CMC EUROPE

CMCE Bi-weekly Update (15 March 2019)

1. ACTIVE PRIORITIES

Brexit		
CMCE priorities: Ancillary activity test, access to UK and EU trading venues, CCPs and TRs		
Status / latest developments	**Next steps**	**CMCE action**
During an eventful week in UK politics, three crucial votes took place in the House of Commons: to reject the EU withdrawal agreement negotiated by Theresa May for a second time, to reject a no-deal Brexit and to ask the EU for an extension of the 29 March exit date at least until 30 June. A third vote on the withdrawal agreement is expected next week and the duration of the postponement that the UK will request depends on whether the agreement is supported or not. Any request for an extension will need to be unanimously approved by the EU27. EMIR On 11 March, the FCA published a statement as a part of preparations in the event of a no-deal Brexit on the reporting of derivatives under EMIR. The FCA stated that with respect to EMIR provisions, UK Trade Repositories (TRs) and counterparties cannot make use of the transitional relief which will be provided from other requirements. From the day the UK leaves, UK counterparties must report details of their derivative trades to an FCA registered, or recognised, TR. Furthermore, UK TRs must provide UK authorities access to data reported to them by UK counterparties from exit day. REMIT Ofgem published an update on 1 March on the subject of no-deal Brexit REMIT contingency arrangements covering monitoring and enforcement, registration, and data reporting. The letter explains that Market Participants (MPs) will not need to re-register with Ofgem in order to enter into transactions for wholesale energy products deliverable in the UK after Brexit if they are registered with the Utility Regulator for Northern Ireland (UREGNI) or with an NRA of the EU27. The provisions of UK REMIT contain a reporting obligation but Ofgem warns that it may not be immediately operational.	Third UK House of Commons vote on EU withdrawal agreement **21-22 March -** European Council	On 11 March, CMCE sent a letter to the European Commission advocating for an equivalence decision for UK trading venues under EMIR in the event of a no-deal Brexit.

Ofgem also refers to a letter published in January by ACER as regards affected MPs and states that they may already prepare their registration with the NRA of a EU27, and that until Brexit day, they will continue to be registered solely in the UK. BMR ESMA published a statement on 7 March on obligations for firms in a no-deal for certain provisions under BMR with respect to the ESMA register of administrators and 3rd country benchmarks. In the event of no-deal, ESMA will delete UK administrators previously included in the ESMA register before the date of exit. Those UK administrators that were originally included in the ESMA register as EU administrators, would after a no-deal Brexit qualify as 3rd country administrators (for which the BMR foresees different regimes to be included in the ESMA register). During the BMR transitional period, this change would not prevent supervised entities in the EU27 from using benchmarks provided by those UK administrators. Similarly, 3rd country benchmarks that were included in the ESMA register before the date of a no-deal Brexit on the basis of recognition or an endorsement status granted in the UK, will be deleted from the ESMA register on the date of no-deal Brexit. However, the BMR transitional period is also applicable to these 3rd country benchmarks so EU27 investment firms can use those benchmarks endorsed before a no-deal takes effect. On 13 March, the FCA published a statement on the obligations of firms under the Benchmarks Regulation in the event of a no-deal Brexit, confirming that the UK will be setting up a public register of benchmarks and authorised administrators.		

MiFID II

CMCE priorities: AA exemption, position limits, reporting, physical forwards

CMCE priorities **Status / latest developments**	**CMCE action**
ESMA published a statement on 7 March on obligations for firms in a no-deal Brexit for certain provisions under MiFID II. On the MiFID II **C(6) carve-out,** ESMA noted that derivative contracts related to electricity or natural gas that would be exclusively produced, traded and delivered in the UK would no longer qualify as wholesale energy product post-Brexit and would no longer be eligible to the C(6) carve-out under MiFID II, even if traded on an EU27 OTF.	

However, where, for instance, UK natural gas would continue to be traded on a spot trading platform in the EU27 post-Brexit, derivatives on UK natural gas would continue to qualify as "wholesale energy products" under Article 2(4) of REMIT and could benefit from the C(6) carve-out in MiFID II. ESMA also noted that where a wholesale energy product is not traded on an EU OTF post Brexit, it would cease to be eligible for the C6 carve out; and could become a financial instrument under C6 or C7 MiFID II. With respect to the **position limits regime**, in a no-deal scenario, commodity derivatives trading on UK trading venues could, subject to meeting certain conditions, be considered as economically equivalent OTC contracts (EEOTC) for the purposes of the EU27 position limits regime. ESMA referred to its opinion published in 2017 which clarified that commodity derivative contracts traded on third-country trading venues meeting a set of criteria are not considered as EEOTC contracts for the position limit regime. ESMA has not yet begun to assess UK trading venues against the criteria in that opinion, but if industry participants from the EU27 ask them to, they would be ready to do so. Pending the outcome of those assessments, ESMA noted that commodity derivative contracts traded on those venues will not be considered EEOTC for the position limits regime. On 13 March, the FCA published a statement on the various obligations of firms under MiFID II in which they stated that commodity derivative contracts traded on EU trading venues should not be considered as EEOTC contracts and they will not count towards the UK position limit regime.	

EMIR REFIT

CMCE priorities: reporting, risk mitigation for uncleared trades, calculation of NFC's positions

Status / latest developments	Next steps	CMCE action
Coreper approved the deal on EMIR Refit on 6 March without discussion. The text will now need to be formally approved by the European Parliament, possibly during the next plenary session on 25 – 28 March and by the Council at Ministerial level before it is published in the Official Journal.	**25-28 March** – Possible plenary vote on EMIR Refit **Second half of 2019** – Expected entry into force of EMIR Refit	

Benchmarks		
CMCE priorities: commodity benchmarks, critical benchmarks, third-country equivalence		
Status / latest developments	**Next steps**	**CMCE action**
Low-carbon benchmarks Coreper approved the political agreement on low-carbon benchmarks on 13 March. The text will now need to be formally approved by the European Parliament, possibly during the next plenary session on 25 – 28 March and by the Council at Ministerial level before it is published in the Official Journal. ESAs review Further trilogues took place on the ESAs review on 12 and 14 March, however, the negotiations stalled on questions on the governance of the ESAs. The issue is the composition of the Management Board and the balance between that and the Board of Supervisors, which is sensitive for member states as there is a question of the interests of the national regulators being represented. Another trilogue may be held on 12 March in an attempt to finalise an agreement.	**19 March –** Trilogue on ESAs review (TBC) **25-28 March** – Possible plenary vote on low-carbon benchmarks **June 2019** – Commission Expert Group on Sustainable Finance to publish report on carbon benchmarks	

II. WATCHING BRIEF

IFR	
CMCE priorities: commodity dealer IF regime, scope of class 1, changes to MiFID II/MiFIR third-country regime	
Status / latest developments	**Next steps**
The Romanian Presidency circulated the IFR / IFD texts to member states for approval through a silence procedure following technical amendments made in technical trilogues. Following the silence procedure, the text will go to Coreper for formal approval by ambassadors. The vote in the plenary of the European Parliament on the text of IFR is expected to take place in the week commencing 15 April. However, a delay is expected in terms of the publication of the text in the official journal, which will only occur in the second half of the year as there is not	**15-18 April** – Plenary vote on the IFR **Second half 2019** – Publication in OJ

enough time for the lawyer-linguist review and translation to take place before the elections. This will trigger a so-called 'corrigendum' procedure whereby a technically and linguistically finalised version of the texts will be issued only in the autumn for formal signature by the new European Parliament and the Council, before the texts can be published in the Official Journal.	

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

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

Other relevant developments		
International role of the euro	The targeted Commission consultation in the field of energy was published by DG Energy on 14 February to gather feedback on the recommendation of the Commission published in December of 2018 on in the international role of the euro in the field of energy. On commodities trading, the consultation asks respondents to explain why they consider that the euro only has a modest role in energy commodity trading. It also asks for ideas on whether and how commodity exchanges could facilitate the further development of euro-denominated derivative contracts on crude oil and refined products.	**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) **31 March** – Close of consultation on the role of the euro in the field of energy

		End of March – Close of consultation on role of euro and liquidity in FX markets
Margin requirements for non-centrally cleared derivatives	On 11 March, the Basel Committee and IOSCO published a progress report on the implementation of the framework for margin requirements for non-centrally-cleared derivatives. The Basel Committee and IOSCO understand that market participants may need to amend derivatives contracts in response to the reforms for interest rate benchmarks. Going forward, the report states that in the remaining phases of the framework's implementation in 2019 and 2020, IM requirements will apply to a large number of entities for the first time, which will involve documentation, custodial and operational arrangements that are not specified in the framework if the bilateral IM amount does not exceed the framework's €50 million IM threshold. It is expected, however, that covered entities will act diligently when their exposures approach the threshold to ensure that the relevant arrangements needed are in place if the threshold is exceeded.	