



Key highlights from the last two weeks:

Communication on European Economic & Financial System. On 19 January, the European Commission published a [Communication](#) emphasizing the need for the EU to enhance what the Commission refers to as ‘open strategic autonomy’. Effectively, this will entail increasing the role of the Euro globally – particularly in energy and commodity markets. As a result, the Commission will promote the use of the Euro and Euro-denominated investments through engagement and trade negotiations with international partners and foster the use of the Euro as a reserve currency and means of exchange. Perhaps more directly for financial markets – the Commission highlights that, in some instances, EU market participants are dependent on third-country market infrastructures. For example, a large volume of Euro-denominated contracts are cleared and settled by CCPs outside the EU. In response to this, the Commission would like to reduce the systemic significance of third-country market infrastructure and their fundamental role in the functioning of EU financial markets. Accordingly, the Commission intends to build the capacity of EU market infrastructure to allow a greater volume of euro-denominated financial contracts to be cleared by EU CCPs.

EMIR. On 28 January, ESMA published updated EMIR [Q&As](#) amending prior entries providing instructions to Trade Repositories (TRs) on appropriate data inputs for the reporting of derivatives in specific cases. The [Q&As](#) also includes detail on the procedure to be followed when terminating so-called ‘dead trades’ by TRs which arises when a counterparty to the trade ceases to exist.

On 27 January, the European Commission adopted an equivalence [decision](#) establishing the US Securities and Exchange Commission (SEC) regime for US central counterparties (CCPs) as compatible with EU rules under EMIR. Therefore, this decision will allow US CCPs registered with SEC to operate in the European Union, following their formal recognition by ESMA. The SEC regime for US CCPs has satisfied the three main conditions established in EMIR: i) compliance with binding requirements equivalent to EMIR; ii) effective supervision and iii) legal framework to allow recognition of foreign CCPs. The equivalence decision applies to so-called SEC-regulated ‘covered clearing agencies’. The equivalence decision is conditional on US CCPs adhering to certain risk management requirements.

On 20 January, the European Commission published 6 draft implementing acts deeming framework governing the prudential treatment of OTC derivatives in the [US](#), [Canada](#), [Australia](#), [Hong Kong](#), [Singapore](#) and [Brazil](#) as equivalent to that of the EU. The draft implementing acts are subject to a public feedback period until 17 February 2021.

SFTR. On 28 January, ESMA published updated [Q&As](#) in relation to SFTR data reporting to provide additional clarifications on; (i) the delayed reporting of events; (ii) updates to records of outstanding SFTs by the Trade Repositories based on reports made by the counterparties; and, (iii) guidance on operational considerations for financial counterparties when reporting on behalf of small non-financial counterparties.

BMR. On 19 January 2021, the Plenary of the European Parliament approved the legislation on Benchmarks Regulation, which will allow the extended use of third-country benchmarks by EU supervised entities until the end of 2023. In addition, the Commission will have the power to replace obsolete benchmarks in financial contracts ahead of the expiry of LIBOR.

ESMA. On 25 January, ESMA issued a [Call for Candidates](#) to join the renewed Consultative Working Group (CWG) to advise the ESMA Commodity Derivatives Task Force (CDTF). The deadline for candidate applications is 7 March 2021. The CWG of the CDTF – defunct since 2018 – is being renewed to advise ESMA and the European Commission on legislative and regulatory issues concerning commodity derivative markets – encompassing energy, agricultural and soft commodities. CMCE strongly encourages member firms to apply to join the CWG-CDTF.

UK-Switzerland Negotiations. On 27 January, HMT [announced](#) that the UK and Switzerland proceeded to formalize negotiations on a comprehensive mutual recognition agreement in the area of financial services – following successful exploratory talks. The aim of the agreement is to reduce barriers between the two markets in a wide range of sectors including insurance, banking, asset management, trading and market infrastructure. The progress in bilateral negotiations follows Swiss trading venues being granted equivalence for the purposes of share trading by the FCA which will enter into force on 3 February 2021. The Swiss are expected to reciprocate thereafter.

I. ACTIVE PRIORITIES

MiFID II	
<i>CMCE priorities: AA exemption, position limits, reporting, physical forwards</i>	
Latest developments & CMCE action	Next steps
<p>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.</p> <p>On 16 December, following the provisional political agreement reached with the European Parliament during the second trilogue on 9 December, COREPER adopted the final text of the MiFID II 'quick fix' following a 24-hour non-objection procedure. The European Parliament is expected to adopt the final text in Q1 2021. The final text reflects the compromises struck on the commodity markets piece – with ESMA and the Commission having committed to develop draft regulatory technical standards on the reformed ancillary activity test by 31 July 2021.</p> <p>On 25 November, ESMA issued a public statement on the application of the EU Derivatives Trading Obligation (DTO) post-Brexit. In the absence of an equivalence decision for UK trading venues, ESMA has decided against adapting the EU DTO despite the risk of substantial market dislocations. ESMA notes that the majority of UK trading venues have established new trading venues in the EU – which ESMA believes will enable trading volume to migrate at the end of the transition period.</p> <p>CMCE action</p> <p>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.</p>	<p><i>MiFID II quick-fix:</i></p> <p>Q1 2021 – European Parliament vote on final text of MiFID II 'quick fix'</p> <p><i>ESMA consultation on MiFIR transaction reporting:</i></p> <p>Q1 2021 – Estimated submission of ESMA final report to EC</p>

EMIR

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

Latest developments & CMCE action

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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.

I. 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

Next steps

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

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

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 [575/2013](#))

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.

<i>CMCE priorities: commodity benchmarks, critical benchmarks, third-country equivalence</i>	
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 II/MiFIR third-country regime</i>	
Latest developments & CMCE action	Next steps
<p>On 21 January, the EBA published final Regulatory Technical Standards (RTS) establishing the criteria to identify all categories of staff whose professional activities have a material impact on the investment firm's risk profile and to specify the instruments that can be used for the purposes of variable remuneration</p> <p>On 2 December 2020, 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 IFR/IRD requirements on 26 June 2020.</p> <p>CMCE action</p> <p>On 25 September, CMCE submitted a response to the FCA Discussion Paper on prudential</p>	<p>26 June 2021 – Application of IFR</p>

<p>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>	
<p>MAR</p>	
<p><i>CMCE priorities: Insider dealing, MM indicators</i></p>	
<p>Latest developments & CMCE action</p>	<p>Next steps</p>
<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>	
<p>SFTR</p>	
<p><i>CMCE priorities: reporting obligations</i></p>	
<p>Latest developments & CMCE action</p>	<p>Next steps</p>
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<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>	
<p>Other relevant developments</p>	
<p>International role of the euro</p>	<p>On 19 January, the European Commission published a Communication emphasizing the need for the EU to enhance what the Commission refers to as ‘open strategic autonomy’.</p> <p>Effectively, this will entail increasing the role of the Euro globally – particularly in energy and commodity markets. As a result, the Commission will promote the use of the Euro and Euro-denominated investments through engagement and trade negotiations with international partners and foster the use of the Euro as a reserve currency and means of exchange.</p> <p>Perhaps more directly for financial markets – the Commission highlights that, in some instances, EU market participants are dependent on third-country market infrastructures. For example, a large volume of Euro-denominated contracts are cleared and settled by CCPs outside the EU.</p> <p>In response to this, the Commission would like to reduce the systemic significance of third-country market infrastructure and their fundamental role in the functioning of EU financial markets. Accordingly, the Commission intends to build the capacity of EU market infrastructure to allow a greater volume of euro-denominated financial contracts to be cleared by EU CCPs.</p>
<p>REMIT</p>	<p>There were no significant development in the past 2 weeks.</p>