

MiFID II | Time to get prepared

March 2015



Stephanie Baruk

sbaruk@chappuishalder.com

The revision of the Markets in Financial Instruments Directive represents one of the centerpieces of financial markets reform across a multitude of areas, requiring not only major implementation efforts, but also a re-assessment of business models. With the intention to boost competition, promote transparency and encourage financial stability, MiFID II is the cornerstone of multiple regulations that are being implemented at a global, European or national level.

Beyond the extension of most of the requirements to other asset classes, we can notice the following evolutions between MiFID and the reviewed directive:

- **Market Structure** | Introduces new market structures with the addition of Organized Trading Facilities (OTF), limitation on trading on dark pools, eligible derivatives to be traded on regulated trading venues only
- **OTC Derivatives** | Move to exchanges or electronic trading platforms where appropriate, OTC Derivatives subject to EMIR clearing obligations
- **Transparency and Reporting** | Expands the needs for transparency and reporting with the inclusion of other asset classes and new reporting requirements tailored to asset classes
- **Investor Protection** | Aims to enhance investor protection through upgraded selling rules and the use of pre-contractual documentation
- **Organizational requirements** | Stipulates the make up of boards and management committees, and their organizational responsibilities, strengthens internal compliance functions
- **Third Country Access** | Sets out rules for those outside the EU to do business with it
- **Position Limits** | Lays out restrictions and position limits as well as details on sanctions

Within this complexity and broad scope, financial institutions need to start assessing impacts to determine efforts, budgets, roadmaps and ensure that their strategy and organization are aligned for compliance by January 2017

Financial institutions should think about integrating MiFID II under a unique regulatory change program allowing to manage extraterritoriality impacts, ensure consistent and efficient implementation and avoid duplication of efforts

Market Structure

- ✓ Introduce Organized Trading Facilities
- ✓ Align RM, MTF and OTF organizational and market surveillance requirements
- ✓ Eligible derivatives are to be traded on regulated trading venues
- ✓ Limitation on trading on dark pools
- ✓ Open access to trading venues

Reporting

- ✓ Additional reporting requirements to regulators
- ✓ External circuit breakers for High Frequency Trading
- ✓ Position limits and public reports with aggregate positions for Commodity Derivatives

Transparency

- ✓ Improve pre and post-trade transparency by expanding scope for Equity instruments and including Non-Equity
- ✓ Improve post-trade quality and availability with European Consolidated Tape approaches
- ✓ Launch Approved Reporting Mechanism for transaction requirements

Public firm price quoting requirements for liquid instruments

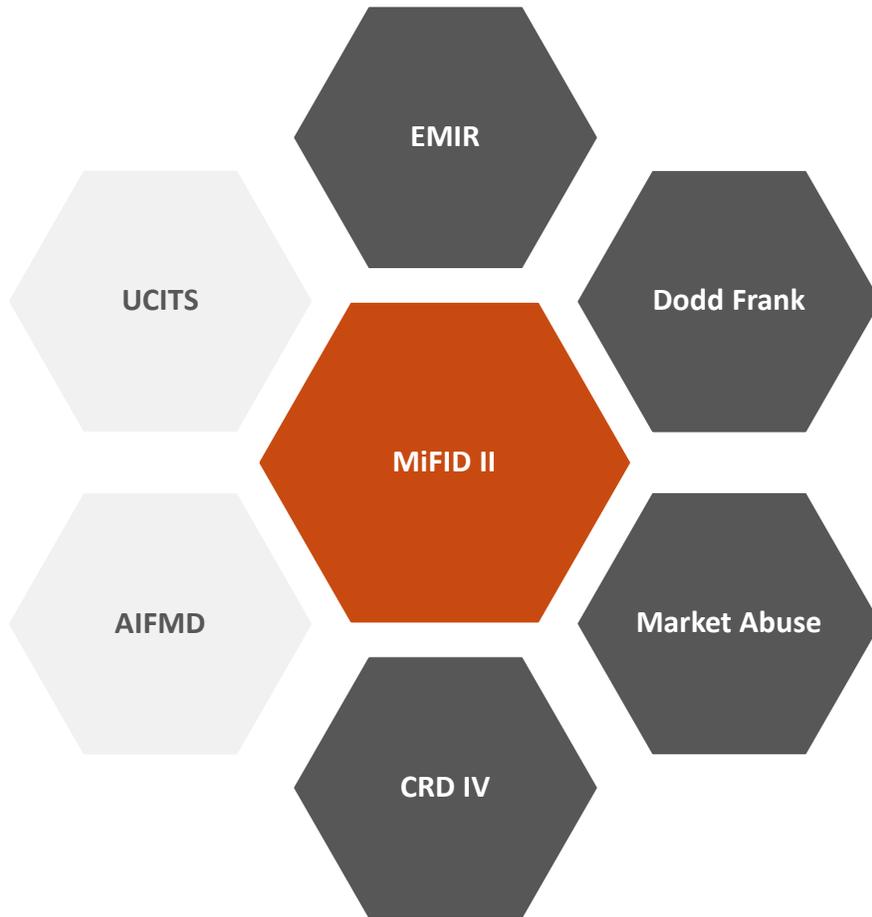
Governance & Internal Controls

- ✓ New selection criteria and appropriateness with respect to the management body
- ✓ Limitation on the number of directorships allowed to members of management bodies
- ✓ Increased scope and role of Compliance
- ✓ Implement recordkeeping solutions



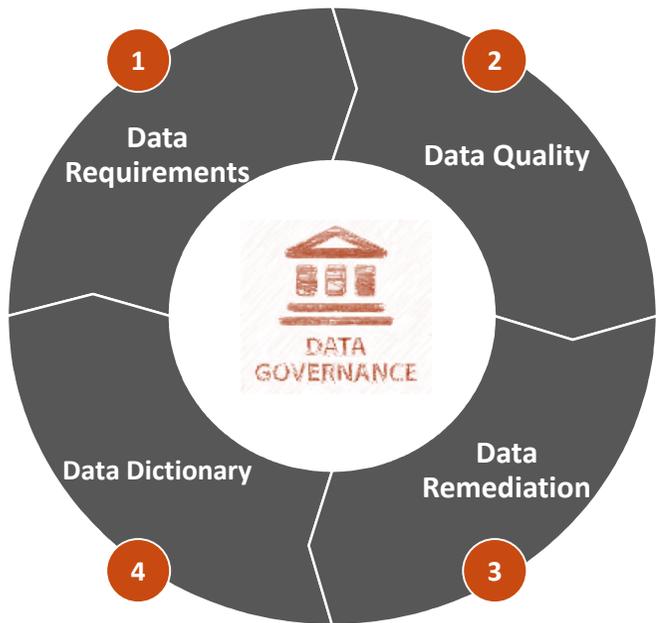
- Jan-17***
 - Application of MiFID II/MiFIR
- Jun-16***
 - EU Members States to implement MiFID II/MiFIR in their national legislations
- Jan-16**
 - Deadline for ESMA to submit draft Implementing Technical Standards (ITS) to the EC
- Jul-15**
 - Deadline for ESMA to submit draft Regulatory Technical Standards (RTS) to the EC
- 20-Mar-15**
 - Deadline for answering ESMA amended consultation paper (incl. proposal for liquidity definitions and size thresholds)
- 19-Dec-14**
 - Publication of Final Technical Advice (implementing rule)
- 2-Jul-14**
 - Entry into force of MiFID II/MiFIR

*Expected date

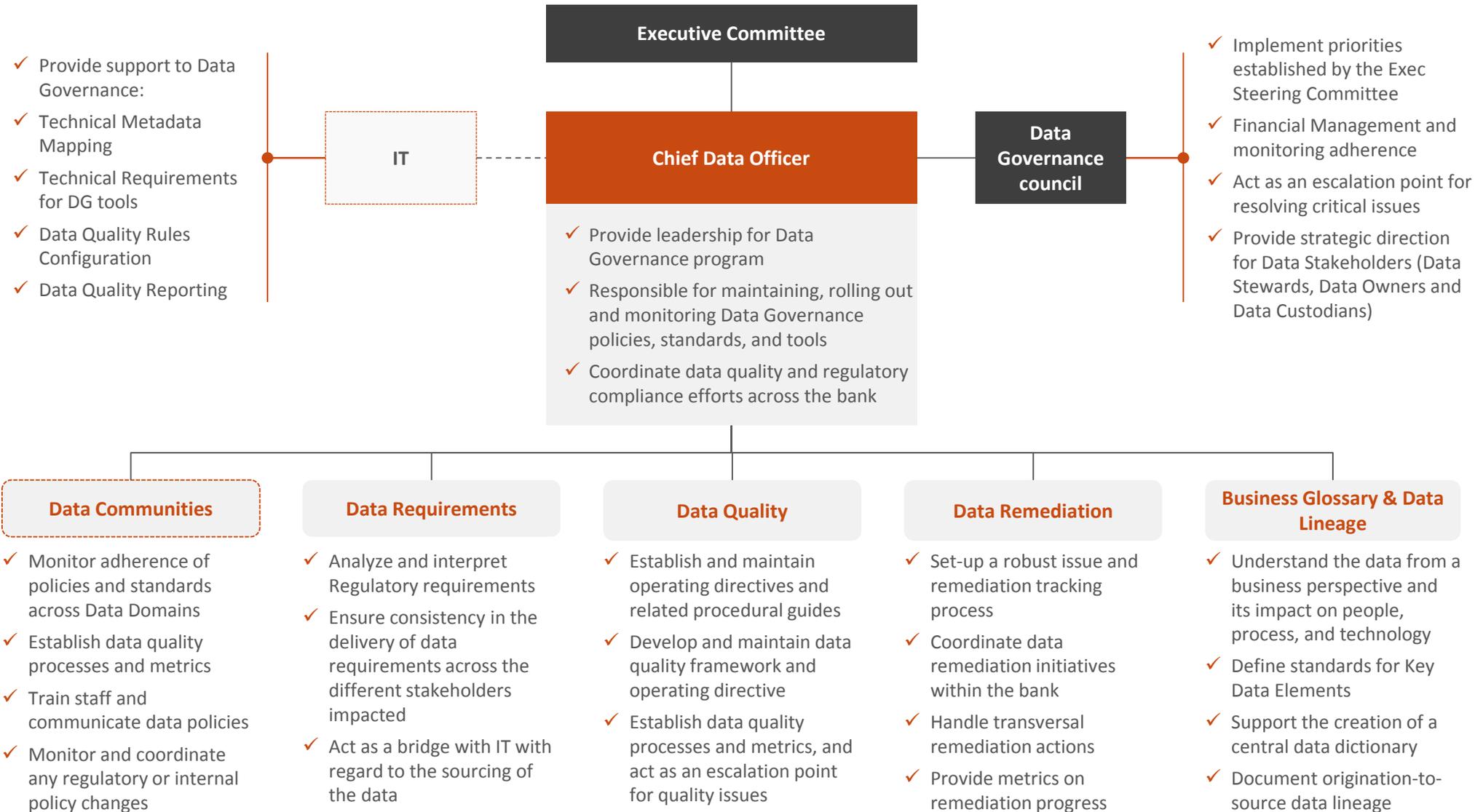


- **EMIR | OTC Derivatives**
 - Trading on exchanges or electronic trading platforms
 - Clearing through central counterparties
 - Reporting solutions need to be aligned
- **Dodd Frank | OTF and SEF, recordkeeping requirements**
 - Cross-territoriality requirements across OTF trading and swap execution under Dodd Frank needs to be taken into account in each jurisdiction
 - Ensure that the platform is flexible enough to cater for each set of requirements
 - Ensure consistency across recordkeeping requirements and leverage as much as possible existing solutions
- **MAD II | Reporting requirements**
 - Common trade and transaction reporting requirements
 - Similar audit trail and data infrastructure enhancements, notably reference data and unique identifiers
- **CRD IV | Corporate Governance**
 - MiFID II incorporates the corporate governance requirements within the Capital Requirements Directive
 - Limits the number of directorships of members of management bodies at the same time





- 1
 - **Identify Regulatory data requirements for reporting purpose**
 - ✓ Analyze and interpret Regulatory requirements and leverage existing regulatory reporting
 - ✓ Ensure consistency in the delivery of data requirements
 - ✓ Act as a bridge with IT with regard to the sourcing of the data
- 2
 - **Assess on an ongoing basis data quality employed within the bank**
 - ✓ Establish and maintain operating directives and related procedural guides
 - ✓ Develop and maintain data quality framework and operating directive
 - ✓ Establish data quality processes and metrics, and act as an escalation point for quality issues
- 3
 - **Ensure data meets the stringent requirements from the regulator**
 - ✓ Set-up a robust issue and remediation tracking process
 - ✓ Coordinate data remediation initiatives within the bank and handle transversal remediation actions
 - ✓ Provide metrics on remediation progress
- 4
 - **Provide additional comfort to decision makers on risk and regulatory challenges**
 - ✓ Understand the data from a business perspective and its impact on the organization
 - ✓ Define standards for Key Data Elements
 - ✓ Support the creation of a central data dictionary and document origination-to-source data lineage



1

Ensure **buy-in of the stakeholders** and **involvement at the executive level** to implement changes as early as possible

2

Align with the **cross-regulatory reform agenda** and ensure that MiFID II is jointly managed with other regulatory initiatives under a **unique regulatory change program**

3

Implement **effective and streamlined post-trade infrastructure** as well as **robust data governance framework**

4

Redefine precisely **roles and responsibilities** in the control framework and enhance **regulation awareness**

5

Benefit from public trade information and pre-trade price publication requirements to **analyze trading behavior and market trends**



Appendix

	Organizations	Activities	Instruments
MiFID	<ul style="list-style-type: none"> • Investment firms • Credit institutions • Portfolio managers • Broker-dealers • Stock brokers • Corporate finance companies • Commodity firms 	<ul style="list-style-type: none"> • Reception and transmission of orders in relation to finance instruments • Execution of orders on behalf of the client • Dealing on own account • Portfolio management • Investment advice • Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis • Placing of financial instruments without a firm commitment basis 	<ul style="list-style-type: none"> • Equities
MiFID II	<ul style="list-style-type: none"> • Market operators • Central counterparties • Data service providers 	<ul style="list-style-type: none"> • High Frequency Trading • Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash /collateral management 	<ul style="list-style-type: none"> • Equities (extended scope) • Derivatives • Fixed income • Commodities • Structured products • Emission allowances

PRE TRADE

- Equity and Equity-Like instruments: Largely unchanged from MiFID I. **Widening to equity-like instruments**
- **Investor protection:** pre-contractual documentation, stringent rules of conduct, upgraded selling rules
- **Systematic Internaliser (SI) Regime** : Obligation to make public firm quotes on specific instruments traded on a trading venue for which the firm is SI and for which there is a liquid market (up to specific threshold)
- Introduction of **Position Limits** for Commodity Derivatives
- Connection to **trading platforms**
- **A volume cap** is introduced for use of the negotiated transaction and reference price waivers

EXECUTION

- **Equity and Equity-Like instruments trading obligation** on Regulated Market (RM), Multilateral Trading Facility (MTF) or SI
- OTC Derivatives subject to EMIR **clearing obligation**
- **Introduction of a new trading venue** - Organized Trading Facility (OTF) - for **non-equities**
- Operators on trading venues will be subject to enhanced requirements in relation to **market surveillance**
- **HFT | Enhanced information requirements**, e.g. information on algorithmic traders' strategies
- **Stricter control** on direct electronic/sponsored access to trading venue systems
- Appropriate systems and controls for **market-making activity**
- **Best execution principles** with strengthened disclosure requirements for investment firms

POST TRADE

- **Widening scope of MiFID transaction reporting obligations** to:
 - Financial instruments which are admitted to trading or traded on a trading venue or for which a request for admission to trading has been made
 - Financial instruments where the underlying is a financial instrument traded on a trading venue
 - Financial instruments where the underlying is an index or a basket composed of financial instruments traded on a trading venue
- **More stringent** reporting requirements: complete and accurate details of trades; report no later than close of the working day following the trade
- **Commodities:** Position reporting
- **Open access to CCPs**
- **Consolidated Tape Providers** required to consolidate data into a continuous electronic data stream

Organization

- **Internal organization requirements** regarding boards and management committees and their organizational responsibilities
- **Expansion** of the scope and role of **Compliance functions**
- **Remuneration policy** to encourage responsible business conduct, fair treatment of clients and to avoid conflict of interests



GENEVA

Rue de Lausanne 80
CH 1202 Genève,
Suisse



PARIS

20, rue de la
Michodière
75002, Paris, France



NIORT

19, avenue Bujault
79000 Niort, France



LONDON

50 Great Portland Street
W1W 7ND, London, UK



NEW YORK

1441 Broadway
Suite 3015, New York
NY 10018, USA



MONTREAL

202 – 1819 Bd Rene
Levesque O.
Montreal, Quebec,
H3H2P5



HONG KONG

905, 9/F,
Kinwick Centre 32
Hollywood Road,
Central, Hong Kong



SINGAPORE

Level 25, North Tower,
One Raffles Quay,
Singapore 048583