CMCE Bi-weekly Update (20 December 2018)

1. ACTIVE PRIORITIES

Brexit			
CMCE priorities	**Status / latest developments**	**Next steps**	**CMCE action**
Transitional arrangements **Ancillary activity test**	The Commission published a Communication on 19 December on implementing its contingency action plan, which includes 14 measures in a limited number of sectors. In financial services these measures included the temporary and conditional equivalence decision for 12 months for UK CCPs to ensure that there will be no disruption in central clearing of derivatives. This will allow ESMA to temporarily recognise CCPs in the UK, allowing them temporarily to continue providing services in the EU27. Secondly, the measures included the temporary and conditional equivalence decision for 24 months to ensure that there will be no disruption in services provided by UK CSDs. It will temporarily allow them to continue providing notary and central maintenance services to operators in the EU. ESMA reacted to state that it is ready to assess the equivalence of UK CCPs and CSDs once the equivalence decision is adopted. As expected, the Commission communication also included two new Delegated Regulations facilitating novation of OTC derivatives contracts with a counterparty established in the UK to replace that counterparty with a counterparty established in the EU. This allows such contracts to be transferred to an EU27 counterparty while maintaining their exempted status and thus not becoming subject to clearing and margining obligations under EMIR.		Members of the CMCE Brexit WG have been asked to provide their input on whether CMCE should write a letter to the FCA to seek assurance on topics discussed during the CMCE AGM.

	The Commission called on the EP and Council to adopt the proposals as a matter of urgency. Member States have also been instructed to accelerate their work to prepare for all scenarios and to refrain from entering into bilateral agreements, arrangements and discussions with the UK. Despite lobbying by industry representatives including the FIA and EFET for the recognition by the Commission of UK trading venues as part of the contingency measures, this was not included in the measures put forward by the Commission. ESMA also published a statement to firms reminding them of their disclosure obligations stemming from MiFID II to their clients of the risks of a no-deal scenario. With the context of Brexit, the Finnish government has proposed an amendment to the Finnish investment services act which has provisions regarding third-country firms providing services in Finland. Amongst other things, the amendments to set up a temporary permissions regime so that foreign investment firms or licensed credit institutions can continue their operations in Finland without a delay in the case of a no-deal Brexit, even before the NCA has provided the authorisation. This could be used, for example, for British service providers who have the intention to continue their operations after Brexit. On 28 November, HM Treasury published an policy statement regarding a draft bill that will provide the Government power to make changes to 'in-flight' financial services legislation for 2 years after the UK's withdraws from the EU. In-flight legislation includes anything which has been published in the EU Official Journal by 29 March 2019 but has not yet entered into force or are currently in negotiation and may enter into the Official Journal up to two years post EU-exit.		

MiFID II

CMCE priorities	Status / latest developments	CMCE action
AA exemption **Position limits**	On 20 December, Following the publication of two opinions in December 2017 on third-country trading venues (TCTVs) for the purposes of post trade transparency and position limits under MiFID II, ESMA stated that	On the work around the classification of physical forwards the advisory team is to

Reporting **Physical forwards**	they had received requests to assess more than 200 TCTVs against the criteria contained in these opinions. ESMA confirmed that it has not yet reviewed a sufficient number of TCTVs to publish a comprehensive list and will delay publication of the list until they have done so in the interests of pursuing a level playing field. As the list has not yet been published, investment firms do not have to make public their transactions concluded on TCTVs via an APA and commodity derivatives contracts traded on TCTVs are not considered as EEOTC contracts for the purpose of the position limit regime. On 20 December, the Commission confirmed that the existing Swiss equivalence decision for Swiss trading venues will be extended by 6 months as the existing one will expire on the 31st of December 2018. On 19 December, ESMA published a consultation paper on integrating sustainability risks and factors into MiFID II. This comes following a request by the Commission on advice on how ESG risks could be integrated in the investment decision or advisory processes. ESMA will pursue a high-level principle-based approach, similar to what they have done with credit risk, market risk and liquidity risk. The consultation covers organisational requirements/corporate governance, product governance, suitability and feedback will be used for draft RTS under the sustainable finance package. As a result, there will be modifications to Delegated Regulation 2017/565 under MiFID II. The consultation closes on 19 February.	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.

EMIR REFIT

CMCE priorities	Status / latest developments	Next steps	CMCE action
Reporting **Risk mitigation for uncleared trades** **Calculation of NFCs positions**	The Austrian Presidency brokered an informal agreement on EMIR Refit on 20 December. To formalise this agreement, there will be technical meetings in January to make it official and to polish the language.	**14-18 January** - Trilogue (tentative dates)	

Benchmarks

CMCE priorities	Status / latest developments	Next steps	CMCE action
Commodity benchmarks **Critical benchmarks** **Third country equivalence**	The Council reached a general approach on the low-carbon benchmarks proposal on 19 December. The Council General Approach, much closer to the Commission proposal than the Parliament, establishes a new category, comprising two types of benchmarks: low-carbon benchmarks (which aim to lower the carbon footprint of a standard investment portfolio) and positive-carbon impact benchmarks, (which have the more ambitious goal to select only components that contribute to attaining the 2°C set out in the Paris climate agreement). The Council General approach modifies art.13 of the BMR on transparency and methodology which would mandate the Commission to review by 31 December 2021 whether all benchmarks, not just those seeking to be categorised as offering low-carbon and/or positive-carbon impact benchmarks, could be required to disclose the ESG factors in the benchmarks statement. The draft report of Neena Gill on low carbon benchmarks was approved in the ECON Committee on 13 December. A compromise amendment was included which would mandate the Commission by 2020 to perform an assessment of the possibilities to require all benchmark or family of benchmarks in the benchmark statement, to include a detailed explanation of how the target of the carbon emission and/or attaining the goals of the Paris Agreement is ensured. Trilogue negotiations on the low-carbon benchmarks proposal are expected to begin in January. ESMA updated its Q&A on the BMR on 18 December to add a question on whether the methodology of a benchmark can include factors that are not input data. ESMA concludes that the methodology of a benchmark can include factors that are not input data. These factors should not measure the underlying market or economic reality that the benchmark intends to measure, but should instead be elements that improve the reliability and representativeness of the benchmark. This should be considered as the essential distinction between the factors embedded in the methodology and input data. On 20 December, ESMA adopted guidelines for non-significant benchmarks which concern procedures, characteristics and positioning of oversight function, appropriateness and verifiability of input data,	**European Parliament** **10 January 2019** – Vote in the ECON Committee on the ESAs review (tentative) **European Commission** **December** - Adoption of delegated acts under the BMR by the European Commission (tentative)	A meeting with HM Treasury on the letter on Miscellaneous BM persons is being scheduled for January.

	transparency of methodology, governance and control requirements for supervised contributors.		

II. 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**	In an attempt to move towards a general approach, the Austrian Presidency launched a silence procedure on 13 December. It was nevertheless broken by France and Luxembourg and as a result, the Austrian Presidency removed the IFR from the agenda of the Coreper meeting which took place on 19 December. This was met with opposition from 14 member-states during the preparatory meeting ahead of the Coreper given that procedurally the Presidency could have proceeded with the Coreper discussion and possible vote despite the objections by France and Luxembourg. This delay is mainly seen as a win for France who were fiercely pushing for the postponement in an effort to negotiate further changes to the MiFID II / MiFIR equivalence regime. As a compromise, the Coreper discussion was only postponed to 7 January, which leaves little time for France to prepare the ground for any further changes. This delay makes it less likely, although not impossible, that an agreement in trilogues will be found during this legislative mandate.	**Council of the EU:** **7 January –** Coreper to discuss the IFR/IFD package

MAR		
CMCE priorities	**Status / latest developments**	**Next steps**

Insider dealing **MM indicators**	There were no significant developments in the past 2 weeks.	
SFTR		
CMCE priorities	**Status / latest developments**	**Next steps**
Reporting Obligations	On 13 December, the Commission submitted the delegated and implementing acts under the SFTR to the EP and Council for their scrutiny. These RTS/ITS include those specifying the details of securities financing transactions (SFTs) to be reported to trade repositories and annex; collection, verification, aggregation, comparison and publication of data on securities financing transactions and annex; access to details of SFTs held in TRs. At the end of the scrutiny period, which is currently expected to last 3 months as the Commission made changes to the ESMA draft RTS/ITS, they will be translated and published in the EU Official Journal. The European Parliament is currently unsure as to whether they will extend the scrutiny period to six months. They would do this if they see that there is anything controversial, however, given the elections, this seems unlikely.	**Q2 2019** – Expected end of EP and Council scrutiny period
Other relevant developments	On 5 December, the Commission published a Communication on strengthening the international role of the Euro as well as a recommendation and staff working document in the field of energy. The Commission identifies the dominance of the US dollar in commodities trade and derivative operations, as well as the fact that global financial market infrastructures mainly focus on non-euro currencies, as factors holding back a stronger international role of the euro. It is also noted that in the energy sector, over 80 % of Europe's energy imports are priced and paid for in US dollar, despite supplies coming mainly from Russia, the Middle East and Africa, and a similar situation is described in the case of raw materials (metals and minerals) and food commodity markets. The Commission identifies several factors explaining the marginal use of the euro in these sectors, including	**23 January 2019**– DG AGRI to consult on use of the euro in food commodities **Early 2019** – DG FISMA to publish a consultation on the role of the Euro in the foreign exchange market **January 2019 -** DG Energy will launch a consultation on the role of the Euro in the field of energy

	historical inertia, network effects and liquidity reasons, mentioning for instance, a lack of euro-denominated benchmarks for international trading in both oil and commodities. As a part of this initiative, in January 2019 the Commission will publish a consultation on the role of the euro in international trade of agriculture and food commodities, as well as one on the role of the euro in the field of energy, a consultation in the non-energy non-agricultural raw materials sector (metals and minerals) and finally a consultation on potential obstacles and incentives to enhance the role of the euro in the foreign exchange market.	