



## I. ACTIVE PRIORITIES

Brexit			
CMCE priorities	Status / latest developments	Next steps	CMCE action
<b>Transitional arrangements</b>	<p>On 12 October, the UK published further notices to prepare citizens and industry for a no-deal Brexit scenario. While this tranche does not have any related to financial services, the following ones might be of interest in the field of energy:</p> <ul style="list-style-type: none"> <li>- <a href="#">Trading electricity if there is no Brexit deal</a></li> <li>- <a href="#">Trading gas if there is no Brexit deal</a></li> <li>- <a href="#">Running an oil or gas business if there is no Brexit deal</a></li> </ul> <p>On October 10 the FCA published <a href="#">a first Consultation Paper</a> (CP) on Brexit and the proposed changes to the Handbook and to Binding Technical Standards (BTS) following the publication of the draft Statutory Instruments earlier this year. It includes proposed amendments to technical standards on position limits and the ancillary activity test.</p> <p>The consultation will close on 7 December 2018. This is part of the FCA's planning in the case that a transitional period will not be in place from 29 March 2019.</p> <p>The CP principally addresses amendments to the Handbook and BTS which relate to those SIs made under the EU Withdrawal Act (EUWA) which were previously published by the UK Government. The CP also explains the FCA's proposed approach to European non-legislative material. A second CP is expected to be published later in the Autumn covering the BTS and parts of the Handbook affected by SIs which are due to be published later.</p>	<p><b>18 October</b> – European Council to discuss Brexit &amp; decide on need for extraordinary Council meeting in November</p> <p><b>November</b> – Deadline for finding a compromise on the Withdrawal Agreement</p> <p><b>7 December</b> – Close of FCA consultation on changes to handbook and technical standards</p>	

	<p>The FCA also notes that the Treasury will bring forward measures that will give the regulators some flexibility to phase in changes to firms' regulatory requirements under the EUWA. The FCA is willing to use these powers to waive or modify some requirements to allow for a smooth transition to the post-exit regulatory regime. This means that firms, regulated entities providing services within the UK's regulatory remit and other stakeholders are not expected to prepare now to implement the changes from exit day. At the same time, the FCA is interested in views from stakeholders regarding any aspects of the proposed changes to firms' regulatory requirements which might cause implementation challenges if the changes were to come into effect on exit day.</p> <p>The FCA also simultaneously published a <a href="#">consultation paper on the Temporary Permissions Regime</a> for firms and funds passporting inbound into the UK after Brexit on 10 October.</p> <p>On 5 October, HM Treasury published a <a href="#">draft Statutory Instrument</a> for the onshoring of MiFID II as part of Brexit preparations (see the MiFID section for a more thorough overview). In order to ensure that MiFID II equivalence regimes continue to operate effectively in the UK post-Brexit, HM Treasury will assume the Commission's function of making equivalence decisions for third-country regimes. Where the Commission has taken equivalence decisions for third-countries before exit day, these will be incorporated into UK law and will continue to apply to the UK's regulatory and supervisory relationship with those third-countries.</p> <p>On 8 October, HMT published the proposal for a <a href="#">temporary transitional power</a> which would give UK regulators the power to waive financial regulation in order to address any fallout from a scenario where the UK leaves the EU with no transitional arrangements. Such waivers could include sunset clauses for certain standards so that industry can comply with pre-exit standards for "a limited time after exit, rather than needing to implement the relevant onshoring changes by 29 March 2019."</p> <p>On the EU side, the European Commission is also making preparations for the possibility of a hard Brexit without a deal. DG FISMA is working closely with the Brexit Preparedness Group of the Secretary General of the Commission to issue a number of contingency legislative initiatives, which we understand will mostly be through Level 2 delegated acts. They will need to be adopted before the official exit of the UK from the EU on 29 March.</p>		
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	<p>According to our intelligence, the ECON Committee has been asked to stand ready to examine these proposals after November, and the Commission may be announcing these measures in mid-November. The timing of possible publication is tightly linked to progress in the negotiations with the UK. As long as the Commission sees it as likely that a deal will be reached, it is not likely to publish these proposals as that is perceived as a political 'no-go'.</p> <p>It is expected that these measures may address <b>derivatives risks</b> regarding:</p> <ul style="list-style-type: none"> <li>– MiFID II and commodity derivatives issues</li> <li>– CCPs – the text could grant UK CCPs temporary full equivalence or could include a grandfathering clause for existing trades to deal with CCPs. In his <a href="#">speech</a> at the World Federation of Exchanges Annual Meeting on 3 October ESMA Chair Steven Maijoor actually reiterated ESMA's commitment to “ensure continued access to UK CCPs for EU clearing members and trading venues” in the case of a hard Brexit via a transitional provision. He called for a “swift conclusion” on EMIR CCP Supervision, which could be complemented by a temporary regime.</li> <li>– Novation – helping firms to move some of their transactions onto European entities.</li> </ul> <p>Moreover, France is currently working on its own contingency measures. French European Affairs Minister Nathalie Loiseau announced on 3 October that the government will present a bill that will give it extraordinary discretionary powers through the so called 'ordonnances' aimed at priority sectors where the impact of a no-deal Brexit could prove most damaging. The bill aims among others at reviewing the <i>Code monétaire et financier</i> and will be presented to the Parliament in November.</p>		
<b>MiFID II</b>			
<b>CMCE priorities</b>	<b>Status / latest developments</b>	<b>CMCE action</b>	
<b>AA exemption</b>  <b>Position limits</b>  <b>Reporting</b>	<p>As was briefly mentioned above in the updates on Brexit, on 5 October, HM Treasury published a <a href="#">draft Statutory Instrument</a> for the onshoring of MiFID II as part of Brexit preparations. There is also an <a href="#">explanatory note</a> which provides an overview of the contents of the draft SI.</p>	<p>On the work around the classification of physical forwards the advisory team is to circulate suggested standardised language for a short paragraph that Members can choose to include in the circle-out notification emails linked to the OSN contract.</p>	

<p><b>Physical forwards</b></p>	<p>The draft SI includes legal provisions for the recognition of EU firms operating in the UK and the exemptions from authorisation for commercial firms trading commodity derivatives i.e. the <b>ancillary activity exemption</b> (AAE) and how it will continue to be based on UK and EU market data so that the “regulatory perimeter” remains unchanged by Brexit. We can also expect another separate SI to fix deficiencies in the Regulated Activities Order (RAO) to be published, which we can expect to maintain the current provision granting firms an exemption from the general prohibition on carrying out a regulated activity, until they can perform the annual calculation determining whether they still meet the terms of the AAE. If the calculation indicates that they no longer qualify for the AAE, then the exemption under the RAO will continue, provided they seek authorisation as a MiFID investment firm within a specified period.</p> <p>The draft SI also includes, amongst others:</p> <ul style="list-style-type: none"> <li>- Requirements so that the transfer of competences from the ESAs to UK authorities i.e. the FCA and PRA for developing level 2 standards can take place.</li> <li>- The MiFID II transparency regime: the FCA will gain operational powers to determine how the transparency regime will function for up to 4 years after the UK withdraws from the EU</li> <li>- Equivalence regime and how HM Treasury will replace the Commission in the process of granting equivalence for third-country firms under MiFID</li> <li>- MiFID II transaction reporting regime: the draft SI will require UK branches of EU firms to report to the FCA, in the same way as UK branches of non-EEA firms are required to do.</li> <li>- Amendments to the UK’s 2017 regulation on Data Reporting Services Providers</li> </ul> <p>On 5 October, ESMA published opinions on position limits for <a href="#">Phelix DE/AT Base Power contracts</a>, for <a href="#">UK natural gas contracts</a> and <a href="#">Swiss power base contracts</a>. ESMA found that the proposed position limits from NCAs are consistent with the objectives established in MiFID II and with the methodology in the RTS.</p> <p>On 2 October, the FCA informed the industry that following the implementation of the exercise at the start of this week by ICE Futures to revise some of its Venue Product Codes (VPCs) for a number of Balmo contracts, the FCA has updated the Excel <a href="#">spreadsheet</a> which lists the full aggregation of all possible VPCs for the purpose of monitoring position limits. ICE and the FCA agreed to the aggregation of such changes from the</p>	
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	<p>multiple VPCs for a particular contract into a single code which together with the contract characteristics would identify the products traded.</p> <p>On 2 October ESMA also updated its <a href="#">Q&amp;As on MiFID commodities topics</a> to modify 3 questions on the Ancillary Activity and add 2 questions on position limits.</p> <p>Also on 2 October, ESMA updated its <a href="#">opinion</a> on the market size calculation for the ancillary activity test. The updated opinion provides the estimation of the market size of commodity derivatives and emission allowances for the year 2017. ESMA has prepared those estimations based on data collected from trading venues as well as data reported to trade repositories under EMIR. The updated opinion includes estimated market size figures for 2015 (ETD data only), 2016 and 2017. The new 2017 data is based on 12 months ETD data collected from the trading venues and annualised OTC totals based on 3 months (July to September) from EMIR reporting.</p> <p>On 26 September, ESMA Chair Steven Maijoor sent a <a href="#">letter</a> to European Commission Vice-President Valdis Dombrovskis on MiFID II/MiFIR third country regimes. The letter expresses ESMA's concerns regarding the MiFIR regime for third country firms providing investment services to eligible counterparties and per se professional clients and the MiFID II regime for third country firms providing investment services and activities to retail and professional clients on request.</p>		
EMIR REFIT			
CMCE priorities	Status / latest developments	Next steps	CMCE action
Reporting  Risk mitigation for uncleared trades  Calculation of NFCs positions	<p><b>EMIR REFIT</b></p> <p>According to an Austrian Presidency flash note following the second trilogue on EMIR Refit which took place on 3 October, despite the intention to discuss reporting related issues, these appear not to have been discussed in the end.</p> <p>The one item of interest to CMCE members that was discussed relates to Risk mitigation techniques for NFCs. The EP had suggested exempting NFCs that are not subject to the clearing obligation from operational risk mitigation techniques for uncleared OTC derivative trades where that counterparty enters into an intragroup transaction. The Commission now</p>		

	<p>confirmed its view that it believes the EP amendment would be incompatible with the <a href="#">equivalence decision</a> on operational risk mitigation for non-centrally cleared OTC transactions for the US CFTC. The Council shared this view. The EP nevertheless maintained its position and insisted that line 192 has to be considered together with lines 179 and 194. Therefore, the issue remains still open.</p> <p><b>Regulatory reporting fitness check</b>  At a QED event in Brussels on 11 October, Patrick Pearson stated that the Commission will be engaging in a round of fitness checks in post-trade, especially on regulatory reporting, which the industry has provided a lot of feedback on and it will cover everything from standards to what regulators do with the data. A public consultation on reporting can be expected next year in March and hopefully the Commission will be ready with a report next June to make the reporting framework more efficient and effective. The last regulatory reporting consultation only covered legislation that was in force at the end of 2016, so many key pieces of legislation were not yet in force, but this next round may be a chance to present more evidence on overlapping requirements and a greater regulatory burden stemming from EMIR and MiFID.</p>		
<b>Benchmarks</b>			
<b>CMCE priorities</b>	<b>Status / latest developments</b>	<b>Next steps</b>	<b>CMCE action</b>
<b>Commodity benchmarks</b>  <b>Critical benchmarks</b>  <b>Third country equivalence</b>	<p>As a part of the Sustainable Finance package, the <a href="#">draft report</a> of Neena Gill MEP (S&amp;D UK), Rapporteur on the proposal on low-carbon benchmarks and positive carbon impact benchmarks that by 2022 was published. The draft report suggests that benchmark providers should ensure that <u>all the benchmarks</u> provided and published are positive carbon impact benchmarks, fully aligned with the Paris Climate Agreement commitments. Given the reference to 'all benchmarks', it would seem that Gill's suggestion is intended to also cover commodity benchmarks. For more detail, please refer to our email update to the Benchmarks Working Group from 2 October.</p> <p>On the ESAs review, there was a consideration of amendments in the ECON Committee which took place on 1 October. The rapporteurs received over 1000 amendments and said they would work hard to</p>	<p><b><u>Council of the EU</u></b>  <b>26 October</b> – Council WG on the ESAs review</p> <p><b><u>European Parliament</u></b>  <b>13 October</b> – End of the scrutiny period for certain RTS under the BMR</p> <p><b>18 October</b> – Presentation of the draft report on low carbon benchmarks in the ECON Committee</p>	<p>The final CMCE letter to the FCA on the implementation of BMR in the UK was sent to the FCA on 4 October.</p> <p>A revised version of the draft CMCE letter to HM Treasury on 'miscellaneous benchmarks persons' will be circulated to the WG following comments from members.</p> <p>Members of the BMR WG are consulted on whether CMCE should engage to support some of the amendments proposed by the Austrian Presidency</p>

	<p>negotiate with all political groups and to take developments (such as the adoption of the report of Danuta Hübner on EMIR CCP supervision) into account.</p> <p>There was no discussion on commodity benchmarks, but Caroline Nagtegaal (ALDE, NL) made some remarks related to regulated data benchmarks and critical benchmarks. She introduced amendments to draw light to the fact that after the BMR was finalised, there was a lack of clarity on regulated data benchmarks, which is important to third-country benchmarks which provide data in the EU.</p> <p>With regard to critical benchmarks (EONIA and EURIBOR), she welcomes the work of the risk free working group to ensure the smooth transition, although the solution may be found in ESTER. She called for an extension of the transition period for 2 years, urges the consideration of this and inclusion of this in the ESA review. The co-rapporteur Pervenche Berès took note of the amendments tabled but stated that she is not entirely convinced that now is the opportunity to re-open the BMR.</p> <p>In the ESMA <a href="#">Q&amp;A on the BMR</a> which was updated on 27 September ( and included in the last week's bi-weekly report), following a more thorough analysis of the new Q5.8 related to when financial instruments traded on systemic internalisers are considered to be in scope. This would seem to expand the scope of "financial instrument" by including instruments identified by systemic internalisers in RTS27 disclosures.</p>	<p><b>24 October</b> – Deadline for tabling amendments on low carbon benchmarks in the ECON Committee</p> <p><b>5 November</b> – Vote in the ECON Committee on the ESAs review (tentative)</p> <p><b>19 November</b> – Consideration of amendments on low carbon benchmarks in the ECON Committee</p> <p><b>3 December</b> – Vote on low carbon benchmarks in the ECON Committee</p> <p><b>European Commission</b>  <b>November</b> - Adoption of delegated acts under the BMR by the European Commission</p>	<p>and some MEPs to the ESAs review amendments to the BMR, as well as to oppose parts of Neena Gill's draft report on low-carbon benchmarks.</p>
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## II. WATCHING BRIEF

IFR		
CMCE priorities	Status / latest developments	Next steps
<b>Commodity dealer IF regime</b>	<p>During the meeting of the Council Working Party on the IFR which took place on 20 September, member states discussed a French non-paper which would require third-country investment firms to establish a branch in the EU. This non-paper was supported by several member states (PL,</p>	<p><b>Council of the EU:</b>  <b>15 October 2018</b> – Council WP on IFR/IFD  <b>15 November 2018</b> – Council WP on IFR/IFD</p>

	<p>IT, ES, PT, EL, SI) and many member states were open to discussing it, but it was not supported by DE, CZ, IE, LU, UK, FI, SE. The Austrian Presidency concluded that this will have to be re-visited during a future meeting.</p> <p>The next meeting of the Council Working Party will discuss draft compromise proposals on the IFD and IFR as well as a non-paper on the Group Capital Test and the changes to the CRR on the definition of “institution” which were circulated via email with highlights of the changes.</p>	<b>10 December 2018</b> – Council WP on IFR/IFD
<b>MAR</b>		
<b>CMCE priorities</b>	<b>Status / latest developments</b>	<b>Next steps</b>
<b>Insider dealing</b>  <b>MM indicators</b>	There were no significant developments in the last two weeks.	
<b>SFTR</b>		
<b>CMCE priorities</b>	<b>Status / latest developments</b>	<b>Next steps</b>
<b>Reporting Obligations</b>	<p>The Commission is now expected to adopt the RTS on reporting by year end 2018. The final RTS are not yet available as they are being re-drafted by the Commission. If adoption by the Commission proceeds in this timeframe, it is likely that they would be published in the EU Official Journal by late Q1 2019 and be applicable from late Q1 2020.</p>	<b>End of 2018</b> – Adoption of the SFTR Level 2 measures by the Commission