



## CMCE Bi-weekly Update (22 June 2018)

### I. ACTIVE PRIORITIES

| Brexit  |  |   |             |
|---|--|---|-------------|
| CMCE priorities   | Status / latest developments   | Next steps  | CMCE action |
| <b>AA exemption</b><br><b>Position limits</b><br><b>Reporting</b><br><b>Physical forwards</b> | <p>The EU27 and UK made a <a href="#">joint-statement</a> on 19 June regarding progress made in the negotiations. While progress has been made on a number of topics, several outstanding questions remain ahead of the European Council summit on 28 June, including that of the Irish border backstop.</p> <p>The ECON Committee was supposed to vote on the draft report of Brian Hayes (EPP, IE) on equivalence this week but there was a delay due to a lack of consensus amongst the shadow rapporteurs. As a result, the vote has been postponed to the ECON Session in mid-July.</p> | <p><b>28 June</b> – European Council summit to discuss Brexit</p> <p><b>11 July</b> - Vote on the draft resolution of Brian Hayes in the ECON Committee</p> <p><b>24 September</b> – Vote in the European Parliament plenary on the resolution of Brian Hayes</p> <p><b>October</b> – Deadline for a compromise on the Withdrawal Agreement</p> |             |
| MiFID II  |  |   |             |
| CMCE priorities   | Status / latest developments   | CMCE action   |             |
| <b>AA exemption</b><br><b>Position limits</b><br><b>Reporting</b>                             | <p>On 22 June, ESMA published the <a href="#">response</a> of European Commission Vice-President Dombrovskis to ESMA's letter asking for a clarification on the application of the ancillary activity exemption under MiFID II.</p>  | <p>On 25 June at 9:00 GMT, the CMCE MiFID Working Group will have a call to discuss the classification of certain physical forward contracts under MiFID II.</p>  |             |

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| Physical forwards  | <p>The key points from the letter from the Commission state that Art.2(1)(j) applies the ancillary activity test by comparing the MiFID activities that a person is engaged in with the commercial activities of the person or the group of which the person forms part.</p> <p>In line with the structure of Art.2(1)(j) MiFID II, the reference to "persons within a group" in Delegated Regulation 2017/592 requires that the ancillary activities test needs to be calculated by each person within a group that engages in either of the two relevant MiFID activities mentioned in Art.2(1)(j). In consequence, the ancillary activities test must be calculated as many times as necessary for each separate person who trades in commodity derivatives within a group.</p> <p>The evidence presented to the Commission's services has shown that a representative sample of the major European energy and agricultural groups conduct the MiFID activities described in Art.2(1)(j) through a single trading entity. This is based on a variety of prudential and commercial considerations which are well-known to ESMA (e.g., capital requirements for trading activities, credit quality and netting opportunities). This means that, in practice, the ancillary activity test will need to be performed only once for each group within that sample."</p> |   |   |
| EMIR REFIT   |   |   |   |
| CMCE priorities  | Status / latest developments  | Next steps  | CMCE action   |
| Reporting<br><br>Risk mitigation for uncleared trades<br><br>Calculation of NFCs positions | <p>The plenary of the European Parliament voted on the <a href="#">report</a> of Werner Langen on 12 June and trilogues will now begin between the co-legislators and the Commission in early July.</p>   | <p><b>28 June</b> – Council meeting to prepare for the first trilogue negotiation</p> <p><b>4 July</b> – First trilogue meeting</p> | <p>The advisory team has suggested updating the CMCE position paper on EMIR Refit and circulating it to Member States, key MEPs and DG FISMA to provide arguments in support of the EP position on the intra-group exemption from reporting for NFCs as well as the position which eases the margin requirement for uncleared trades, and the EP text on the methodology for the calculation of positions against the clearing thresholds</p> |

|   |  |            | Members have been asked to provide feedback on the suggested approach by the end of this week . |
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| Benchmarks  |  |            |   |
| CMCE priorities   | Status / latest developments   | Next steps | CMCE action   |
| <b>Commodity benchmarks</b><br><br><b>Critical benchmarks</b><br><br><b>Third country equivalence</b> | <p>The scrutiny session which the ECON Committee was supposed to have on 19 June to examine level 2 measures under the Benchmarks regulation was postponed. This is because the draft Regulatory Technical Standards (RTS) under the Benchmarks regulation, based on the <a href="#">draft RTS</a> submitted by ESMA to the Commission on 30 March 2017, have faced delays and the remainder of the 12 RTS (input data, the code of conduct, the benchmark statement, and the oversight function) are expected to be adopted before the summer recess by the Commission.</p> |            |   |

## II. WATCHING BRIEF

| IFR                               |   |  |
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| CMCE priorities                   | Status / latest developments  | Next steps   |
| <b>Commodity dealer IF regime</b> | <p>CMCE lent its support to a joint letter with EFET and several other energy associations to offer support on a number of amendments suggested to the draft report on IFR, which is being discussed in the European Parliament. These were sent to key MEPs on 20 June. The amendments seek to make the suggested capital requirements regime less burdensome for commodity dealer investment firms.</p> | <p><b>European Parliament:</b></p> <p><b>July 2</b> – Meeting of the shadow rapporteurs</p> <p><b>24 September</b> – Vote in ECON (tentative, subject to the progress of the negotiating team)</p> <p><b>Council of the EU:</b></p> <p><b>25 June</b> – Meeting of the Council WP on IFR</p> |

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|  | <p>On 19 June, the ECON committee had a consideration of <a href="#">amendments on regulation</a> and <a href="#">amendments on the directive</a> for the prudential framework for investment firms and a discussion on the draft reports of Markus Ferber <a href="#">on the IFD</a> and <a href="#">the IFR</a>. In general, MEPs support the direction that the draft report is taking but several MEPs are concerned about the third-country regime as equivalence was mentioned repeatedly. The rapporteur echoed the discussion on other files, namely that they would like to see equivalence decisions made via delegated acts rather than implementing acts. Anne Sander (EPP, FR) took the opportunity to comment on the priority of equivalence, which she sees as promoting fair competition. Financial markets should maintain their integrity and for this reason, she suggested that ESMA should have a role in the supervision of third country firms.</p> <p>Some MEPs (Greens, S&amp;D) would like to see elements of the sustainable finance package (such as the ESG factors) integrated into the IFR/IFD proposal.</p> <p>MEPs from several groups (S&amp;D, EPP, ALDE) have raised concerns about thresholds that the Commission contains which creates various classes of investment firms. The S&amp;D is concerned about the weakening of prudential and supervisory requirements. On the thresholds between classes 2 and 3, the rapporteur suggested a more predictable regime for smaller firms so they don't switch back and forth between one year and another. Nils Torvalds (ALDE, FI) called the classification of firms, and the way that they can move between them "the main issue."</p> |                   |
| <b>MAR</b>   |  |                   |
| <b>CMCE priorities</b>                             | <b>Status / latest developments</b>  | <b>Next steps</b> |
| <b>Insider dealing</b><br><br><b>MM indicators</b> | There were no significant developments this week.  |                   |
| <b>SFTR</b>  |  |                   |

| CMCE priorities              | Status / latest developments   | Next steps  |
|------------------------------|--|---|
| <b>Reporting Obligations</b> | <p>There were no significant developments in the last week. However, it is understood that the RTS that will initiate the countdown to the go live date of the reporting obligation is now scheduled for adoption as one package by the Commission in July. The adoption of the RTS has been repeatedly postponed by the Commission, which was originally expected to adopt the RTS in Q1 this year.</p> | <p><b>July</b> – expected adoption of RTS by the Commission</p> |