Stand out for the right reasons
Financial Services Risk and Regulation

MiFID II

Delegated Regulations give further detail

The MiFID II Delegated Acts were finalised by the European Commission with two Delegated Regulations. Contained within the documents are important details for firms implementing changes to meet the new MiFID II requirements. Our briefing highlights the key changes from ESMA's Technical Advice and explores the impacts for firms.

The European Commission (EC) published two Delegated Regulations (DR), covering MiFID II and MiFIR, on 25 April 2016 and 18 May 2016 respectively. Along with the Delegated Directive published on 7 April 2016, the DRs complete the EC's Delegated Acts on the MiFID II package.

The DR on MiFID II contains information on:

- Scope, including the definition of commodity and currency derivatives
- Definition of algorithmic and high-frequency trading
- Systematic internaliser thresholds
- Organisational requirements, including complaints handling and remuneration
- Conflicts of interest
- Information to clients and reporting to clients
- Investment advice
- Suitability and appropriateness
- Best execution
- Client order handling
- Eligible counterparties
- Record keeping
- SME growth markets
- Obligations for trading venues
- Position reporting in commodity derivatives

The DR on MiFIR contains information on:

- Determination of liquidity for equity instruments
- Data provision obligations for trading venues and systematic internalisers
- Data publication obligations for systematic internalisers
- Derivatives (portfolio compression)
- Product intervention and position management

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Similarly to the Delegated Directive (DD) published on 7 April 2016, the DRs do not represent a precise replica of ESMA's Technical Advice (TA), but nor has the EC strayed too far from ESMA's wording in the vast majority of cases. Our briefing highlights those areas where there is a difference between the DRs and ESMA's TA, and sets out the likely impact of those differences for firms.

Contained within the DR on MiFID II is the much-anticipated clarification on what constitutes a currency derivative. Inconsistencies in the definition of FX forwards came to ESMA's attention during the implementation of EMIR, and it is only now that we have clarity. DR makes clear that derivative contracts relating to currencies are not a financial instrument if the contract is a spot contract, or a means of payment that must be settled physically otherwise than by reason of a default or other termination event; and is entered into by at least a person which is not a financial counterparty to facilitate payment for identifiable goods, services or direct investment. According to the DR, any contract longer than two days will not be considered spot, although there are some exceptions for 'non-major' currency pairs.

On algorithmic trading, the EC has opted not to include all of ESMA's proposed clarifications on definition. This means that firms will have to look carefully at the definition within the DR and consider if parts of their trading activity are in scope. On high-frequency algorithmic trading (HFT), ESMA put forward three options for determining a 'high message intraday rate' in its TA. The TR has opted for a combination of two of those options, based on a per instrument per venue, and all instruments per venue. The TR has followed ESMA's recommended thresholds for both of these options.

Slightly more clarity has been afforded to firms attempting to establish whether they are likely to be classed as a systematic internaliser. The DR sets out the quantitative thresholds for the frequent and systematic, and substantial, determinations. The EC has not departed from ESMA's TA here – where the TA provided a range of percentages, the DR has opted for the midpoint of these to give greater clarity. Clearly, the lack of EU-wide data remains the most important challenge for firms seeking to reach a conclusion on systematic internaliser determination, and unfortunately the DR was never expected to address this issue– so firms will have to wait longer for full clarity, at least until ESMA provides transitional calculations which is likely to happen in 2017.

Broadly speaking, there are some differences between the texts that are likely to result in increased compliance costs for firms. For example, in the area of information to clients, the DR goes further than ESMA's TA in requiring the illustration showing the cumulative effect of costs on return when providing investment services to be provided both on an ex-ante and ex-post basis. ESMA's TA only required that the information be provided at point of sale.

As with the DD, our analysis sign-posts where the changes are between ESMA's TA and delegated legislation, and provides a high-level overview of the likely impacts. It will be important for firms to go beyond this and conduct deeper analysis considering what the

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changes will mean for their particular circumstances, and incorporate this analysis into their compliance efforts and strategic decision making.

Beyond the official confirmation of the postponing of the implementation date that now await official approval from the European Parliament, we now look towards the finalisation of the RTS as the next MiFID II milestone, as well as efforts from Member States to implement at a local level, and additional guidance from ESMA on some topics. It is important that firms digest this latest information, and keep close to future developments as we continue to move towards 3 January 2018.

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Organisational requirements

MiFID II contains requirements regarding general organisation, as well as particular requirements relating to the compliance function, complaints handling, remuneration, and policies and procedures.

Main differences with ESMA's TA

Complaints handling: The DR goes slightly further than ESMA's TA; it sets out that firms must keep a record of the complaints received and the measures taken for their resolution.

Importance of these differences

LOW

Main impacts of these differences

The impact of the additional record-keeping requirement for complaints is likely to be of no or very little consequence for most firms, as it is already best practice to retain these records, at least in some countries.

Information to clients

MiFID II enhances the requirements on information to clients on costs by adding additional information such as the cumulative effect of costs on returns.

Main differences with ESMA's TA

Cumulative effect of costs on return: The DR goes further than ESMA's TA in requiring the illustration showing the cumulative effect of costs on return when providing investment service to be provided both on an ex-ante and ex-post basis. ESMA's TA only required that the information be provided at point of sale.

Separate figures on costs: ESMA's TA set out that firms should be allowed to provide clients or prospective clients with separate figures comprising: aggregated initial costs and charges; aggregated on-going costs and charges; and aggregated exit costs. This provision has not been carried over to the DR.

Importance of these differences

MEDIUM

Main impacts of these differences

There are likely to be increased costs for investment firms because of the additional requirements on cumulative effect of costs on charges on an ex-post basis.

Investment advice

MiFID II requires firms to make clear to clients whether the advice they are providing is independent or non-independent. If providing independent advice, firms are required to adhere to certain requirements, such as considering a sufficiently broad range of financial instruments.

Main differences with ESMA's TA

Informing clients on independence: ESMA's TA set out that firms should explain to clients whether and why investment advice could qualify as independent and the type and nature of the restrictions that apply. The DR appears to go beyond this, setting out that firms must explain whether and why investment advice qualifies as independent.

Firms providing advice on an independent basis and focusing on certain categories or a specified range of instruments: MiFID II requires that firms providing investment advice on an independent basis that focus on certain categories or a specified range of instruments must comply with specific requirements. One of the requirements contained within ESMA's TA for these firms is that clients, or potential clients, should be able to easily identify a preference for the specified classes or range of financial instruments and be able to self-select with a high degree of accuracy. This requirement has not been carried over to the DR.

Information to clients: The obligation for firms to inform the client in a durable medium, whether advice will be independent or non-independent applies for retail and professional clients under the DR. The obligation to inform in a durable medium was only applicable to retail clients in ESMA's TA.

Importance of these differences

LOW

Main impacts of these differences

The subtle difference in wording in the requirement to inform client about the nature of advice tightens the requirement on the firm to provide this information. However, this is unlikely to have a material impact on firms, as it is not likely that many would seek to exploit the apparent loophole presented in ESMA's TA.

While the number of criteria for considering an adequate range of sufficiently diverse financial instruments is reduced, there are four other criteria that are carried over from ESMA's TA. These criteria are broad, and require firms, for example, to ensure that they consider clients' characteristics, as well as ensuring that the number and variety considered is

representative of instruments available in the market. Therefore, it is unlikely that the omission of one of these criteria would have a material impact on firms' selection processes.

The fact that the requirement for firms "that clients, or potential clients, should be able to easily identify a preference for the specified classes or range of financial instruments and be able to self-select with a high degree of accuracy" has not been carried over to the DR should be welcome as it was not the clearest requirement in the framework.

Position reporting in commodity derivatives

MiFID II contains requirements for firms and market operators operating a trading venue that trades commodity derivatives or emission allowances to publish a weekly report on those contracts.

Main differences with ESMA's TA

Lower threshold for reporting: Under ESMA's TA, the first threshold for venues to publish position reports is 30 open position holders. Under the DR, this threshold is set at 20 open position holders.

Exemption for second threshold: Under the DR, the second threshold (the absolute amount of the gross long or short volume of total open interest exceeds a level of four times the deliverable supply in the same commodity derivative) is not applicable when the commodity derivative does not have a physically deliverable underlying asset; this exception did not exist in ESMA's TA.

Importance of these differences

MEDIUM

Main impacts of these differences

Both thresholds have been strengthened by the EC in the DR. Therefore, entities which operate a trading venue will have to issue a weekly report in more cases which will create additional burden for some market operators.

Data provision obligations for data reporting service providers

Under MiFID II, there are requirements for post-trade disclosures by investment firms through an approved publication arrangement (APA) or a consolidated tape provider (CTP). These data reporting service providers are required to provide market data on the basis of cost (i.e. the market data price is based on the cost with a reasonable margin); and to provide market data on a non-discriminatory basis (i.e. there should be the same price for all customers in the same category; any differentials between different categories shall be proportionate).

Main differences with ESMA's TA

Reasonable margin: The DR provides that the market data price may include a reasonable margin.

Increase in prices: The DR does not require that any increase in market data prices reflects changes in costs of data production/dissemination.

Central website: The DR does not require setting up a central web-site as single point of reference for any market data user in order to make easily available to the public the information.

Importance of these differences

MEDIUM

Main impacts of these differences

The DR provisions are less restrictive with regard to the market data pricing but requires transparency on costs/prices (which was an option proposed in ESMA's TA).

Derivative contracts specified in Section C (10) of Annex I MiFID II

Main differences with ESMA's TA

Transmission or transportation capacity derivatives: ESMA's TA sets out that derivatives contracts with transmission or transportation capacity relating to commodities as the underlying should be considered financial instruments under MiFID II, providing they meet certain criteria. The DR excludes from this category transmission rights related to electricity transmission cross zonal capacities when they are, on the primary market, entered into with or by a transmission system operator or any persons acting as service providers on their behalf and in order to allocate the transmission capacity.

Importance of these differences

LOW

Main impacts of these differences

This change should be welcomed by electricity transmission system operators.

FX derivatives

Although not included in ESMA's TA, the DR specifies the definition of derivative contracts relating to

currencies. The DR makes clear that derivative contracts relating to currencies are not a financial instrument if the contract is a spot contract, or a means of payment that must be settled physically otherwise than by reason of a default or other termination event; and is entered into by at least a person which is not a financial counterparty to facilitate payment for identifiable goods, services or direct investment.

On the controversial issue of what constitutes a spot contract for derivatives contracts relating to currencies, the DR provides the following clarification.

A spot contract means a contract for the exchange of one currency against another currency, under the terms of which delivery is scheduled to be made within the longer of the following periods:

a. *two trading days in respect of any pair of major currencies[1];*

b. *for any pair of currencies where at least one currency is not a major currency, the longer of two trading days or the period generally accepted in the market for that currency pair as the standard delivery period;*

c. *where the contract for the exchange of those currencies is used for the sole or main purpose of the sale or purchase of a transferable security or a unit in a collective investment undertaking, the period generally accepted in the market for the settlement of that transferable security or unit in a collective investment undertaking as the standard delivery period or 5 trading days, whichever is shorter.*

The DR sets out that a contract is not spot if there is an understanding between the parties that the delivery of the currency is to be postponed.

Impact of this clarification

The issue of what constitutes an FX forward has been debated extensively by ESMA, the EC and industry. The DR will provide welcome clarity on this issue for industry. However, in some Member States where the generally accepted practice was to consider FX forwards with delivery of longer than two days as spot, the clarification will bring FX forwards into the scope of regulation. It will be important for firms to consider the impact of this alongside the means of payment definition, which, applied properly, should avoid the unintended consequence of bringing additional contracts into scope unnecessarily.

The definition of systematic internalisers

Under MiFID II, a systematic internaliser (SI) is defined as an investment firm which, on an organised, frequent, systematic and substantial basis, deals on own account by executing client orders outside a regulated market, an MTF or an OTF without operating a multilateral system. ESMA's TA provided quantitative thresholds for the definition of SIs (frequent and systematic, and substantial) across different classes of instruments.

Main differences with ESMA's TA

Where ESMA provided a range of percentages within the thresholds, the DR contains a single percentage at the midpoint of this range. For example, ESMA provided that the frequent and systematic threshold for bonds (liquid market) should be where OTC trading represents 2% to 3% of total EU activity; the DR sets out that the threshold should be 2.5%.

Importance of these differences

LOW

Main impacts of these differences

The clarification will give firms certainty as to the thresholds that they need to feed into their SI determination models. Having a precise number, as opposed to a range contained within ESMA's TA, is preferable. However, the fact that the EU-wide market data remains unknown means that firms still have a high degree of uncertainty in regard to the SI determination, and are not yet able to complete the calculation.

[1] Major currencies are defined as: US dollar, Euro, Japanese yen, Pound sterling, Australian dollar, Swiss franc, Canadian dollar, Hong Kong dollar, Swedish krona, New Zealand dollar, Singapore dollar, Norwegian krone, Mexican peso, Croatian kuna, Bulgarian lev, Czech koruna, Danish krone, Hungarian forint, Polish zloty and Romanian leu.

	ESMA's TA		*DR*	
Asset class	**Frequent and systematic**	**Substantial**	**Frequent and systematic**	**Substantial**
Equities and equity-like	**Liquid market:** Number of OTC transactions executed on own account or when executing client orders in liquid instruments is equal or larger than 0.4% of the total number of transactions in the EU executed on any venue or OTC. Must be traded on a daily basis. **Non-liquid market:** OTC transactions carried out on own account takes place on average on a daily basis during last six months.	OTC trading is 15% of the turnover in that financial instrument executed by the investment firm on own account or on behalf of clients and carried out on any trading venue or OTC, or 0.4% of the total turnover of that financial instrument executed in the EU and carried out on any EU trading venue or OTC.	**Liquid market:** Number of OTC transactions executed on own account or when executing client orders in liquid instruments is equal or larger than 0.4% of the total number of transactions in the EU executed on any venue or OTC. Must be traded on a daily basis. **Non-liquid market:** OTC transactions carried out on own account takes place on average on a daily basis during last six months.	OTC trading is 15% of the turnover in that financial instrument executed by the investment firm on own account or on behalf of clients and carried out on any trading venue or OTC, or 0.4% of the total turnover of that financial instrument executed in the EU and carried out on any EU trading venue or OTC.
Bonds	**Liquid market:** Number of transactions executed on own account OTC in liquid instruments is equal to or larger than 2% to 3% of the total number of transactions in the relevant financial instrument in the EU executed on any trading venue or OTC. Must be traded once a week. **Non-liquid market:** OTC transactions carried out on own account takes place on average once a week during last six months.	OTC trading is equal or larger than either 25% of the total nominal amount traded in that financial instrument executed by the investment firm on own account or on behalf of clients and carried out on any trading venue or OTC, or 0.5% to 1.5% of the total nominal amount traded in that financial instrument executed in the EU and carried out on any EU trading venue or OTC.	**Liquid market:** Number of transactions executed on own account OTC in liquid instruments is equal to or larger than 2.5% of the total number of transactions in the relevant financial instrument in the EU executed on any trading venue or OTC. Must be traded once a week. **Non-liquid market:** OTC transactions carried out on own account takes place on average once a week during last six months.	OTC trading is equal or larger than either 25% of the total nominal amount traded in that financial instrument executed by the investment firm on own account or on behalf of clients and carried out on any trading venue or OTC, or 1% of the total nominal amount traded in that financial instrument executed in the EU and carried out on any EU trading venue or OTC.
Structured finance products	**Liquid market:** Number of OTC transactions executed on own account or when executing client orders in liquid instruments is equal or larger than 3% to 5% of the total number of transactions in the EU executed on any EU trading venue or OTC. Must be traded once a week. **Non-liquid market:** OTC transactions carried out on own account takes place on average once a week during last six months.	OTC trading is 30% of the total nominal amount traded in that financial instrument executed by the investment firm on own account or on behalf of clients and carried out on any trading venue or OTC, or 1.5% to 3% of the total nominal amount traded in that financial instrument executed in the EU and carried out on any EU trading venue or OTC.	**Liquid market:** Number of OTC transactions executed on own account or when executing client orders in liquid instruments is equal or larger than 4% of the total number of transactions in the EU executed on any EU trading venue or OTC. Must be traded once a week. **Non-liquid market:** OTC transactions carried out on own account takes place on average once a week during last six months.	OTC trading is 30% of the total nominal amount traded in that financial instrument executed by the investment firm on own account or on behalf of clients and carried out on any trading venue or OTC, or 2.25% of the total nominal amount traded in that financial instrument executed in the EU and carried out on any EU trading venue or OTC.

	ESMA's TA		*DR*	
Asset class	**Frequent and systematic**	**Substantial**	**Frequent and systematic**	**Substantial**
Derivatives	**Liquid market:** Number of transactions executed on own account OTC in liquid instruments is equal to or larger than 2% to 3% of the total number of transactions in the relevant financial instrument in the EU executed on any EU trading venue or OTC. Must be traded once a week. **Non-liquid market:** OTC transactions carried out on own account takes place on average once a week during last six months.	OTC trading is equal or larger than either 25% of the total nominal amount traded in that financial instrument executed by the investment firm on own account or on behalf of clients and carried out on any trading venue or OTC, or 0.5% to 1.5% of the total nominal amount traded in that financial instrument executed in the EU and carried out on any EU trading venue or OTC.	**Liquid market:** Number of transactions executed on own account OTC in liquid instruments is equal to or larger than 2.5% of the total number of transactions in the relevant financial instrument in the EU executed on any EU trading venue or OTC. Must be traded once a week. **Non-liquid market:** OTC transactions carried out on own account takes place on average once a week during last six months.	OTC trading is equal or larger than either 25% of the total nominal amount traded in that financial instrument executed by the investment firm on own account or on behalf of clients and carried out on any trading venue or OTC, or 1% of the total nominal amount traded in that financial instrument executed in the EU and carried out on any EU trading venue or OTC.
Emission allowances	**Liquid market:** Number of OTC transactions executed on own account or when executing client orders in liquid instruments is equal or larger than 3% to 5% of the total number of transactions in the EU executed on any EU trading venue or OTC. Must be traded once a week. **Non-liquid market:** OTC transactions carried out on own account takes place on average once a week during last six months.	OTC trading is 30% of the total nominal amount traded in that financial instrument executed by the investment firm on own account or on behalf of clients and carried out on any trading venue or OTC, or 1.5% to 3% of the total nominal amount traded in that financial instrument executed in the EU and carried out on any EU trading venue or OTC.	**Liquid market:** Number of OTC transactions executed on own account or when executing client orders in liquid instruments is equal or larger than 4% of the total number of transactions in the EU executed on any EU trading venue or OTC. Must be traded once a week. **Non-liquid market:** OTC transactions carried out on own account takes place on average once a week during last six months.	OTC trading is 30% of the total nominal amount traded in that financial instrument executed by the investment firm on own account or on behalf of clients and carried out on any trading venue or OTC, or 2.25% of the total nominal amount traded in that financial instrument executed in the EU and carried out on any EU trading venue or OTC.

Algorithmic and high-frequency trading

MiFID II introduces a set of rules for firms pursing algorithmic trading and high-frequency trading (HFT) strategies. Certain exemptions, such as dealing on own account, are not available for firms pursing HFT strategies.

Main differences with ESMA's TA

Definition of algorithmic trading: ESMA's TA put forward three areas of further clarification regarding the definition of algorithmic trading. Only one of these points of clarification has been carried over to the DR. The DR sets out that with 'no or limited human intervention' means: "for any order or quote generation process or any process to optimise order-execution, an automated system makes decisions at any stages of initiating, generating, routing or executing orders or quotes according to pre-determined parameters".

Definition of HFT: ESMA's TA provided three options for the definition of a high message intra-day rate: a quantitative measure of messages per second per instrument per venue; a quantitative measure of messages per second for all instruments on a venue; or a relative threshold, based on the median daily lifetime of modified or cancelled orders. The TR has opted for a combination of the first two options, and has followed ESMA's recommended thresholds. Therefore, according to the TR, a high message intra-day rate means:

a. at least 2 messages per second with respect to any single financial instrument traded on a trading venue; or

b. at least 4 messages per second with respect to all financial instruments traded on a trading venue.

In line with ESMA's TA, only messages submitted for orders when dealing on own account, and for which there is a liquid market, are to count towards the calculation.

Importance of these differences

MEDIUM

Main impacts of these differences

The clarification on HFT will come as a comfort to parts of the industry that were concerned that the relative threshold would have unintentionally captured participants trading at relatively low speeds. Confirmation that only proprietary order flow, and only liquid markets, will count towards the calculation will not come as a surprise, but will be welcomed by the industry.

It is notable that the DR has not carried over all of ESMA's suggestions for further clarifying the definition of algorithmic trading. There is a wide range of interpretations of what constitutes algorithmic trading across the industry, and a lack of real clarity from the DR will not provide much help in achieving consistency.

Liquid market for equities

The definition of 'liquid market' for equities and equity-like products is relevant to a number of parts of MiFIR.

Main differences with ESMA's TA:

Most relevant market: There are no material differences between ESMA's TA and the DR. Compared to the TA, an additional paragraph is contained within each asset class setting out that if a Member State is the most relevant market for fewer than five liquid shares, the competent authority in that Member State can designate one or more additional liquid shares.

List of liquid instruments: The DR contains additional requirements for competent authorities to publish a list for all liquid equity and equity-like instruments on 1 March each year.

Importance of these differences

LOW

Main impacts of these differences

The differences are not likely to impact the majority of firms.

Data publication obligations for trading venues and SIs

MiFID II requires trading venues and systematic internalisers (SIs) to make data available on a reasonable commercial basis.

Main differences with ESMA's TA:

There are no material differences between ESMA's TA and the DR. The DR is aligned with ESMA's TA in allowing trading venues and SIs to include a reasonable margin in the cost of producing and disseminating market data.

Per-user basis requirements: The DR is aligned with ESMA's TA in requiring trading venues and SIs to offer market data on a per user basis, except in cases where this is disproportionately costly. However, the DR goes further than ESMA's TA in

requiring trading venues and systematic internalisers not offering data on a per user basis to publish on their webpage the justifications for this.

Responsibilities in relation to third parties: ESMA's TA set out that if a trading venue makes its data feed available only in such a way that customers need to use the services of a third-party supplier (e.g. an external IT provider for decryption), then it should be the responsibility of the trading venue to ensure that the overall data service is available to customers on a reasonable commercial basis, including on a non-discriminatory basis. The DR does not contain this requirement.

Importance of these differences

LOW

Main impacts of these differences

There is a potential additional burden for trading venues and SI as firms may need to consider whether they are able to offer data on a per user basis, and if not, clearly articulate why they are not able to do this, while remaining conscious of commercial sensitivities. On the contrary, firms will welcome the removal of the responsibility to ensure any third parties provide data on a reasonable commercial basis.

Portfolio compression

MiFID II contains rules that apply to firms when providing portfolio compression for clients.

Main differences with ESMA's TA:

Risk tolerance: There are no material differences between ESMA's TA and the DR. However, the DR provides slightly more detail in respect of the features of counterparties' risk tolerance to be taken into account by firms or market operators providing portfolio compression.

Publication of information: ESMA's TA sets out that publication of information on the portfolio compression should be made shortly after the compression. ESMA's TA conceded that when compression takes place between counterparties rather than by a provider, it may be a more manual process and therefore a delay publishing could require more time (although this should not extend beyond the following business day). The DR does not make reference to this. The DR requires that the publication should be made as close to real-time as is technically possible and no later than the following business day after a compression proposal becomes legally binding.

Importance of these differences

LOW

Main impacts of these differences

Firms providing portfolio compression should be aware of the requirement to publish information as close to real-time as possible.

What's next?

The publication of the Delegated Regulations completes the Delegated Acts from the EC. Our attention now turns to the regulatory technical standards (RTS), which are currently due to be finalised before September 2016. Negotiations are ongoing between ESMA and EC on some of the more controversial RTS, such as RTS 2 on pre-trade transparency, and RTS 21 on position limits. It is important to remain close to developments on these important areas of MiFID II.

With the completion of the Delegated Acts, we can expect Member States to move forward with proposals for rules to transpose the contents of the Delegated Directive, and the recast MiFID. The EC will closely monitor the transposition process that needs to happen before July 2017. Once done, ESMA will be seeking to ensure consistency in application across all Member States to the greatest possible extent. However, for firms operating across borders in the EU, it will be important to identify any variations in approach at the local level that could require subtle alterations to implementation strategies. There are some areas where Member States have specific dispensation to go beyond the rules in MiFID II, such investor protection requirements under Article 24, and firms should be especially vigilant on these subjects.

What do I need to do?

3 January 2018 may still sound like it is still a long way off, but given the nature and scale of changes most firms still need to make, it will come round very quickly. The delay to the MiFID II go-live date has given firms a welcome opportunity to take stock of their MiFID II implementation efforts. The EC's publication of the DRs means the Delegated Acts are complete and there is now new work to do to, and it is time to move forward. It's therefore important that you quickly establish the impact of the latest developments on your organisation, and move to make the necessary changes to your implementation programmes and strategic thinking. For example, many firms will need to consider the confirmation of scope and definitions on important topics such as derivatives and HFT, and establish how they will be affected. Others will need to consider how they will implement specific changes in the DRs, such as the requirement to publish the cumulative effect of costs on return when providing investment service to be provided both on an ex-ante and ex-post basis.

We have a vast amount of experience supporting firms across the sector with MiFID II gap analysis, impact assessment, programme management and strategic implementation. We have deep expertise in all areas of MiFID II, from investor protection and governance, through to transparency and market structure. We can also help you understand the strategic opportunities MiFID II brings, and help you establish the cumulative impact of the broader regulatory change agenda, across the EU and beyond. If you would like to discuss any of the issues described above in more detail, please contact us.

As implementation at the national level is going to be a key dimension especially for investor protection issues, PwC has set up a fully integrated cross-border European team, which thanks to its transversal approach and close proximity with both European and national regulators can assist you in monitoring the possible differences between countries in this implementation and coping with these differences.

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