CMCE Weekly Report (9 March 2018)

This week's highlights include:

- **MiFID II:** CMCE met with the FCA to discuss the definition of EEOTC contracts following the statement by the FCA that it is accepting position reports from financial institutions including EEOTCs. The FCA did not seem to appreciate the potential repercussions of this on the reporting obligation for firms availing of the ancillary activity exemption under MiFID II. A more detailed report will be circulated to the MiFID WG.
- **EMIR Refit:** HB secured access to the amendments made by MEPs on rapporteur Werner Langen's report and they were circulated to the CMCE EMIR Working Group. An analysis will be circulated to the EMIR WG.
- **EMIR CCP Supervision:** Rapporteur Danuta Hübner MEP and Patrick Pearson from the European Commission made comments during an event on Euro-Clearing after Brexit about third-country equivalence. Hübner said that she sees that equivalence is the most likely way that the UK will gain access to the single market, but that the EU's current equivalence regime will have to be reviewed in order to ensure it is sophisticated enough for granting equivalence to the UK.
- **Brexit:** Following the publication of the Commission draft withdrawal agreement last week, British Chancellor of the Exchequer, Philip Hammond made a speech outlining the UK Government's principles on the UK's future financial services relationship with the EU, calling for close collaboration on cross-border financial services post-Brexit, and making the case that mutual recognition and reciprocal regulatory equivalence could provide an effective basis for a comprehensive EU-UK partnership. The European Parliament published a draft motion for a resolution on the framework of the future EU-UK relationship, emphasising financial stability concerns and commenting that a customary part of FTAs is a prudential carve-out and limitations in the cross-border provisions of financial services.
- **Taxation of commodity derivatives trading:** The Commission launched an infringement procedure against the UK over its VAT treatment of some commodity derivatives trading under the UK Terminal Markets Order, which allows a specific VAT zero rate for derivative transactions in spots, futures and options on commodity contracts, when traded on an exchange. HM Treasury has 2 months to respond to the Commission's letter.
- **Sustainable Finance Action Plan:** The Commission published its Sustainable Finance Action plan, one point of which is to create a new low-carbon benchmark under the framework of the BMR.

MiFID II			
CMCE priorities	**Status / latest developments**	**Next steps**	**CMCE action**
AA exemption **Position limits** **Reporting** **Physical forwards**	The advisory team and CMCE members met with the FCA on 7 March in London to discuss a statement recently made by the FCA that it is accepting position reports from financial institutions including EEOTC contracts. A report will be circulated to the MiFID WG. From 8 March, ESMA began to publish double volume cap data under MiFID II which had been delayed from the beginning of the year. The FCA updated their LEI page on MiFID II as the requirements on LEIs will apply from 10 March 2018. Transaction reporting requirements apply to MiFID investment firms, trading venue operators and UK branches of third-country investment firms.	**Q1 2018** – Publication of position limits by ESMA	

EMIR			
CMCE priorities	**Status / latest developments**	**Next steps**	**CMCE action**
EMIR implementation	There were no significant developments this week.		
EMIR REFIT	HB secured access to the amendments which have been tabled to Werner Langen's report on EMIR Refit. An analysis will be circulated.	**20 March** – Consideration of amendments in the ECON Committee **24 April** – Vote in ECON	An analysis of the amendments to Werner Langen's report on EMIR Refit will be circulated to the EMIR WG.

EMIR II.2 – CCP supervision	During an event on "Euro-Clearing after Brexit" that took place in Brussels on 8 March, there were interesting comments on Brexit, equivalence and 3rd country CCP supervision Danuta Hübner MEP, the Rapporteur on EMIR CCP Supervision, and Chair of the Constitutional Affairs Committee, member of the EP's Brexit Steering Group in charge of scrutinising the Brexit negotiations for the EP commented that the EU will have an FTA with the UK, with equivalence as the most likely form of access to single market; the EU's current equivalence regime, she said, is not sufficiently sophisticated to deal with the UK. She added that the Bank of England understands that equivalence seems the likely route for access, despite weaknesses in the system. She doubts whether the EU will have a horizontal approach to equivalence or one linked to international standards as the EU does not have sufficient influence on the formulation of international standards. Ultimately, she said, relocation will be in the report, but will be far less discretionary, as the Commission needs to get approval from all 27 Member states, and suggested the Commission conduct a public consultation and relocation will only be allowed if it does not cause international market fragmentation. Patrick Pearson, the Head of Unit, Financial Markets Infrastructure, DG FISMA, European Commission) said that regarding the systemic relevance of CCPs, the Commission copied the criteria from Dodd-Frank and so the US and CFTC should not be therefore surprised. He added that the American colleagues understand that under no circumstances will the Commission withdraw its proposal. He also added that an EU CCP in the US still will have more requirements/paperwork to satisfy than a US CCP in the EU after EMIR 2.2 is adopted.	**20 March** – Council Financial Services Working Party on EMIR Supervision **26 March** - Deadline for amendments in the ECON Committee **23-24 April** - Consideration of amendments in the ECON Committee **16-17 May** - Vote in the ECON Committee	

CRR II & Regulatory Capital			
CMCE priorities	**Status / latest developments**	**Next steps**	**CMCE action**
IFR & IFD	There were no significant developments this week.	**27 March** – Council WP	A draft letter to the European Commission will be circulated to the Reg. Cap. WG for comments.

Benchmarks			
CMCE priorities	**Status / latest developments**	**Next steps**	**CMCE action**
Commodity benchmarks **Critical benchmarks** **Third country equivalence**	The European Commission published its action plan on sustainable finance on 8 March and it contains an action point on developing sustainability benchmarks. By Q2 2018, the Commission intends to (i) adopt delegated acts, within the framework of the BMR, on the transparency of the methodologies and features of benchmarks to allow users to better assess the quality of sustainability benchmarks; and (ii) put forward, subject to the outcome of its impact assessment, an initiative for harmonising benchmarks comprising low-carbon issuers, based on a sound methodology to calculate their carbon impact, to be put into operation once the climate taxonomy is in place. The Commission's technical expert group will, on the basis of consultation of all relevant stakeholders, publish a report on the design and methodology of the low-carbon benchmark by Q2 2019. To discuss the Sustainable Finance Action Plan, the Commission is hosting a High-Level Conference on 22 March in Brussels.		

MAR		
CMCE priorities	**Status / latest developments**	**Next steps**
Reporting Obligations	There were no significant developments this week.	

ESAs review			
CMCE priorities	**Status / latest developments**	**Next steps**	**CMCE action**
Critical benchmarks **Supervision**	The Council Working Party (WP) on the ESAs met on 8 March to discuss the funding of ESAs and the new direct powers of ESMA on certain investment funds (EuVECA, EuSEF, ELTIFs).	**26 March** – Council WP on ESAs review **18-19 June** - Presentation of draft report in the ECON Committee **9 July** - Deadline for amendments in the ECON Committee **3 September** - Consideration of amendments in the ECON Committee **24 September** – Vote in the ECON Committee	The advisory team will put together a draft list of potential CMCE key messages and arguments to the co-legislators. Members of the WG are asked to submit any additional input to what was discussed on the call to HB.

<table>
<tr><th colspan="3">Brexit</th></tr>
<tr><th>Latest developments</th><th>Next steps</th><th>CMCE action</th></tr>
<tr>
<td>
Following the publication of the Commission draft withdrawal agreement last week, the Council met to draft negotiating guidelines for the framework for a future relationship were leaked.
British Chancellor of the Exchequer, Philip Hammond MP made a speech on the UK's future financial services relationship with the EU in the context of Brexit on 7 March. Broadly speaking, the UK has three principles for a future partnership in financial services with the EU and they are: firstly creating, a process for establishing regulatory requirements for cross-border trade between the UK and the EU; secondly, ensuring that cooperation arrangements that are reciprocal, reliable and that prioritise financial stability; and finally, a legal framework that makes this structure durable and reliable for participants in the market and for businesses that use their services. He commented that the UK will start from a position of "Day I de facto equivalence" after Brexit and while the UK will not act as a "rule-taker" from the EU, it could deliver "fully equivalent regulatory outcomes."
The speech came after the European Council President, Donald Tusk delivered a speech proposing that the EU 27 "aim for a trade agreement covering all sectors and with zero tariffs on goods." He added that "Like other free trade agreements, it should address services."
On 7 March, the European Parliament published a draft motion for a resolution on the framework of the future EU-UK relationship for plenary, and with reference to financial services, in which they underline that:

leaving the internal market would lead to the UK losing both passporting rights for financial services and the possibility of opening branches in the EU subject to UK supervision;
that EU legislation gives the possibility to consider third-country rules as equivalent based on a proportional and risk-based approach, and notes the ongoing legislative work and upcoming Commission proposals in this area; that decisions on equivalence are always of a unilateral nature;
stressing that in order to safeguard financial stability and ensure full compliance with the EU regulatory regime and standards and their application, prudential carve-out and limitations in the cross-border provisions of financial services are a customary feature of FTAs.

</td>
<td>
March - Commission to publish draft discussion documents on the framework for a future relationship and to draft statement of progress on transition arrangement negotiations
23 March - The Commission will also issue additional recommendations for the negotiations, that will need to be approved by the Council, presumably at the next European Council summit.
23 March - The Council will adopt additional draft guidelines for the 'framework for the future relationship.'
End of March – Deadline for the EU27 and UK to agree on terms for the transition arrangement
April - Union negotiator to begin negotiations with the UK on the overall understanding on the framework for the future relationship
</td>
<td>
A meeting summary of the first CMCE Brexit Working Group will be circulated.
</td>
</tr>
</table>

CCP RR		
CMCE priorities	**Status / latest developments**	**Next steps**
Resolution Tools	There were no significant developments this week.	

Other relevant developments
On 8 March, the Commission launched an infringement procedure against the UK over its VAT treatment of some commodity derivatives trading under the UK Terminal Markets Order (TMO), which allows a specific VAT zero rate for derivative transactions in spots, futures and options on commodity contracts, when traded on an exchange. HM Treasury issued a statement today acknowledging that the UK received a "letter of formal notice" from the Commission under art. 258 of TFEU which is the first stage of the infringement process. HM Treasury will have to send a detailed response within two months. The Commission can pursue infringement procedures against Member States who are not complying with EU law. The procedure after the letter of formal notice is as follows: – If the Commission concludes that the Member State (MS) is failing to fulfil its obligations under EU law, it may send a reasoned opinion and the MS has 2 months to provide information on how the MS will take action comply with EU law. – If the Commission still thinks that the MS is not complying with EU law, it may refer the case to the Court of Justice. – The Commission may ask the court to impose penalties if the MS does not communicate measures that implement the provisions of a directive in time. – Following a ruling of the Court, the MS must take action to comply with the court's judgment. The issuance of the letter does not have any immediate effect on UK tax law and for now, trading and the lack of application of VAT in some commodities derivatives contracts will continue as before.