# CMCE Bi-weekly Update (30 August 2019)

***European Commission first 100 days***

A leaked version of a European Commission internal document outlining the priorities of the first 100 days has been circulating in Brussels in August. DG FISMA has proposed to focus on the cyber resilience, Basel 3 implementation and anti-money laundering initiatives. Sustainability is not mentioned as a theme for the first 100 days, but given the political importance of this topic, we would not exclude that final version of the document could be more nuanced in this sense. We expect the document to be approved by the European Commission in September before the parliamentary hearings with the commissioners-designate would take place in the European Parliament. The new Commissioners would focus on these priorities at the beginning of their mandates as of 1 November 2019.

***Sustainability standards for commodity markets***

The WFE (World Federation of Exchanges) published on 22 August a white paper exploring sustainability in the context of commodity derivatives markets. According to the new paper, users of commodities increasingly demand greater oversight and understanding of the supply chain, to ensure the commodities they use accord with some definition of sustainability. In the absence of a single set of sustainability standards that specifies requirements for a commodity to be deemed sustainable, the WFE is exploring potential ways for commodity derivatives exchanges to address the impact of sustainability. The WFE notes that some exchanges – notably ICE and CME – already have listed contracts that respond to environmental challenges. Another way is to incorporate sustainability elements into existing contracts, such as by amending them or introducing parallel 'sustainable' versions. A premium could also be incorporated to recognise a "verifiably sustainable version of the existing underlying", the WFE says, though this could present liquidity challenges.

***German Finance Ministry's position papers on MiFID II/MiFIR***

The German Finance Ministry published on 29 August a position paper on MiFID II/MIFIR, outlining suggestions to the European Commission. It proposes a two-step approach with near-term corrections of mainly technical deficiencies and then subsequent work by the European Commission on more fundamental and contentious issues. Suggested amendments concerning position limits commodity derivatives are included.

***EU-wide Financial Transaction Tax (FTT)***

The Finnish Presidency of the Council will hold on 20 September a Working Party that is set to include all Member States – and not only the 10 ones participating to the enhanced cooperation – in order to brief them on the new draft text. This new draft text suggests that negotiations between Member States are ongoing. However, there is no indication that the political feasibility and likelihood of an agreement have materially changed compared to a few months ago. There are deep disagreements between Member States regarding the mutualisation of FTT revenues and extraterritoriality issues. Some Member States are opposed to such a mutualisation mechanism, such as Spain which would be the big winner but wouldn't be inclined to share the revenues, while others like Slovenia or Slovakia argue that such a mechanism is necessary to ensure that smaller countries can cover the fixed costs associated with establishing and maintaining infrastructure for the collection of the FTT.

# 1. ACTIVE PRIORITIES

<table>
<tr><th colspan="2">Brexit</th></tr>
<tr><td colspan="2">CMCE priorities: Ancillary activity test, access to UK and EU trading venues, CCPs and TRs</td></tr>
<tr><th>Latest developments & CMCE action</th><th>Next steps</th></tr>
<tr><td>Prime Minister Boris Johnson asked on 28 August the Queen to end the current parliamentary session during the second week of September, before reopening it on 14 October. The Queen agreed to this request on the same day.<br><br>This will have the effect of extending the conference recess aimed at holding party conferences in September, which was due to finish around 7 October. The parliamentary timetable is therefore compressed, reducing the amount of time MPs will be able to prevent a no-deal Brexit. It also means that it limits the chances of getting any deal – if one is reached with the EU – through Parliament.<br><br>It is also worth noting there is a European Council summit on 17/18 October. The UK Government may therefore be planning to bring an amended deal to the House of Commons where the looming deadline would force MPs to back the deal – or go for no deal.</td><td>17/18 October – European Council<br><br>31 October – Deadline for UK to adopt Withdrawal Agreement, subject to a further extension</td></tr>
<tr><th colspan="2">MiFID II</th></tr>
<tr><td colspan="2">CMCE priorities: AA exemption, position limits, reporting, physical forwards</td></tr>
<tr><th>Latest developments & CMCE action</th><th>Next steps</th></tr>
<tr><td>The German Finance Ministry published on 29 August a position paper on MiFID II/MIFIR. It proposes a two-step approach with near-term corrections of mainly technical deficiencies and then subsequent work by the European Commission on more fundamental and contentious issues. Suggested amendments concerning position limits and commodity derivatives are included:<ul><li>Position limits – The current provisions on position limits work sufficiently well and lead to contain speculation in the area of commodity derivatives. But to the development and growth of new and illiquid contracts the requirements have proven to be a substantial barrier. Therefore, for such contracts the requirements should be reviewed with the aim of allowing nascent markets to develop niche and preventing contracts from being shifted to OTC trading or to third country venues.</li><li>Commodity derivatives – The application of MiFID/MiFIR core requirements to commodity derivatives raises a number of questions that should be analysed more closely:</li></ul></td><td>January 2020 – Deadline for ESMA to provide input to the European Commission on MiFID II/MiFIR review report on C6 energy derivatives contracts<br><br>March 2020 – Deadline for ESMA to provide input to the European Commission on MiFID II/MiFIR review report on position limits and reporting</td></tr>
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| - LIS and IL waivers: Suitability of the calibration of large in scale (LIS) and illiquidity (IL) waivers from pre-trade transparency, notably for pre-arranged trades;<br>- Hedging exemption: Suitability of the scope of application of the hedging exemption from position limits;<br>- Ancillary activity exemption: Suitability of the calibration of the thresholds for making use of the ancillary activity exemption for persons dealing on own account in commodity derivatives and emission allowances;<br>- Emission allowances: Suitability of equalizing the treatment of derivatives and emission allowances held under the Emissions Trading Directive. This would recognise the hedging character of such emission allowances and would allow to take them into account when calculating thresholds for the ancillary activity exemption.<br><br>According to our intel, DG FISMA has set up an internal project team to look into the upcoming MiFID II review. We understand that it doesn't plan a major overhaul of the legislative framework.<br><br>In addition, we heard that a task force has been formed within ESMA to coordinate with the NCAs and to start working on the MiFID/MiFID workstream. We also heard that a consultation should be launched in H2 2020. We think that in case there is not be so much pressure from the political level at DG FISMA, it may be the case that the future MiFID/MiFIR legislative initiative might be much more influenced by ESMA.<br><br>***CMCE action***<br>A CMCE response to the ESMA call for evidence on position limits and position management in commodity derivatives was submitted on 5 July, and was published by ESMA on 12 July with all the responses it received to the call for evidence.<br><br>Samina Anwar will meet Tilman Lueder, Head of the Securities Markets Unit at DG FISMA, on 2 October to discuss position limits. A prep call with the MiFID WG will be organised in the second half of September. | |

## EMIR

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

| **Latest developments** | **Next steps** |
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| There were no significant developments in the last 2 weeks. | |

## Benchmarks

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

| **Latest developments & CMCE action** | **Next steps** |
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| There were no significant developments in the last 2 weeks.<br><br>***CMCE action***<br>CMCE submitted in July a response focussing on commodity benchmarks to the TEG's call for feedback on the interim report on ESG disclosure for benchmarks<br><br>The FCA has given CMCE the opportunity to provide comments on the Senior Managers and Certification Regime (SM&CR) that will apply from 7 December 2020 to UK authorised BM administrators, prior to its formal consultation process on draft rules.<br><br>A prep call with the Benchmarks WG took place on 28 August and the call with the FCA took place on 29 August. The call with the FCA was an informal exchange of views to understand each other's starting point ahead of the publication a formal consultation process. CMCE will follow-up to that call by sending to the FCA a written contribution in the coming days. The FCA assured that there will be further opportunities to engage with this work when the FCA consults formally. | **September –** Final TEG report on climate friendly benchmarks to be published<br><br>**7 December 2020 –** Application of the SM&CR regime to benchmark administrators<br><br>**ESAs review & low-carbon benchmarks:**<br>**September plenaries** – Plenary vote in new Parliament (TBC)<br><br>**21 October -** Signature of Council President and EP President (earliest possible date)<br><br>**Mid-November -** Publication in the EU Official Journal (tentative timeline)<br><br>**December** - Entry into force (20 days after publication) |

## II. WATCHING BRIEF

| **IFR** | |
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| *CMCE priorities: commodity dealer IF regime, scope of class 1, changes to MiFID II/MiFIR third-country regime* | |
| **Latest developments & CMCE action** | **Next steps** |
| There were no significant developments in the past two weeks. | **September plenary** – Plenary vote in new Parliament (TBC)<br><br>**21 October -** Signature of Council President and EP President (earliest possible date)<br><br>**Mid-November -** Publication in the EU Official Journal (tentative timeline)<br><br>**December** - Entry into force (20 days after publication) |

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

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| There were no significant developments in the past two weeks.<br><br>***CMCE action***<br>A discussion took place at the Geneva members' meeting on 28 June on market abuse enforcement trends and the recent ACER guidance on REMIT implementation and layering and spoofing in wholesale energy markets. It was concluded that it would be useful for members to have a forum in which to exchange experiences and learnings in this area. In the first instance, a CMCE members' only information sharing forum will be set up. A MAR working group could be set up in due course if the need for that emerges from these discussions. | **31 December 2019** – Deadline for ESMA to provide technical advice to the Commission on the MAR review |

| **SFTR** | |
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| *CMCE priorities: reporting obligations* | |
| **Latest developments & CMCE action** | **Next steps** |
| There were no significant developments in the past two weeks. | **Q4 2019** - ESMA to publish a final report on the guidelines on reporting under SFTR |

| **Other relevant developments** | | |
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| **International role of the euro** | There were no significant developments in the past 2 weeks. | **Summer 2019 –** European Commission to report on the results of the consultation on the international role of the euro |
| **REMIT** | There were no significant developments in the past 2 weeks. | **16 September 2019** – ACER public consultation on the definition of inside information closes |
| **UK Senior Managers and Certification Regime (SM&CR)** | The FCA published on 26 July a policy statement on optimising the Senior Managers & Certification Regime (SM&CR), which summarises the feedback received to the consultation it hold in January 2019 as well as its response to the feedback.<br><br>The SM&CR is aimed at strengthening individual accountability in the financial services industry and was introduced for banking firms in 2016 and insurers in December 2018. It will apply to solo-regulated firms from 9 December 2019. | **9 December 2019** – Application of the SM&CR regime to solo-regulated firms |