CMCE Bi-weekly Update (15 February 2019)

1. ACTIVE PRIORITIES

Brexit			
CMCE priorities	**Status / latest developments**	**Next steps**	**CMCE action**
Transitional arrangements **Ancillary activity test**	On 4 February, ESMA published an announcement regarding an MoU it has agreed with the Bank of England for the recognition of CCPs and the CSD established in the UK in the event of a no-deal Brexit. ESMA aims to complete the recognition of the UK CCPs and the UK CSD and to adopt the recognition decisions "well ahead of Brexit date." In a no-deal scenario, the recognition decisions would take effect on the date following the date the UK leaves.		The CMCE Brexit WG has been consulted on a note which analyses changes to the UK SIs for EMIR, MiFID II and MAR. Members have been asked to provide feedback on whether they see a need for CMCE to engage with the FCA/Treasury on any of the issues highlighted in the note.

MiFID II		
CMCE priorities	**Status / latest developments**	**CMCE action**
AA exemption **Position limits** **Reporting** **Physical forwards**	On 5 February, ESMA published a statement on the use of UK data for MiFID II calculations in a no-deal Brexit scenario for the ancillary activity test,. ESMA stated that UK-related data will be gradually phased out from the ancillary activity calculations. ESMA will continue to include UK data in its market size estimates for commodities published as long as the UK is a member of the EU. In the case of a hard Brexit, NFCs will therefore have to gradually phase out UK data from their calculations measuring their own activity against	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.

	total market size, performed over a 3-year rolling period preceding the date of calculation as follows: – The calculations to be performed in Y2019 would be based on EU data including UK data for Y2018, Y2017, and Y2016. – The Y2020 calculations would be based on EU data excluding UK data for Q2, Q3, and Q4 2019 and EU data including UK data for Q1 2019, Y2018 and Y2017 and so on until the Y2023 calculations that would ultimately be based on EU27 data only for the three preceding years (2022, 2021 and 2020). On the same day, the FCA also released a statement saying that they would clarify their approach to using the temporary powers to operate MiFID II in the UK by the end of February 2019. On 7 February, ESMA published its 2019 Supervisory Convergence Work Programme and in the commodity derivatives space, said it will continue to issue opinions on position limits for commodity derivatives incorporating the finalisation of pending position limit notifications and ensuring a uniform ongoing approach to new position limits received, and the development of the concept of ancillary activity including the management of ongoing calculations and data requirements. Particular emphasis will be placed on any amendments required to both position limits, and ancillary activity calculations following Brexit.	

EMIR REFIT

CMCE priorities	Status / latest developments	Next steps	CMCE action
Reporting **Risk mitigation for uncleared trades** **Calculation of NFCs positions**	On 5 February, the Council Presidency and Parliament announced that they had found a political agreement in trilogues on EMIR Refit following the informal agreement reached at the end of last year. The text is now being reviewed by member state delegations, who have 1-2 weeks to read the text in full to ensure it is fully acceptable, before it will be translated and checked by lawyer linguists. The EP has to vote on the final text in plenary and it must then be formally approved by the Council, before publication in the EU Official Journal. The text will enter into force 20 days after publication and will apply as of 5 months after the date of entry into force.	**11-14 March** – Possible plenary vote on EMIR Refit **End of Q2 2019** – Estimated entry into force of EMIR Refit	

Benchmarks			
CMCE priorities	**Status / latest developments**	**Next steps**	**CMCE action**
Commodity benchmarks **Critical benchmarks** **Third country equivalence**	Low-carbon benchmarks Ahead of the trilogue on 13 February, the Romanian Presidency presented a compromise package on low-carbon benchmarks. The Presidency suggests extending the timeline for the **review clause on the benchmark statement** by two years to the end of 2021. The review clause would mandate the Commission to review whether the requirement to disclose ESG factors in the benchmark statement could be extended from low-carbon and/or positive-carbon impact to all benchmarks. The Presidency also suggest that the extension of the transparency requirements should not be binding. The EP is aiming for a review by 1 January 2020 and has insisted in keeping their position on this issue. On the **extension of the transitional regime for critical benchmarks,** the Romanian Presidency invited member states to support the extension of the transitional period for **third country benchmarks** until the same deadline, in order to mitigate the negative impact on European foreign trade. Such additional extension is strongly supported in the Council, as they share the concern that the third country regime is likely to result in the loss of access to a significant number of widely used third country benchmarks. In order to ensure that the Parliament would support the amendments above, the Presidency invites Member States to consider a more flexible approach as regards other issues in this package. ESAs review On 6 February EU Ambassadors agreed to the Romanian Presidency's compromise text for a general approach and the suggestion to launch trilogues on the entire package. This was validated by the ECOFIN Council on 12 February. The first trilogue took place on 14 February which focused on agreeing on procedures and the AML provisions.	**20 February –** Council WP on the ESAs review **21 February –** Trilogue on the ESAs review **22 February –** Council WP on Sustainable Finance **June 2019** – Commission Expert Group on Sustainable Finance to publish report on carbon benchmarks	A meeting with HM Treasury on the letter on Miscellaneous BM persons took place on 6 February. A read-out will be circulated.

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**	During the trilogue on IFR which took place on 6 February, the EP requested to delete the exemption of commodity dealers for the exposure held against other non-financial industrial groups for concentration risk. The Presidency agreed to test the issue with the Member States. When the Presidency raised this with member states, some showed flexibility towards the Parliament (such as Belgium, France, Portugal, Sweden), while others support the Council approach (Germany, Ireland, Netherlands, UK, Czech Republic Denmark). Spain and Poland would support the Council text, but this point is not important for them. Italy said it would be open to a revision clause. The Commission does not have a strong view and said a review clause could be the solution. On equivalence, the Commission presented a non-paper at the trialogue suggesting a compromise solution on the request by the Parliament to exclude dealing on own account and underwriting services from the MiFIR equivalence regime under IFR. The Commission suggests that one way to alleviate the concerns of the EP would be to include additional criteria to the assessment of the third-country legal framework applicable to these 'bank-like services' by specifying this in art.47 MiFIR and to list new criteria. This would require for instance the Commission in its equivalence assessment to check that firms in third countries are subject to appropriate capital requirements when performing bank like services. It is nevertheless expected that the EP will drop the request for an exclusion of dealing on own account and underwriting from the scope of the equivalence regime. We also understand that France, which has been pushing for a more stringent equivalence regime for bank-like services, has now admitted that excluding dealing on own account may be a step too far; and that 'bank-like' services should apply where an entity engages in both dealing on own account and underwriting, not one or the other. The trilogue on 12 February did not make much progress and discussions stalled on the subject of the bonus cap.	**21 February –** Council WP on IFR **26 February –** Trilogue on IFR

MAR		
CMCE priorities	**Status / latest developments**	**Next steps**
Insider dealing **MM indicators**	There were no significant developments in the last two weeks.	

SFTR		
CMCE priorities	**Status / latest developments**	**Next steps**
Reporting Obligations	There were no significant developments in the last two weeks.	

Other relevant developments		
International role of the euro	The Commission published several consultations following the Communication last year on how to boost the international role of the euro: - On 30 January, the Commission announced a consultation on the role of the euro in non-energy non-agricultural raw materials (metals and minerals); - On 28 January, a consultation on the international role of the euro and liquidity in FX markets was published; - A consultation on the international role of the euro in the agricultural and food commodities was published on 24 January.	**22 March –** Close of consultations on international role of the euro in agriculture and food commodities and on non-agricultural raw materials (metals and minerals) **End of March –** Close of consultation on role of euro and liquidity in FX markets

IOSCO report on Commodity Storage and Delivery Infrastructure	On 7 February, IOSCO announced the publication of its final report on Commodity Storage and Delivery Infrastructures: Good or Sound Practices which identifies a number of issues that may apply to storage infrastructures and sets forth a range of possible actions to mitigate them. The practices are intended to benefit the activities of market participants regarding physical commodities and commodity derivatives. They can be broken down into 3 categories: a) preventative practices that seek to establish good governance and dispute resolution procedures in an effort to avoid issues; b) monitoring practices that seek to address issues as they arise in order to mitigate deleterious effects; and c) punitive practices which address, through resolution, behaviours after the fact. IOSCO notes the existence of global or regional codes of conduct for certain commodities, as well as specific regulation in some jurisdictions for commodities such as gas and power. IOSCO does not intend the practices to conflict with or duplicate existing codes and encourages market participants to seek to identify and follow best practice where overlaps exist.