CMC EUROPE

CMCE Bi-weekly Update (22 May 2020)

MiFID II/MiFIR

On 19 May, in the context of the COVID-19 pandemic, the European Commission unveiled a range of targeted amendments to the MiFID II framework to the ECON committee coordinators of the political groups in the European Parliament. The same package of amendments will be discussed with the Member States at the meeting of the Expert Group of European Securities Committee (EGESC) on 29 May 2020. Described by the Commission as the MiFID quick fix, 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.

European Green Deal

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.

EMIR

On 4 May, the European Supervisory Authorities (ESMA, EBA, EIOPA) have published joint draft Regulatory Technical Standards (RTS) amending the Delegated Regulation on risk mitigation techniques for non-centrally cleared OTC derivatives under EMIR to take account of the delay in the final two implementation phases agreed upon by the BCBS-IOSCO in early April. The amendments 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.

1. ACTIVE PRIORITIES

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<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>
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<tr><td>The third round of negotiations on the future EU-UK partnership were held remotely between 11 May and 15 May. Following the conclusion of the third round of negotiations, the EU's chief negotiator Michel Barnier issued a public statement outlining the outcome of the talks. 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, the UK would prefer to focus on select issues of greatest interest to the UK and where meaningful progress can be made.

Echoing the comments made by Mr Barnier following the second round of negotiations, 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.

Despite the lack of substantive progress during the second and third rounds of negotiations, the UK Government is maintaining the position that it will not ask for an extension of the transition period. The deadline to jointly agree on an extension to the deadline is 1 July 2020. This is despite reports that Prime Minister Boris Johnson has expressed concern at the negotiations' prospects for success. The Prime Minister is expected to urge the European Commission and EU27 leaders to devote more attention to the negotiations in an effort to make more substantive progress in the coming weeks.</td><td>1 June 2020 – Fourth negotiating round to begin.

1 July 2020 – Deadline to agree on an extension to the transition period</td></tr>
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MiFID II

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

Latest developments & CMCE action	Next steps
On 19 May, in the context of the COVID-19 pandemic, the European Commission unveiled a range of targeted amendments to the MiFID II framework to the ECON committee coordinators of the political groups in the European Parliament. The same package of amendments will be discussed with the Member States at the meeting of the Expert Group of European Securities Committee (EGESC) on 29 May 2020. Described by the Commission as the MiFID quick fix, some of the amendments envisaged relate to commodity derivatives trading. The changes to rules governing commodity derivatives trading would include; ▪ A recalibration of the position limits regime that would benefit the development of nascent euro-denominated commodity markets. ▪ With regard to exemptions from the position limits regime, the Commission proposes excluding nascent power, oil, gas and metal commodity markets from the regime in the interest of minimising price volatility. ▪ The Commission further envisages aligning the ancillary activity test to the new, post-Brexit market environment to ensure a level-playing field with other jurisdictions. ▪ A strictly defined hedging exemption would be made available to financial counterparties in cases where the financial counterparty is a market facing entity in a predominantly commercial group. ▪ In addition, financial and non-financial counterparties subject to mandatory liquidity provision obligations would benefit from an exemption from the position limits regime for market making activities. On 30 April, ESMA published the annual transparency calculations of the Large-in-Scale (LIS) and size specific to the instruments (SSTI) thresholds for bonds; systematic internaliser calculations for equity, equity-like instruments and bonds; and new data for bonds subject to the pre- and post-trade requirements of MiFID II/MiFIR. The	**14 June 2020** – Deadline for the ESMA consultation on the transparency regime for non-equities under MiFID II/MiFIR.

transparency requirements stemming from the results of the annual calculations of the LIS and SSTI thresholds will apply as of 1 June 2020 to 31 May 2021. **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 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: ▪ 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. 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.	**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.

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 until **13 July 2020**. This effectively makes the 13 July 2020 the effective date of application for SFT reporting obligations for investment firms.	**13 July 2020** – Reporting obligation for investment firms **11 January 2021** – Reporting obligation for non-financial counterparties

European Green Deal	
CMCE priorities: monitoring developments	
Latest developments & CMCE action	**Next steps**

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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 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

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.

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.	

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