Grant Thornton
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Financial Services Group

Regulatory handbook 2014-2015

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Status	Definition
Proposed	Proposal pending consultation to be moved forward
Drafted	Consultation papers pending formal approval and enactment
Enacted	Formally implemented as an active piece of regulation, legislation or policy. Subject to compliance date

Introduction

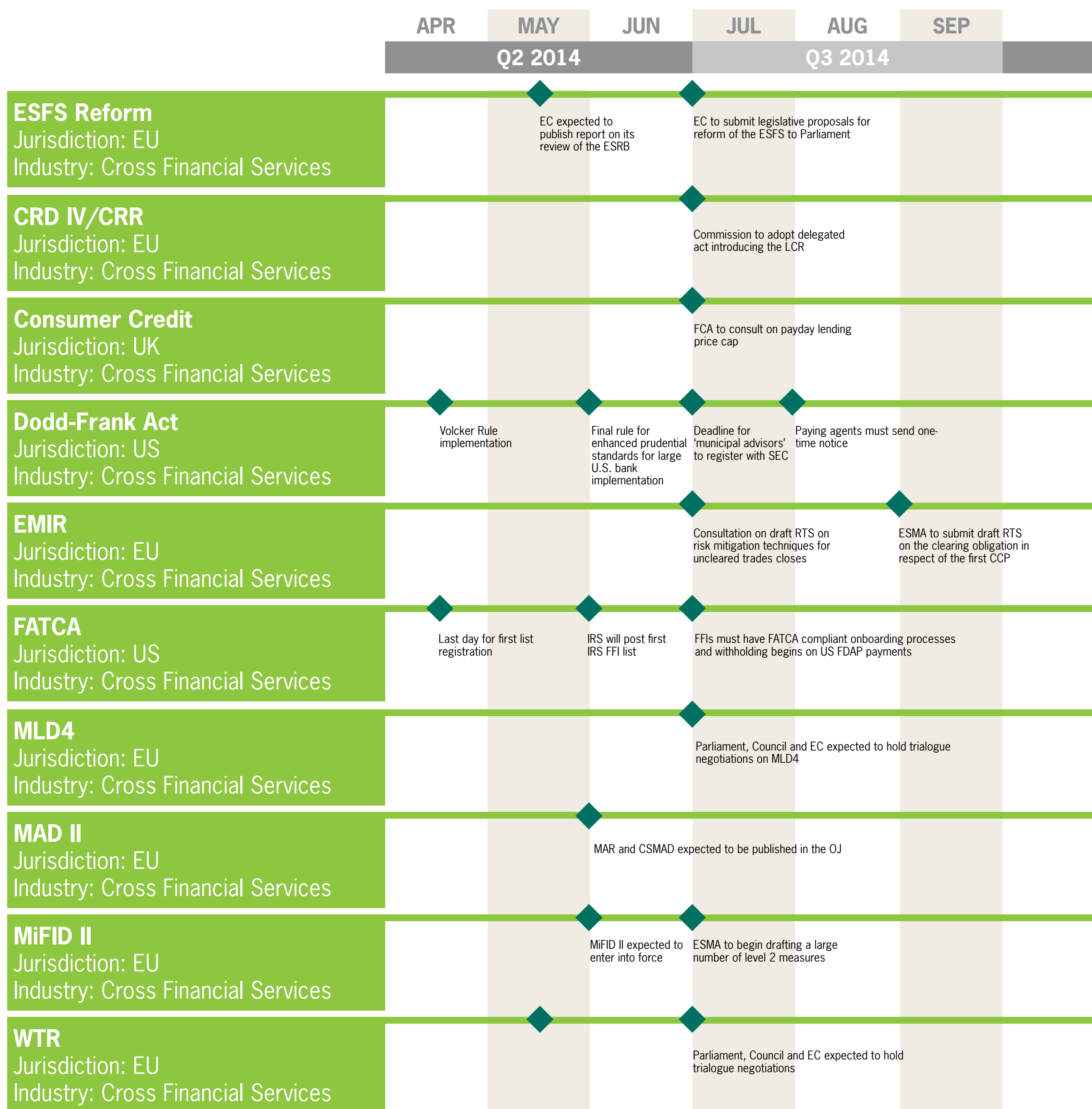
The global Financial Services industry continues to grapple with the broadest and most sustained period of regulatory change in its history. There are no signs of the volume abating.

Seven years on from the financial crisis, the regulatory landscape is still evolving; financial institutions are having to devote evermore resources to governance, risk and compliance issues. While much of the initial flurry of regulation has now been implemented, regulators continue to debate new legislation to further strengthen the resilience of the financial sector.

Complying with the wide range of regulatory requirements is a significant challenge, particularly for institutions with a global presence. Some broad categories of norms can be drawn from the initial global initiative; nevertheless, few benefit from standardised application, the majority have been customised by national regulators. Local variations, as well as differences in scope and timing, distort competition; frequently resulting in duplication and contradiction.

Moreover, firms are not only affected by the proliferation of rules, but also by the increasing number of supervisors. Despite a slight shift from policymaking to implementation, there is still uncertainty stemming from ever-changing implementation deadlines and endlessly varying principles. Critical to surviving in this challenging environment is an in-depth understanding of the regulatory panorama and its implication on business strategies, operational frameworks and functional business processes.

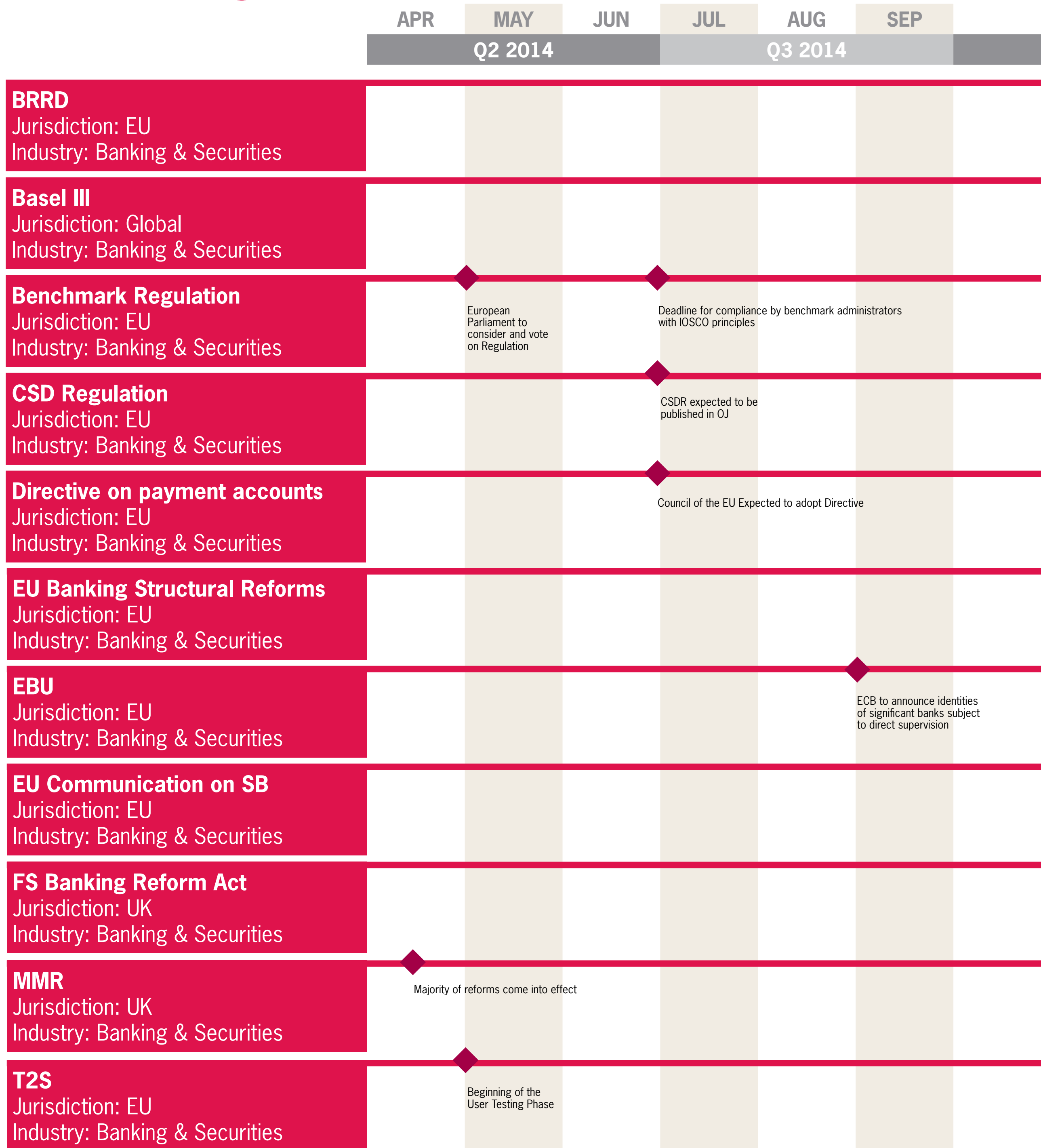
Regulatory timeline - Cross Financial Services



For dates beyond June 2015, please see individual timelines on the respective pages

OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
Q4 2014			Q1 2015			Q2 2015		
			Delegated act introducing the LCR will apply					
FCA to start considering applications for full authorisation from firms with interim permissions	Policy statement, with final rules, on payday lending price cap		Payday lending price cap in force					
	First clearing obligations likely, but will be subject to phasing-in							
			Withholding begins on US FDAP payments on pre-existing accounts of non-documented FFIs			Account reporting for PFFIs for the 2014 on US and recalcitrant accounts		
	Parliament and Council expected to adopt MLD4							
		ESMA's technical advice on Level 2 measures due						
	Parliament and Council expected to adopt revised WTR							

Regulatory timeline - Banking and Securities



For dates beyond June 2015, please see individual timelines on the respective pages

OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
Q4 2014			Q1 2015			Q2 2015		

Deadline for BRRD transposition

Deadline for applying BRRD

40% of required deductions should be made. MCER increases to 4.5%
Minimum Tier 1 capital ratio increases to 6%
Disclosure by banks of leverage ratio and components. Introduction of the 60% LCR

ESMA and the EBA review application of principles for benchmark setting processes

Earliest timing for agreement on text of Regulation

CSDR to come into force

EC's preferred deadline for adoption of final text

Phase 3, collation of AQR will conclude

ECB will assume its SSM supervisory role

Proposed date of SRM application

EBA to publish guidelines to limit banks' exposure to unregulated financial counterparties

MMF to come into force

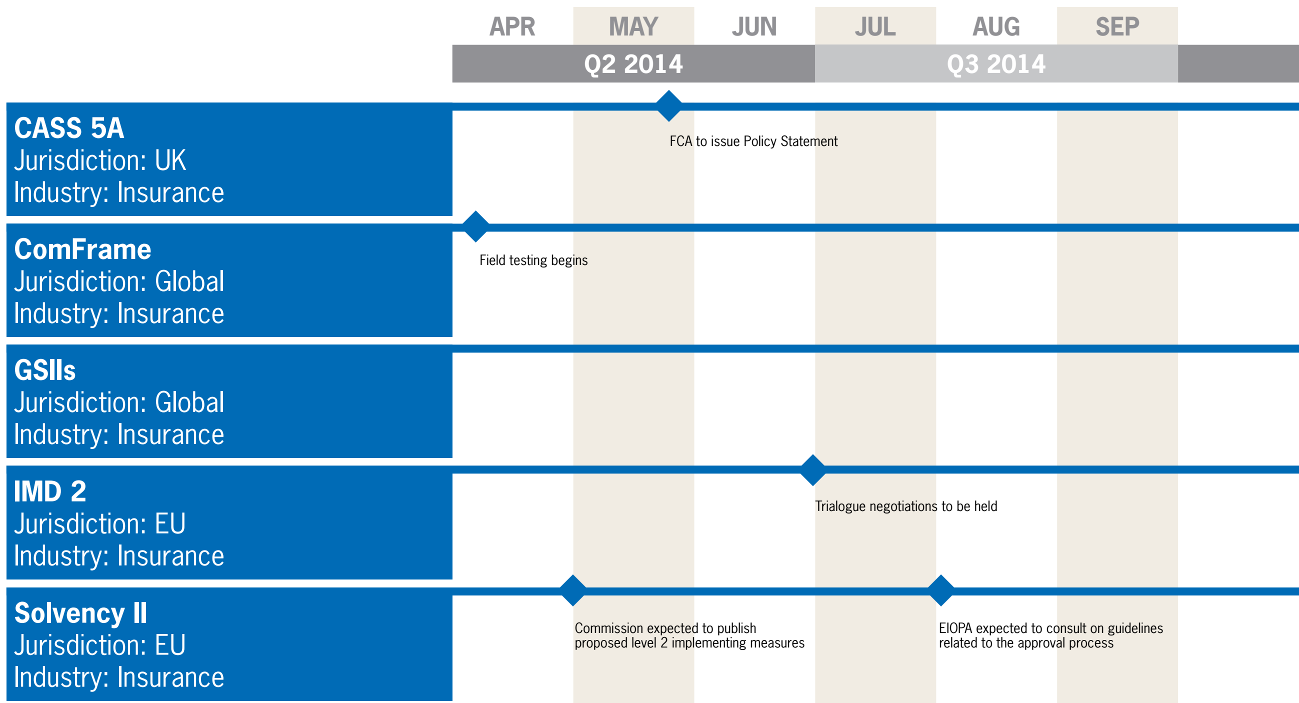
Payment Systems Regulator's powers to come into force

Payment Systems Regulator to become fully operational

Deadline for all relevant secondary legislation to be completed

T2S to go live – first wave

Regulatory timeline - Insurance



For dates beyond June 2015, please see individual timelines on the respective pages

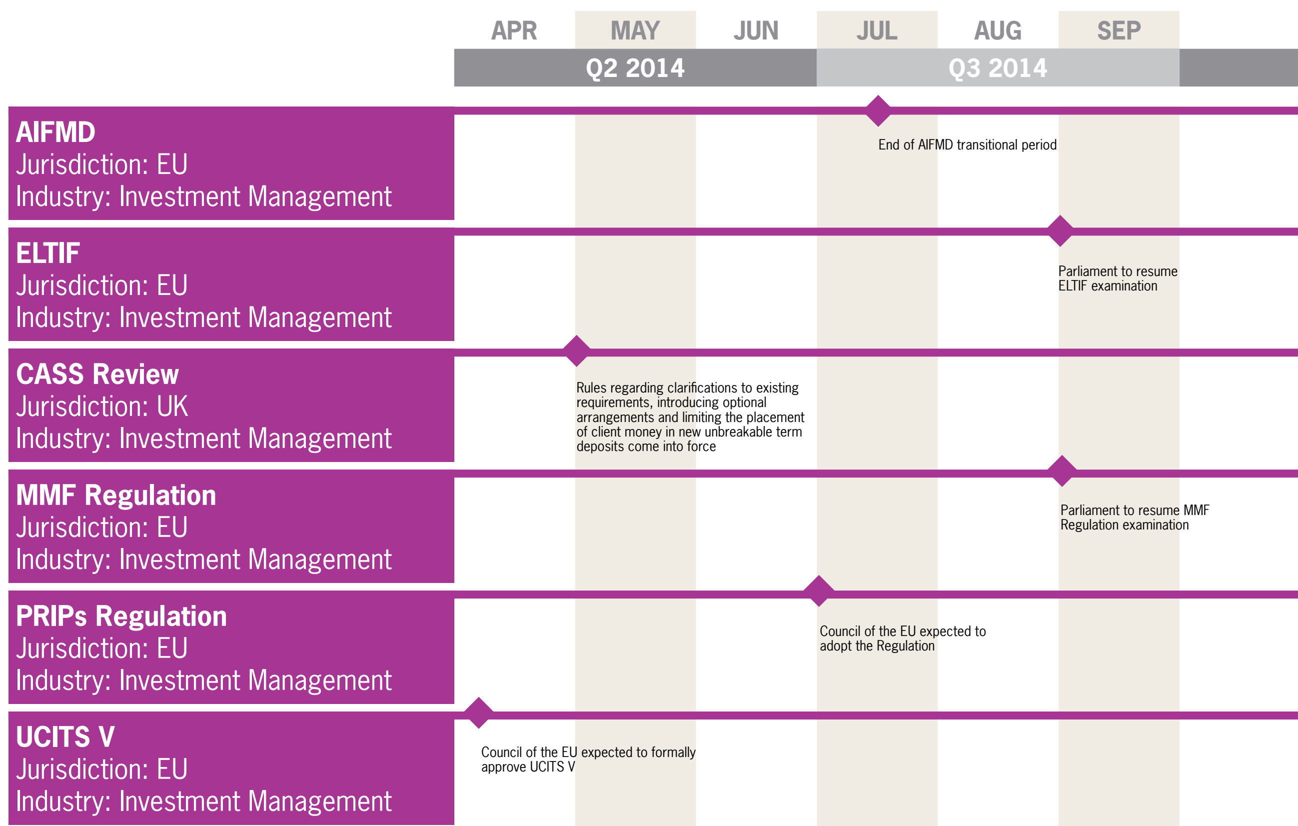
OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
Q4 2014			Q1 2015			Q2 2015		

- NOV: IAIS to develop BCR and systemically important reinsurers to be announced
- DEC: RRPs to be developed and agreed by CMGs

- NOV: Parliament and Council voting to adopt IMD2
- FEB: EC and EIOPA to produce level 2 measures and level 3 guidelines

- OCT: EIOPA expected to submit Set 1 ITS to the Commission
- DEC: Commission expected to have adopted Solvency II level 2 implementing measures
- FEB: National Supervisors to submit implementation progress report
- MAR: Transposition deadline
- JUN: EIOPA expected to submit Set 2 ITS to the Commission

Regulatory timeline - Investment Management



For dates beyond June 2015, please see individual timelines on the respective pages

OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
Q4 2014			Q1 2015			Q2 2015		
		Deadline for member states to transpose the CRA III Directive	EC to adopt legislation specifying date for non-EU AIFs/AIFMs passport availability					
	Rules and guidance relating to the provision of information to new clients come into force							All of the remaining rules and guidance come into force

FCA Business Plan 2014/15

In its 2014/15 business plan, the FCA states that it will continue to advance its objectives by being judgement-based, forward-looking and pre-emptive in assessing potential and emerging risks.

The FCA's three primary objectives for 2014/15 are as follows:

- to secure an appropriate degree of protection for consumers
- to protect and enhance the integrity of the UK financial system
- to promote effective competition in the interests of consumers

The topics covered in the business plan and risk outlook will govern the activities of the FCA for the upcoming year; financial institutions must remain aware of the potential impacts of market studies and thematic reviews, and subsequent regulatory change, on their business models and strategies. By engaging with these topics early, and proactively addressing potential shortcomings, firms can gain significant competitive advantage.

Furthermore, the FCA has identified key forward-looking areas where potential risks to its objectives may arise. Financial institutions should remain aware of these risks as the Regulator will continue to monitor firms, taking action where necessary:

- Technology may outstrip firms' investment, consumer capabilities and regulatory response
- Poor culture and controls continue to threaten market integrity
- Large back books may lead firms to act against their existing customers' best interests
- Retirement income products and distribution may deliver poor consumer outcomes
- The growth of consumer credit may lead to unaffordable debts
- Terms and conditions may be excessively complex
- House price growth that is substantial and rapid may give rise to conduct issues

From April 2015, the FCA will become a concurrent regulator, enforcing competition law in financial services alongside the Competition and Markets Authority (CMA). This will give the Regulator enforcement powers which can be used to address any practices of firms operating in the UK that distort, restrict or prevent competition, including imposing penalty fines of up to 10% of worldwide turnover.

Additionally, the FCA will have the power to carry out market studies and make references to the CMA, the new central UK competition authority which will take over the competition functions of the Office of Fair Trading and Competition Commission in April 2014.

Over the coming year, the FCA will continue to work with global, European and local regulatory bodies to influence and contribute to international regulatory standards.

Key changes

Changes to the Approved Persons Regime

The Financial Services (Banking Reform) Act 2013 will have a significant impact in the method in which the FCA and the PRA regulate firms and individuals. Key to this will be the introduction of a Senior Managers Regime in deposit-taking institutions. The FCA has stated that it intends to create a Senior Managers Regime that:

- encourages and incentivises senior persons to take accountability for their actions,
- raises the overall standards of governance in firms, and
- strengthens [the FCA's] ability to account for the conduct in their institutions

Mark Carney, Governor of the Bank of England, has stated that the PRA will 'create a similar regime for senior managers in the insurance industry', ensuring that 'those who manage insurers [are] accountable for their actions if things go wrong'. While the details of the regime are likely to differ from the banking rules, increased personal accountability at executive level is inevitable.

In 2014/15, the FCA will also introduce a Certified Persons Regime for individuals not covered by the Senior Managers Regime but perform a role that involves, or might involve, a risk of significant harm to a firm or its customers. The FCA will continue to consult on the proposals.

Payment Systems Regulator

In 2014, the FCA will set up a new regulator to supervise the UK's payments systems, to become operational in April 2015. The Regulator will be a separate legal entity, operating within the FCA's existing structure and have responsibility for the £75 trillion payment services industry.

Its primary objectives will be to promote competition and innovation, and ensure responsiveness to consumer needs. The FCA will appoint the Regulator's board, with the treasury holding final approval for the chair and managing director, and must approve its annual plan and budget.

Consumer Credit

One of the FCA's key activities for 2014/15 will be integrating consumer credit firms into its regulatory regime. The 1st April 2014 takeover followed extensive research by the Regulator into understanding the market. The FCA has stated its key objectives for the regulatory reform are to 'ensure that consumers continue to have access to the services they need, while protecting them from harmful lending practices that could lead to spiralling debt which they struggle to repay'.

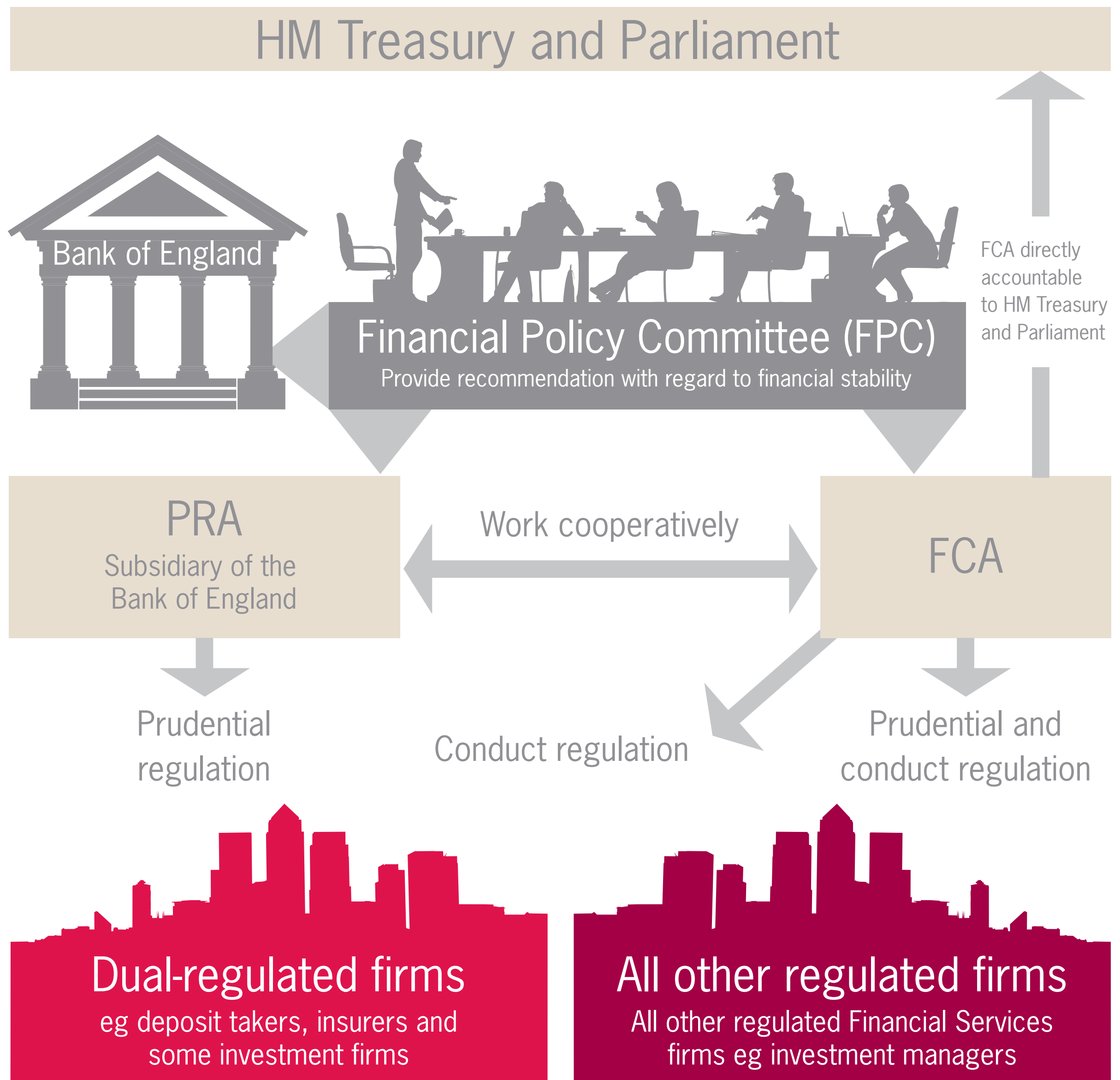
From the 1 April, firms or individuals providing consumer credit services must have sustainable and well-controlled business models, underpinned by a culture based on doing the right thing for their customers and meeting the FCA's standards.

Consumer credit firms will have to apply for full authorisation and be assessed against threshold conditions which are more stringent than the current Consumer Credit Act fitness test. Once authorised, firms must report on a number of activities, including the amount of business they take on and the number of complaints they receive. Furthermore, senior management will have to seek approval to undertake 'controlled functions' and governance structures and business practices of firms will be subject to rigorous assessment.

Alongside this, the FCA will undertake a number of activities to determine whether there are any risks to consumers and to the stability of the overall market. This will include:

- thematic work into high-cost short-term credit and consulting on price caps for payday lenders (will come into effect on 2 January 2015)
- thematic work into arrears management processes
- identifying and addressing poor financial promotions
- carrying out a market study assessing competition in the credit market
- enhancing standards for logbook loans
- considering the role of the regulator in facilitating real-time data sharing,
- visiting firms to check adherence to regulation

UK Regulatory Supervisors



Jurisdiction:	UK
Status:	N/A
Industry:	Cross Financial Services

In a nutshell:

The Financial Services Act 2012 sought to reform the UK financial market regulatory framework. The Act came as a reaction to the 2008 financial crisis, which exposed the deficiencies of the previous structure in monitoring and regulating the financial markets. What was previously the Financial Services Authority (FSA), has now been replaced by the FCA and PRA. The new legislation also set up an independent monitoring body that is a committee of the Bank of England, the FPC. The Financial Services Act 2012 was published on 20 December 2012 with the majority of reforms enacted on the 1 April 2013.

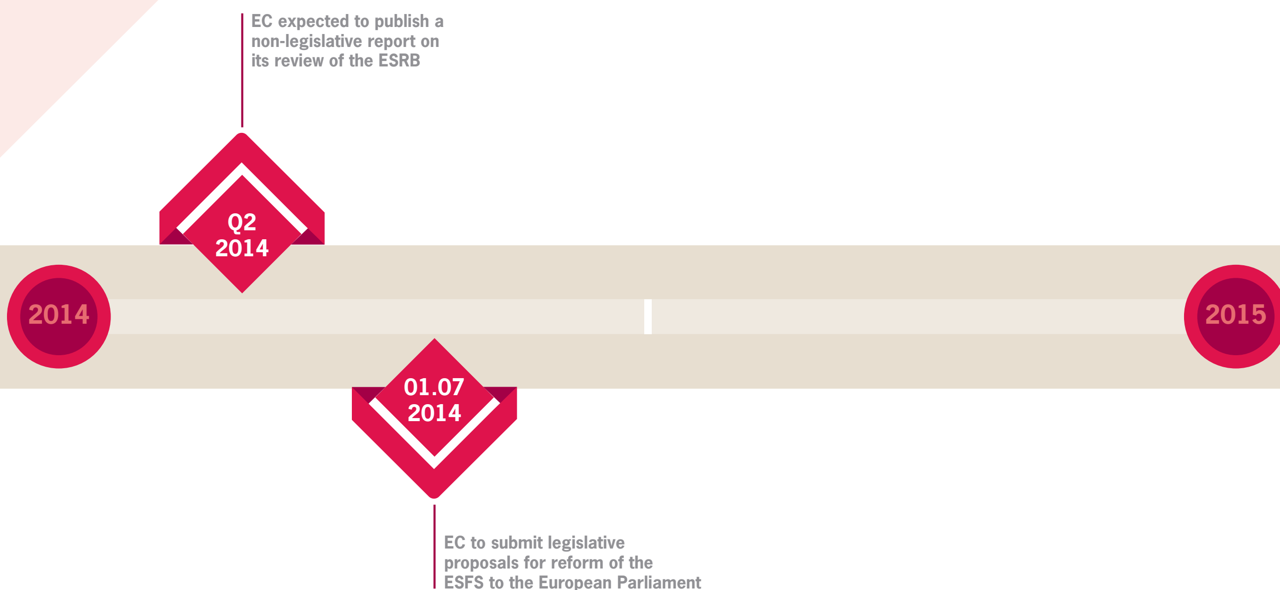
Core components:

- **The Financial Conduct Authority (FCA)** is responsible for the regulation of conduct by both retail and wholesale Financial Services firms
- **The Prudential Regulatory Authority (PRA)** which is a subsidiary of the Bank of England, is responsible for the prudential supervision and regulation of banks, building societies, credit unions, insurers and investment firms. Its purpose is to improve the stability of the financial system through supervision and regulation
- **The Financial Policy Committee (FPC)** is a committee of the Bank of England responsible for the monitoring of the UK's economy. It focuses on monitoring the macro-economic and broader financial issues that threaten the stability of the financial system or long-term growth

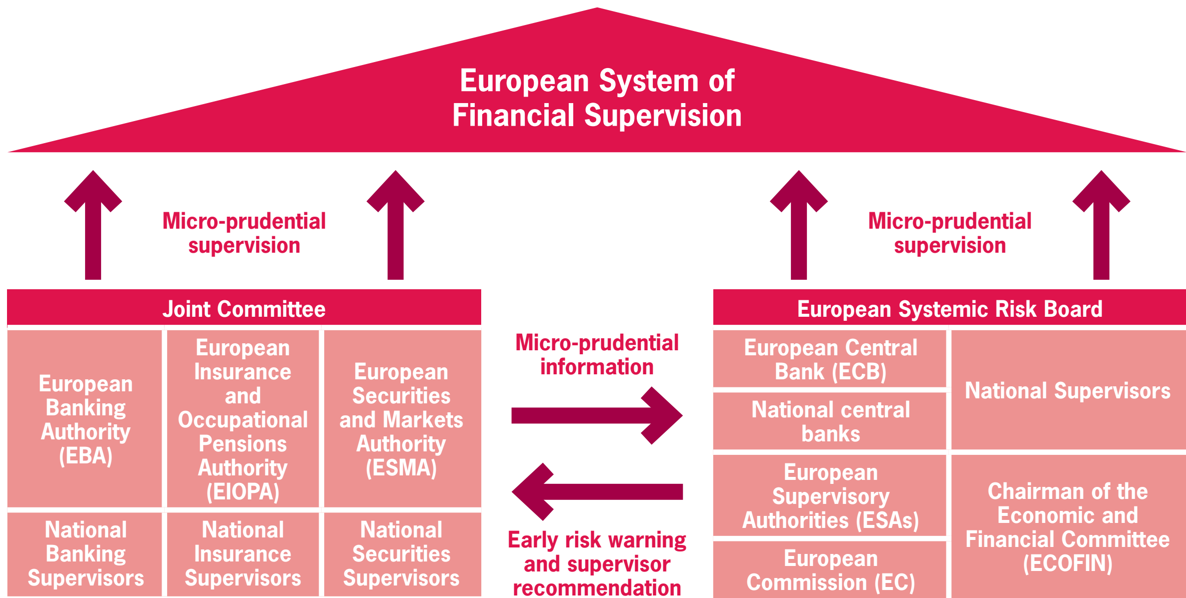
European System of Financial Supervision (ESFS) reform

In a nutshell:

In response to the financial crisis, which exposed failures in financial supervision, the EU created the European System of Financial Supervision (ESFS); an integrated network of national and EU supervisors. The ESFS formally came into force on 1 January 2011. The EU has since commissioned a review of the European System of Financial Supervision and any changes that arise will likely affect all financial services firms, markets, services, products and financial market infrastructures (FMIs) that fall within EU sectoral legislation.



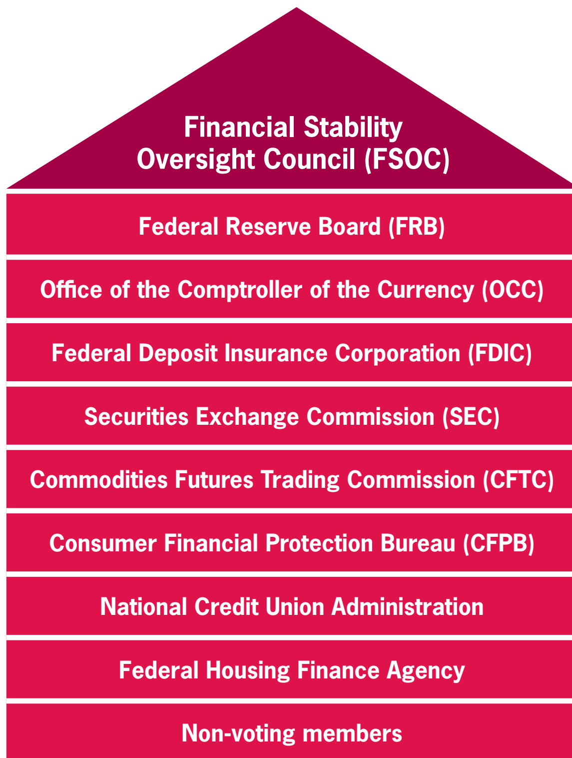
Jurisdiction:	EU
Status:	N/A
Industry:	Cross Financial Services



Core components:

- **The European Systemic Risk Board (ESRB)** – an independent body responsible for the macro-prudential oversight of the EU financial system. The ESRB's day-to-day business is entrusted to the European Central Bank (ECB)
- The following independent sectoral micro-prudential supervisors, known as the European Supervisory Authorities (ESAs):
  - **the European Banking Authority (EBA)**
  - **the European Securities and Markets Authority (ESMA)**
  - **the European Insurance and Occupational Pensions Authority (EIOPA)**
- **The Joint Committee of the ESAs,** which deals with cross-sectoral issues
- **The 28 EU Member State national supervisors**, who still carry out the day-to-day supervision of financial institutions, with a limited number of exceptions

US Regulatory Supervisors



In a nutshell:

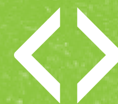
The US regulatory system was restructured as a part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. This was following deficiencies identified in the 2008 financial crisis. A major part of this restructuring initiative is overhauling the role of many federal regulatory agencies and the way that financial institutions are supervised and regulated.

Jurisdiction:	US
Status:	N/A
Industry:	Cross Financial Services

Core components:

- **Financial Stability Oversight Council (FSOC)** – the FSOC was created to identify risks to US financial stability, promote market discipline and respond to emerging threats to the stability of the US financial system
- **Federal Reserve Board (FRB)** – the FRB supervises and regulates the Federal Reserve Banks, is responsible for the US' payment system, administers most of the US laws regarding consumer credit protection and supervises banking institutions and banking activities
- **Office of the Comptroller of the Currency (OCC)** – the OCC is an independent office of the US Department of the Treasury that charters, regulates and supervises all national banks and supervises the federal branches and agencies of foreign banks
- **Federal Deposit Insurance Corporation (FDIC)** – the FDIC is an independent federal agency created by US Congress to maintain stability and public confidence in the nation's financial system by: insuring deposits at federal and state banks, examining and supervising insured depository institutions for safety, soundness and consumer protection issues and managing receivership of failed or failing depository institutions
- **Securities and Exchange Commission (SEC)** – the federal agency created to administer the Securities Exchange Act of 1934 and the Securities Act of 1933 and later given authority to administer the Investment Company Act of 1940 and the Investment Advisers Act of 1940
- **Commodity Futures Trading Commission (CFTC)** – regulates the commodity futures and options markets in the US and is responsible for the regulation of securities futures
- **Consumer Financial Protection Bureau (CFPB)** – an independent bureau that assumes regulatory and supervisory authority over most federal consumer protection laws
- **National Credit Union Administration**
- **Federal Housing Finance Agency**
- **Non-voting members** – the director of the Office of Financial Research (OFR), the director of the Federal Insurance Office (FIO), a state insurance regulator, a state banking supervisor and a state securities commissioner

Cross Financial Services



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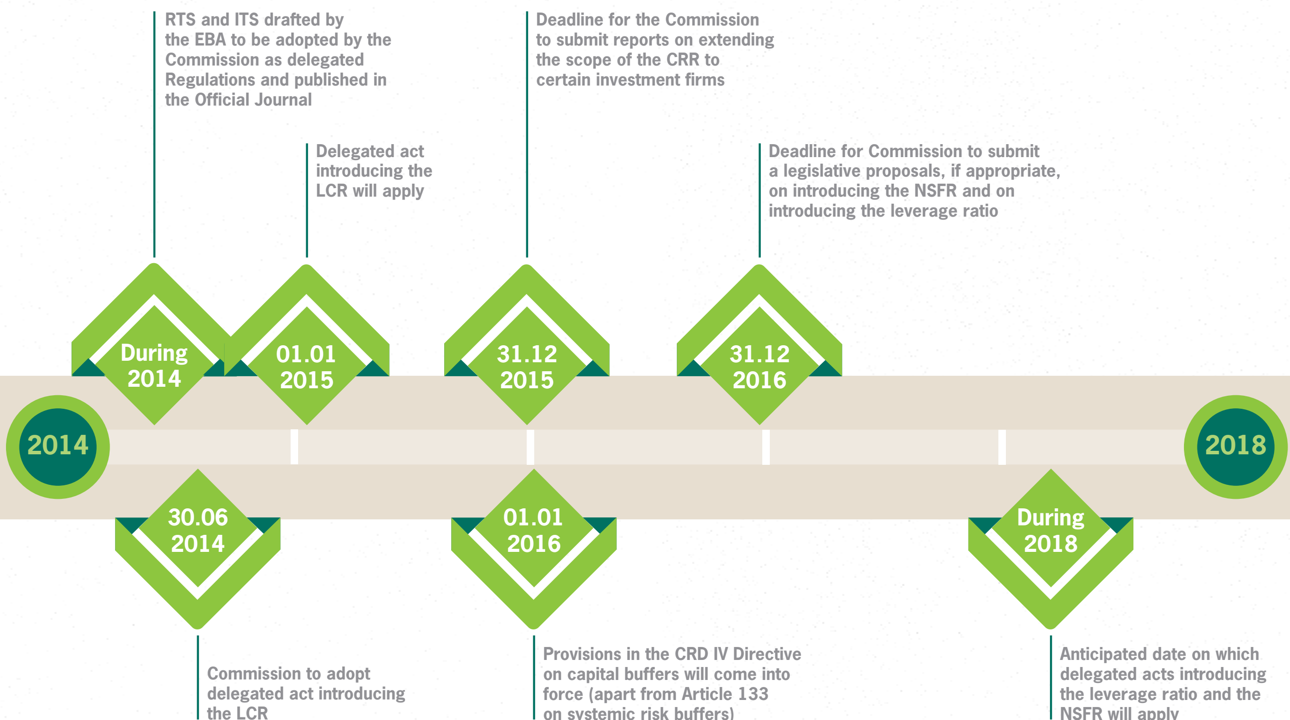
The Capital Requirements Directive (CRD IV) and Capital Requirements Regulation (CRR)

In a nutshell:

The CRDIV package is a set of major reforms to the EU's capital requirements regime for credit institutions and investment firms. It recasts and replaces the Capital Requirements Directive with a new directive and regulation: the CRD IV Directive and the Capital Requirements Regulation (CRR).

The primary aims of the reforms are to implement the Basel III requirements as well as introduce EU-specific reforms.



Jurisdiction:	EU
Status:	Enacted
Industry:	Cross Financial Services

Core components:

CRR

The bulk of the reforms were included in the CRR, as a regulation, to prevent fragmented application by individual Member States. The CRR contains Basel III reforms relating to: **quality of capital, quantity of capital, counterparty credit risk, credit valuation adjustment risk and the leverage ratio.** The EU-specific requirements are as follows:

- **Single Rulebook** – a single set of harmonised prudential rules for banks and investment firms; most national discretions have been removed
- **Reliance on external ratings** – measures intended to reduce the reliance by credit institutions on external credit ratings

CRD IV

CRD IV, which needs to be implemented by all Member States, contains less prescriptive provisions where the links with national law are critical. **The capital conservation buffer, countercyclical buffer and liquidity requirements of** Basel III were implemented through CRD IV. EU-specific reforms included:

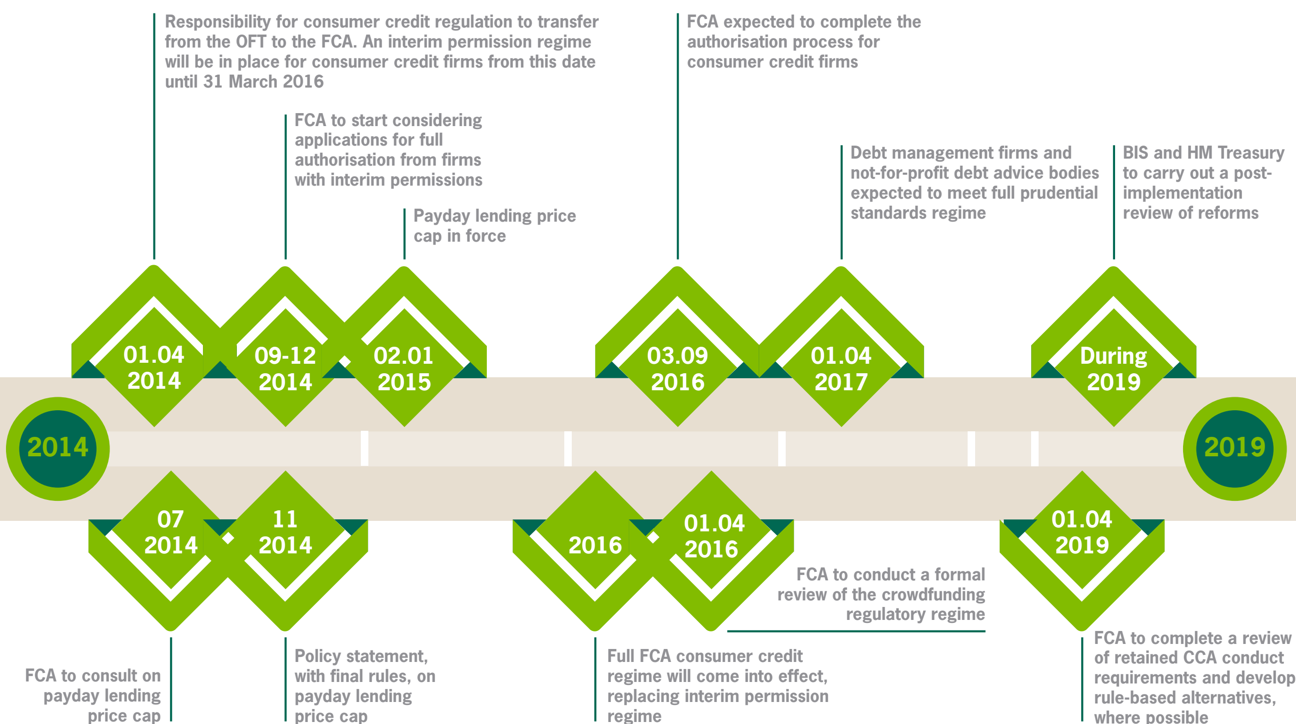
- **Remuneration** – a ratio on certain bankers' salaries relative to variable pay and a disclosure requirement of individuals with a total remuneration over a certain threshold
- **Corporate Governance** – measures to strengthen corporate governance arrangements and processes relating to the composition of boards, their role in risk oversight and strategy, alongside strengthening the risk management function within firms
- **Sanctions** – a requirement for Member States to apply appropriate administrative sanctions to violations of EU banking legislation

Consumer Credit

In a nutshell:

On the 1st April 2014, the regulation of Consumer Credit activities was taken over by the FCA from the Office of Fair Trading (OFT), which ceased to exist on that date. The change in regulatory supervision comes as a result of concerns from the government that the previous regulatory regime lacked the capacity and powers to tackle the bulk of detriment in the consumer credit market. The government's stated aims were to ensure that regulation:

- is able to flex to keep pace with a fast-growing, innovative market;
- has the powers and resources to protect consumers from actual, and potential, detriment,
- puts a proportionate and manageable regulatory burden on business; and
- delivers a well-functioning consumer credit market, which ensures that consumers have access to the credit they need and supports the sustainable growth of the UK economy.



Jurisdiction:	UK
Status:	Enacted
Industry:	Cross Financial Services

Core components:

- **Interim permission regime** – this will operate from 1 April 2014 to 31 March 2016. The phased approach has been designed to enable firms to transfer into the FSMA regime first, and adapt to the new regime, before seeking full authorisation
- **Stricter conditions of entry for firms** – firms will have to apply for authorisation through the full FSMA process
- **Increased scrutiny of key individuals** – this will primarily be through the approved persons regime
- Proactive supervision of higher-risk firms
- Credit advertising will be subject to the FSMA financial promotions regime
- Wider, and more robust enforcement powers, with improved access to redress for consumers
- Reduced requirements for firms carrying out certain lower-risk activities
- Prudential requirements for debt management firms
- Limited reporting requirements for certain firms
- No Financial Services Compensation Scheme (FSCS) cover for consumers

Dodd-Frank Wall Street Reform and Consumer Protection Act

In a nutshell:

The Dodd-Frank Act puts in place a wide-ranging reform of the US financial regulatory system, affecting most aspects of the financial industry. Many of the provisions of the Act allow the relevant federal regulatory agencies a period of time before they must issue new rules, implement regulations or instruct the applicable regulatory agencies to conduct studies examining particular issues before taking any action. The Dodd-Frank Act covers a wide range of reform and regulation across the US Financial Services industry. Many provisions affect UK entities directly, particularly any that do business in the US or with a US citizen. The Dodd-Frank Act was enacted into law on the 21 July 2010 but due to its wide-ranging nature and multiple compliance dates, no definitive timeline can be produced.

Jurisdiction:	US
Status:	Enacted
Industry:	Cross Financial Services

Core components:

- **The Volcker Rule** – The Dodd-Frank Act implemented the Volcker Rule, which generally prohibits certain 'banking entities' (and their affiliates and subsidiaries) from engaging in proprietary trading and acquiring or retaining any ownership interest in, or sponsoring, a hedge fund or a private equity fund
- **Regulatory structure** – includes provisions that overhaul the US financial regulatory system, including the creation of the Financial Stability Oversight Council, the elimination of the Office of Thrift Supervision (OTS) and the overhaul of the Federal Reserve Bank, Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), Bureau of Consumer Financial Protection and other agencies
- **Swaps and derivatives** – addresses perceived shortcomings in the over-the-counter (OTC) derivatives markets. The primary goals are to minimise systemic risk of derivatives trading, create transparency in derivatives markets and provide credit protection for derivatives traders
- **Bank capital (Collins Amendment)** – minimum leverage capital and risk-based capital requirements for depository institutions and holding companies
- **Credit rating agencies** – measures imposed on rating agencies relating to their internal controls, conflicts-of-interest, transparency and accountability
- **Securitisation** – seeks to address certain perceived flaws in securitisation market practice
- **Private equity and hedge funds** – imposes measures relating to hedge funds, private equity and venture capital funds and other private investment funds and the entities managing these funds
- **Regulation of systemically significant financial institutions** – supervises and regulates banks and other financial companies that could pose a threat to the stability of the US financial system
- **Corporate governance and executive compensation**
- **SEC Authority and Selected Securities Act and Exchange Act Provisions**
- **Resolution of failing financial institutions**

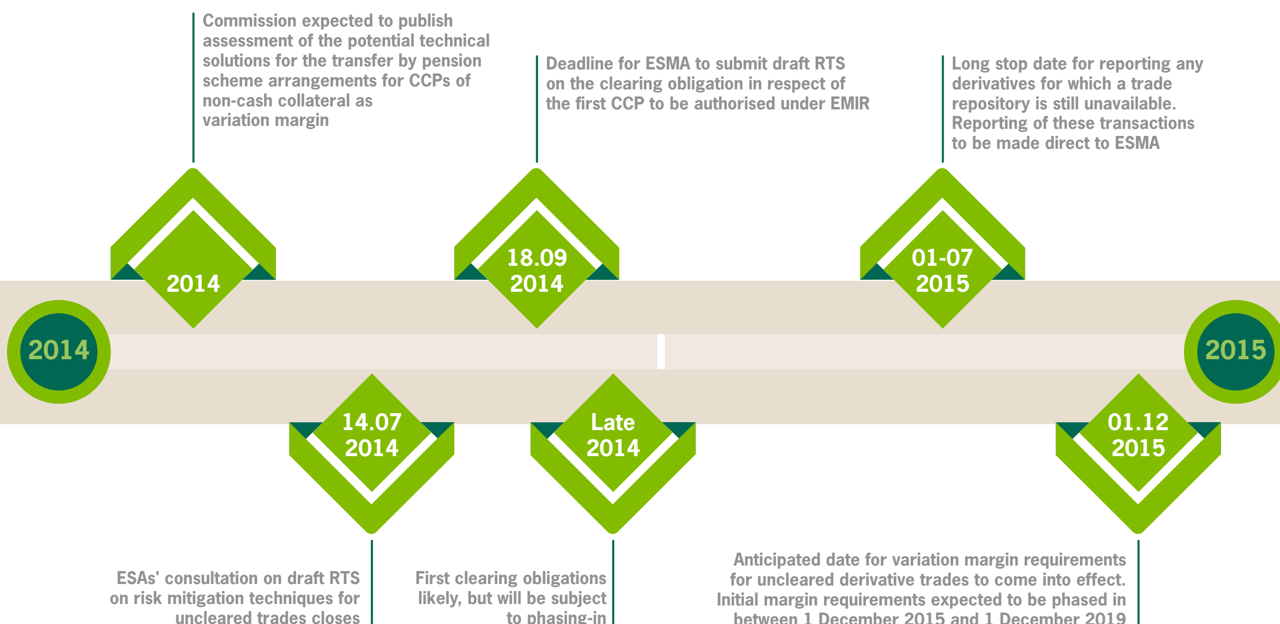
The European Market Infrastructure Regulation (EMIR)

In a nutshell:

The European Market Infrastructure Regulation (EMIR) is an EU regulation on Over The Counter (OTC) derivatives, Central Counterparties (CCPs) and Trade Repositories (TRs). It aims to improve the management of counterparty credit risk and increase trade transparency within the derivatives market. EMIR, the EU equivalent of similar provisions made within the US Dodd-Frank Act, has been brought into force in response to weaknesses exposed in the global financial system after the default of Lehman Brothers, near-collapse of Bear Stearns and events surrounding AIG in 2008. The interconnectedness of OTC derivative participants and the default, or fear of default, led to liquidity problems, compounded by a lack of transparency of positions and exposures to both regulators and market participants.

Key objectives of EMIR include:

- Reduce the interconnectedness between counterparties in the OTC derivatives markets, minimising systematic risk
- Provide the regulatory framework needed to improve counterparty risk management
- Create transparency for regulators and participants within the OTC derivatives market, minimising transparency risk



Jurisdiction:	EU
Status:	Enacted
Industry:	Cross Financial Services

Core components:

- **Imposing new clearing requirements for specified standardised OTC derivative trades** – mandating the clearing of eligible OTC derivatives through a CCP
- **Introducing risk mitigation requirements for trades that are not centrally cleared by a CCP** – trades not cleared through a CCP (Non-Cleared) will incur collateral requirements and/or higher capital charges
- **Setting a reporting requirement for all derivatives trades (exchange traded and OTC)** – reporting of derivative transactions to Trade Repositories (TRs)
- **Introducing new obligations on Central Counterparties (CCPs)** – including an authorisation process, supervisory requirements and interoperability arrangements between CCPs
- **Imposing new obligations on Trade Repositories (TRs)** – including a registration process and requirements on operational reliability, transparency and protection and availability of trade data

EU Data Protection Reform

In a nutshell:

The EU Data Protection Regulation was proposed to reform the EU's 1995 data protection rules in order to strengthen online data protection rights and boost Europe's digital economy. The proposals update and modernise the principles of the original Directive with a primary aim of ensuring more effective control for consumers over their personal data. The EC has also stated that it should make it easier for businesses to operate and innovate in the EU's Single Market. Adoption of the Regulation has been delayed; the next meeting of Justice Ministers on the Data Protection Reform is due to take place in June 2014.

Jurisdiction:	EU
Status:	Proposed
Industry:	Cross Financial Services

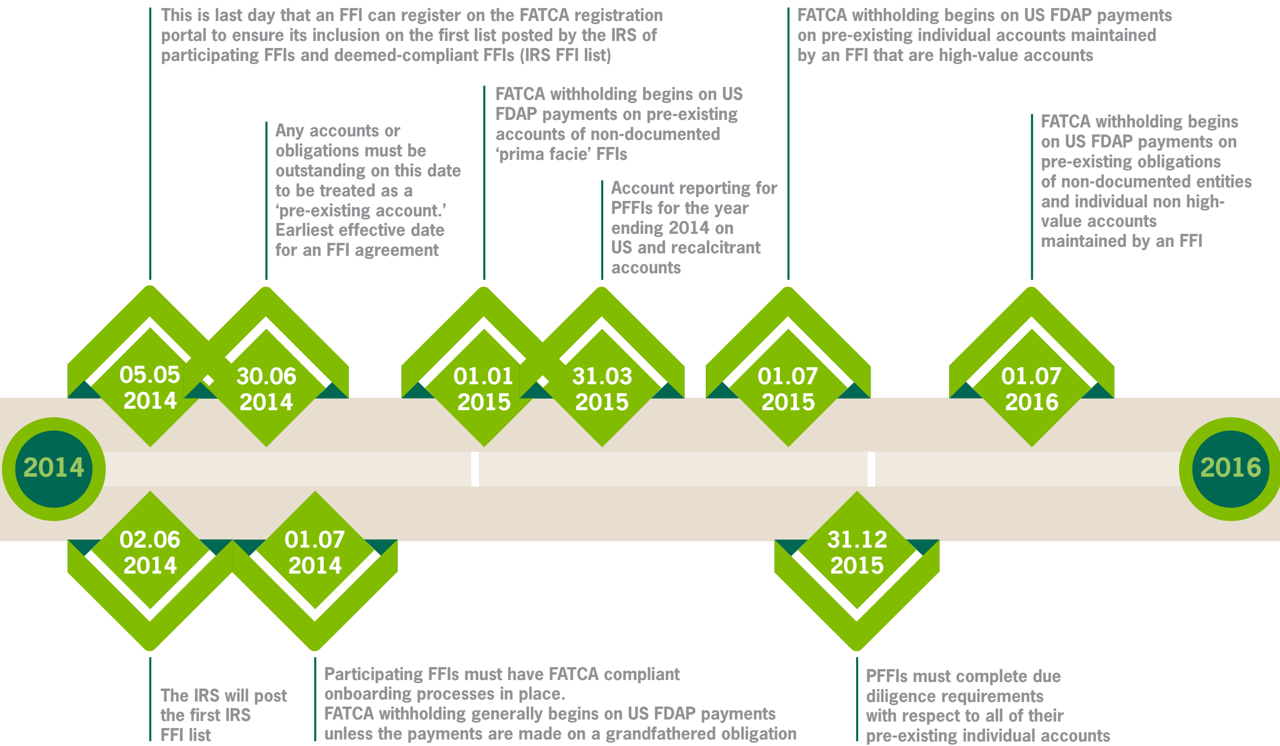
Core components:

- **Scope** – the Regulation will apply if the organisation or data subject is based in the EU. The Regulation will also apply to organisations based outside the European Union if they process personal data of EU residents
- **Single Set of Rules** – there will be a single set of rules applicable to all EU Member States and one single Data Protection Authority (DPA) responsible for each company depending on where the company is based or which DPA it chooses
- **Responsibility & Accountability** – the notice requirements in the original Directive remain and are expanded upon. Privacy by Design and by Default require that data protection is designed into the development of business processes for products and services. Data Protection Impact Assessments have to be conducted when specific risks occur to the rights and freedoms of data subjects. Nominated Data Protection Officers are responsible for ensuring compliance within organisations
- **Consent** – firms must ensure that they have valid consent for any data collected and document the purposes for which the data is used
- **Data breaches** – firms must notify the DPA as soon as possible, and no later than 72 hours where feasible, after having become aware of a data breach
- **Sanctions** – DPAs will be able to impose the following sanctions: a written warning in cases of first and non-intentional non-compliance, regular periodic data protection audits and a fine of up to €100 million or up to 5% of the annual worldwide turnover of an organisation
- **Right to be Forgotten** – personal data has to be deleted if an individual withdraws consent or in the case that the data is no longer necessary and there is no reason for it to be kept
- **Data Portability** – a user must be able to request a copy of any personal data that is being processed and be able to transmit it electronically to another processing system

The Foreign Account Tax Compliance Act (FATCA)

In a nutshell:

The Foreign Account Tax Compliance Act (FATCA) is a set of requirements that was introduced to target US taxpayers using foreign accounts to avoid tax and any Foreign Financial Institutions (FFIs) helping them to do so. The purpose of the Act is to ensure the Internal Revenue Service (IRS) can identify and collect the appropriate tax from any US citizen holding financial assets outside of the US. FATCA legislation applies to any Financial Institution including banks, investment managers, funds and insurers and introduces ever higher levels of client identification and compliance to avoid the threat of reporting and/or withholding. Although some jurisdictions are signing up to IGAs, most will currently fall under the 'full' regulations. This is where each institution will have to enter into a formal legal agreement with the IRS, withhold on the non-compliant and nominate a responsible officer to certify that the entity remains compliant.



Jurisdiction:	US
Status:	Enacted
Industry:	Cross Financial Services

Core components:

- **FFIs** – to avoid being withheld or reported on, FFIs must register with and agree to report to the IRS certain information about their US accounts, including accounts of certain foreign entities with substantial US owners. FFIs that enter into an agreement may be required to withhold 30% on certain payments to foreign payees if such payees do not comply with FATCA. Categories of FFIs that are exempt from FATCA include governmental entities and not for profit organisations. Unless otherwise exempt, FFIs that do not both register and agree to report can face a 30% withholding tax on certain US-source payments made to them
- **NFFE** – If not an FFI an entity will be considered an NFFE (Non-Financial Foreign Entity) which will be further classified as Active or Passive, depending on the type of income derived, if Passive the NFFE will be required to report on any US account holders to its financial counterparties
- **Intergovernmental Agreements (IGAs)** – the US has collaborated with other governments to develop two model IGAs to implement FATCA. These demand that governments bring in primary legislation that will require all FFIs to identify US accounts and report information about these and any non-compliant persons/firms
- **Impact** – the requirements of FATCA mark a seismic shift in the exchange of information worldwide. Almost all companies will be affected, requiring an analysis of their classification under FATCA, the possible consequential registration, due diligence, changes to client onboarding, detailed reporting and, where not in a Model I IGA jurisdiction, 30% withholding on US income and gross proceeds (from sale of assets that produced interest or dividends) for the non-compliant. Additionally the future implementation of both the Intergovernmental Agreements between the UK and Crown Dependencies and the common reporting standards, means that this new level of information exchange will abide

Financial Transaction Tax (FTT)

In a nutshell:

In September 2011, the European Commission proposed a harmonised Financial Transaction Tax for the EU. This was in part due to Member States expressing a desire to ensure the Financial Services sector was appropriately contributing to public finances. As well as this, the initiative was intended to be the first step to introducing a global financial transaction tax. The primary objectives of the proposal were:

- to encourage harmonisation across the Single Market and therefore avoid the fragmentation associated with separate legislations for each jurisdiction
- to ensure that the financial sector was contributing to public finances and repaying part of what it received from taxpayers during the financial crisis
- to discourage inefficient financial transactions

Not all Member States of the EU agreed to go ahead with the proposals so the European Commission has allowed a subgroup of Member States to engage in discussions (under the EU's Enhanced Co-operation procedures) about introducing a harmonised Financial Transaction Tax. This subgroup, the 'EU11', comprises Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain.

Economic and Financial Affairs Council state that the first steps would be implemented by this date

01.01 2016

2015

2016

Jurisdiction:	EU
Status:	Drafted
Industry:	Cross Financial Services

Core components:

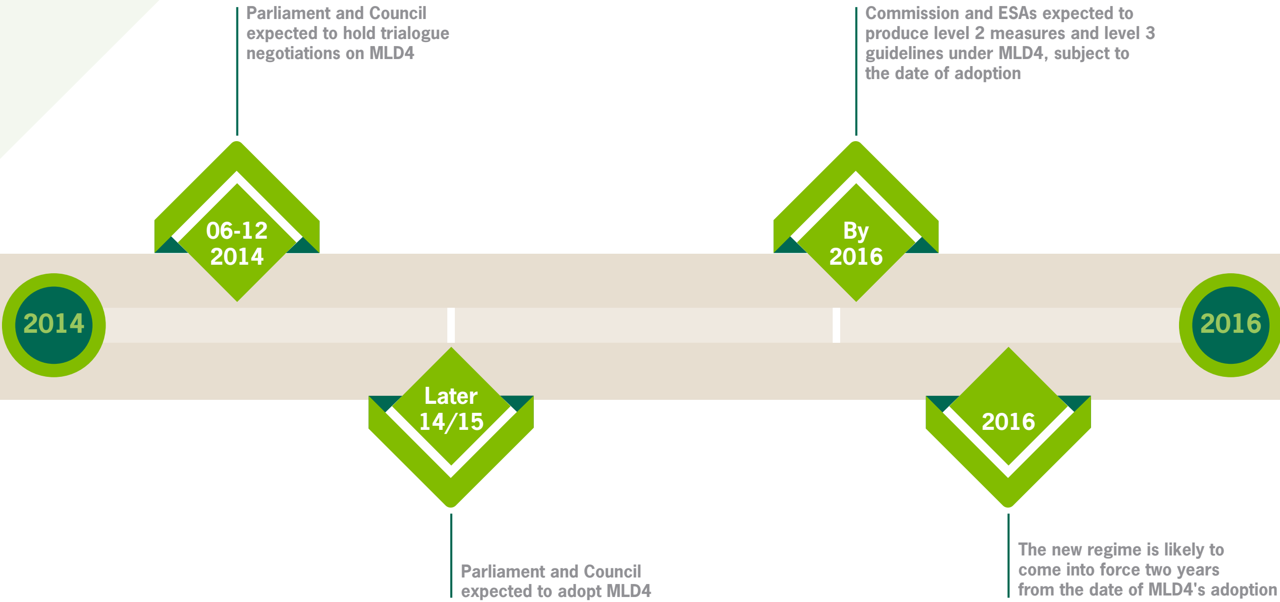
- **A levy of 0.1 per cent on stock and bond trades**
- **A levy of 0.01 per cent on derivatives transactions between financial institutions, if at least one institution is located in the EU, a feature which has given rise to concerns that the tax will have cross-border extraterritorial reach, eg payable by financial institutions outside the EU11 if contracting with parties within the EU11**
- **An estimated annual revenue of €30 billion to €35 billion (0.4% to 0.5% of the GDP of the participating Member States)**

The legality of the EU Financial Transaction Tax legislation has come under debate. This includes a challenge lodged by the UK at the European Court of Justice in April 2013 regarding the appropriateness of using the Enhanced Co-operation process in the light of the extraterritorial aspects of the Commission's proposal. The Commission and several participating Member States rebutted the claims that the harmonised FTT framework would contain provisions with inappropriate extraterritorial effects or not respect the rights of non-participating Member States. Once agreed upon at European level, participating Member States will have to transpose the Directive into national legislation.

The Fourth Money Laundering Directive (MLD4)

In a nutshell:

The Fourth Money Laundering Directive (MLD4) is a European minimum harmonising directive designed to further strengthen the EU's defences against money laundering and terrorist financing. The Directive will amend and replace the Third Money Laundering Directive and align the EU framework with the Financial Action Task Force (FATF) standards. MLD4 is designed to contribute to financial stability by protecting the soundness, integrity and proper functioning of the financial system.



Jurisdiction:	EU
Status:	Drafted
Industry:	Cross Financial Services

Core components:

- **Extending scope** – MLD4 will extend the scope of the MLD3. All persons dealing in goods for cash/occasional payments of €7,500 or more will now be within its scope. Tax crimes will be added as a predicate offence
- **Politically Exposed Persons (PEPs)** – the proposals extend the categories of individuals who are included within the scope of the PEP definition to include the linkage between UBO's and PEP's
- **Beneficial owner information** – the clarity and accessibility of beneficial owner information will be enhanced to further define source of funds
- **SDD** – MLD4 will tighten the rules on Simplified Due Diligence (SDD) and will not allow exemptions from these rules
- **Third-country equivalence** – MLD4 will change the focus from positive to non-equivalence of the existing MLD3 third-country equivalence regime
- **Harmonisation between EU member states** – where appropriate, cross-border due diligence and transaction monitoring should be harmonised with supplementary assessments of the risks within European Supervisory Authority jurisdictions
- **Risk-based approach** – MLD4 will recognise that use of a risk-based approach is an effective way to identify and mitigate money laundering and terrorist financing risks. Firms will also be obliged to take appropriate steps to identify and assess money laundering and terrorist financing risks. Firms must document their risk assessments and keep them up-to-date in order to demonstrate compliance
- **Home and host supervisory responsibilities** – a new requirement clarifying that branches and subsidiaries situated in Member States other than a firm's head office Member State are to apply host state Anti-Money Laundering (AML) and Counter Terrorist Financing (CTF) rules
- **Financial intelligence units** – MLD4 will incorporate the provisions currently set out in Council Decision 2000/642/JHA. It will also extend the powers of Financial Intelligence Units (FIUs), and strengthen their co-operation
- **Data protection** – MLD4 will improve the balance of AML and CTF record keeping requirements with data protection requirements, and clarify the interaction between these requirements

Market Abuse Directive (MAD) II

In a nutshell:

MAD (Market Abuse Directive) was a directive adopted by the European Parliament in 2003, with the primary aim of introducing a common EU framework for the prevention and detection of market abuse. The European Commission launched a review of MAD in 2009, with a view to strengthening and modernising the EU market abuse framework. The EU proposal comprises a regulation on insider dealing and market manipulation (MAR) and a directive on criminal sanctions for insider dealing and market manipulation (CSMAD). Currently, the UK has decided not to opt in to CSMAD.

Jurisdiction:	EU
Status:	Drafted
Industry:	Cross Financial Services

Core components:

MAR

- **Scope change** – extending the scope of MAD to incorporate and monitor more financial instruments, such as commodity derivatives traded on European Multilateral Trading Facilities (MTFs) and Organised Trading Facilities (OTFs). The scope of MAD was also extended into more financial markets, namely commodity markets
- **Widening of insider dealing and market manipulation definitions** – requiring firms to disclose inside information in a simple market-specific format
- **Disclosure requirements** – inside information is required to be disclosed in a modified and simplified market-specific way. The proposal also clarifies managers' transactions reporting requirements
- **Administrative sanctions** – MAR introduces minimum rules for administrative measures, sanctions and fines. Measures are introduced requiring Member States to encourage reporting of breaches of MAR

CSMAD

- **Market abuse offences** – CSMAD introduces two market abuse offences that should be regarded by Member States as criminal offences; insider dealing and market manipulation
- **Criminalising market abuse** – Member States must criminalise behaviour amounting to inciting, aiding and abetting market abuse or attempting to commit any market abuse offences as previously defined. Member States must also ensure that these are punishable by criminal sanctions

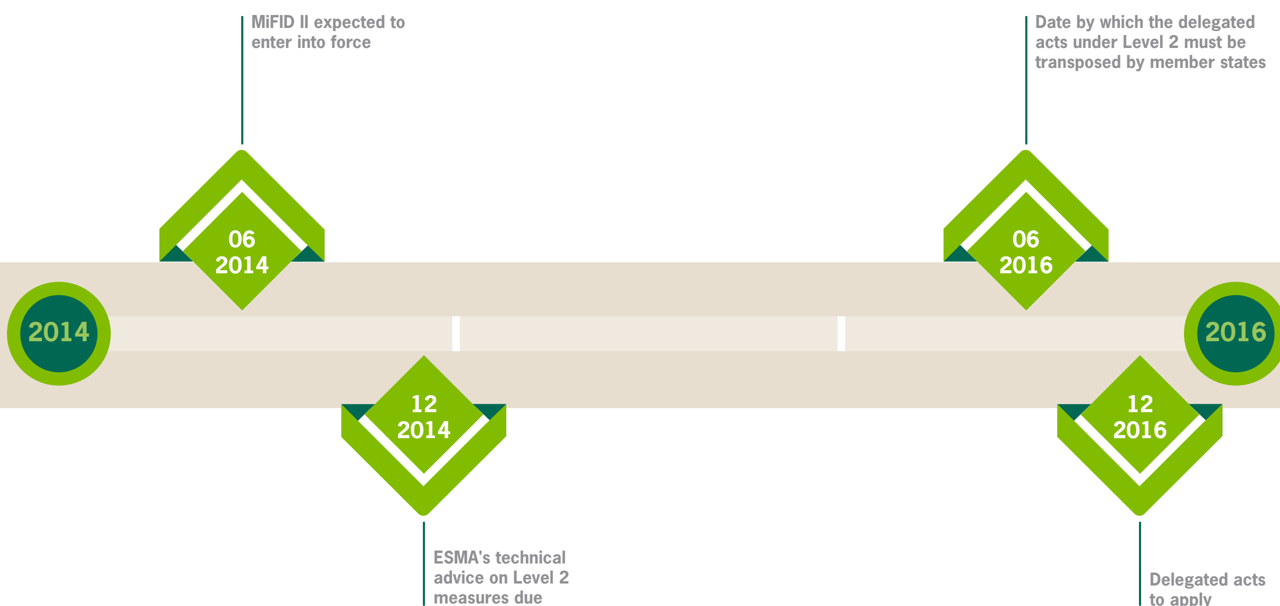
Markets in Financial Instruments Directive (MiFID)II

In a nutshell:

The Markets in Financial Instruments Directive (MiFID) was originally introduced to promote competition in the EU trading landscape. On 20 October 2011, the European Commission (EC) adopted a legislative proposal for the revision of MiFID. The Proposal was to create a revised Directive (MiFIDII) and a new Regulation (MiFIR) that addressed developments in the trading environment since the implementation of MiFID and the changes brought about by the financial crisis.

The key objectives of the updated Regulation include:

- Strengthening investor protection
- The introduction of a more stringent framework for commodity derivatives market
- Making financial markets more efficient and resilient to changes such as those seen during the financial crisis
- Increased transparency of the markets
- Reinforcement of supervisory powers
- Adapting for developments in technology since MiFID was originally implemented



Jurisdiction:	EU
Status:	Enacted
Industry:	Cross Financial Services

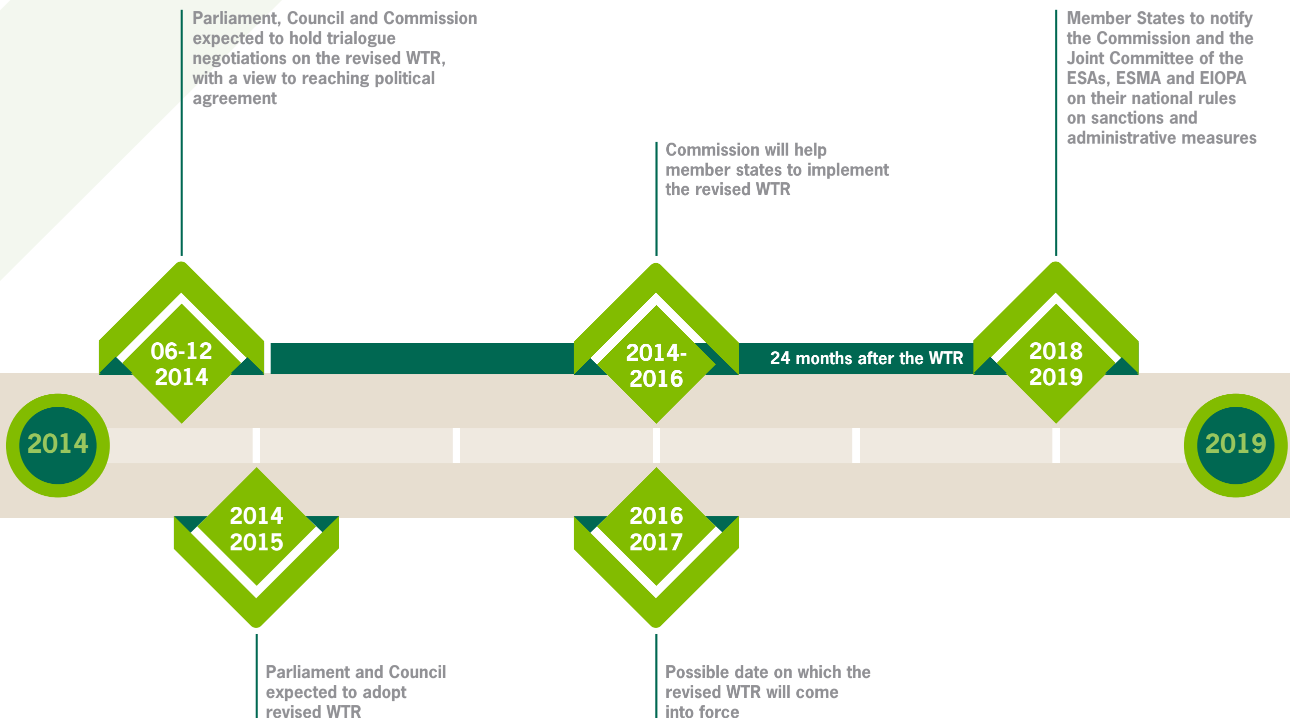
Core components:

- **Extension of scope** – broadening of scope to cover financial products, services and entities not currently covered. Emissions allowances trading is brought within the MiFID framework
- **Third country firms** – introduction of harmonised rules for authorisation and conduct of business of EU branches of third-country firms
- **Organised Trading Facilities (OTFs)** – this involves the creation of a new type of trading venue that will be monitored within the regulatory framework. OTFs are not currently monitored. OTFs will be under the same transparency rules as other trading venues all of which are now required to publish data on execution quality
- **Consolidation of market data** – investment firms will be required to submit post-trade data to Authorised Reporting Mechanisms (ARMs), who will report the details of transactions to regulators
- **Reinforced supervisory powers** – supervisors will be able to ban specific products, services or practices where there are threats to investor protection, financial stability or the functioning of markets. There will also be minimum rules to ensure that Member States apply appropriate administrative sanctions and measures to breaches of MiFID
- **Commodity derivatives markets** – a reporting obligation will be introduced which will vary depending on the category of trader. Regulators will also be able to monitor and intervene when necessary at any stage of trading
- **Conduct of business requirements** – this includes but is not limited to: new requirements for advisors who wish to call themselves 'independent' and enhanced information disclosure to different categories of clients
- **Transparency** – OTFs will be subject to the same transparency rules as other trading venues, to improve transparency in equity markets. A new transparency regime will be introduced for non-equity markets
- **Transaction reporting** – extension of the scope of the transaction reporting requirements to all financial instruments

Revised Wire Transfer Regulation (WTR)

In a nutshell:

The European Commission has proposed a Regulation to amend and replace the Wire Transfer Regulation (WTR). The WTR forms part of the EU action plan to combat money laundering and terrorist financing. As part of the original WTR, the EC was required to review the regime and include proposals for modification or repeal in its report, if appropriate. The revised WTR is designed to improve the effectiveness of the existing WTR regime, while also ensuring that the EU framework is aligned with the Financial Action Task Force (FATF) standards.

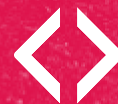


Jurisdiction:	EU
Status:	Drafted
Industry:	Cross Financial Services

Core components:

- **Information on the payee** – introduction of a new requirement on the Payment Service Provider (PSP) of the payer to ensure that transfers of funds are accompanied by specific information on the payee
- **Verifying the identity of the payee** – the revised WTR will impose a new requirement on the PSP of the payee to verify the identity of the payee where there are transfers of funds of more than EUR1,000 or where the PSP of the payer is established outside the EU
- **Clarification of scope** – credit and debit cards, mobile telephones and other digital or information technology devices will become subject to the provisions of the WTR regime if they are used to transfer funds person-to-person
- **Establishment of risk-based procedures** – both the PSP of the payee and the intermediary PSPs will be obliged to establish effective risk-based procedures for determining when to execute, reject or suspend a transfer of funds that lacks the required payer and payee information
- **Whistleblowing** – Member States will be required to establish effective mechanisms to encourage the reporting of WTR breaches to national supervisors
- **Data protection** – the proposals align the FATF standards relating to record keeping with the new data protection regime envisaged in the EC's proposals for reforming the regime under the Data Protection Directive. On the expiry of the five year data retention period, PSPs will have to delete personal data, unless otherwise provided for in national law

Banking and Securities



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Bank Levy

In a nutshell:

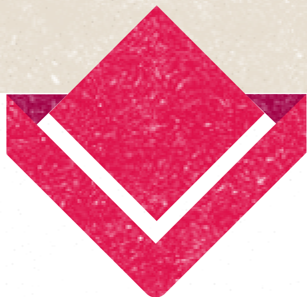
The Bank Levy is a tax applicable to the balance sheets of the UK's largest banks. The tax has been effective since the beginning of 2011. The legislation was designed to encourage banks to reduce their chargeable liabilities by switching to more equity capital or long-term funding over short term debt; primarily by accepting more retail deposits and/or by holding more high quality government securities.

The stated objectives for the levy were:

- for banks to make a 'full and fair contribution in respect of the potential risks they pose to the wider economy'
- to encourage banks to reduce their dependence on, short term funding
- to raise £2.5 billion in revenue across the industry. This target has been increased to £2.9 billion for 2015 onwards

The design of the tax deliberately aligns with regulatory concepts and objectives, in particular:

- Tier 1 capital (including Additional Tier 1) is excluded
- Government protected deposits (FSCS and similar) are excluded
- Deduction available for assets qualifying for liquidity buffers
- Relief is available for netting of assets and liabilities, aligned with regulatory netting concepts for RWA/large exposure



Jurisdiction:	UK
Status:	Enacted
Industry:	Banking and Securities

Core components:

- **A levy of 0.156 per cent on 'chargeable equity and liabilities' as at year end balance sheet date. This rate is halved for long-term liabilities**
- **The rate has continually increased from the original 0.075 per cent, as the government has recalibrated in order to achieve the target revenue yield**
- **The bank levy applies to the largest banks operating in the UK, it is only charged on chargeable balance sheets greater than £20 billion – the 20-30 largest taxable balance sheets**
- **For UK parented banks the charge is on the entire global balance sheet, for foreign banks on the UK balance sheet**

The government carried out a review of the Bank Levy rules during 2013, which has led to some changes on points of detail. As part of the 2014 Budget, the government announced that it will consult on a redesign of the levy charging mechanism. Banks could fall into bands according to their chargeable equity and liabilities which the government suggests would help them more easily predict receipts from the tax.

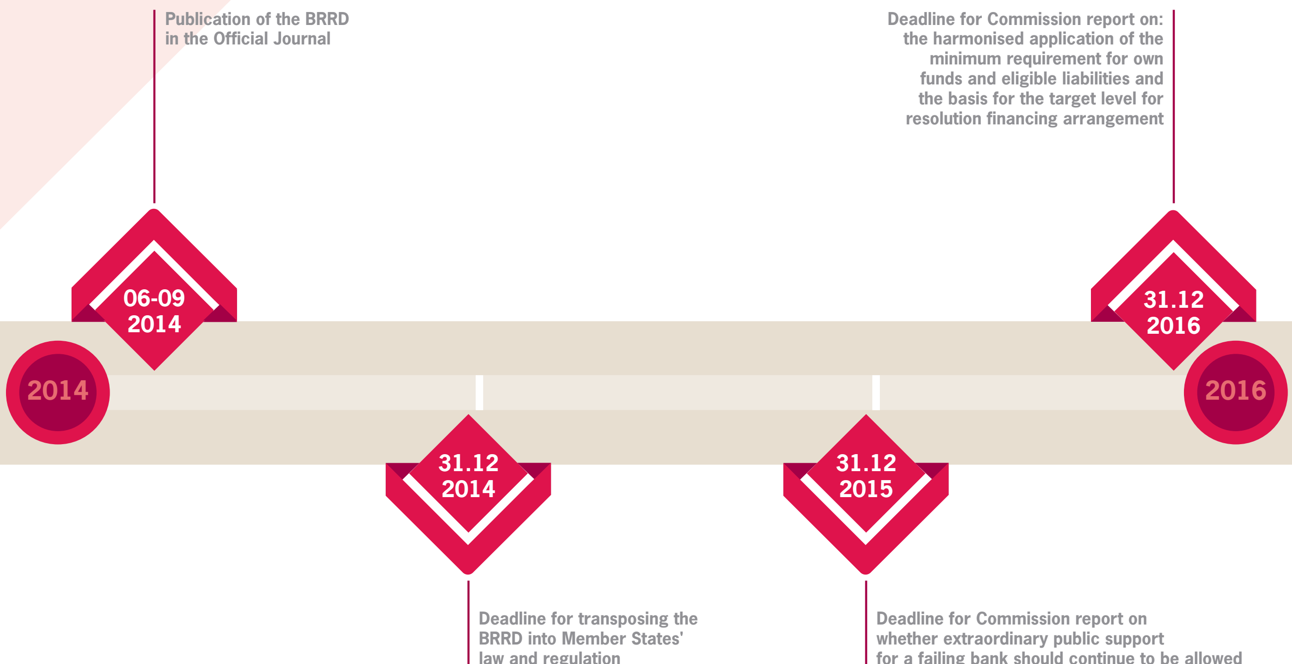
The government is also considering whether it is necessary to change the structure of the Bank Levy to enable it to meet the UK's obligations under the Recovery and Resolution and Deposit Guarantee Scheme directives.

Other countries also enacted similar bank levies as a response to the financial crisis – notably Germany, France and the Netherlands, and legislation is in place aimed at preventing the charging of the same balance sheet in more than one country.

Bank Recovery and Resolution Directive (BRRD)

In a nutshell:

The BRRD will establish a harmonised EU framework for the recovery and resolution of credit institutions. The European Commission proposed the Directive to address the 'too big to fail' issue. The Directive will provide national authorities with harmonised tools and powers to tackle bank/credit crises before they become of detriment to the financial system and taxpayers. The rules will apply to both credit institutions and larger investment firms, those that are subject to the Capital Requirements Directive.



Jurisdiction:	EU
Status:	Enacted
Industry:	Banking and Securities

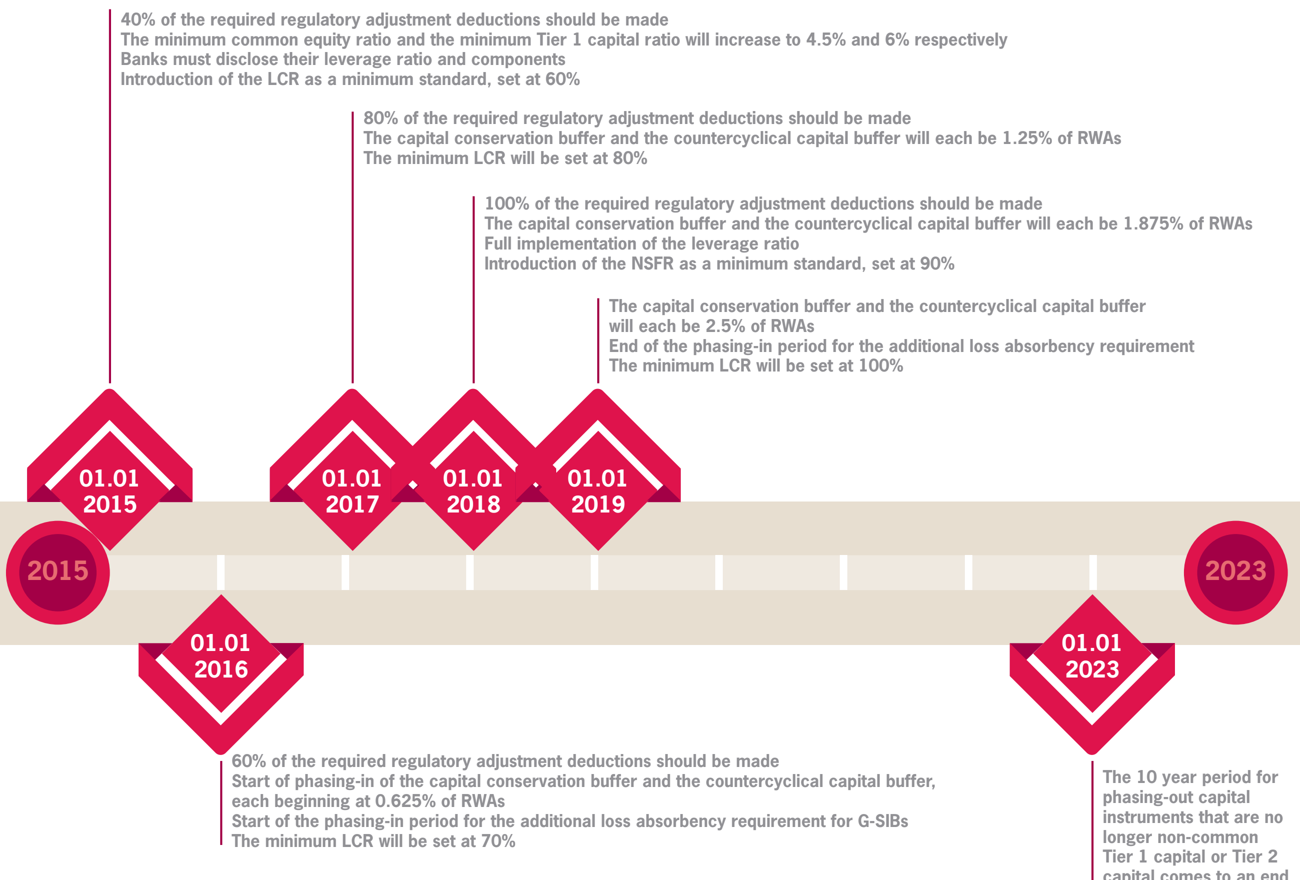
Core components:

- **Recovery Plans** – firms will be required to produce and maintain recovery plans, setting out the arrangements that they have in place to ensure their long-term viability, in the case that there was material deterioration of their financial situation. The plans require annual revision and must be submitted to competent authorities for assessment. Firms will have to provide and stress test the range of scenarios as part of severe financial stress. From here they are required to demonstrate that resolution plans are able to preserve function in case of failure
- **Resolution Plans** – resolution authorities will be required to prepare resolutions plans to set out how a firm would be resolved, and essential functions preserved, in the event of its failure. These will be updated at least annually and firms are expected to provide the necessary information to the authorities to enable them to prepare these plans
- **Early Supervisory Intervention** – the Directive gives powers to the authorities to take early action in addressing the possible failure of a firm. These include, but are not limited to, implementing measures set out in the recovery plan, drawing up a plan for the restructuring of debt and changing its business strategy
- **Special Management and Administration** – if there is serious detriment to a firm's financial position, authorities will have the power to appoint a special manager to replace the existing management. If this is insufficient, the authority may appoint temporary administrators to the institution
- **Resolution Tools** – the main resolution tools in the Directive include: the sale of business tool, the bridge institution tool, the asset separation tool and the bail-in tool. The bail-in tool is the process of internal recapitalisation triggered when a firm reaches the point of non-viability and its aim is to ensure that the costs of resolution are borne by firms' shareholders, rather than by the public sector

Basel III

In a nutshell:

The Basel Accords seek to enhance the resilience of banks and the financial system by adopting a consistent approach to prudential oversight of banks and focusing on the amount and quality of capital, liquidity and leverage that banks need to maintain. Basel III is the latest accord, strengthening the provisions set out in Basel II & 2.5 as well as introducing new prudential requirements. It addresses issues around bank capital adequacy, stress testing and market liquidity risk and leverage. The phasing in of requirements began in 2013, with full compliance expected in 2019.



Jurisdiction:	Global
Status:	Enacted
Industry:	Banking and Securities

Core components:

- **Quantity and quality of capital** – measures to improve the loss-absorbency of bank capital. Basel III places a much greater emphasis on Common Equity Tier 1 (CET1) capital, from which most regulatory deductions are made, and increases the CETI ratios considerably
- **Capital buffers** – introduction of countercyclical capital buffers and capital conservation buffers
- **Risk coverage** – Basel III strengthens the capital requirements for counterparty credit risk exposures. It also amends Basel II to reduce incentives for banks to rely too heavily on external ratings when calculating credit risk. This builds on the Basel 2.5 developments aimed at improving market risk coverage with specific measures on the trading book and securitisations
- **Leverage ratio** – introduction of a non-risk based leverage ratio as a backstop to risk-based measures and to prevent excessive credit growth, particularly in off-balance sheet structures (Capital/Total Assets – On/Off Balance Sheet)
- **Liquidity ratio** – introduction of two new liquidity ratios. The Liquidity Coverage Ratio: this requires stock of high quality liquid assets over a 30 day stress. The Net Stable Funding Ratio, where illiquid assets have to be backed by stable funding (long-term)
- **Credit valuation adjustment (CVA)** – Basel III contains measures intended to address exposures to CVA risk, requiring banks to hold capital against mark-to-market losses associated with a deterioration in a counterparty's credit risk
- **Disclosure** – the new proposals require banks to increase disclosure on the quality of capital they hold, this is in relation to pillar 3 of the Accord
- **Systematically Important Banks (SIBS)** – banks that are classified as SIBS, either globally or domestically, will be subject to higher capital requirements

Basel III – Fundamental Review of the Trading Book (FRTB)

In a nutshell:

The Fundamental Review of the Trading Book (FRTB) seeks to address shortcomings in the overall design of the trading book, the market risk and regulatory capital regime and weaknesses in risk measurement, modelling and supervision.

The FRTB was a response by the Basel Committee on Banking Supervision (BCBS) to the shortcomings of Basel 2.5. Particularly, its failure to address the cyclicality of the market risk framework and the concept of measuring market risk, built upon the concept of Value-at-Risk (VaR).The principal operational impact for firms will be the requirement to maintain both Standardised Approach (SA) and internal risk model infrastructures. Regulators will face increased supervisory responsibilities and firms will be obligated to provide the Regulator with enhanced risk model metrics.

In Autumn 2013, the BCBS published its second consultation paper on FRTB and, following a Quantitative Input Study (QIS), intends to publish the final standards and implementation arrangements 'within an appropriate time frame'.

Jurisdiction:	Global
Status:	Enacted
Industry:	Banking and Securities

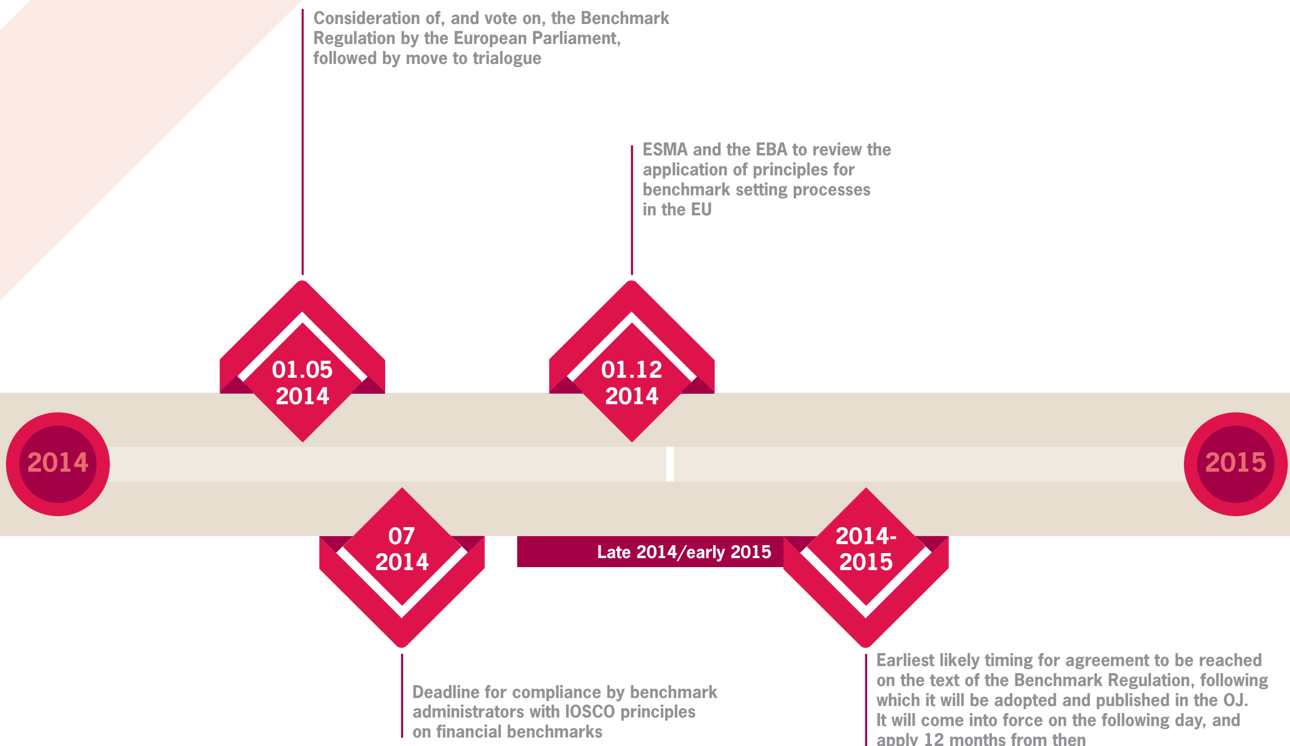
Core components:

- **Trading book definition** – two new boundary definitions are being considered: Trading evidence-based boundary or Valuation-based boundary
- **Stressed calibration** – the capital framework within trading will be reformed so it can deal with periods of significant market stress
- **Moving from Value-at-Risk (VaR) to Expected Shortfall (ES)** – VaR is often criticised for not capturing the full picture of risks that a company is facing. Expected Shortfall is more sensitive to the shape of the loss distribution in the tail of the distribution
- **Incorporating market illiquidity risk** with market risk as a key consideration in banks' regulatory capital requirements for trading portfolios
- **Hedging and diversification** – aligning the treatment of hedging and diversification benefits between the standard approach and the internal-models approach
- **Models vs Standardised Approach** – strengthening the relationship between the internal-models based approach and the standardised approach

Benchmark Regulation

In a nutshell:

Following investigations and enforcement action into the manipulation of LIBOR and EURIBOR, the European Commission proposed a Regulation on indices used as benchmarks in financial instruments and financial contracts. The primary aim of the Regulation is to restore confidence in the accuracy and integrity of benchmarks. The EC believes that the legislation will help to enhance the Single Market by creating a common framework across Member States.



Jurisdiction:	EU
Status:	Drafted
Industry:	Banking and Securities

Core components:

- **Benchmark administrators** – administrators will be subject to various requirements including, but not limited to: applying for authorisation to provide a benchmark, establishing and maintaining robust governance arrangements and oversight functions, having control and accountability frameworks and adopting a code of conduct for each benchmark. The Regulation also prescribes that administrators must notify the relevant competent authority of any suspicious behaviour
- **Benchmark contributors** – the Regulation includes provisions that apply to all contributors, together with additional requirements for supervised contributors, including: compliance with a prescribed code of conduct, governance and control requirements for supervised contributors and mandatory contribution requirements
- **Benchmark users** – supervised entities may only use a benchmark if it is provided by an authorised administrator or one that has satisfied the equivalence requirements. Supervised entities must also produce 'robust written plans' that set out the actions they would take should the benchmark materially change or cease to be produced as well as carrying out a suitability assessment when it intends to enter into a financial contract with a consumer
- **Powers of competent authorities** – competent authorities are given powers to ensure administrators' compliance with, and effective enforcement of, the Regulation's requirements

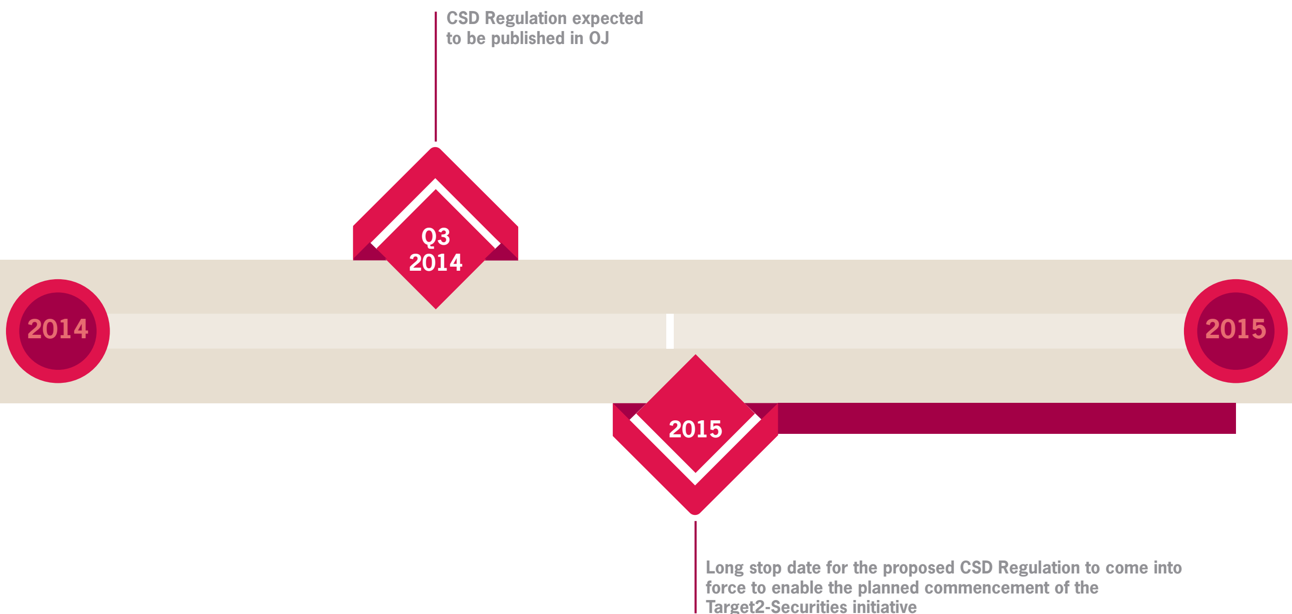
Central Securities Depository Regulation (CSDR)

In a nutshell:

In response to the systemic importance of CSDs and their strategic position at the end of the post-trading process, the European Commission is aiming to introduce an appropriate regulatory framework for CSDs. The diversity in settlement practices across the EU has been perceived as hindering the development of a truly integrated European post-trade market. This new Regulation will work alongside EMIR and MiFID to form a framework in which securities infrastructure will be subject to common rules on a European level.

The main objectives of the proposal are to:

- **Increase the safety of settlements:** by ensuring that buyers and sellers receive their securities and money on time and without risks
- **Increase the efficiency of settlements:** by introducing a true internal market for the operations of national CSDs
- **Increase the safety of CSDs:** by applying high prudential requirements in line with international standards



Jurisdiction:	EU
Status:	Enacted
Industry:	Banking and Securities

Core components:

- **The establishment of a common regulatory framework for CSDs** – this may include, but is not limited to, common definitions of CSD services, common rules regarding authorisation on on-going supervision of CSDs, high prudential standards for CSDs and rules on access and interoperability
- **The removal of barriers to cross-border post trading services** – barriers currently exist between issuers and CSDs, between CSDs themselves and between CSDs and other market infrastructures, such as CCPs (Central Counterparty Clearing Houses) or trading venues
- **Dematerialisation for securities trade** – this would be an obligation for securities to be recorded electronically in book-entry form through a CSD
- **A common settlement period** – currently regulated markets settle two or three days after trading. The intended settlement date for securities traded on Recognised Investment Exchanges (RIEs), Multilateral Trading Facilities (MTFs) and Organised Trading Facilities (OTFs) must be no later than the second business day after the trade takes place

Directive on Payment Accounts

In a nutshell:

Following a number of problems identified in the EU payment accounts market, the EC adopted a legislative proposal for a Directive. The Directive aims to make it easier for consumers to compare the fees charged on payment accounts, establish a simple and quick procedure for switching from one payment account to another and allow all EU consumers, irrespective of their country of residence in the EU or financial situation, to open a payment account that allows them to perform essential operations.

Council of the EU expected to adopt the Directive at first reading

06-09 2014

2014

2015

Jurisdiction:	EU
Status:	Proposed
Industry:	Banking and Securities

Core components:

- **Comparability of fees connected with payment accounts** – national regulatory authorities must compile a list of the most representative payment services subject to a fee at national level. Payment service providers must provide the consumer with a fee information document containing the national payment services list and the corresponding fees for each service on an annual basis. When a payment account is offered together with another service or product as part of a package, the payment service provider must inform the consumer whether it is possible to buy the payment account separately and provide information about the costs and fees associated with the products included
- **Payment account switching** – payment service providers must provide a switching service to any consumer who holds a payment account with an EU payment service provider. Consumers must be able to access, free of charge, information about their accounts and the switching service. There is a restriction on the fees that can be charged for information provision and termination of accounts
- **Access to payment accounts** – Member States must ensure that EU residents: are not discriminated against by reason of their nationality, have access to at least one payment service and are not refused an application apart from in specific prescribed circumstances. Members States are required to ensure that payment service providers: offer a payment account with basic features, either free of charge or for a reasonable fee and must also comply with termination rules

Directive recasting the Deposit Guarantee Schemes Directive (DGSD)

In a nutshell:

In July 2010, the European Commission published a legislative proposal for a Directive that would recast and replace the Deposit Guarantee Scheme Directive (DGSD), intended as a short-term fix to address a number of identified issues. The original DGSD, implemented in 1995, required each Member State to introduce at least one deposit guarantee scheme (DGS) in their jurisdiction in order to improve financial stability by limiting the risk of bank runs. The aims of the 2010 proposal were to simplify and harmonise the Directive, further reduce the time limit for paying out depositors, provide better access for DGSs to information about their members and to ensure DGSs are sound, credible and sufficiently financed.

Jurisdiction:	EU
Status:	Proposed
Industry:	Banking and Securities

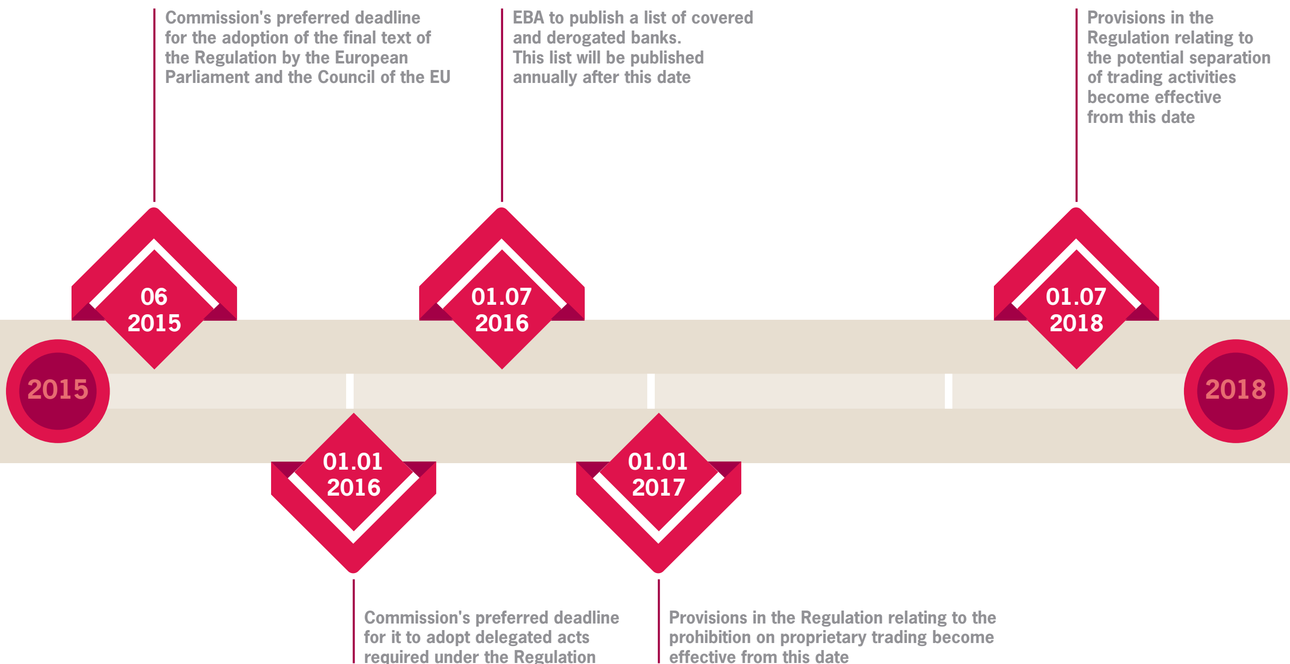
Core components:

- All credit institutions must be members of a DGS
- The definition of deposits is to be tightened to exclude structured products, certificates and bonds
- The coverage level of €100,000 will remain the same but Member States are permitted to cover deposits above this limit, arising from real estate transaction and deposits relating to particular life events, provided that this is limited to 12 months
- The DGS must repay depositors within a week
- Credit institutions must be able to provide information on the aggregated deposits of a depositor at any time
- Specific provisions on the financing of DGSs, including: requiring risk-based contributions from credit institutions to DGSs and allowing DGSs in need to borrow from all other DGSs in the EU
- Changes to the prescribed information about DGSs to be provided to depositors

EU Banking Structural Reforms (Liikanen)

In a nutshell:

The European Commission has adopted a legislative proposal for a Regulation on a structural reform of the EU banking sector. The reforms introduced are intended to address the concern that some EU credit institutions are too complex to supervise and 'too big to fail', as seen in the financial crisis. The proposal was introduced following recommendations of the high-level expert group on reforming the structure of the EU banking sector, chaired by Erkki Liikanen. The Commission believed that an EU-wide initiative on structural reforms was necessary as a number of Member States had begun to undertake different structural reforms in their respective jurisdictions.



Jurisdiction:	EU
Status:	Drafted
Industry:	Banking and Securities

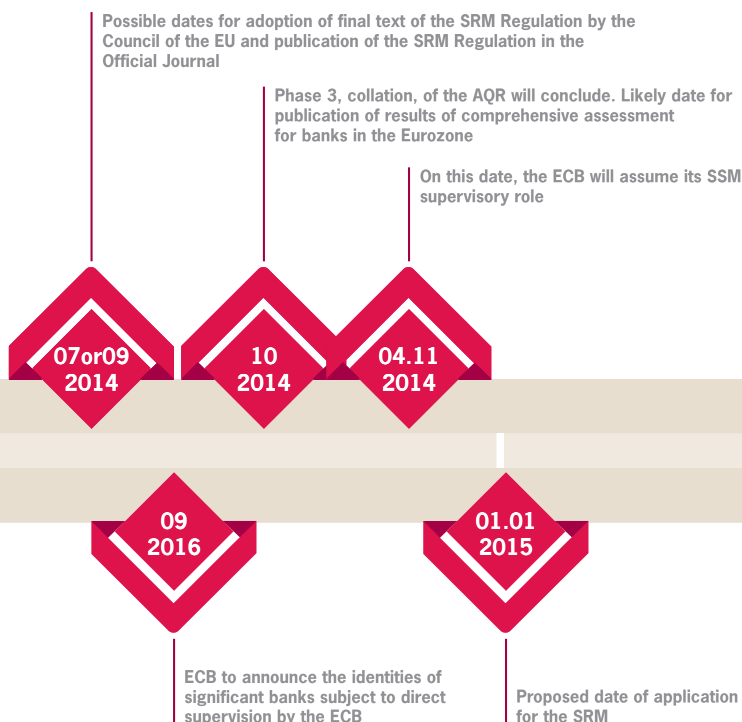
Core components:

- **Prohibition on proprietary trading** – financial institutions within the scope of the Regulation are prohibited from engaging in proprietary trading; this excludes trading in EU Member States' government bonds and operating dedicated structures for buying and selling money market instruments for the purposes of cash management. Investing in or holding shares in hedge funds, or entities that engage in proprietary trading or sponsor hedge funds, is also prohibited
- **Separation of trading activities** – while trading and investment banking activities are allowed, if an institution's activities are deemed to pose a threat to financial stability, the competent authority may prohibit the credit institution from performing these activities. These activities are permitted providing that they are performed by another entity in the same banking group as the credit institution; the trading entity must be legally, operationally and economically separate from the credit institution (a ring-fence is enacted)

European Banking Union

In a nutshell:

The EU is in the process of establishing a banking union, intended to address the increased supervisory demands resulting from the financial integration of the Eurozone. The aim of the banking union is to remove the close ties between banks and the risks of individual sovereign Member States and instead to link the risk of individual banks to the wider banking union. The banking union will apply automatically to all Eurozone Member States. EU Member States that are not in the Eurozone may choose to participate in the banking union, provided certain conditions are met. The UK will not participate in the SSM or a pan-EU DGS.



Jurisdiction:	EU
Status:	Drafted
Industry:	Banking and Securities

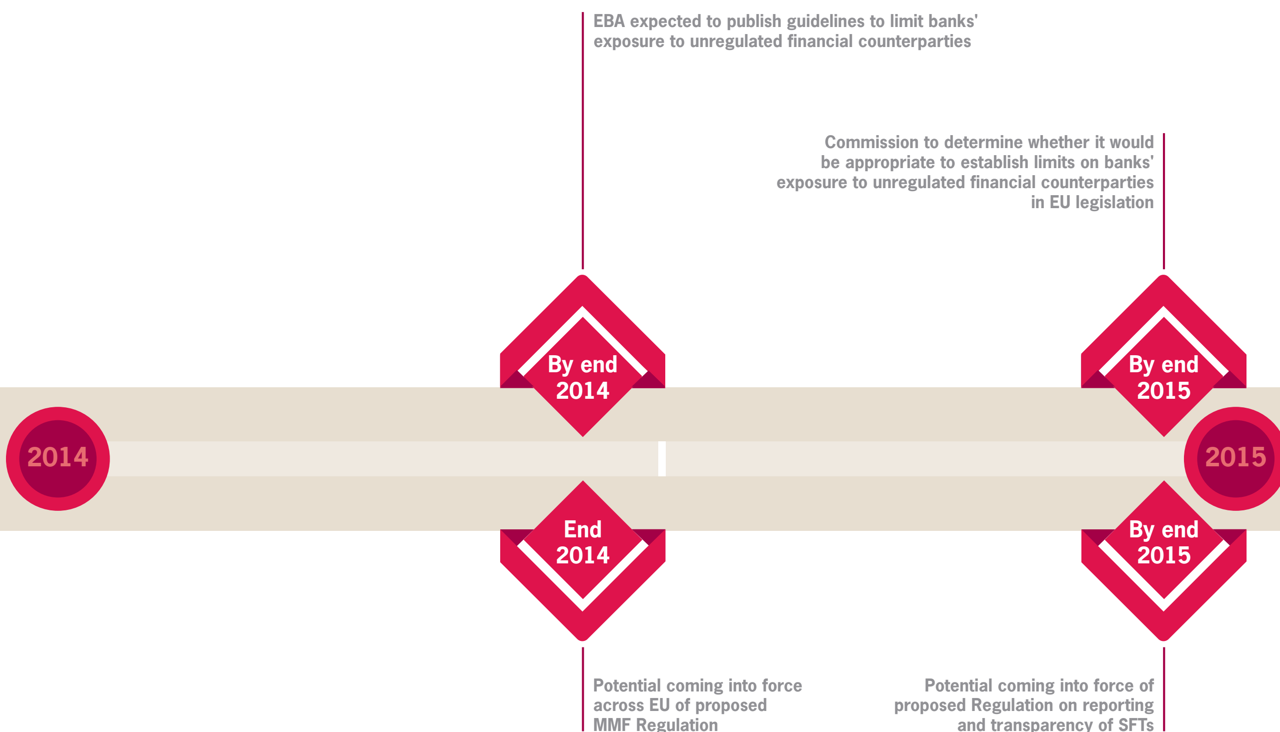
Core components:

- **A Single Supervisory Mechanism (SSM)** – the SSM will entrust supervisory responsibilities to a single regulatory body (the ECB) operating at a European level which will coordinate with supervisors in Member States. The ECB will take over the many of the supervisory roles and powers held by national competent authorities (NCAs) in EU banking legislation
- **A Single Resolution Mechanism (SRM)** – the SRM is a single resolution process for all banks in Member States participating in the SSM, co-ordinated by a Single Resolution Board (SRB). A Single Bank Resolution Fund (SBRF) will also be established to provide medium-term funding support for the resolution of banks
- **A Single Deposit Guarantee Scheme (SDGS)** – the SDGS would be a single compensation scheme for depositors in banks in EU Member States participating in the banking union. In June 2013, the European Commission indicated that it did not intend to press ahead with proposals for the SDGS

European Commission Communication on shadow banking

In a nutshell:

Following a consultation on the risks presented by the shadow banking sector, the European Commission (EC) published a communication, setting out the initiatives it planned to undertake. The aim of the work is to limit the emergence of risks in unregulated sectors, particularly those of a systemic nature which could be damaging due to their interconnectedness with the regulated financial system. The Commission also stated that there was a need to reduce opportunities for regulatory arbitrage between the regulated sectors and other market segments where similar activities could be performed without facing the same level of regulation. The EC will continue to assess whether supplementary measures are necessary to establish a suitable framework for shadow banking.



Jurisdiction:	EU
Status:	Proposed
Industry:	Banking and Securities

Core components:

◆ **Increased Transparency**

- Supplementing existing initiatives regarding the collection and exchange of data
- Developing central repositories for derivatives within the framework of EMIR and the revision of MiFID
- Implementing the Legal Entity Identifier (LEI)
- Increasing transparency of securities financing transactions (SFTs)

◆ **An Enhanced Framework for Certain Investment Funds**

- Proposed legislative measures to provide a strengthened framework for MMFs
- Strengthening the UCITS framework

◆ **Reducing the risks associated with SFTs**

- Proposed Regulation on reporting and transparency of SFTs
- Possible Securities Law Regulation

◆ **Strengthening the prudential banking framework to limit contagion and arbitrage risk**

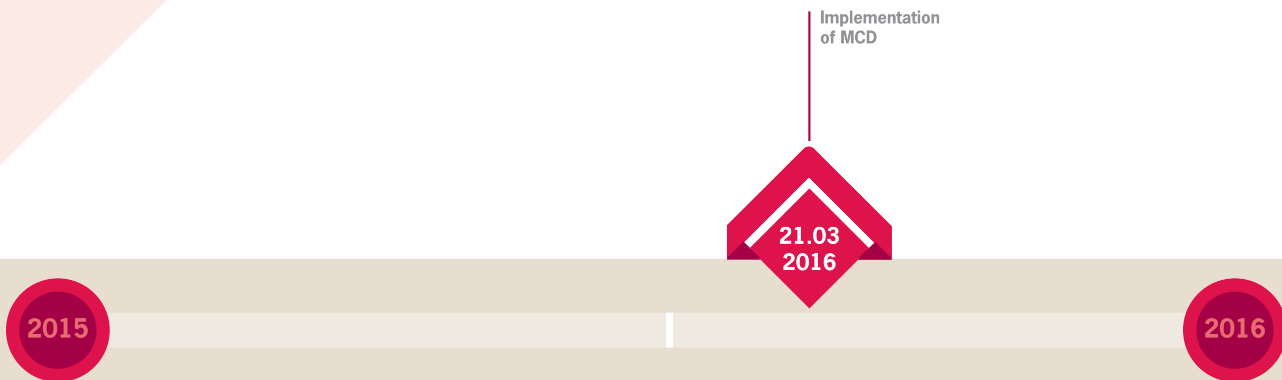
- Tightening the prudential rules applied to banks in their operations with unregulated financial entities to reduce contagion risks
- Considering a potential extension of the scope of application of current EU banking prudential rules to reduce arbitrage risks

Greater supervision of the shadow banking sector at both the National and EU level

EU Mortgage Credit Directive (MCD)

In a nutshell:

Following a review of the EU residential mortgage market, the European Commission considered that it was essential to enact harmonised EU standards. The Commission's objective was to promote financial stability and a competitive Single Market for residential mortgages. The UK has transposed the Directive and mortgage providers will have until the end of 2015 to implement the measures set out. The proposed Directive also includes a review clause, which states that the Commission will carry out a review five years after it has come into force.



Jurisdiction:	EU
Status:	Enacted
Industry:	Banking and Securities

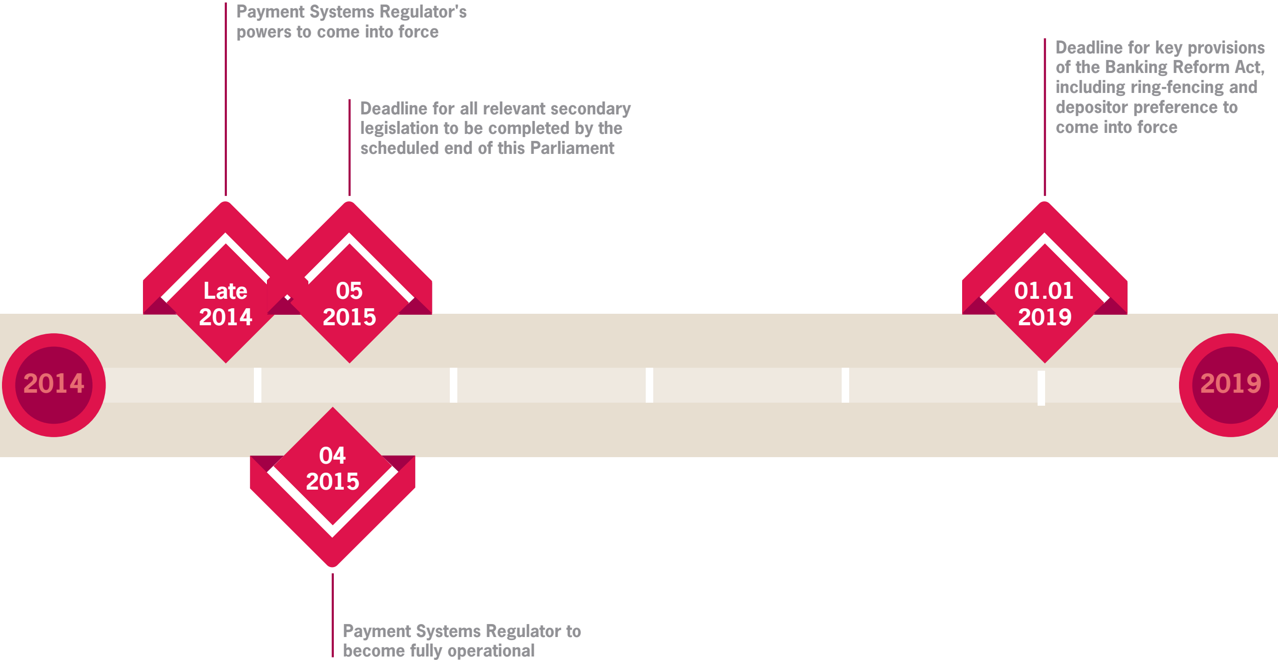
Core components:

- **Advertising and marketing** – an introduction of general principles for marketing and advertising communications
- **Pre-contractual information** – creditors and credit intermediaries will be required to make certain information available to consumers at the pre-contractual stage, including: general information on the range of credit products available, personalised information to the consumer on the basis of a 'European Standardised Information Sheet' (ESIS), explanations on the proposed credit agreement and details of the calculation of the annual percentage rate of charge (APRC)
- **Creditworthiness and suitability assessments** – creditors will be required to assess the consumer's ability to repay the credit
- **Advice** - the creditor or the credit intermediary must make clear to the borrower whether or not advice is being provided
- **Early repayment** – the proposed Directive allows consumers the right to repay their credit before the expiry of the credit agreement
- **Regulation of credit intermediaries** – the Directive will establish principles for the authorisation, registration and supervision of credit intermediaries and for the establishment of a passport regime
- **Regulation of non-credit institutions providing mortgage credit** – Member States will have to ensure that non-credit institutions are subject to adequate authorisation, registration and supervision

The Financial Services (Banking Reform) Act 2013 (Banking Reform Act)

In a nutshell:

The Financial Services Banking Reform Bill 2013-14 will enact a number of reforms to the UK's banking sector. The main role of the Bill is to give HM Treasury and the regulators, primarily the PRA, powers to implement some of the recommendations made by the Independent Commission on Banking (ICB). In particular, the act applies the ICB's recommendations for ring-fencing requirements for banks and higher standards of conduct for those working in Financial Services.



Jurisdiction:	UK
Status:	Enacted
Industry:	Banking and Securities

Core components:

- **Ring-fencing** – introduction of a ring-fence around retail deposits held by UK banks to separate certain core banking services from wholesale and investment banking services
- **Primary loss-absorbing capacity requirements** – systemically important UK banks and building societies will be required to hold loss-absorbing capacity in addition to capital held to satisfy their capital requirements
- **Depositor preference** – depositors who are protected under the Financial Services Compensation Scheme will be given preference if a bank enters insolvency
- **A new bail-in stabilisation option** – the bail-in tool will give the BoE the ability to impose losses on a failing bank's shareholders and certain creditors and reduce the need to resort to public money
- **Senior Managers Regime** – introduction of a new framework for individuals within banking, consisting of: a Senior Managers Regime, a Licensing Regime and banking standards rules
- **Criminal offence for reckless misconduct for senior bankers** – the Act introduces a new criminal offence of reckless misconduct in the management of a bank
- **Payment Systems Regulator** – the Act establishes a new Payment Systems Regulator
- **A special administration regime for systemically important inter-bank and securities settlement systems**
- **A cap on the cost of payday loans**
- **New powers for the regulators over holding companies**
- **Regulation of claims management companies**

International Financial Reporting Standards (IFRS 9)

In a nutshell:

International Financial Reporting Standards (IFRS 9) are an accounting standard, offering guidance on the appropriate measurement of liabilities and recognition of financial instruments. They seek to harmonise the classification and measurement of financial instruments and improve financial reporting standards. IFRS 9 will replace International Accounting Standard (IAS) 39, which dealt with the recognition of financial assets, and will be mandatory for all companies reporting using IFRS. In July 2013, the International Accounting Standards Board (IASB) decided to defer IFRS 9's implementation date. The mandatory effective date is left open until the impairment and classification and measurement requirements are finalised. Early application of IFRS 9 is permitted.

Jurisdiction:	Global
Status:	Enacted
Industry:	Banking and Securities

Core components:

- **Recognition and derecognition** – this determines when a financial asset and liability should either be recognised or derecognised in a company's financial statement
- **Classification of financial assets and liabilities** – IFRS 9 will seek to classify financial assets measured at amortised cost (ie costs of an asset written off due to depreciation), or fair value (ie estimated value based on the price it could be sold in a free and transparent market). IFRS 9 will also seek to classify financial liabilities at fair value through profit or loss, or at amortised cost
- **Hedge accounting** – hedge accounting refers to means by which companies attempt to limit volatility in their financial instruments. Hedge accounting under IFRS 9 will be made more aligned with risk management to make financial statements more representative of a company's risk profile and ensure the board reviews hedge accounting requirements
- **Impairment of financial assets** – IFRS 9 will introduce an impairment review for financial assets which are measured at fair value or amortised cost. It will seek to ensure the losses a company reports are appropriately captured and reported in their financial statements

Mortgage Market Review (MMR)

In a nutshell:

The Mortgage Market Review (MMR) was a comprehensive review of conduct business regulation commissioned by the FSA in 2009, culminating into a Policy Statement and final rules in October 2012. The main objective of the review was to have a mortgage market that is sustainable for participants and flexible for consumers. In addition to trying to improve the quality and standards within the residential mortgage market, the review also intended to ensure only those who can afford a mortgage are extended one. The majority of the changes came into effect on the 26 April 2014.

Jurisdiction:	UK
Status:	Enacted
Industry:	Banking and Securities

Core components:

- **Responsible lending** – lenders must verify income in all cases taking into account a borrower's net income, committed expenditure and basic household expenditure. Lenders must also take into account the impact of future interest rate increases on the borrower's ability to make repayments. Other factors that lenders must consider include assessing a borrower's income beyond state pension age, adapting additional measures to protect credit-impaired customers and only providing interest-only mortgages where a borrower has a credible repayment strategy
- **Distribution** – the FCA has further differentiated between interactive and execution-only mortgages. Interactive is essentially an advised sale for the majority of borrowers, with the exception of customers who are of high net worth or mortgage professionals, where execution-only can be used. Execution-only is also allowed in purely non-interactive sales (postal and internet) as long as advice is not offered
- **Arrears management** – the FCA has limited the number of times fees for missed payments can be charged. The arrears charges and forbearance rules have been widened to cover all payment shortfalls. Lenders have also been prevented from removing borrowers from concessionary interest rates should they go into payment shortfall. The FCA has also made it clear how it expects lenders to deal with mortgage arrears going forward
- **Prudential proposals for non-deposit taking mortgage lenders (non-banks)** – this includes a risk-based capital requirement, an increase in the quality of capital, a requirement for high-level systems and controls to manage liquidity risk and application on a solo-basis and not to firms that are in run-off

Payments Legislative Directive

In a nutshell:

The European Commission has adopted a legislative package regarding the EU payments framework. This package comprises a revised Payments Services Directive (PSD2) and a Regulation on Multilateral Interchange Fees (MIFs). The proposals are designed to extend the scope of the regime to previously unregulated payment services providers, improve integration and efficiency in the European payments market, increase consumer rights and payment security, encourage a reduction in the prices for payments and help to establish harmonised technical standards.

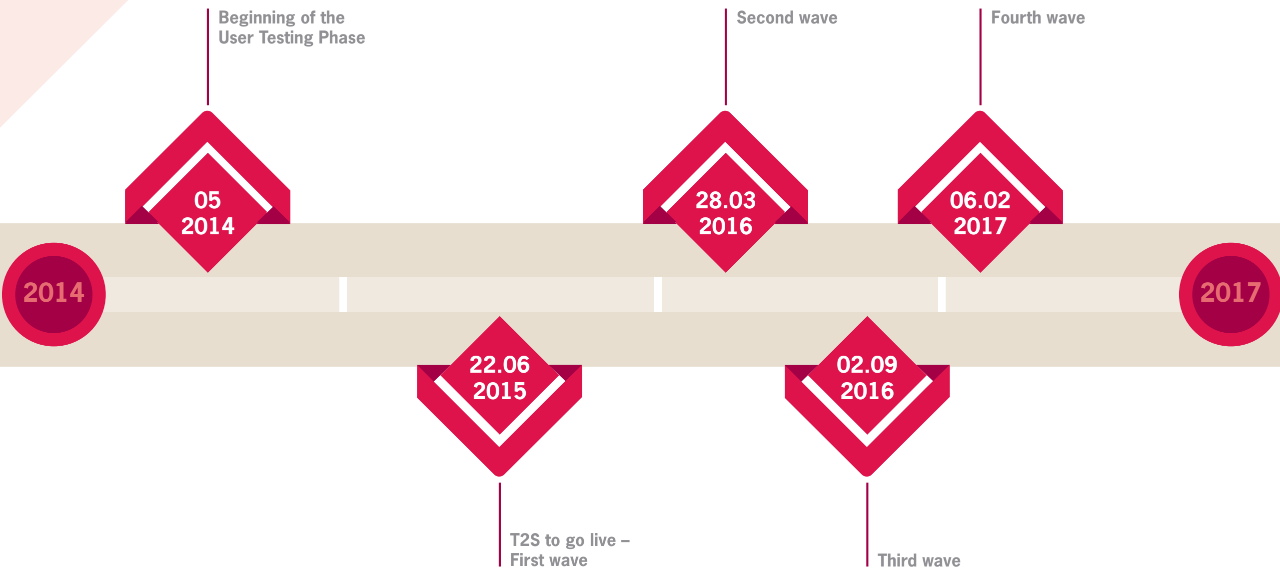
Jurisdiction:	EU
Status:	Proposed
Industry:	Banking and Securities

Core components:

- **Scope** – the scope will be extended so that transparency and information requirements will apply to 'one leg' transactions. This will now apply to all currencies
- **Exemptions** – the limited network exemption will be amended so it is only capable of being used in respect of specific payment instruments. The independent Automated Teller Machine (ATM) operator exemption is being removed. The commercial agent exemption is being amended to only exempt agents which act on behalf of either the payer or the payee, not both. The digital download exemption is being amended so that it only applies to telecoms operators
- **Payment institutions** – third party providers of initiation services and account information platforms will need to be authorised as payment institutions. The threshold for being a small payment institution will be reduced from having average monthly payment transaction turnover of less than €3 million to less than €1 million
- **Conduct** – the proposals introduce security requirements for payment instruments, reduce customer liability for unauthorised transactions to €50 instead of €150 and provide customers with the right to an unconditional refund for a disputed payment transaction, unless the good or service has already been consumed
- **Surcharge prohibition and interchange fees** – there will be prohibition on surcharging and an introduction of a cap on interchange fees of 0.2% for debit cards and 0.3% for credit cards
- **The EBA must establish a unique electronic access point enabling interconnection at EU level of national public registers**

Target2-Securities (T2S)

In a nutshell:
Target2-Securities (T2S) is a large infrastructure project that was launched by the Eurosystem in 2007 to stimulate cross-border settlement harmonisation. It will provide a single pan-European platform for securities settlement in central bank money. The current cross-border securities settlement method has been deemed expensive and complex, with a high level of risk, therefore highlighting the need for updated methodology. The project aims to increase efficiency, provide significant liquidity savings and eliminate counterparty risk.

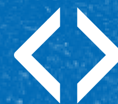


Jurisdiction:	EU
Status:	Enacted
Industry:	Banking and Securities

Core components:

- **Settlement** – T2S will be a state-of-the-art settlement engine offering centralised delivery-versus-payment (DvP) settlement in central bank money. It will be operated by the Eurosystem on a cost-recovery basis
- **Integrated Model** – it will employ the 'integrated model' method; both securities accounts and cash accounts will be integrated on one single IT platform, so that only one interface will be necessary between the Central Securities Depositaries (CSDs) and the T2S platform
- **Multicurrency dimension** – it will extend beyond the Euro area, enabling the interested non-Eurozone national central banks to connect to T2S with their currencies. Currently, most CSDs organise DvP settlements in central bank money with only one central bank. In T2S, securities will be settled against any of the available currencies
- A single set of rules, standards and tariffs will be applied to all transactions in Europe, dramatically reducing the complexity of the current market infrastructure. Cross-border fees will be considerably lower

Insurance



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CASS 5A

In a nutshell:

CASS 5 is chapter 5 of the FCA's Client Assets Sourcebook. This chapter sets out the client money rules for insurance intermediaries. The rules require firms to arrange adequate protection for clients' money when they are responsible for it. The FCA is concerned that the current rules are not well understood, which could result in client money not being adequately protected. Therefore, on 28 August 2012 the FSA (the FCA's predecessor) issued a consultation paper (CP12/20) in which it proposed significant changes to the client money rules. It also proposed to delete the existing CASS 5 rulebook and replace it with the new, clearer and easier to apply CASS 5A. CASS 5A comprises new rules designed to enhance the protection of client money and clarify certain existing rules. The proposed new rules will require firms to adapt or implement new processes and designate further resources to CASS compliance.

Jurisdiction:	UK
Status:	Proposed
Industry:	Insurance Intermediaries

Core components:

- **Increasing the frequency of the client money calculation from monthly to weekly calculations**
- **Restricting the length of time that credit can be advanced to clients and insurers under a non-statutory trust**
- **Prohibiting conditional risk transfer**
- **Allowing credit-write backs to be made for a limited period of time, after which new unclaimed money rules will come into effect**

The FCA was expected to issue a Policy Statement on changes to the client money rules for insurance intermediaries in May 2014. However, this publication has been delayed. Once published there is likely to be a 12 month period before implementation. The unclaimed money rules will come into effect after the credit-write back provisions expire.

The Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame)

In a nutshell:

The Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame) is a set of international supervisory requirements focusing on the effective group-wide supervision of internationally active insurance groups (IAIGs). ComFrame is built and expands upon the high-level requirements and guidance currently set out in the International Association of Insurance Supervisors' (IAIS') insurance core principles (ICPs). These core principles generally apply on both a legal entity and group-wide basis. While the ICPs are globally accepted requirements for insurance supervision, IAIGs need tailored and more coordinated supervision; primarily due to their complexity and international activity. As a result, the IAIS proposed a specific framework to assist supervisors in collectively addressing group-wide activities and risks, identifying and avoiding regulatory gaps and coordinating supervisory activities under the aegis of a group-wide supervisor.

Jurisdiction:	Global
Status:	Proposed
Industry:	Insurance

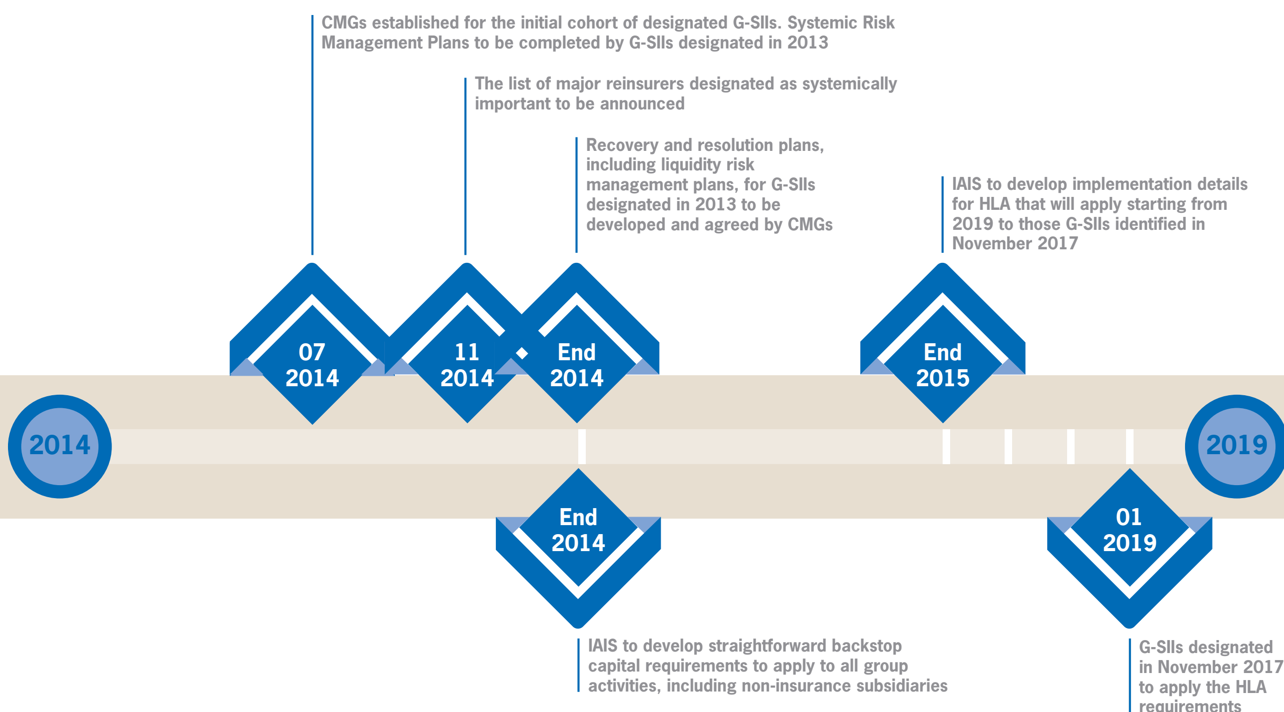
Core components:

- **Module 1: Scope of ComFrame** – to be identified as an IAIG, insurers must meet the following criteria: premiums are written in three or more jurisdictions, percentage of gross premiums written outside the home jurisdiction is at least 10% of the group's total gross written premium and, based on a rolling three-year average, total assets are at least $50 billion or gross written premiums are at least $10 billion. Module 1 also addresses the process for the identification of IAIGs by supervisors, the breadth of supervision of IAIGs and the identification of the group-wide supervisor
- **Module 2: The IAIG** – this module contains the standards with which the IAIG will have to comply. This covers the IAIG's legal and management structures, the group governance framework and expected roles of the Governing Body and Senior Management of the Head of the IAIG, the requirements for Enterprise Risk Management (ERM), group-wide ERM policies that an IAIG should develop and implement, the process the IAIG follows to assess its capital adequacy and reporting and disclosure requirements
- **Module 3: The Supervisors** – this describes the processes whereby supervisors assess whether IAIGs meet the requirements in Module 2. This includes the group-wide supervisory process, measures for addressing crisis management and resolution and the need for cooperation and interaction between involved supervisors and the requirement for supervisory colleges

Global Systemically Important Insurers (G-SIIs)

In a nutshell:

Following the financial crisis, G20 Leaders asked the Financial Stability Board (FSB) to develop a policy framework to address the systemic and moral hazard risks associated with Systemically Important Financial Institutions (SIFIs), and initially in particular global SIFIs (G-SIFIs). Following an initial allocation of Global Systemically Important Banks (G-SIBs), the International Association of Insurance Supervisors (IAIS) published a methodology for identifying Global Systemically Important Insurers (G-SIIs), and a set of policy measures that will apply to them.



Jurisdiction:	Global
Status:	Enacted
Industry:	Insurance

Core components:

- **The recovery and resolution planning requirements:**
  - the establishment of a Crisis Management Group (CMG)
  - the development of a recovery and resolution plan (RRP), including a liquidity risk management plan
  - resolvability assessments must be carried out within the CMG
  - the development of institution-specific cross-border cooperation agreements among relevant resolution authorities
- **Enhanced group-wide supervision, including:**
  - the group-wide supervisor to have direct powers over holding companies
  - group-wide supervisor to oversee the development and implementation of a Systemic Risk Management Plan
- **Higher loss absorbency (HLA) requirements for non-traditional and non-insurance activities**
  - in the absence of a global capital standard as a basis, these will be built upon straightforward, backstop capital requirements for all group activities, including non-insurance subsidiaries. HLA requirements will need to be met by the highest quality capital

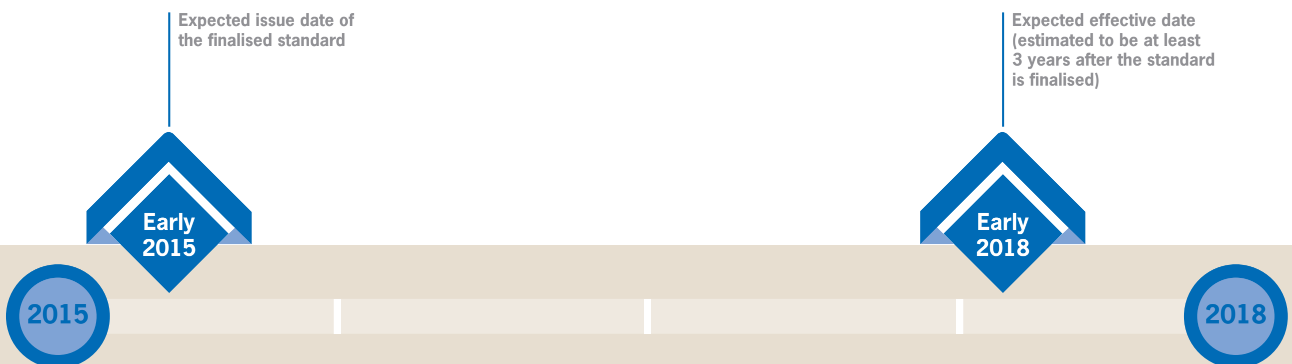
IFRS 4 Phase II

In a nutshell:

IFRS 4 Phase II is a global driven initiative, led by the International Accounting Standards Board (IASB). The aim of this standard is to develop a universal principle-based standard for valuing insurance contracts, to replace the current approach which still allows many different local accounting rules.

Phase I of the project was issued in March 2004 as an interim standard. Phase II was originally published in June 2010, and a revised exposure draft was issued June 2013, requesting industry feedback on 5 key elements of the standard. It is expected that the finalised standard will be published Autumn 2014.

The standard is applicable to all types of insurance contracts that an insurer holds, including reinsurance contracts.



Jurisdiction:	Global
Status:	Proposed
Industry:	Insurance

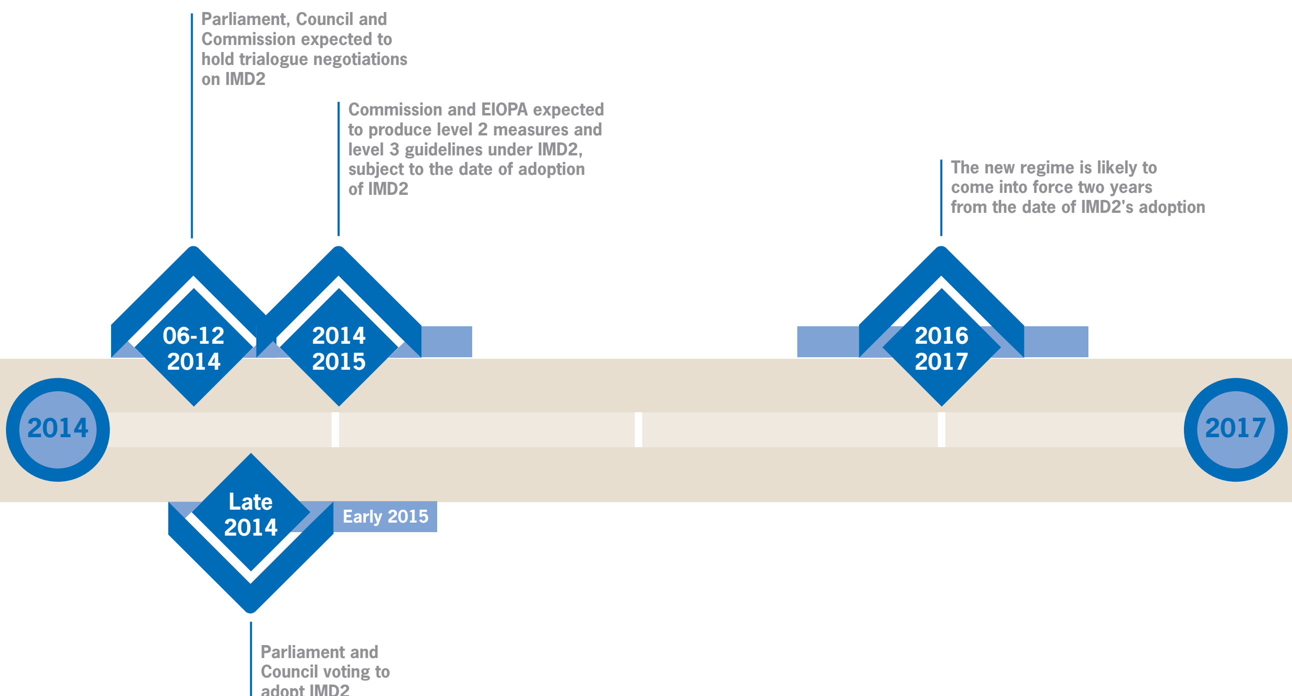
Core components:

- **Building Block Approach** – to measure insurance contract liabilities, the IASB has proposed using a building block approach. This model consists of four key building blocks:
  - **Future cash flows:** The insurer must estimate the expected cashflows from premiums, claims and benefits
  - **Risk Adjustment:** An adjustment must be made to the first building block to allow for the uncertainty around the value of future cash flows
  - **Discounting:** The next stage is to discount the future cashflows to allow for the time value of money (and express all cashflows in today's money terms)
  - **Contractual Service:** Any estimated profit from the insurance contract must be recorded in the contractual service margin and released over the remaining period of the contract, whereas losses should be recognised immediately within the Profit and Loss account
- **Unlocking** – any changes in estimated profits should be recognised over the remaining period of the insurance contract
- **Mirroring** – there shouldn't be an economic mismatch between returns on cashflows and the returns on any underlying items within the insurance contract
- **Statement of Comprehensive Income** – the IASB has proposed that the Statement of Comprehensive Income should reflect the potential profits or loss of the insurance contract by using a current view (as at the reporting date) of the discount rate assumption

Insurance Mediation Directive 2 (IMD2)

In a nutshell:

The European Commission (EC) has proposed a recast Directive on Insurance Mediation; the original Insurance Mediation Directive was implemented in 2005. The EC considered that a full review was needed to address the issues arising from differences in Member State transposition; key issues included: scope, conflicts of interest, advice, professional qualifications, cross-border trade and administrative sanctions. IMD2 is designed to improve regulation in the retail insurance market and aims to: ensure efficient competition for all participants involved in the sale of insurance products, make it easier for firms to trade cross-border, and strengthen policyholder protection. The Directive will be aligned to requirements in MiFID II and Solvency II.



Jurisdiction:	EU
Status:	Drafted
Industry:	Insurance

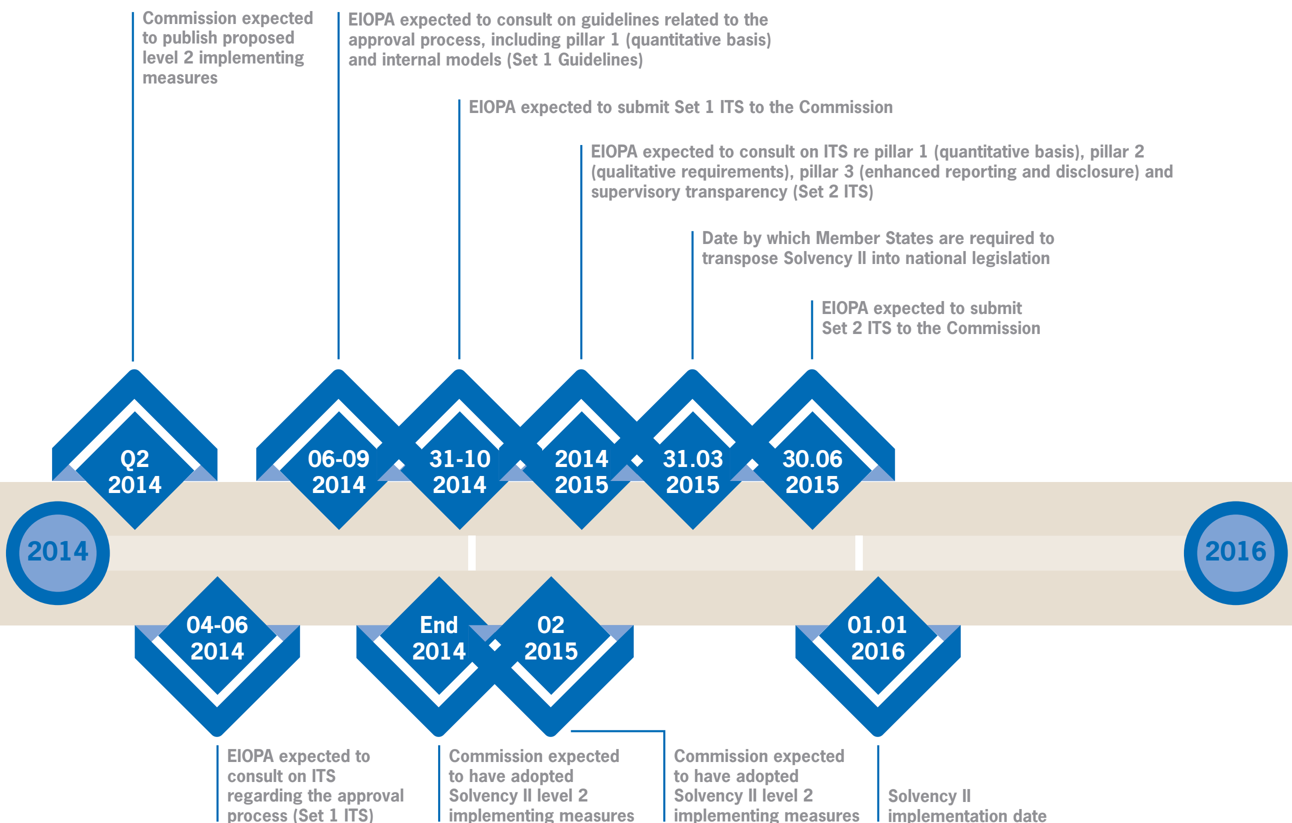
Core components:

- **Scope** – it will extend the scope of the IMD to all sellers of insurance products, including insurance companies that sell directly to customers
- **Declaration procedures** – certain intermediaries will not have to register as insurance intermediaries with competent authorities
- **Disputes** – requirements for the out-of-court settlement of disputes will be strengthened
- **Conflicts of interest** – there will be more effective management and mitigation of conflicts of interest. New rules will be introduced to address the risk of conflicts of interest between the seller of an insurance product and the potential customer more effectively
- **Bundled products** – special disclosure requirements will apply where suppliers bundle products together. Customers must be informed that it is possible to buy the bundled products separately
- **Insurance Packaged Retail Investment Products (PRIPs)** – stricter selling practices will be introduced for firms selling insurance PRIPs
- **Professional qualifications** – there will be mutual recognition of professional knowledge and ability, as evidenced by registration and proof of professional qualifications acquired in Member States
- **Administrative sanctions** – the level of harmonisation of administrative sanctions and measures for breach of key IMD provisions will be increased
- **Cross-border trade** – the procedure for cross-border entry to insurance markets in the EU will be simplified in number of ways, including by establishing a single EU registry for insurance intermediaries who want to provide cross-border services

Solvency II

In a nutshell:

Solvency II is a European driven initiative, proposed by the European Insurance and Occupational Pensions Authority (EIOPA), designed to create a consistent risk based approach to calculating capital requirements for insurers and reinsurers. In addition, it seeks to embed rigorous governance and risk management frameworks, establish a comprehensive reporting and disclosure system and introduce a more thorough supervisory regime. The intention is that this will make it easier for insurers and reinsurers, within the EU, to operate across borders. The overarching intention is to increase the level of policyholder protection, reduce the probability of customer loss and minimise disruptions to the insurance market.

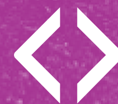


Jurisdiction:	EU
Status:	Enacted
Industry:	Insurance

Core components:

- **Pillar 1: Capital Requirements** – quantitative requirements, such that insurers and reinsurers are mandated to have adequate financial resources to meet their solvency needs. The Solvency Capital Requirement (SCR) is the capital required to ensure that the insurance company will be able to meet its obligations over the next 12 months with a probability of at least 99.5%. In addition to the SCR, a Minimum Capital Requirement (MCR) must be calculated. The SCR represents the threshold below which the national supervisor would intervene whereas the MCR represents the threshold below which it would withdraw the insurer's authorisation to trade if the position cannot be rectified within a short period. The MCR is intended to correspond to an 85% probability of adequacy over a one year period and is bounded between 25% and 45% of the SCR
- **Pillar 2: Systems of Governance** – qualitative requirements, requiring an embedded risk management system which promotes prudent governance and the ability to manage, measure and identify material risks. Effective systems of governance must also be established around certain key functions, including: risk management, compliance, internal audit and actuarial. A key new element of Solvency II is the Own Risk and Solvency Assessment (ORSA). As a forward looking tool, the ORSA seeks to enable an insurer to gain a good understanding of its risk profile and to align that risk profile with features such as risk appetite, business plans and capital requirements
- **Pillar 3: Reporting and Disclosure** – in attempting to engrain market discipline and a consistent approach to disseminating information to the market and other stakeholders, firms are required to establish robust systems and controls to meet reporting and disclosure requirements. Key reports firms will need to provide include the Solvency and Financial Condition Report (SFCR), the Regular Supervisory Report (RSR) and the annual and quarterly Quantitative Reporting Templates (QRTs)

Investment Management



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The Alternative Investment Fund Managers Directive (AIFMD)

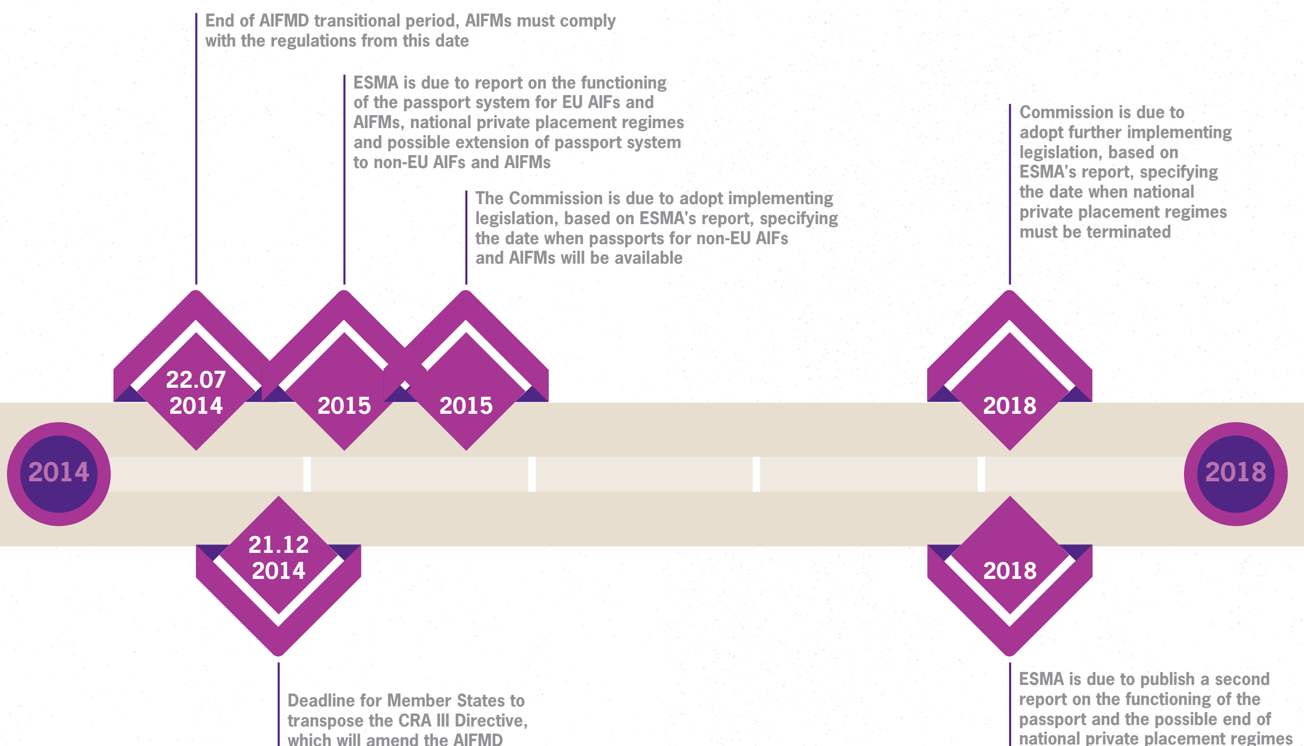
In a nutshell:

The Alternative Investment Fund Managers Directive (AIFMD) is an EU directive that aims to create a harmonised regulatory framework for firms managing or marketing alternative investment funds (AIFs) in Europe.

Issues identified within the market that contributed to the creation of the Directive included the financial crisis and a lack of consistent legislation within the investment fund market. Issues with short selling and market volatility also contributed.

The chief objectives of the Directive include:

- harmonised regulatory and supervisory framework
- appropriate authorisation and registration requirements
- increased transparency of AIFM to investors, stakeholders and regulators to help them identify systemic risks within the industry



Jurisdiction:	EU
Status:	Enacted
Industry:	Investment Management

Core components:

- **Requiring AIFMs to be authorised and subject to supervision by the regulator in their home Member State**
- **Capital requirements** – likely to be higher on an initial and on-going basis
- **Delegation rules** – requirements are imposed when an AIFM seeks to delegate any of the AIFM functions
- **Depositary rules** – the Directive sets out certain rules such as when a depositary must be appointed, who can be a depositary, where it must be established and its functions and duties
- **Remuneration rules** – require AIFMs to have remuneration policies and practices in place. The Directive also includes a set of principles that an AIFM must comply with when establishing and applying its remuneration policies
- **Valuation rules** – valuation policies must be transparent, comprehensive and consistent
- **Risk management rules** – require AIFMs to functionally and hierarchically separate the risk and portfolio management functions
- **Liquidity rules** – require appropriate limits to be set and stress tests to be performed
- **Disclosure and transparency rules** – sets out information that must be provided to investors and regulators pre-investment, on a periodic basis and in the annual report of the AIF

European Long-Term Investment Funds Regulation (ELTIF)

In a nutshell:

The European Commission has proposed a Regulation on European Long-Term Investment Funds (ELTIF) which will create a new brand of fund available for retail and professional investors. An ELTIF is a proposed type of fund that will allow investors to invest into companies and projects that need long-term capital. The European Commission's (EC's) proposal comes as a result of the regulatory fragmentation currently challenging investors wishing to gain exposure to long-term assets. Potential investors in long-term assets do not currently have an appropriate investment vehicle and the EC believes that the inefficient market for pooled investments impedes access to finance.

European Parliament expected to resume examination of ELTIF Regulation

Autumn 2014

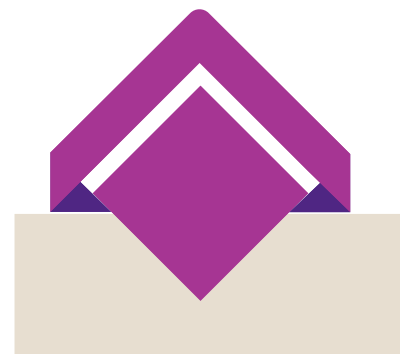
2014

2015

Jurisdiction:	EU
Status:	Proposed
Industry:	Investment Management

Core components:

- **The ELTIF description** – an ELTIF must be: an EU Alternative Investment Fund (AIF), be authorised by a regulator in the home Member State of the EU AIF and comply with prescribed rules on investment policies, redemption, transparency and marketing
- **Authorisation process** – an ELTIF must apply for authorisation to the home Member State regulator of the fund. The application includes, but is not limited to: the fund rules or instruments of incorporation, information on the identity of the manager, information on the identity of the depositary, a description of the information to be made available to investors, a written agreement with the fund's depositary, information on delegation arrangements concerning portfolio and risk management and administration and information about the investment strategies, the risk profile and other characteristics of funds that the manager is authorised to manage
- **Investment policies and diversification requirements** – an ELTIF must invest at least 70% of its capital in eligible investment assets as prescribed by the Regulation and is required to diversify the remaining 30% of investments
- **Investment restrictions** – an ELTIF is restricted from: engaging in short selling, direct or indirect exposure to commodities, entering into securities lending agreements, securities borrowing agreements, repurchase agreements and using financial derivative instruments
- **Redemption, trading and distribution of income** – investors are not allowed to redeem their units or shares before the 'end of life' of an ELTIF and there are provisions for the trading of units or shares of an ELTIF on regulated markets, as well as the free transfer to third parties
- **Transparency requirements** – a prospectus that complies with the requirements contained in the Prospectus Directive must be published as well as a Key Information Document, when marketing to retail investors
- The Regulation also contains a passporting regime whereby the manager of an ELTIF can market a fund into host Member States if it has followed the notification process in Article 32 of the AIFMD



FCA review of client assets regime for investment business

In a nutshell:

In response to concerns that a number of firms were still failing to comply with fundamental requirements regarding recording the client assets they held and segregating them according to the FCA's Client Assets Sourcebook, the FCA conducted a wide review of its client assets regime for investment business.

The final proposals, published in June 2014, cover the entire operation of the client money and custody rules for investment firms that hold client money, custody assets, collateral and/or mandates in relation to investment business. The changes include a rewrite of client money rules for investment firms and substantial amendments to custody rules in the Client Assets Sourcebook.

The aims of the proposals were to address specific risks, clarify the requirements firms must comply with and enhance the client assets regime to achieve better results for consumers and increase confidence in financial markets.

2014

01.07 2014

Certain rules and guidance come into force providing clarifications to existing requirements, introducing optional arrangements with which firms may choose to comply and limiting the placement of client money in new unbreakable term deposits

01.12 2014

Rules and guidance relating to the provision of information to new clients come into force

01.06 2015

All of the remaining rules and guidance come into force

2015

Jurisdiction:	UK
Status:	Enacted
Industry:	Investment Management

Core components:

- **Speed Proposal** – the FCA will not proceed with its proposals on client money distribution rules but will keep these under review in line with HMT's implementation of Special Administration Regime recommendations
- **Delivery versus Payment (DVP)** – the DVP window has been retained for settling transactions in collective investment schemes, but has been reduced to one day and firms must also obtain each client's consent to their assets or monies being held within the DVP window
- **Format and frequency of reconciliations** – the format of internal client money reconciliations is being clarified with the requirement to perform these daily and external reconciliations at least monthly
- **Unbreakable Term Deposits** – unbreakable fixed term deposits will be limited to a maximum of 30 days
- **Mandate Rules** – the requirement for firms to retain the mandate records indefinitely has been removed and replaced with retention requirements of at least one year, or at least five years if the mandate was obtained in connection with MiFID business
- **Client Asset Disclosure Document (CADD)** – the proposal for a CADD has not been adopted
- **Acknowledgement letters for client money bank accounts** – a new template for acknowledgement letters will be introduced alongside a requirement to re-paper existing acknowledgement letters and to have these letters in place before starting to use any new bank account which is opened to hold client money
- **Due diligence** – additional due diligence will be required for banks with whom client money is held

Money Market Funds Regulation (MMF Regulation)

In a nutshell:

The European Commission has proposed a Regulation on Money Market Funds (MMFs) following an investigation into shadow banking and investment funds where the European Commission (EC) identified a number of concerns. The EC considers MMFs to be systemically relevant and subject to inherent market risks and investor runs. In addition, MMFs are systemically interconnected with the banking sector and money markets. The proposed Regulation is designed to ensure that MMFs can better withstand redemption pressure in stressed market conditions, by enhancing their liquidity profile and stability. The proposed MMF Regulation will apply to all MMFs that invest in money market instruments.

European Parliament to resume examination of the MMF Regulation

Late 2014

2014

2015

Jurisdiction:	EU
Status:	Proposed
Industry:	Investment Management

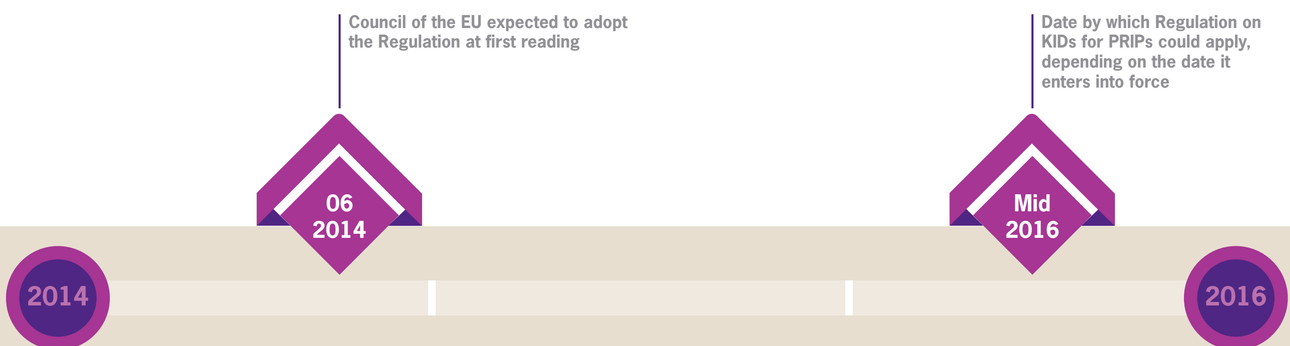
Core components:

- **The MMF description** – when an Undertaking for Collective Investment in Transferable Securities (UCITS) or Alternative Investment Fund (AIF) has been authorised under the MMF Regulation, it can use the designation Money Market Fund or 'MMF' to describe itself or the units it issues
- **Authorisation process** – only funds authorised as a UCITS under the UCITS IV Directive, or AIFs under the AIFMD, can be authorised as an MMF. The authorisation process depends on this categorisation
- **Investment policies** – an MMF can only invest in: money market instruments, deposits with credit institutions, financial derivative instruments or reverse repurchase agreements; it is also subject to restrictions within these categories. An MMF cannot: short-sell money market instruments, take direct or indirect exposure to equity or commodities, enter into securities lending agreements and securities borrowing agreements or borrow and lend cash
- **Diversification** – the Regulation contains detailed rules on the diversification of eligible investment assets that each MMF has to follow
- **Concentration** – there are provisions that address the maximum limits that an MMF can hold in a single issuer
- **Credit quality of money market instruments** – there are detailed rules on the internal assessment of the credit quality of MMF investment instruments
- **Risk management** – the Regulation contains portfolio rules for short-term MMFs and standard MMFs. MMFs are prevented from soliciting or financing an external credit rating. Article 24 requires a manager of an MMF to establish, implement and apply a Know Your Customer (KYC) policy. Article 25 sets out the stress testing processes that a manager of an MMF should have in place
- **Valuation** – there are requirements relating to how an MMF has to value its individual investment assets, calculate the Net Asset Value (NAV) per unit of the MMF, as well as the frequency of valuations
- **Transparency** – there are provisions regarding the specific information that MMFs are required to include in marketing material. Article 38 establishes reporting requirements for MMFs that apply in addition to the requirements contained in the UCITS IV Directive and the AIFMD

Proposed Regulation on key information documents for PRIPs

In a nutshell:

The European Commission proposed a Regulation to introduce a new pan-European pre-contractual product disclosure document, also known as a Key Information Document (KID), for Packaged Retail Investment Products (PRIPs). Investment funds, retail structured products and certain types of insurance contracts used for investment purposes are often referred to as PRIPs. The primary aim of the Regulation is to aid retail investors understand information about different investment products and more easily compare these. Furthermore, the regulation of pre-contractual product disclosures is currently highly fragmented. The Regulation will complement measures set out in MiFID 2 and IMD2.



Jurisdiction:	EU
Status:	Drafted
Industry:	Investment Management

Core components:

- **Responsibility for producing the KID** – the investment product manufacturer will be responsible for preparing the KID. This includes both the person who manufactures the product and anyone who makes changes to significantly alter an existing product
- **Form and content of the KID** – the proposal applies the principles of the Undertakings for Collective investment in Transferable Securities (UCITS) key investor information document regime across all other retail investment products. Amongst other things, the KID must be a stand-alone document that is accurate, fair, clear and not misleading and must be kept to a minimum short form. The proposal also outlines measures on keeping the KID up to date
- **Responsibility and timing for the provision of the KID to investors** – any person selling the investment product to retail investors must provide the KID to the potential investor in good time before a sale is transacted; it must be provided before an investment decision is taken. The proposal also sets out requirements on the media that can be used for providing the KID to retail investors
- **Treatment of UCITS funds** – to allow the recently introduced KID for UCITS to be implemented, the Commission has proposed that UCITS management companies and investment companies will be exempt from the obligations under the Regulation for five years after its entry into force
- The proposal also includes measures regarding complaints, redress and sanctions for breaches of the Regulation

Undertakings for Collective Investment in Transferable Securities (UCITS)V

In a nutshell:

The financial crisis highlighted that EU financial services regulation is not always consistently applied across Member States. In addition, the imbalances between the level of regulation and investor protection afforded to those investing in UCITS and those investing in alternative investment funds (AIFs) required addressing.

UCITS V is a set of reforms which seeks to begin to align how Member States regulate these funds and to bring UCITS legislation in line with that of AIFMD. UCITS V will require funds to appoint a depositary function, sets out new requirements with regard to manager remuneration and seeks to address previous inconsistencies across Member States on sanctions.

UCITS are investment funds that have been established under UCITS legislation that allow funds registered in one EU country to be freely marketed across the whole of the EU.

Jurisdiction:	EU
Status:	Drafted
Industry:	Investment Management

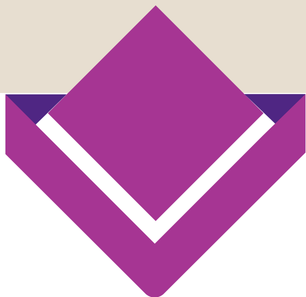
Core components:

- **The UCITS depositary function** – UCITS V brings in the requirement that all UCITS funds must appoint a depositary. It also brings in clear requirements with regard to the depositary's oversight duties, cash monitoring, custody duties, conduct and the management of conflicts of interest. The Directive will also define the conditions in which the depositary's safekeeping duties can be delegated to a sub-custodian, as well as defining the scope of liability a depositary has in the event of the loss of a financial instrument that is held in custody
- **Remuneration** – UCITS managers will be required to comply with minimum remuneration policies and ensure that these are consistent with the sound management of the UCITS fund. Managers will have to disclose the amount of remuneration for each financial year in the UCITS fund's annual report
- **Sanctions** – the Directive is seeking to achieve harmonisation by requiring a minimum catalogue of administrative sanctions and measures, a minimum list of sanctioning criteria and a requirement for competent authorities to establish whistle-blowing mechanisms. These sanctions are in relation to breaches of the main investor protection safeguards as set out in UCITS

Undertakings for Collective Investment in Transferable Securities (UCITS)VI

In a nutshell:

In July 2012, the European Commission held a consultation on potential areas of reform of the UCITS regime. It is a comprehensive review of the operational function of UCITS funds and is therefore very wide ranging. It followed on from recent international work on shadow banking, coordinated by the Financial Stability Board (FSB), which identified certain areas of investment funds that require closer scrutiny. The Commission's consultation did not contain any indication of a possible timetable for the presentation of a legislative proposal on UCITS VI. However, in mid-2013 the Commission indicated that the UCITS VI legislative proposal would be published in December 2013. By November 2013, the programme had been amended and references to UCITS VI have been deleted. It is now unclear when a UCITS VI legislative proposal will be published.



Jurisdiction:	EU
Status:	Proposed
Industry:	Investment Management

Core components:

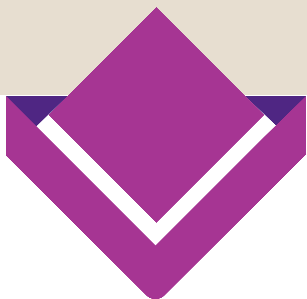
- **Eligible assets and the use of derivatives** – evaluation of the current practices in UCITS portfolio management and assessment of specific fund investment policies
- **Efficient portfolio management techniques** – assessment of the current rules regarding certain types of transactions and the quality and reinvestment of collateral
- **Over-the-counter derivatives** – assessment of the treatment of OTC derivatives that are cleared through central counterparties as well as an assessment of the current framework regarding operational risk and conflicts of interests and the frequency of the calculation of counterparty risk exposure
- **Liquidity management rules** – an assessment to determine whether there is a need for a harmonised framework when dealing with liquidity issues
- **Depositary passport** – determining whether there is a requirement for a cross border passport for the depositary functions (similar to the passporting requirements in AIFMD). Currently UCITS can only use services of depositaries that are located in the same Member State as the UCITS itself
- **Money Market Funds (MMFs)** – determining whether there is a need for an EU harmonised regulatory framework for the MMF market in order to prevent investor runs and systemic risks
- **Long-term investments** – the commission questions whether promotion of long-term investments is the key to improving the internal market and whether this would be achieved through modification of UCITS regime or a standalone initiative
- **Improvements to UCITS IV** – an assessment of various measures that were introduced as a part of UCITS 4 but have not been functioning as predicted and may require improvements

Unregulated Collective Investment Schemes (UCIS)

In a nutshell:

Following a consultation by the FSA (the FCA's predecessor), serious problems were identified in the distribution of high-risk, complex investments to ordinary retail investors. As a result, the FSA proposed rule changes aimed at improving retail consumer outcomes by banning the promotion of UCIS and close substitutes to retail investors other than where specific exemptions apply. The new marketing restriction rules came into force on 1 January 2014 and aim to ensure that Non-Mainstream Pooled Investments (NMPIs) are recognised as specialist products unsuitable for general promotion in the UK retail market. Through limiting the promotion of UCIS, the FCA aims to limit the number of retail clients being wrongly advised to invest in UCIS.

The investments subject to marketing restrictions are: units in Qualified Investor Schemes (QIS), traded life policy investments, units in UCIS, and securities issued by Special Purpose Vehicles (SPVs) pooling investment in assets other than listed or unlisted shares or bonds.

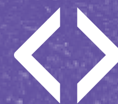


Jurisdiction:	UK
Status:	Enacted
Industry:	Investment Management

Core components:

- **In order to protect ordinary retail investors, the FCA is imposing restrictions on the promotion of NMPIs which it considers to be niche, risky products; inappropriate for ordinary retail investors. Firms are prohibited from communicating or approving financial promotions in relation to NMPIs that are addressed to, or to be received by, retail clients. The FCA considers that the provision of advice is likely to include a financial promotion, therefore, advice to retail clients in relation to NMPIs is also banned subject to certain exemptions**
- **Scope** – the new rules apply to a wider category of NMPIs, as well as UCIS. The following products lie outside the scope of the ban: securities issued by SPVs that pool investment in listed or unlisted shares or bonds, exchange traded products, overseas investment companies that would meet the criteria for investment trust status if based in the UK, real estate investment trusts, and venture capital trusts
- **Exemptions** – the FCA has removed the ability for firms to promote UCIS to people when the firm has a) taken reasonable steps to ensure the investment is suitable; and b) assessed a target client as being capable of understanding the risks. Instead, firms will only be able to promote NMPIs to retail clients if they are: a 'certified high net worth investor', a 'certified sophisticated investor' or a 'self-certified sophisticated investor'. Additional exemptions also exist in specific circumstances
- **Compliance** – the FCA has stated that ensuring the client technically falls within an exemption is only a small part of compliance. Firms must ensure that they are acting in the best interest of the client; they need to ensure that the client has the ability to properly understand and evaluate the product

Further Information



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FCA thematic review timeline

Cross Financial Services | Banking and Securities | Insurance | Investment Management

SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
	Q4 2014			Q1 2015			Q2 2015		

Glossary

AIF	Alternative Investment Fund
ARM	Authorised Reporting Mechanism
BCBS	Basel Committee on Banking Supervision
CCP	Central Counterparties
CDS	Credit Default Swaps
CRM	Comprehensive Risk Measure
CSD	Central Securities Depositary
EC	European Commission
ECB	European Central Bank
EIOPA	European Insurance and Occupational Pensions Authority
ESMA	European Securities and Markets Authority
ES	Expected Shortfall
FATF	Financial Action Task Force
FCA	Financial Conduct Authority
FCFS	Financial Services Compensation Scheme
FFI	Foreign Financial Institution
FPC	The Financial Policy Committee
FMSA	Financial Services and Markets Act
G-SIBs	Global Systemically Important Banks
G-SIFIs	Global Systemically Important Financial Institutions
G-SIIs	Global Systemically Important Insurers
ICAS	Individual Capital Adequacy Standards
IGAs	Intergovernmental Agreements
IRC	The Incremental Risk Charge
IRS	Internal Revenue Service
ITS	Implementing Technical Standards
KID	Key Information Document
LCR	Liquidity Coverage Ratio
LEI	Legal Entity Identifier
MCR	Minimum Capital Requirement
MIFs	Multilateral Interchange Fees
MMF	Money Market Fund
MTF	Multilateral Trading Facilities
NMPI	Non-Mainstream Pooled Investment
NSFR	Net Stable Funding Ratio
NST	Non-Statutory Trust
ORSA	Own Risk and Solvency Assessment
OTC	Over-The-Counter
OTF	Organised Trading Facility
PRA	Prudential Regulatory Authority
PRIP	Packaged Retail Investment Products
QRTs	Quantitative Reporting Templates
RRP	Recovery and Resolution Plan
RSR	Regular Supervisory Report
RTS	Regulatory Technical Standards
RWA	Risk Weighted Assets
SA	Standardised Approach
SCR	The Solvency Capital Requirement
SDGS	Single Deposit Guarantee System
SFCR	Solvency and Financial Condition Report
SFT	Securities Financing Transaction
SPS	Statement of Professional Standing
SRM	Single Resolution Mechanism
SSM	Single Supervisory Mechanism
SVaR	Stressed Value at Risk
TRs	Trade Repositories
VaR	Value at Risk

Notes

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