CMCE Bi-weekly Update (6 November 2020)

Key highlights from the last two weeks:

MiFID II quick-fix. On 28 October, the ECON committee voted to adopt the European Parliament's position on the MiFID II 'quick fix' proposal with 30 votes in favour, 12 against and 14 abstentions. Nevertheless, the ECON committee vote will have to be affirmed by the November plenary of the European Parliament. The Parliament position failed to win the 31 votes in ECON that would have negated the need for a plenary endorsement. MEPs will have another opportunity to table amendments to the Parliament text during next week's plenary. The 'quick-fix' process has encountered significant resistance from the Socialists & Democrats (S&D) and the Greens that describe it as an attempt to deregulate at the expense of investor protection. The Greens are also highly critical of amendments to the position limits regime.

UK Trading Venues. On 27 October, ESMA announced that it had assessed UK trading venues for the purposes of post-trade transparency and the position limits regime and updated its list of third-country trading venues accordingly. As a result of the assessment, as of 1 January 2021, EU investment firms will not be required to make transactions public in the EU through an EU APA if they are executed on one of the UK trading venues featured on the transparency list. Furthermore, commodity derivative contracts traded on UK trading venues on the position limits list will not be considered as economically equivalent over-the-counter (EEOTC) contracts according to the EU position limits regime.

MAR. On 29 October, ESMA submitted its final report on two draft technical standards for the promotion of the use of SME Growth Markets to the European Commission. The final report includes both regulatory technical standards (RTS) on liquidity contracts and implementing technical standards on insider lists.

SFTR. On 5 November, ESMA published the first Q&As related to reporting under the SFTR consisting of 5 questions and answers. The Q&As clarify the reporting of fields related to time and applicable calendars, the reporting of settlement legs, reporting SFTs collarteralised initially at transaction and then net exposure level, reporting of SFTs concluded off-venue and cleared on the same day, and the reporting of zero collateral for margin loans.

BMR. On 6 November, ESMA published its updated Q&As on the BMR clarifying the transitional provisions regarding critical benchmarks. Specifically, the updated Q&As specify that an existing critical benchmark can be used by supervised entities in the EU until 31 December 2021 even if the index provider has not been granted authorization.

I. ACTIVE PRIORITIES

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<tr><td>Intensive negotiations on the EU-UK future relationship during the last week have failed to yield substantive results. While chief negotiators on both sides are minimising their contact with the press they have provided some indication of the state-of-play through social media.

Michel Barnier tweeted that despite attempts to find solutions; “very serious divergences remain in level-playing field, governance & fisheries. These are essential conditions for any economic partnership”. In fact, recent negotiations would appear to have widened the gap between the two sides in relation to the level-playing field with the UK challenging the introduction of “non-regression” clauses on environmental and labour standards.

Mr Barnier was due to brief EU27 European Affairs ministers next week on the progress of the negotiations. It has been decided that this meeting will be postponed until substantive progress has been achieved.

Separately, on 4 November, the FCA announced that it would exercise its Temporary Transitional Power to effectively suspend the application of the UK STO by allowing firms to continue trading all shares on EU trading venues and systematic internalisers. Accordingly, UK market participants will continue to be able to access any EU trading venue from the end of the implementation period.

CMCE action

On 25 September, CMCE submitted a response to the FCA Discussion Paper on prudential requirements for investment firms (DP20/2), following a discussion of the Regulatory Capital WG on 17 September. The DP sets out the FCA’s approach to adapting the EU IFR/IFD framework for the UK market following Brexit.</td><td>31 December 2020 – Expiry of transition period</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>
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Latest developments & CMCE action	Next steps
On 28 October, the ECON committee voted to adopt the European Parliament's position on the MiFID II 'quick fix' proposal with 30 votes in favour, 12 against and 14 abstentions. Nevertheless, the ECON committee vote will have to be affirmed by the November plenary of the European Parliament. The Parliament position failed to win the 31 votes in ECON that would have negated the need for a plenary endorsement. MEPs will have another opportunity to table amendments to the Parliament text during next week's plenary. The 'quick-fix' process has encountered significant resistance from the Socialists & Democrats (S&D) and the Greens that describe it as an attempt to deregulate at the expense of investor protection. The Greens are also highly critical of amendments to commodity rules preferring to retain the current regime. On 21 October, COREPER adopted the Council's position and negotiating mandate on the MiFID II 'quick fix', which reflects the most recent amendments to commodity markets rules. The Council's most recent text specifies that the criterion for determining critical or significant contracts of 300,000 lots of open interest should be stipulated in the Level 1 text. ESMA should therefore only consider the number and size of market participants and the commodity underlying the derivative concerned when elaborating additional criteria. Notably, the Council text does not make substantive changes to the proposed qualitative ancillary activity test. The ECON Committee of the European Parliament is still in the process of debating its compromise amendments to the 'quick fix' proposal. **CMCE action** A MiFID WG took place on 5 November to discuss how CMCE should engage alongside other trade associations in response to the delay in the MiFID II quick fix process.	*MiFID II quick-fix:* **November 2020** – European Parliament plenary to vote on EP position on 'quick-fix'. *ESMA consultation on MiFIR transaction reporting:* **20 November 2020** – Deadline for responses to ESMA consultation **Q1 2021** – Estimated submission of ESMA final report to EC

EMIR

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

Latest developments & CMCE action	Next steps
On 19 October, ESMA published a consultation paper on draft regulatory technical standards on the conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorization and conditions	**15 November 2020** – Deadline to the ESMA consultation on draft RTS on extending CCP authorisation **1 September 2021** – Initial Margin requirements to apply to

under which changes to the models and parameters are significant under EMIR. On 28 September, ESMA published updated Q&As on EMIR data reporting issues, dealing in particular with practical matters relevant to Trade Repositories such as specifying valid entries in various data fields when reporting transactions. **EMIR Refit** Following confirmation from contacts within DG FISMA, we understand that the Commission shares ESMA's redefinition of the term 'group' for the purpose of the exemption from reporting intragroup transactions whereby – in order to bel eligible for the exemption - a 'group' must have its parent undertaking located in the EU in order to qualify as a 'group'. **CMCE action** A letter highlighting the concerns of CMCE regarding a possible intention to restrict availability of the exemption from reporting requirements for intragroup transactions for groups based outside of the EU was sent to both ESMA and the European Commission on 4 September.	counterparties with an AANA of uncleared derivatives above EUR 50 billion. **1 September 2022** – Final implementation phase covering entities with an AANA of uncleared derivatives greater than EUR 8 billion.

Benchmarks

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

Latest developments & CMCE action	Next steps
On 7 October, the Council agreed upon its compromise text and negotiating mandate on the Commission's BMR reform proposal. The Council position envisages the introduction of an additional exemption for spot foreign exchange benchmarks with a review of the exemption's use to be undertaken in 2027. The Council also broadens the powers of the Commission to designate replacement reference rates beyond critical financial benchmarks. The Council also favours enabling EU supervised entities to continue using third-country benchmarks until 2025 as opposed to 2021 thus allowing for a smoother transition. On 1 October, ESMA issued a public statement regarding the impact of Brexit on the application Benchmark Regulation (BMR) to UK benchmarks after the end of the transition period. On 25 September, ESMA launched a consultation on fees for benchmarks administrators under the BMR. The aim of the Consultation Paper is to advise the European Commission (EC) on fees to be paid by the benchmark administrators that will be supervised by ESMA	The European Parliament is yet to agree upon a negotiating mandate on BMR reform. Once the Parliament has done so, trilogues with the Council can commence. **7 December 2020** – Application of the SM&CR regime to benchmark administrators.

starting in January 2022.	

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**
On 28 September, ESMA submitted draft technical standards to the Commission elaborating additional information requirements for the registration and annual reporting of third-country investment firms that provide investment services or engage in investment activities in the EU. The Commission has a period of three months to adopt the technical standards with or without amendments. Thereafter, they will be submitted to the co-legislators in accordance with the correct non-objection procedure. **CMCE action** On 25 September, CMCE submitted a response to the FCA Discussion Paper on prudential requirements for investment firms (DP20/2), following a discussion of the Regulatory Capital WG on 17 September. The DP sets out the FCA's approach to adapting the EU IFR/IFD framework for the UK market following Brexit.	**26 June 2021** – Application of IFR

MAR	
CMCE priorities: Insider dealing, MM indicators	
Latest developments & CMCE action	**Next steps**
On 24 September, ESMA published its final report on MAR Review, which provides technical advice to the Commission on a number of areas under MAR. The report sets out recommendations in a number of areas, including the treatment of spot FX contracts, the definition of inside information, the EU framework for cross-market order book surveillance and the scope of application of the MAR benchmarks provisions. The Report is submitted to the	

European Commission and is expected to feed into their review of MAR. **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.	
SFTR	
CMCE priorities: reporting obligations	
Latest developments & CMCE action	**Next steps**
On 9 July, ESMA opened a consultation on draft Guidelines on the calculation of SFT positions by trade repositories (TRs) under the SFTR. ESMA intends to issue final Guidelines upon the receipt of feedback to the consultation in the interest of ensuring consistency in how positions are calculated by TRs under the SFTR. ESMA underlines the importance of high-quality data on SFT positions to enable a proper assessment of systemic risks. The deadline for the submission of responses is the 15 September 2020.	**11 January 2021** – Reporting obligation for non-financial counterparties
European Green Deal	
CMCE priorities: monitoring developments	
Latest developments & CMCE action	**Next steps**
The European Commission released its plan on how to achieve emissions reductions of at least 55 per cent by 2030, in order to become climate neutral by 2050. The Commission's proposal is based on a thorough impact assessment and confirms that reducing emissions by at least 55% by 2030 is a realistic and feasible course of action. On 7 October, the European Parliament adopted its negotiating mandate on the EU Climate Law that reflects greater ambition than the initial Commission proposal. MEPs would like emission reductions of 60% by 2030 and a legally binding obligation placed on all Member States to be carbon neutral by 2050. The Parliament's negotiating mandate received the backing of 392 MEPs, with 161 voting against and a further 142 abstaining.	The European Parliament had adopted its negotiating mandate. Negotiations between Member States in the Council are continuing in order to agree upon a compromise text.

	In July, the UK Government published draft legislation on the UK's Emissions Trading Scheme (ETS) which should be operational by 1 January 2021. The UK ETS is intended to encourage cost-effective emission reductions that will contribute to the attainment of the UK's emission reduction targets. Another key aim of the draft legislation is to ensure continuity with the EU ETS and facilitate the linking of the two schemes in future.	
Other relevant developments		
International role of the euro	There were no significant development in the past 2 weeks.	
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