CMC EUROPE

CMCE Bi-weekly Update (7 December 2018)

1. ACTIVE PRIORITIES

Brexit			
CMCE priorities	**Status / latest developments**	**Next steps**	**CMCE action**
Transitional arrangements **Ancillary activity test**	On 25 November during the European Council summit, European leaders gave their support to the draft Withdrawal Agreement and political declaration on the future relationship. This is being put to a vote in the UK House of Commons. On 28 November, the Swedish Ministry of Finance published a proposal to exempt UK based firms from licensing requirements to provide investment services in Sweden following Brexit for a limited period of time. The aim is to ensure continuity of services and for ease of operations regarding the handling of derivative contracts entered into by Swedish businesses with a counterpart in the UK. On 29 November, the ESAs published a final report with draft RTS with changes to Commission Delegated Regulation on the risk mitigation techniques for non-centrally cleared OTC derivatives under EMIR. The draft RTS propose, in the context of Brexit the introduction of a limited exemption in order to facilitate the novation of certain OTC derivative contracts to EU counterparties during a specific time-window. The draft RTS amend the Delegated Regulation to allow UK counterparties to be replaced with EU ones without triggering the new procedures defined in the bilateral margin RTS for a twelve month period following the withdrawal of the UK from the EU. This complements a similar proposal for cleared derivatives published by ESMA on 8 November.	**7 December** – Close of FCA consultation on changes to handbook and technical standards **11 December** – UK House of Commons vote on the withdrawal agreement **13/14 December** – European Council to discuss result of the vote in the UK House of Commons	

MiFID II		
CMCE priorities	**Status / latest developments**	**CMCE action**
AA exemption **Position limits** **Reporting** **Physical forwards**	During a conference in Brussels on 5 December organised by FESE and Better Finance, Benoît Juvigny, the Secretary-General of the AMF said that he is not an advocate for "MiFID III" but is in favour of some targeted changes. ESMA taken this approach and has sent letters to the EP to raise awareness of issues around trading screens, the scope of 3rd country regime and reverse solicitation. Tilman Lueder, Head of Unit for Securities Markets at DG FISMA in the Commission, also recently made comments indicating that instead of constant reforms of primary legislation, industry should concentrate their efforts on RTS since the Commission can be expected to make incremental changes by reforming Level 2 measures. The need for a "MiFID III" can be avoided by making changes to Level 2 measures, which is preferred as it gives the Commission more flexibility than changes to Level 1. During the Nordic Financial Ecosystem Conference on 28 November in Brussels, Markus Ferber (EPP, DE) called for a horizontal approach across sectors on equivalence. He also advocated for the equivalence assessment to be kept technical. The EU went too far with regard to the equivalence decision for the US on the Share Trading Obligation, and in the case of the EU equivalence decision for Switzerland, it was clearly overly politicised and not sufficiently resting on facts/data. The EU needs to change this, to avoid such problems in the future. On investor protection, we have made it impossible across IDD, MiFID, UCITS, PRIIPS. He concluded that finding a harmonised horizontal approach should be a priority for the next European Commission. Natasha Cazaneve, Managing Director of the AMF responded that there will not be a horizontal approach to equivalence as the activities are different in terms of risks (CCPs, trading venues, asset management) and the nature of equivalence is different. The goal is better supervision of firms overall with the main objective that firms servicing EU customers cannot be more attractive outside the EU than inside the EU because of different regulatory obligations. With regard to the equivalence regime, she added that the goal of the AMF is not to build a fence around Europe, nor to attract particular businesses to France. The aim is to ensure that regulators	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.

	have tools that are adequate to understand risk stemming from third-countries. During the same conference, the same AMF representative stated that post-Brexit, all the MiFID II RTS with calibrations will need to be re-calibrated to reflect the departure of the UK such as in the case of the ancillary activity test, transparency requirements, reference data, and SI thresholds.	

EMIR REFIT

CMCE priorities	Status / latest developments	Next steps	CMCE action
Reporting **Risk mitigation for uncleared trades** **Calculation of NFCs positions**	In a last attempt to reach a deal on EMIR REFIT before the end of the year, the Presidency circulated compromise suggestions on key outstanding issues to member states that may form the basis of a final compromise with the Parliament, if agreed by member states. The compromise suggestions are broadly based on previous Presidency suggestions, but one relevant change is proposed to the intra-group transaction exemption for NFCs. The Presidency suggests that where firms use the exemption they would have to notify their NCA. The wording would be based on the example in the existing art.11(9) EMIR. Member states were given until 16:00 on 6 December to provide their agreement/objections to the Presidency suggestions. Currently, no further date for a political trilogue has been agreed but the Presidency is in informal contact with the EP and should an agreement be found imminently, a potentially final trilogue could be held next week.	**19 December -** Coreper	

Benchmarks

CMCE priorities	Status / latest developments	Next steps	CMCE action
Commodity benchmarks **Critical benchmarks**	The vote on the draft report of Neena Gill on low carbon benchmarks has been postponed twice in the last week until 10 December. In a meeting of the ECON Committee, Pervenche Berès (S&D, France) raised the fact that the rapporteur Neena Gill had not been in Brussels this week, so no	**<u>European Parliament</u>** **10 December** – Vote on low carbon benchmarks in the ECON Committee (tentative)	CMCE met the FCA to discuss the CMCE letter on the implementation of BMR in the UK on 29 November. The

Third country equivalence	progress could be made. Additionally, she expressed concerns that the European Parliament will have a weak position in the upcoming trilogues and one that is not consistent with the Parliament report on disclosures relating to sustainable investments. Markus Ferber (EPP, Germany), Lieve Wierinck (ALDE, Belgium) and Ashlex Fox (ECR, UK) supported the comments of Pervenche Berès. The latest version of the compromise amendments was circulated to the Benchmarks WG. While there is now no mention of prohibiting fees charged by benchmarks administrators, there are some relatively important changes; the EP has replaced the language from the Commission low-carbon & positive carbon impact BMs with 'climate transition and Paris aligned benchmarks. Another compromise is that Benchmark providers in the EU endeavour to market one or more climate transition benchmarks and Paris aligned benchmarks by 2022. This drafting suggests that all benchmark providers should look to provide these Benchmarks. Compromise amendment C would apply requirement to report on how environmental, social and governance factors are reflected **i**n each benchmark to all benchmarks, not just benchmarks provided and published which pursue or take into account ESG objectives as per the Commission proposal. Compromise amendment I suggests that "to enable market players to make well-informed choices and to enhance transparency, all benchmark administrators should be required to disclose the total carbon emission of the index portfolio. The benchmark statement should disclose the degree of alignment with the long-term global warming target of the Paris Climate Agreement. The vote on the ESAs in the ECON Committee has been postponed from 10 December until January and will possibly take place during the meeting on 10 January.	**10 January** – Vote in the ECON Committee on the ESAs review (tentative) **<u>Council of the EU</u>** **12 December –** Council WG on low-carbon benchmarks **<u>European Commission</u>** **December** - Adoption of delegated acts under the BMR by the European Commission (tentative)	summary of the meeting was circulated via email. A meeting with HM Treasury on the letter on Miscellaneous BM persons is also being scheduled.

11. WATCHING BRIEF

IFR		
CMCE priorities	**Status / latest developments**	**Next steps**
Commodity dealer IF regime **Scope of Class 1** **Changes to MiFID II/MiFIR 3rd country regime**	The last Council WG took place on 28 November during which a non-paper on class 1 firms was discussed. As a result of the discussion, the "Class 1.5 proposal" i.e. for firms with assets less than 15 billion euros in case of dealing on own account, or firm underwriting now clarifies that only assets in the EU are to be included in the calculation. Previously, the wording in the proposal made reference to the notion of 'group' in EU law, which would include worldwide assets. With regard to the changes to the transitional period, the latest version of the text indicates that the suggestions contained in the German-UK non-paper was not put in the text and with regard to shortening the transitional period for commodity dealer IF firms. The text is now back to a 5-year period as was previously the case instead of the shorter period suggested by the non-paper. Member States broadly supported the points of the compromise on reclassification, thresholds and the discretion for NCAs. Delegations also supported the text's provisions on third-countries and equivalence. The changes proposed by France and Finland in a non-paper were not met with support during the meeting, and as a result are not included in the text. On equivalence provisions, the scope of the latest compromise text remains unmodified, with dealing on own account included in scope. There is no requirement for opening a branch. As for the next steps, Austrian Presidency will prepare a new compromise text and they will organise another meeting of the member states on 10 December which will also be attachés only. The agenda of the next Council Working Party on the IFR indicates that member states will discuss equivalence and class 1 firms. The Austrian Presidency still aims to secure a deal in December and is confident of achieving that aim, given the progress made, they have every intention of securing a deal in December, and want to present the compromise to the ambassadors at the level of Coreper on 19 December.	**Council of the EU**: **10 December –** Council WP on IFR/IFD **19 December** – Coreper

MAR		
CMCE priorities	**Status / latest developments**	**Next steps**
Insider dealing **MM indicators**	During a conference in Brussels on 5 December organised by FESE and Better Finance, Benoît Juvigny, the Secretary-General of the AMF commented that in the last year, regulators have seen huge improvement during 2018 in the market integrity space since the go-live date of MiFID II. They have taken big steps forward to have a comprehensive toolkit for NCAs for the enforcement of MAR. The transaction reporting system is now enhanced, and the reported data is more granular. 500 million reports exchanged monthly between NCAs. However, he added that work needs to be done as there is still too much inconsistent data and the system will operate best once all reports are complete.	

SFTR		
CMCE priorities	**Status / latest developments**	**Next steps**
Reporting Obligations	There were no significant developments in the past 2 weeks.	**End of 2018** – Adoption of the SFTR Level 2 measures by the Commission