

Mandatory exchange trading in the EU

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Scope: which derivatives will it cover?

- The trading obligation applies to any derivative or class of derivatives which is:
 - a) subject to a clearing obligation under EMIR;
 - b) made available to trade by at least one EU trading venue; and
 - c) determined by specific ESMA Regulatory Technical Standard⁽¹⁾ to be sufficiently liquid⁽²⁾.
- The liquidity test: a class of derivatives is considered sufficiently liquid on the basis of the following criteria:
 - average frequency and size of trades;
 - the number and type of active market participants;
 - the average size of spreads.

In establishing the trading mandate ESMA shall have regard to the anticipated impact that the trading obligation might have on the liquidity of the derivatives and the commercial activities of end users which are not financial entities.
- The trading mandate excludes intragroup transactions and transactions covered by transitional provisions (ie current exemption for pension funds).

⁽¹⁾ Subject to public consultation and to be endorsed by the European Commission.

⁽²⁾ There is the potential to mandate only for transactions below a certain size, but larger transactions can anyway benefit from pre-trade transparency exemptions and post-trade transparency deferral periods).

Scope: which counterparties does it apply to?

The EU trading obligation applies to transactions executed by:

Financial counterparties:

- investment firms (including credit institutions, dealers);
- insurance, assurance and reinsurance undertakings;
- "UCITS";
- pension funds (if not exempt from clearing obligation);
- Alternative Investment Funds;

&

Non-Financial Counterparties (NFCs):

- Any non-financial counterparty which takes positions⁽¹⁾ in OTC derivatives contracts exceeding certain asset-class specific thresholds during a specified period.

(1) Excluding those resulting from hedging activities of their commercial or treasury activities.

Scope: is there extraterritorial reach?

The trading obligation applies to selected non-EU counterparties:

- Third-country financial entities or non-financial entities which would be subject to the clearing obligation if established in the EU for transactions with EU counterparties (financial counterparties and NFC+s) in derivatives subject to the trading mandate.
- Other third-country firms which would be subject to the clearing obligation if they were established in the EU where the contract has a **direct, substantial and foreseeable effect within the EU** or where the obligation is necessary or appropriate to prevent the evasion of any relevant provision.

Contracts with **direct, substantial and foreseeable effect within the EU** (to be specified through RTS): certain entities which benefit from a (material) guarantee from an EU financial institution and EU branches of non-EU financial counterparties.

Timing: when will it take effect?

MiFIR requires ESMA to develop draft regulatory technical standards to specify which class of derivative is subject to the trading mandate:

- Within six months after the adoption of the regulatory technical standards for the purpose of the clearing obligation;
- The draft regulatory technical standards must specify the date or dates from which the trading obligation takes effect, including any phase-in and the categories of counterparties to which the obligation applies.

Timing: trading obligation timetable

- 1** The European Commission endorses draft RTS under EMIR (clearing obligation)
- 2** The European Parliament and Council have 1 month to object if the European Commission adopts the ESMA draft (extendable to 2 more months)
- 3** If no objection the RTS are published in the “Official Journal” and apply 21 days after publication
- 4** ESMA must submit draft RTS (trading obligation) under MiFIR to the European Commission within 6 months of the adoption of the RTS (clearing obligation)
- 5** If endorsed by the European Commission and subject to the same “non-objection” by the European Parliament and Council the trading obligation applies from the date specified in the RTS.

Which venues will be eligible?

A derivative or class of derivatives subject to the trading mandate can only be traded on:

- Regulated Markets
- MTFs;
- OTFs; or
- Third-country trading venues provided that:
 1. the European Commission has adopted an equivalence decision; and
 2. the third-country provides for an effective equivalent system of recognition for EU trading venues.

Equivalence decision

- The European Commission adopts an equivalence provision in accordance with an examination procedure⁽¹⁾
- The legal and supervisory framework of a third-country is considered equivalent where:
 - a) Trading venues in that country are subject to authorisation and effective supervision and enforcement;
 - b) Trading venues have clear and transparent rules seeking to ensure that financial instruments are capable of being traded in a fair, orderly and efficient manner, and are freely negotiable;
 - c) Market transparency and integrity is ensured via rules addressing market abuse.

(1) The European Commission may take an equivalence decision subject to a positive opinion by a committee composed by representatives of Member States.

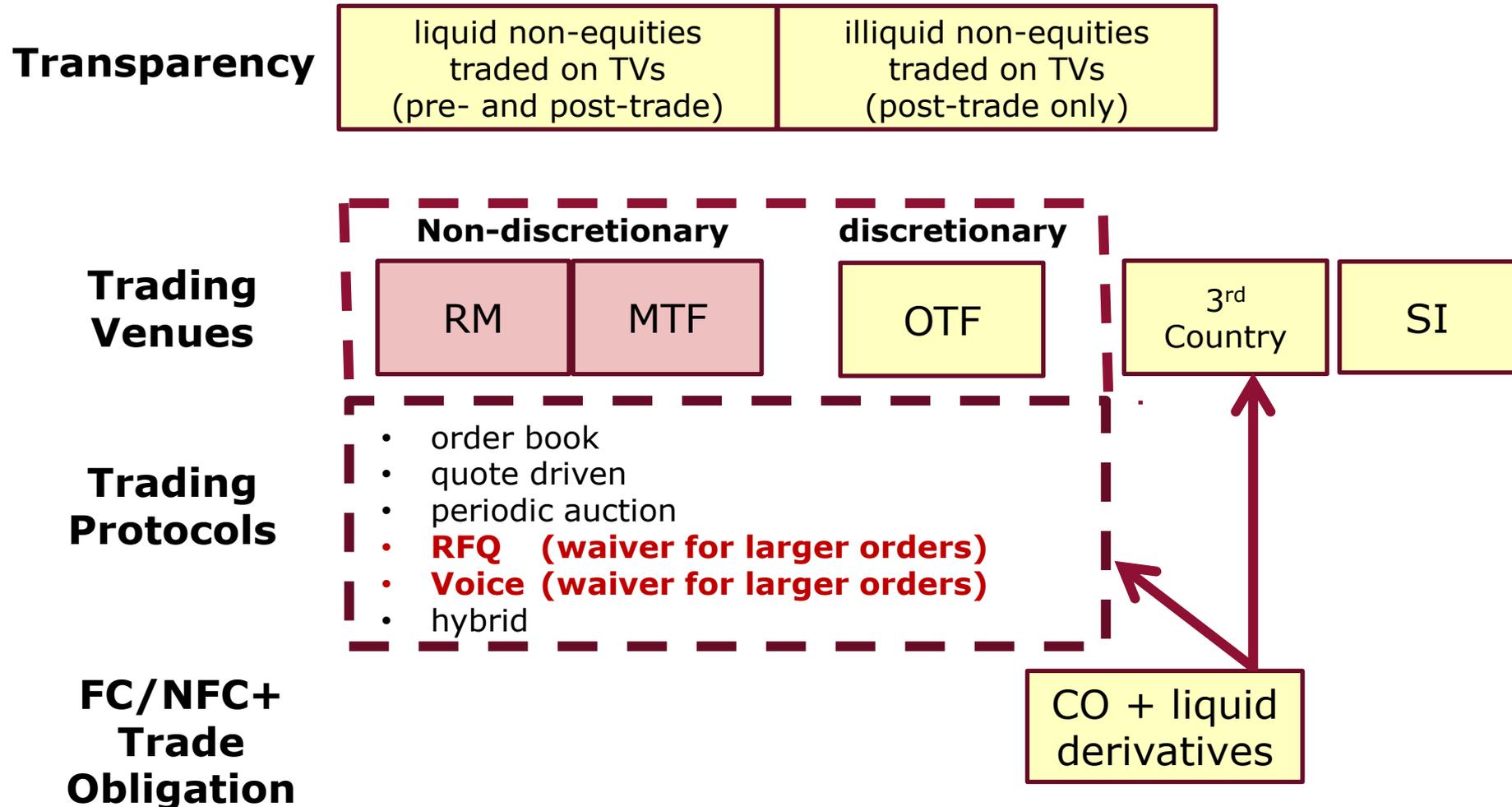


Thank you



Additional slides

A new market structure for non-equities



MTF v. OTF (I)

	MTF	OTF
Instruments	All MiFID financial instruments (including equities)	Bonds, structured finance products, emissions allowances, derivatives (no equities)
Trading methodology	Must be non-discretionary	Must involve operator discretion
Trade transparency	Same requirements	
Access	Transparent, non-discriminatory and objective access requirements	
Use of proprietary capital	No	Not for trades in G20 derivatives
Client-facing responsibilities	Carve-out from conduct rules for interaction between members on MTF (but not between members and their clients)	The OTF operator is subject to conduct rules, including best execution, in their dealings with users of their system

Clearing thresholds

Article 11

(Article 10(4)(b) of Regulation (EU) No 648/2012) **Clearing thresholds(*)**

The clearing thresholds values for the purpose of the clearing obligation shall be:

- a) EUR 1 billion in gross notional value for OTC credit derivative contracts;
- b) EUR 1 billion in gross notional value for OTC equity derivative contracts;
- c) EUR 3 billion in gross notional value for OTC interest rate derivative contracts;
- d) EUR 3 billion in gross notional value for OTC foreign exchange derivative contracts;
- e) EUR 3 billion in gross notional value for OTC commodity derivative contracts and other OTC derivative contracts not provided for under points (a) to (d).

(*) Excluding hedging and intragroup transactions