



MiFID II/MiFIR

On 10 March, ESMA opened a [consultation](#) on the transparency regime for non-equities and the derivative trading obligation (DTO) under MiFID II/MiFIR. The consultation will be open until 19 April 2020. The consultation assesses the level of transparency in non-equity markets, the share of trading in standardised OTC derivatives that takes place on exchanges and electronic trading platforms, and the appropriateness of lowering liquidity thresholds so as to boost transparency under Article 17 of RTS 2.

BMR

On 9 March, ESMA opened a [consultation](#) on draft Regulatory Technical Standards (RTS) under the Benchmarks Regulation (BMR) relating to governance arrangements, methodology, and oversight functions for benchmark administrators, and the powers of competent authorities in the context of benchmark transition or cessation. The deadline for the submission of responses is **9 May 2020**.

EMIR

On 9 March, ESMA issued a [report](#) on the potential impact of making C6 energy derivative contracts subject to certain EMIR requirements, namely the Clearing Obligation (CO), the requirement to exchange collateral, and including C6 energy derivatives in the calculation of positions against the clearing thresholds.

I. ACTIVE PRIORITIES

Brexit	
<i>CMCE priorities: Ancillary activity test, access to UK and EU trading venues, CCPs and TRs</i>	
Latest developments & CMCE action	Next steps
<p>On 2 March the first round of negotiations on the future relationship between the EU and the UK began in Brussels.</p> <p>The Task force for Relations with the United Kingdom (UKTF), led by chief negotiator Michel Barnier, will represent the EU during the talks. The UK is represented by Task Force Europe (TFE), led by David Frost.</p> <p>Given the breadth and complexity of the talks, negotiations are conducted by dedicated negotiating groups. There are 11 such negotiating groups covering the negotiations on issues ranging from trade in goods to fisheries to mobility and social security coordination.</p> <p>The second round of negotiations was due to be held in London but due to concerns over the spread of COVID-19 it could now be held via video conference.</p>	<p>18 March – Second round of negotiations on the future relationship between the EU and the UK to begin.</p>
MiFID II	
<i>CMCE priorities: AA exemption, position limits, reporting, physical forwards</i>	
Latest developments & CMCE action	Next steps
<p>On 10 March, ESMA opened a consultation on the transparency regime for non-equities and the derivative trading obligation (DTO) under MiFID II/MiFIR. The consultation will be open until 19 April 2020.</p> <p>The consultation assesses the level of transparency in non-equity markets, the share of trading in standardised OTC derivatives that takes place on exchanges and electronic trading platforms, and the appropriateness of lowering liquidity thresholds so as to boost transparency under Article 17 of RTS 2.</p>	<p>31 March 2020 – Deadline for ESMA to provide input to the European Commission MiFID II/MiFIR review report on position limits and reporting.</p> <p>19 April 2020 – Deadline for the ESMA consultation on the transparency regime for non-equities under MiFID II/MiFIR.</p>

In the consultation:

- ESMA notes that pre-trade transparency in non-equity markets remains limited due to the extensive use of waivers. In particular, ESMA has highlighted the use of the SSTI waiver as problematic and suggests removing it. To compensate for the removal of the SSTI waiver ESMA proposes lowering the pre-trade thresholds for LIS trades.
- Post-trade transparency is also undermined by the use of deferrals, which is not harmonised across the EU. ESMA notes that many NCAs adopt a flexible approach with regard to the use of the deferral regime to the detriment of the internal market.
- The consultation also incorporates ESMA's report on the impact of the DTO and the progress made in concentrating trading volume in standardised OTC derivatives to exchanges or electronic trading platforms. ESMA recommends establishing a possibility for the DTO to be suspended that would mirror the process set out in EMIR Refit for the suspension of the CO.
- Regarding commodity derivatives trading, ESMA observes that 11% of the notional trading volume and 70% in terms of number of transactions is benefiting from the hedging exemption from pre-trade transparency requirements. In the interest of simplicity and legal certainty, ESMA is proposing to expand the waiver for pre-arranged or negotiated transactions in derivatives so as to apply to hedging transactions involving at least one non-financial counterparty.

On 17 February, the European Commission launched its [consultation](#) on MiFID II/MiFIR review. The consultation will be open **until 20 April 2020**.

The consultation contains **three sections**:

- The first section aims to gather views from all stakeholders on the experience of two years of application of MiFID II/MiFIR. In particular, it will gather feedback from stakeholders on whether a targeted review of MiFID II/MiFIR with an ambitious timeline would be appropriate to address the most urgent shortcomings.
- The second section will seek views of stakeholders on technical aspects of the current MiFID II/MiFIR regime: consolidated tape, availability and price of market data, investor protection topics, client profiling and classification, research unbundling rules and SME research coverage, **commodity markets**. Areas identified as non-priority for the review include the derivatives trading obligation, multilateral systems, double volume cap, non-discriminatory access, digitalisation, foreign exchange.
- The third section invites stakeholders to draw the attention of the European Commission to any further regulatory aspects or identified issues not mentioned in

20 April 2020 – Deadline for the Commission consultation on the review of MiFID II/MiFIR.

<p>the first and second sections.</p> <p>On commodity markets (questions 69 to 76.1), the European Commission reiterates its objective of fostering more commodity derivatives trading denominated in euros. To that purpose, it seeks stakeholders' feedback on the implementation of the position limit framework and pre-trade transparency rules, which could be recalibrated.</p> <p>CMCE action</p> <p>On 6 March the MiFID WG held a call to discuss the CMCE response to the Commission consultation on the review of the MiFID II/MiFIR regulatory framework. The MiFID WG will start to prepare the initial draft of the CMCE response to the section concerning commodity markets.</p>	
EMIR	
<i>CMCE priorities: reporting, risk mitigation for uncleared trades, calculation of NFC's positions</i>	
Latest developments & CMCE action	Next steps
<p>On 9 March, ESMA issued a report on the potential impact of making C6 energy derivative contracts subject to certain EMIR requirements, namely the Clearing Obligation (CO), the requirement to exchange collateral, and including C6 energy derivatives in the calculation of positions against the clearing thresholds.</p> <ul style="list-style-type: none"> ▪ ESMA has concluded that making C6 energy derivative contracts subject to certain EMIR requirements would have limited impact from a systemic risk perspective. Accordingly, ESMA recommends extending the temporary exemption for C6 energy derivative contracts as envisaged in MiFID II. The Commission is empowered to extend the temporary exemption from certain EMIR requirements for C6 energy derivative contracts through a Delegated Act according to the second subparagraph of Article 90(4) of MiFID II; once for a period of two years, and once further for a period of one year thereafter. ▪ ESMA notes that NFCs represent a large share of the commodity derivative market and enter into commodity derivative transactions, including C6 energy derivative contracts, largely for hedging purposes. Accordingly, they benefit from the hedging exemption in relation to these contracts which, consequently, do not count towards the calculation of their positions against the clearing thresholds. ▪ ESMA also acknowledges that the UK's withdrawal from the EU could have dramatic consequences on the structure of the market in C6 energy derivative contracts in the EU. A significant share of C6 energy derivative contracts are 	

<p>currently traded in the UK and it remains uncertain how the UK will regulate this market.</p> <p>Background</p> <p>Article 90(4) of MiFID II mandates ESMA to prepare a report to the European Commission on the potential impact, cost, and feasibility of extending certain EMIR requirements to C6 energy derivative contracts.</p> <p>C6 energy derivative contracts currently benefit from a temporary exemption from certain EMIR requirements until 3 January 2021, according to transitional arrangements stipulated in Article 95 of MiFID II. This temporary exemption can be extended by the Commission through a Delegated Act in accordance with the second subparagraph of Article 90(4) of MiFID II.</p>	
<p>Benchmarks</p>	
<p><i>CMCE priorities: commodity benchmarks, critical benchmarks, third-country equivalence</i></p>	
<p>Latest developments & CMCE action</p>	<p>Next steps</p>
<p>On 9 March, ESMA opened a consultation on draft Regulatory Technical Standards (RTS) under the Benchmarks Regulation (BMR) relating to governance arrangements, methodology, and oversight functions for benchmark administrators, and the powers of competent authorities in the context of benchmark transition or cessation. The deadline for the submission of responses is 9 May 2020.</p> <p>The ESAs Review introduced changes to the BMR that require and mandate ESMA to provide draft RTS to further specify and elaborate on provisions relevant to benchmark administrators, methodology, oversight functions and competent authorities. These include;</p> <ol style="list-style-type: none"> 1. The requirements to ensure that the governance arrangements of an administrator are sufficiently robust; 2. The conditions that ensure that the methodology used by an administrator to determine whether a benchmark complies with the relevant requirements in Article 12(1) of the BMR; 3. The characteristics of the systems and controls established by an administrator to ensure the integrity of input data in order to be able to identify and report to the 	<p>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.</p> <p>7 December 2020 – Application of the SM&CR regime to benchmark administrators.</p>

competent authority any conduct that may involve manipulation or attempted manipulation of a benchmark;

4. The criteria that the competent authority applies when assessing how the benchmark is transitioned to a new administrator or ceases to be provided, and;
5. The criteria under which competent authorities may require changes to the compliance statement.

CMCE action

On 26 February the CMCE submitted its response to the FCA consultation on the application of the Senior Managers Regime to Benchmark Administrators prepared by the BMR WG.

This followed the CMCE's participation in the FCA roundtable regarding the consultation held on 20 January.

II. WATCHING BRIEF

IFR	
<i>CMCE priorities: commodity dealer IF regime, scope of class 1, changes to MiFID II/MiFIR third-country regime</i>	
Latest developments & CMCE action	Next steps
<p>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.</p>	<p>26 June 2021 – Application of IFR</p>
MAR	
<i>CMCE priorities: Insider dealing, MM indicators</i>	
Latest developments & CMCE action	Next steps
<p>There were no significant developments in the past 2 weeks.</p> <p>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.</p>	<p>Spring 2020 – ESMA to submit the final report providing technical to the European</p>

SFTR		
<i>CMCE priorities: reporting obligations</i>		
Latest developments & CMCE action		Next steps
<p>CMCE action On 13 February CMCE participated in a Joint Association meeting with the FCA on readiness for the reporting of commodities transactions under the SFTR. GFMA, LBMA, EFET, AFME and FIA also participated. During the meeting the lack of clarity as to the exact scope of the transactions subject to the SFTR reporting requirements was highlighted in addition to the operational challenges in ensuring seamless compliance by 11 April 2020. The FCA acknowledged these challenges, in particular noting the confusion in determining the exact scope of the reporting requirements.</p> <p>Following the meeting, the Joint Associations wrote a letter to the FCA co-signed by CMCE on 20 February. The letter reiterates the concerns of the Joint Associations and requests that the FCA be lenient in cases of possible underreporting or overreporting.</p>		<p>11 April 2020 – Reporting obligation for investment firms</p> <p>11 January 2021 – Reporting obligation for non-financial counterparties</p>
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.	