



Key highlights from the last two weeks:

MiFID II/MiFIR. On 14 January, the ECON Committee voted in favour of the political agreement on the MiFID II 'quick fix' that was reached with the Council in December 2020. ECON members voted 29 in favour vs 21 against. The political agreement will still be subject to a full vote in plenary.

On 31 December 2020, the FCA [announced](#) that it would exercise its Temporary Transitional Power (TTP) to suspend the UK's Derivatives Trading Obligation (DTO). The FCA's decision was taken in the absence of mutual equivalence between the EU and the UK. Accordingly, branches of EU firms in London will not be subject to the UK DTO so as to avoid a conflict between EU and UK requirements that would cause significant market disruption. The FCA clarified that the relief does not apply to trades with non-EU clients, proprietary trading conducted, for example, to hedge a firm's own risk exposure, and trades between UK branches of EU firms.

EMIR. On 22 December 2020, the European Commission adopted two Delegated Acts under EMIR concerning the application of the clearing obligation to intragroup transactions, and margin requirements and exchange of collateral (in the case of OTC derivative contracts not subject to central clearing) to minimise potential disruption arising due to the end of the Brexit transition period. The Delegated Acts also address the treatment of new contracts arising from novations from UK counterparties from a risk management perspective. The legal texts were transmitted to the Council and the European Parliament with a letter from Commissioner Mairead McGuinness requesting that they be subject to an early non-objection procedure so as to ensure swift application.

BMR. On 23 December, ESMA opened a [consultation](#) on the procedural rules for imposing fines and penalties on Benchmark Administrators under ESMA's direct supervision. The BMR introduces detailed requirements regarding how penalties to Benchmark Administrators may be applied and the procedure to be followed. In particular, the ESMA consultation relates to; (i) the right to be heard by the Independent Investigating Officer (IIO); (ii) the content of the file to be submitted by the IIO; (iii) access to the file; (iv) procedure for imposing penalties; (v) adoption of interim decisions, and; (vi) limitation periods for the imposition as well as enforcement of penalties. The consultation will close on 23 January 2021.

ESMA-CFTC MoU. On 7 January, ESMA and the CFTC signed a Memorandum of Understanding (MoU) regarding cooperation and exchange of information with respect to select registered derivatives clearing organisations established in the United States considered to be CCPs recognized by ESMA under EMIR.

UK Equivalence framework. On 14 January, the FCA published [government guidance](#) on the UK approach to equivalence according to which overseas regimes will be assessed in the interest of maintaining cross-border financial activity while still ensuring financial stability and adequate investor protection.

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 24 December, the European Commission reached an Agreement with the United Kingdom on the terms of its future cooperation. The parties agreed to apply the Agreement on a provisional basis, for a limited period of time until 28 February 2021. On the EU side, following up on all the formalities, all the documents were published in the Official Journal of the EU on 31 December. The European Parliament has been asked to give its consent to the Agreement. As a last step on the EU side, the Council must adopt the decision on the conclusion of the Agreement. On the UK side, the Agreement was smoothly passed into UK law on 30 December. As expected, financial services agenda is only detailed in the non-binding Joint Declaration to the Agreement. This does not have the same legal effect as the main accord yet is important as it helps define a common understanding between the two sides. In this context, the EU and the UK have committed to try and conclude a Memorandum of Understanding by March 2021.</p> <p>CMCE action</p> <p>On 2 December, CMCE sent a letter to several European Commissioners and senior staff within the European Commission on the urgent need to adopt an equivalence decision with regard to UK trading venues pursuant to Article 2a of EMIR. The letter, which was prepared by both the EMIR & Brexit WGs, emphasized the adverse, real-economy impact that the absence of an equivalence decision would imply.</p>	
MiFID II	
<i>CMCE priorities: AA exemption, position limits, reporting, physical forwards</i>	
Latest developments & CMCE action	Next steps
<p>On 14 January, the ECON Committee voted in favour of the political agreement on the MiFID II 'quick fix' that was reached with the Council in December 2020. ECON members voted 29 in favour vs 21 against. The political agreement will still subject to a full</p>	<p><i>MiFID II quick-fix:</i></p> <p>Q1 2021 – European Parliament vote on final text of MiFID II 'quick fix'</p>

vote in plenary.

On 13 January, ESMA released a [public statement](#) as a reminder on reverse solicitation addressed to MiFID II firms in the context of the end of the UK transition period. In this sense, ESMA highlighted that Article 42 of MiFID II - which establishes that where a third-country firm solicits clients in the Union or promotes investment services together with ancillary services in the Union - it should not be deemed as a service provided at the exclusive initiative of the client. Besides, ESMA recalls that: i) it is mandatory to have the proper authorization to provide investment services in the EU. The consequences of not having appropriate authorization can lead to criminal proceedings, and; ii) when using the services of investment service providers which are not properly authorised in accordance with EU and Member States' law, investors may lose protections granted to them under relevant EU rules (Directive 97/9/EC).

On 31 December 2020, the FCA [announced](#) that it would exercise its Temporary Transitional Power (TTP) to suspend the UK's Derivatives Trading Obligation (DTO). The FCA's decision was taken in the absence of mutual equivalence between the EU and the UK. Accordingly, branches of EU firms in London will not be subject to the UK DTO so as to avoid a conflict between EU and UK requirements that would cause significant market disruption. The FCA clarified that the relief does not apply to trades with non-EU clients, proprietary trading conducted, for example, to hedge a firm's own risk exposure, and trades between UK branches of EU firms.

CMCE action

CMCE, alongside other trade associations, undertook intensive engagement with the Commission, the DE Presidency, and Member States to express concern over the Parliament's approach to the AAE. This included circulating a letter to the attaches of Member States providing alternative drafting for the provisions on the AAE and a number of meetings with the Securities Markets Unit in DG FISMA to explain the concerns of commodity traders.

ESMA consultation on MiFIR transaction reporting:

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

On 22 December 2020, the European Commission adopted two Delegated Acts under EMIR concerning the application of the **clearing obligation to intragroup transactions**, and margin requirements and exchange of collateral (in the case of OTC

Next steps

1 September 2021 – Initial Margin requirements to apply to counterparties with an AANA of uncleared derivatives above EUR 50 billion.

derivative contracts not subject to central clearing) to minimise potential disruption arising due to the end of the Brexit transition period. The Delegated Acts also address the treatment of new contracts arising from novations from UK counterparties from a risk management perspective. The legal texts were transmitted to the Council and the European Parliament with a letter from Commissioner Mairead McGuinness requesting that they be subject to an early non-objection procedure so as to ensure swift application.

1. Exemption from the clearing obligation for intragroup transactions

- Under EMIR, the application of the clearing obligation to OTC derivative contracts concluded between counterparties belonging to the same group – where one counterparty is established in a third-country and the other counterparty is established in the EU – was deferred until 21 December 2020.
- The Delegated Acts extend the derogation from the clearing obligation for intragroup transactions involving non-EU entities until **30 June 2022** in the absence of an equivalence decision between the EU and the UK.

2. Treatment of contracts novated from a counterparty established in the UK

- Following the end of the transition period, UK counterparties will no longer be able to provide so-called ‘life-cycle events’ in the EU. The performance of such ‘life-cycle events’ on a cross-border basis will require authorisation by individual Member States in accordance with their specific national regimes.
- To avoid having to contend with 27 distinct regimes, effected counterparties may choose to novate their contracts to entities established and authorised in the EU. However, new contracts arising from these novations may be subject to **margin requirements** and the **clearing obligation** that did not apply when the original contracts were arranged.
- The Delegated Acts include amendments to EMIR requirements to remove this disincentive to transfer contracts to firms established in the EU by disapplying risk-management procedures that might otherwise apply to contracts that arise from novations to replace counterparties established in the UK for a fixed period of **12 months**.

3. Treatment of physically settled foreign exchange forward & swap contracts

- The Delegated Acts introduce a permanent exemption from posting and collecting of variation margin for physically settled foreign exchange forward contracts and physically settled foreign exchange swap contracts where one of the counterparties does not qualify as a credit institution as defined by Article 4(1)(3) of the Capital Requirements Regulation (Regulation (EU) No

1 September 2022 – Final implementation phase covering entities with an AANA of uncleared derivatives greater than EUR 8 billion.

[575/2013](#))

On 21 December 2020, ESMA published updated EMIR [Q&As](#) amending prior entries on OTC transactions and reporting to trade repositories to reflect the new post-Brexit reality.

OTC transactions

- ESMA clarifies that new derivatives contracts executed on UK markets will be considered as OTC derivative contracts under Article 2(7) of EMIR.
- However, outstanding derivative contracts executed on UK markets before they became third-country trading venues shall not be considered OTC derivatives under EMIR.

Reporting to trade repositories

- ESMA has made technical amendments to Q&As on reporting to trade repositories under different transactions scenarios so as to include the correct legislative references.

Notable omissions

- Despite the expectation that ESMA would clarify the scope of the intragroup transaction reporting exemption – there is no reference to intragroup reporting in the updated Q&As.
- CMCE is following-up with the European Commission in order to determine when the new interpretation of the intragroup transaction reporting exemption will be communicated publicly.

CMCE action

On 2 December, CMCE sent a letter to several European Commissioners and senior staff within the European Commission on the urgent need to adopt an equivalence decision with regard to UK trading venues pursuant to Article 2a of EMIR. The letter, which was prepared by both the EMIR & Brexit WGs, emphasized the adverse, real-economy impact that the absence of an equivalence decision would imply.

Benchmarks

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

Latest developments & CMCE action	Next steps
<p>On 30 November, following only one political trilogue, the European Parliament and the Council reached a preliminary political agreement on the BMR 'quick fix proposal. In order to reach a compromise, the European Parliament and the Council introduced a more complex process to extend the transitional period for the use of third-country benchmarks by supervised entities in the EU. According to the political agreement, the transitional period is extended until 31 December 2023. Thereafter, in order to further extend the transitional period, the Commission will be required to submit an assessment by 15 June 2023 demonstrating that a further extension is warranted. The transitional period cannot be extended beyond 31 December 2025.</p>	

II. WATCHING BRIEF

IFR	
<i>CMCE priorities: commodity dealer IF regime, scope of class I, changes to MiFID III/MiFIR third-country regime</i>	
Latest developments & CMCE action	Next steps
<p>On 2 December, a Corrigendum to the IFR/IFD extending the exemptions for commodity derivative investment firms in relation to own funds requirements and large exposures requirements until 26 June 2020 was published in the Official Journal of the EU with immediate effect. The Corrigendum ensures that commodity derivatives investment firms can continue to benefit from exemptions under CRR/CRD that were due to expire at the end of 2020, prior to the application of IRF/IRD requirements on 26 June 2020.</p> <p>On 3 December, the European Banking Authority published final draft technical standards on the treatment of non-trading book positions subject to foreign-exchange risk or commodity risk under the FRTB framework. The technical standards specify how credit institutions should calculate the own funds requirements for foreign-exchange and commodity risk stemming from banking book positions.</p> <p>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.</p> <p>On 28 September, ESMA submitted draft technical standards to the Commission elaborating additional information requirements for the registration and annual reporting of third-country</p>	<p>26 June 2021 – Application of IFR</p>

<p>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.</p> <p>CMCE action</p> <p>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.</p>	
MAR	
<i>CMCE priorities: Insider dealing, MM indicators</i>	
Latest developments & CMCE action	Next steps
<p>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.</p> <p>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.</p> <p>CMCE action</p> <p>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>	
SFTR	
<i>CMCE priorities: reporting obligations</i>	

Latest developments & CMCE action		Next steps
<p>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 collateralised 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.</p>		
<h3>European Green Deal</h3>		
<p><i>CMCE priorities: monitoring developments</i></p>		
Latest developments & CMCE action		Next steps
<p>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.</p> <p>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.</p> <p>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.</p>		<p>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.</p>
<h3>Other relevant developments</h3>		
<p>International role of the euro</p>	<p>There were no significant development in the past 2 weeks.</p>	

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