CMCE Bi-weekly Update (5 June 2020)

MiFID II/MiFIR

On 3 June, ESMA issued an opinion on the application of the MiFID II position limits regime to commodity derivatives trading on third-country trading venues (TCTVs). According to the opinion, contracts in commodity derivatives that are traded on TCTVs should not be regarded as OTC for the purposes of the EU position limits regime. Accordingly, positions arising from trading in those contracts on TCTVs should not count towards the calculation of EU positions. ESMA provided a list of 7 trading platforms that qualify as TCTVs, set out in an annex accompanying the opinion. Commodity derivatives traded on venues not included on the list shall be considered as OTC trades for the purposes of the position limits regime from 3 October 2020.

On 29 May, the European Commission discussed a range of targeted amendments to the MiFID II framework at the meeting of the Expert Group of European Securities Committee (EGESC) which consists of Member State experts on securities markets regulation. The amendments to MiFID II are part of a broader COVID-19 recovery package, some of the amendments envisaged relate to commodity derivatives trading, namely the position limits regime, the ancillary activity test and exemptions for financial and non-financial counterparties. In the area of commodity derivatives trading, the Member States were broadly in favour of the amendments put forward by the Commission as part of the recovery package.

EMIR

On 28 May, ESMA published updated EMIR Q&As addressing practical questions on data reporting issues, specifically related to Trade Repositories (TRs) under EMIR. ESMA clarifies the details that a NFC- should provide to a FC reporting on their behalf. Likewise, the updated Q&As specify how a FC should proceed if the NFC- renews its LEI and in the event the NFC's status changes from NFC+ to NFC-. Lastly, the Q&As clarify how both the FC and NFC- should proceed if they report to two different trade repositories.

1. ACTIVE PRIORITIES

Brexit

CMCE priorities: Ancillary activity test, access to UK and EU trading venues, CCPs and TRs

Latest developments & CMCE action	Next steps
The fourth round of negotiations on the future EU-UK partnership commenced on 2 June 2020 with little indication of substantive progress. Prime Minister Boris Johnson and Commission President Ursula von der Leyen are due to meet in late June to discuss how to proceed with negotiations. Thus far, seemingly fundamental differences are preventing the EU and UK negotiating teams from reaching broad agreement on the contours of the future relationship. The high-level meeting between Johnson and Von der Leyen will be crucial to breaking the current impasse in negotiations and/or reaching a decision on the need for an extension of the transition period. Progress in the negotiations continues to be hampered by the divergent approaches of the EU and the UK. Whereas the EU insists that progress be pursued on all issues in parallel and as part of a comprehensive agreement, the UK would prefer to focus on select issues of greatest interest to the UK and where meaningful progress can be made. The EU has continued to criticise the UK's apparent unwillingness to engage on several key questions such as the level-playing field. In response, David Frost has stressed in a letter to Michel Barnier dated 18 May that, rather than being unwilling to engage, the UK merely disagrees with the approach to the talks adopted by the EU. Moreover, the UK is frustrated by the unwillingness of the EU to remove technical barriers to trade such as sanitary standards on animal products. Further divergences persist on the question of the level-playing field and EU access to UK fishing waters. Arrangements for the governance of the future partnership provide an additional sticking point alongside difficult negotiations on police and judicial cooperation in criminal matters.	**1 July 2020** – Deadline to agree on an extension to the transition period

MiFID II

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

Latest developments & CMCE action	Next steps
On 3 June, ESMA issued an opinion on the application of the MiFID II position limits regime to commodity derivatives trading on third-country trading venues (TCTVs). According to the opinion, contracts in commodity derivatives that are traded on TCTVs should not be regarded as OTC for the purposes of the EU position limits regime. Accordingly, positions arising from trading in those contracts on TCTVs should not count towards the calculation of EU positions. ESMA provided a list of 7 trading platforms that qualify as TCTVs, set out in an annex accompanying the opinion. Commodity derivatives traded on venues not included on the list shall be considered as OTC trades for the purposes of the position limits regime from 3 October 2020. On 29 May, the European Commission discussed a range of targeted amendments to the MiFID II framework at the meeting of the Expert Group of European Securities Committee (EGESC) which consists of Member State experts on securities markets regulation. The amendments to MiFID II are part of a broader COVID-19 recovery package, some of the amendments envisaged relate to commodity derivatives trading, namely the position limits regime, the ancillary activity test and exemptions for financial and non-financial counterparties. In the area of commodity derivatives trading, the Member States are broadly in favour of the amendments put forward by the Commission. The majority of Member States expressed support for limiting the application of position limits to mature markets in energy, oil, natural gas and metals. Agricultural commodities would be ring-fenced due to their politically sensitive nature. With regard to the ancillary activity test, a majority of Member States were in favour of simplifying the current quantitative test to determine whether a non-financial counterparty would be obliged to obtain a MiFID II license for its own account trading. Member States were also broadly supportive of the proposal to introduce a targeted hedging exemption for financial counterparties belonging to commercial groups. With regard to the exemption from position limits for market makers, regardless of whether they are financial or non-financial counterparties, the Member States were more	**12 June 2020** – Deadline for Member States to send comments on Commission's MiFID II quick fix proposals **14 June 2020** – Deadline for the ESMA consultation on the transparency regime for non-equities under MiFID II/MiFIR. **16 June 2020** – Next meeting of the EGESC to discuss the MiFID II quick fix proposals. **July – September** – broader MiFID II/MiFIR Review proposal

hesitant. Several delegations highlighted that supervising such an exemption would be challenging. In addition, if position limits are only applied to markets comprising more than 300,000 lots such an exemption may be unnecessary.

On 5 June, the Commission is due to discuss its proposed amendments with the Financial Services Committee (FSC), composed of financial services attachees from the Member States.

CMCE action

CMCE submitted its response to the European Commission's consultation on the Review of the MiFID II/MiFIR regulatory framework on 18 May 2020.

EMIR

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

Latest developments & CMCE action	Next steps
On 28 May, ESMA published updated EMIR Q&As addressing practical questions on data reporting issues, specifically related to Trade Repositories (TRs). ESMA clarifies the details that a NFC- should provide to a FC reporting on their behalf. Likewise, the updated Q&As specify how a FC should proceed if the NFC- renews its LEI and in the event the NFC's status changes from NFC+ to NFC-. Lastly, the Q&As clarify how both the FC and NFC- should proceed if they report to two different trade repositories. On 4 May, the European Supervisory Authorities (ESMA, EBA, EIOPA) published joint draft Regulatory Technical Standards (RTS) amending the Delegated Regulation on risk mitigation techniques for non-centrally cleared OTC derivatives to take account of the delay in the final two implementation phases agreed upon by the BCBS-IOSCO in early April. The changes made by the ESAs reflect the 12-month deferral of Phase 5 and Phase 6 of the implementation schedule for initial margin requirements for uncleared derivatives transactions in the EU's regulatory framework. According to the amended implementation schedule:	**1 September 2021** – Initial Margin requirements to apply to counterparties with an AANA of uncleared derivatives above 50 billion. **1 September 2022** - Final implementation phase covering entities with an AANA of uncleared derivatives greater than EUR 8 billion

▪ Phase 5, covering counterparties with an AANA of uncleared derivatives above EUR 50 billion, will take effect from 1 September 2021. ▪ Phase 6, covering counterparties with an AANA of uncleared derivatives above EUR 8 billion, will take effect from 1 September 2022. The ESAs have submitted the draft RTS to the European Commission for endorsement. Following endorsement by the European Commission the draft RTS will be adopted as a Delegated Act and submitted to the European Parliament and the Council for scrutiny. The European Parliament and the Council will have two months to raise objections to the Delegated Act as proposed by the European Commission. In the absence of any objections, the Delegated Act will enter into force following the end of the two-month scrutiny period.	

Benchmarks

CMCE priorities: commodity benchmarks, critical benchmarks, third-country equivalence

Latest developments & CMCE action	**Next steps**
On 29 April, ESMA issued a No Action Letter instructing National Competent Authorities not to prioritise supervisory and enforcement actions against benchmark administrators with regard to environmental, social and governance (ESG) disclosure requirements. ESMA regards it as necessary to be lenient towards administrators that fail to apply the ESG disclosure requirements in the absence of the Delegated Acts specifying their exact content. ESMA's No Action Letter was accompanied by an Opinion addressed to the European Commission stressing the need for the relevant Delegated Acts to be adopted without delay in order to provide clarity to administrators on how to apply these requirements. On 8 April, the European Commission opened a consultation on three draft Delegated Acts relating to ESG disclosure requirements applicable to benchmark administrators with a deadline of 6 May 2020. The first of these draft Delegated Acts specifies the minimum standards that EU Climate Transition and Paris-aligned benchmarks should meet in order to be labelled as such.	**1 October 2020** – Deadline for the Commission to adopt the draft RTS on governance arrangements, methodology, oversight functions and the power of competent authorities in the context of benchmark transition or cessation. **7 December 2020** – Application of the SM&CR regime to benchmark administrators.

The second sets out the explanation that is to be included in the benchmark statement about how ESG factors are reflected in each benchmark. The third clarifies the minimum content of the explanation of how the benchmark methodology takes account of ESG factors for each benchmark, with the exception of interest rate and foreign exchange benchmarks. Following the adoption of the final Delegated Acts the European Commission will submit them to the European Parliament and the Council for scrutiny. In the absence of any objections from the co-legislators during a two-month period the Delegated Acts will enter into force.	

II. WATCHING BRIEF

IFR	
CMCE priorities: commodity dealer IF regime, scope of class 1, changes to MiFID II/MiFIR third-country regime	
Latest developments & CMCE action	**Next steps**
The IFR/IFD texts were published on 5 December 2019 in the EU Official Journal. IFR will apply from 26 June 2021, except points (2) and (3) of Article 63 on tick sizes and systematic internalisers, which will apply from 26 March 2020, and point 30 of Article 62 on which will apply from 25 December 2019. Concerning IFD, Member States shall adopt the national transposition measures by 26 June 2021.	**26 June 2021** – Application of IFR

MAR	
CMCE priorities: Insider dealing, MM indicators	
Latest developments & CMCE action	**Next steps**

There were no significant developments in the past 2 weeks. **CMCE action** CMCE submitted its response to the ESMA consultation on MAR review on 28 November 2019. ESMA published on 13 December 2019 the responses received to this consultation.	**Spring 2020** – ESMA to submit the final report providing technical advice to the European

SFTR	
CMCE priorities: reporting obligations	
Latest developments & CMCE action	**Next steps**
On 6 May, ESMA extended the registrations of four trade repositories (TRs) to include securities financing transactions (SFT) reporting under the SFTR. The TRs concerned are DTCC Derivatives Repository plc, UnaVista TRADEcho B.V., Krajowy Depozyt Papierow Wartosciowych S.A. and REGIS-TR S.A. The broadened registrations took effect on 7 May 2020. On 19 March, in view of the extraordinary circumstances precipitated by the spread of COVID-19, ESMA released a public statement announcing the deferral of reporting obligations for securities financing transactions (SFTs) under the SFTR and MiFIR. In the statement, ESMA acknowledged that the precautionary measures introduced by national authorities and individual firms in response to the COVID-19 pandemic are impairing firms ability to ensure their readiness for the application of SFT reporting obligations in time for the deadline on 13 April 2020. ESMA has therefore instructed competent authorities to take no supervisory actions penalising counterparties, entities responsible for reporting, and investment firms for failure to comply with SFT reporting obligations from the go-live date of 13 April 2020	**13 July 2020** – Reporting obligation for investment firms **11 January 2021** – Reporting obligation for non-financial counterparties

until **13 July 2020**. This effectively makes the 13 July 2020 the effective date of application for SFT reporting obligations for investment firms.	
European Green Deal	
CMCE priorities: monitoring developments	
Latest developments & CMCE action	**Next steps**
On 8 May, The ESAs sent a joint letter to DG FISMA requesting that the Commission revisit the date of application for disclosures under the Regulation on sustainability-related disclosures in the financial sector (SFDR). The current date of application foreseen in the Regulation is 10 March 2021, at which point entities in the scope of the SFDR will have to start disclosing if and how they take into account Principal Adverse Impacts (PAI) on sustainability factors. The ESAs believe that the process of developing the regulatory technical standards needed to implement the Regulation will take longer than initially anticipated, in large part due to the disruption caused by the COVID-19 pandemic. This, in turn, will necessitate a later date of application. The ESAs opened a consultation on the draft RTS on 23 April 2020. In view of the challenging circumstances for many potential respondents, the ESAs decided to have a longer than usual consultation period. Accordingly, the deadline for responses was set for 1 September 2020. The prolonged consultation period will have an impact on the ESAs capacity to deliver the finalised RTS by 30 December 2020, as stipulated in the SFDR. As a consequence, the ESAs have indicated that they intend to deliver the final RTS by the end of January 2021. This would in turn leave insufficient time for the Commission to review the RTS, adopt them and to allow the co-legislators (European Parliament and Council) to scrutinise these RTS. Therefore, the letter asks for a delay of the SFDR while not mentioning any specific new timeline. On 23 April, the ESAs (ESMA, EIOPA, & the EBA) launched a joint consultation on draft Regulatory Technical Standards (RTS) under the EU Sustainability related Disclosure	**23 June 2020** – Deadline for the Commission consultation on 2030 greenhouse gas emission reduction targets. **15 July 2020** – Deadline for the Commission consultation on the Renewed Sustainable Finance Strategy. **1 September 2020** – Deadline for the Joint ESAs consultation on draft Regulatory Technical Standards under the Sustainability-related disclosures regulation.

Regulation. The consultation will remain open until **1 September 2020**. The consultation provides detail as to the content, methodologies and presentation of the disclosures that firms will be required to make. The first set of disclosure obligations will apply as of March 2021. The ESAs are likely to need one to three months after the end of the consultation to process comments by stakeholders and draft the final technical rules for the European Commission. Thereafter, following the Commission's adoption of the technical standards the co-legislators will require an additional one to three months to scrutinise the rules before either objecting or endorsing them. On 8 April, the European Commission opened a consultation on the Renewed Sustainable Finance Strategy. The consultation will remain open until **15 July 2020**. In the consultation, the Commission outlines that the Renewed Strategy will focus on three main areas; ▪ Creating a framework with appropriate tools and structures to promote sustainable investment, while also aiming to shift the focus of financial and non-financial companies from short-term financial performance to long-term development. ▪ Maximise the impact of the frameworks and tools to finance green projects and have a positive impact on sustainability. ▪ Manage and integrate climate and environmental risks into financial institutions and the financial system, also taking account of social risks where relevant. On 31 March, the European Commission opened a consultation on its intention to propose an increase to the EU's 2030 target for greenhouse gas emission reductions to at least -50%, and towards -55% compared to 1990 levels. The consultation will remain open until **23 June 2020**. The first part of the consultation questionnaire includes high-level questions on the opportunities and challenges, and sectoral potential for CO2 Reductions by 2030. The Second part includes questions on the design of specific climate and energy policies as well as EU policies towards third-countries on climate change. On 4 March, the European Commission launched an Inception Impact Assessment on a carbon adjustment tax mechanism. The impact assessment aimed to inform citizens and provide an opportunity for stakeholders to offer feedback. The mechanism envisages a carbon border adjustment levy (CBA) applicable to certain imports as they enter the EU market. The measure is intended to mitigate the risk of carbon leakage. The feedback period ended on 1 April 2020. A legislative proposal is expected by mid-2021.	

Other relevant developments		
International role of the euro	There were no significant development in the past 2 weeks.	
REMIT	There were no significant development in the past 2 weeks.	