CMCE Bi-weekly Update (20 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 report still remains to be endorsed by the plenary of the European Parliament. The report failed to win the 31 votes in ECON that would allow the co-legislators to proceed immediately to trilogues. A vote on the Parliament position is scheduled on 23 November during the forthcoming plenary session. If Parliament adopts its position without further delay the first trilogue may take place as soon as 26 November.

On 10 November, ESMA issued a public statement on the use of UK data in ESMA databases and the performance of MiFID II calculations that relate to various MiFID II/MiFIR requirements dependent on data published by ESMA – including the annual ancillary activity calculations.

On 6 November ESMA opened a consultation on draft guidelines on MiFID II/MiFIR obligations on market data. The consultation will remain open until 11 January 2021. The draft guidelines are consistent with the recommendations made by ESMA in its review report on the development of prices for market data. The draft guidelines contain a total of 16 guidelines that relate to; (i) the question of how market data should be provided on the basis of costs; (ii) the obligation to provide market data on a non-discriminatory basis; (iii) the per-user fee obligation; (iv) the obligation to keep market data unbundled and the development of a standardised publication format, key terminology, accounting methodologies for setting market data fees and auditing practices, and; (v) the obligation to provide market data free of charge 15 minutes after publication.

EMIR. On 10 November, ESMA published its report on Post Trade Risk Reduction (PTRR) services under EMIR. The report assesses whether trades that result from PTTR services should be exempted from the clearing obligation. ESMA's findings suggest that a limited and qualified exemption from the clearing obligation would reduce risk and complexity in the market.

EMIR/SFTR. On 10 November, ESMA issued a public statement in relation to issues affecting EMIR and SFTR application post-Brexit. In particular, the public statement outlines the implications of Brexit for reporting, record-keeping, reconciliation, data access, portability and aggregation of derivatives under Article 9 of EMIR and Article 4 of the SFTR.

BMR. On 19 November, the ECON committee voted adopted the Parliament position on the BMR 'quick fix' with 49 votes in favour and the remaining ECON members abstaining. The majority is enough to allow the ECON committee to proceed to trilogues with the Council without plenary endorsement. As the Parliament and Council texts do not diverge substantially - the negotiations with the Council are expected to be concluded relatively quickly.

I. ACTIVE PRIORITIES

Brexit	
CMCE priorities: Ancillary activity test, access to UK and EU trading venues, CCPs and TRs	
Latest developments & CMCE action	**Next steps**
Negotiations between the EU and the UK were suspended late this week as a member of the EU negotiating team tested positive for COVID-19. EU negotiators, including Michel Barnier, will now be required to self-isolate under Belgian law. This could complicate the process of arriving at a deal by next week. Michel Barnier was due to update Member States today on the state-of-play. It is understood that a senior official will now be asked to substitute for Mr. Barnier. Until now, intensive talks have failed to overcome the seemingly intractable issue of the level-playing field and fisheries. However, there have been claims of progress with all other aspects of the agreement virtually finalised. There has been speculation in the press that the departure of Lee Cain – the Director of Communications at Downing Street and the resignation of Dominic Cummings – close advisers to Prime Minister Boris Johnson – have improved the chances of a deal being struck. It has also been reported that the European Parliament is planning for an emergency plenary session on 28 December if needed to ratify the agreement. In the meanwhile, the European Commission has been asked by Member States to increase preparations for a no-deal outcome. As for the broader political context, domestically, the UK Government's Internal Market Bill was defeated in a vote in the House of Lords last week amid concerns that it would undermine the UK's credibility with international partners. In response, the Government has asked that MPs reaffirm the Commons' support and return the Internal Market Bill to the Lords. In addition, on 9 November, HM Treasury made a series of announcements in relation to the future regulation of the UK financial sector. This included the UK's approach to equivalence with overseas jurisdictions; a forthcoming consultation o the regulation of crypto-assets and proposals on how the UK can become a global leader in green finance. The UK also announced that it was granting equivalence to the EU and the EEA in a number of areas – including margining requirements - in order to avoid market disruption after the end of the transition period.	**31 December 2020** – Expiry of transition period

The Treasury's announcements were followed on 13 November by comments from Nausicaa Delfas urging the EU to grant DTO equivalence so as to avoid significant market dislocations. **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.	

MiFID II

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

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 report still remains to be endorsed by the plenary of the European Parliament. The report failed to win the 31 votes in ECON that would allow the co-legislators to proceed immediately to trilogues. A vote on the Parliament position is scheduled on 23 November during the forthcoming plenary session. If Parliament adopts its position without further delay the first trilogue may take place as soon as 26 November. On 16 November, ESMA released its third annual statistical report on EU derivatives markets. The report provides comprehensive data on the size and structure of the EU market. Notably, the report finds that OTC trading accounts for 92% of derivatives transactions with exchange-traded derivatives making up only 15% of the market. On 10 November, ESMA issued a public statement on the use of UK data in ESMA databases and the performance of MiFID II calculations that relate to various MiFID II/MiFIR requirements dependent on data published by ESMA – including the annual ancillary activity calculations. On 6 November ESMA opened a consultation on draft guidelines on MiFID II/MiFIR obligations on market data. The consultation will remain open until 11 January 2021. The draft guidelines are consistent with the recommendations made by ESMA in its review report on the development of prices for market data. The draft guidelines contain a total of 16 guidelines that relate to; (i) the question of how market data should be provided on	*MiFID II quick-fix:* **23 November 2020** – European Parliament plenary to vote on EP position on 'quick-fix'. **26 November 2020** – First trilogue on the MiFID II 'quick fix' (TBD) *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

the basis of costs; (ii) the obligation to provide market data on a non-discriminatory basis; (iii) the per-user fee obligation; (iv) the obligation to keep market data unbundled and the development of a standardised publication format, key terminology, accounting methodologies for setting market data fees and auditing practices, and; (v) the obligation to provide market data free of charge 15 minutes after publication. **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. Following discussions with EFET regarding a Joint Associations outreach - CMCE will co-sign two Joint Associations submissions on the ancillary activity test and position limits to be circulated to the DE Presidency, key Member States and DG FISMA ahead of trilogue negotiations on the MiFID II 'quick fix'.	

EMIR

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

Latest developments & CMCE action	Next steps
On 10 November, ESMA published its report on Post Trade Risk Reduction (PTRR) services under EMIR. The report assesses whether trades that result from PTTR services should be exempted from the clearing obligation. ESMA's findings suggest that a limited and qualified exemption from the clearing obligation would reduce risk and complexity in the market. On 10 November, ESMA issued a public statement in relation to issues affecting EMIR and SFTR application post-Brexit. In particular, the public statement outlines the implications of Brexit for reporting, record-keeping, reconciliation, data access, portability and aggregation of derivatives under Article 9 of EMIR and Article 4 of the SFTR. **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'.	**1 September 2021** – Initial Margin requirements to apply to 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.

CMCE action The EMIR WG is drafting a letter to the European Commission requesting equivalence for UK trading venues under Article 2a of EMIR. Alongside other trade associations, CMCE is requesting that the Commission grant equivalence to avoid additional requirements being triggered for counterparties once their transactions no longer qualify as traded on-venue.	

Benchmarks

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

Latest developments & CMCE action	Next steps
On 19 November, the ECON committee voted adopted the Parliament position on the BMR 'quick fix' with 49 votes in favour and the remaining ECON members abstaining. The majority is sufficient to allow the ECON committee to proceed to trilogues with the Council without plenary endorsement. As the Parliament and Council texts do not diverge substantially - the negotiations with the Council are expected to be concluded relatively quickly. 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. 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.	**November 2020** – Trilogues on BMR 'quick fix' to commence (TBD). **7 December 2020** – Application of the SM&CR regime to benchmark administrators.

11. 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 16 November, HM Treasury, the PRA and the FCA announced the deferral of CRR2 AND IFPR implementation dates to a target date of 1 January 2022. 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 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. 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 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.	**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. 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.	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.

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.	