CMCE Bi-weekly Update (26 February 2021)

Key highlights from the last two weeks:

BMR. On 25 February, ESMA opened a consultation on draft guidelines on alternative methodologies for benchmarks that can be used under exceptional circumstances and amending guidelines in relation to non-significant benchmarks. The consultation will remain open until **30 April 2021**. ESMA has recognised the need to issue clarifications on the use of alternative benchmark methodologies in view of the divergent approaches taken by benchmark administrators in response to the market volatility precipitated by COVID-19. While certain benchmark administrators continued to apply their standard methodology others decided to fully suspend or adjust the rebalancing of their benchmarks or apply a partial suspension for some benchmarks with various implications for benchmark users. Accordingly, the draft guidelines propose to enhance transparency of alternative methodologies and the material impact of the changes envisaged to the benchmark according to the alternative methodology, and to create greater clarity as to the occasions on which such alternative methodologies would be applied.

***EU Climate Adaptation Strategy* .** On 24 February, the European Commission published a Communication on the new EU Strategy on Adaptation to Climate Change. The purpose of the strategy is to further elaborate upon how the Commission intends to contribute to climate adaptation by 2050 through a more systematic, efficient, responsive and international approach. The strategy encompasses 3 main areas for action; (i) to improve knowledge on adaptation by promoting the use of data and developing a better understanding of the interplay between environmental and socioeconomic considerations; (ii) to support policy development at regional, national and local level as well as cross-border cooperation by enhancing national adaptation strategies, and; (iii) to implement pending EU legislation to facilitate climate adaptation such as the EU Taxonomy.

EMIR. On 24 February, ESMA published guidelines to assist competent authorities in conducting the review & evaluation of CCPs by establishing common procedures for the review of the arrangements, mechanisms and strategies implemented by CCPs and to evaluate the risks to which CCPs could be exposed. According to the guidelines, competent authorities should conduct a review & evaluation of CCPs on an annual basis with the 'depth' of the process dependent on the nature, scope and complexity of an individual CCP's activities.

MiFID II. On 24 February, ESMA published its second annual report on the use of waivers and post-trade deferrals for non-equity instruments under MiFIR. According to the report, 80% of waiver requests relate to illiquid instruments with the LIS, OMF and SSTI waivers making up the remainder. The majority of deferrals related to LIS transactions. Interestingly, the largest number of wavier requests related to trades occurring on trading venues established in the Netherlands. According to ESMA's assessment this reflects the fact that a number of UK trading venues operate subsidiaries in the Netherlands post-Brexit.

I. ACTIVE PRIORITIES

General Developments

CMCE priorities: Ancillary activity test, access to UK and EU trading venues, CCPs and TRs

Latest developments & CMCE action	Next steps
On 24 February, the European Commission published a Communication on the new EU Strategy on Adaptation to Climate Change. The purpose of the strategy is to further elaborate upon how the Commission intends to contribute to climate adaptation by 2050 through a more systematic, efficient, responsive and international approach. The strategy encompasses 3 main areas for action; (i) to improve knowledge on adaptation by promoting the use of data and developing a better understanding of the interplay between environmental and socioeconomic considerations; (ii) to support policy development at regional, national and local level as well as cross-border cooperation by enhancing national adaptation strategies, and; (iii) to implement pending EU legislation to facilitate climate adaptation such as the EU Taxonomy.	**8 March 2021 –** Deadline for applications to the CWG-PTSC **7 March 2021 –** Deadline for applications to the CWG-CDTF

MiFID II

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

Latest developments & CMCE action	Next steps
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does not directly contribute to the post-pandemic economic recovery. The ECOFIN Council – composed of EU Finance Ministers – still need to approve the MiFID II 'quick fix' before it can be published in the Official Journal. This is largely a formality. The ECOFIN Council is due to meet on 16 February 2021 to discuss pending financial services legislation and other recovery related issues. While the MiFID II 'quick fix' is not featured on the agenda – it is likely to be approved by finance ministers over the course of their deliberations.	

EMIR

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

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Benchmarks

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

Latest developments & CMCE action	**Next steps**
On 25 February, ESMA opened a consultation on draft guidelines on alternative methodologies for benchmarks that can be used under exceptional circumstances and amending guidelines in relation to non-significant benchmarks. The consultation will remain open until 30 April 2021. ESMA has recognised the need to issue clarifications on the use of alternative benchmark methodologies in view of the divergent approaches taken by benchmark administrators in response to the market volatility precipitated by COVID-19. While certain benchmark administrators continued to apply their standard methodology others decided to fully suspend or adjust the rebalancing of their benchmarks or apply a partial suspension for some benchmarks with various implications for benchmark users. Accordingly, the draft guidelines propose to enhance transparency	**30 April 2021** – Deadline to submit response to ESMA consultation on guidelines for alternative benchmark methodologies

of alternative methodologies and the material impact of the changes envisaged to the benchmark according to the alternative methodology, and to create greater clarity as to the occasions on which such alternative methodologies would be applied.	

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 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 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 IRF/IRD requirements on 26 June 2020. **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 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. 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.	

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.

Other relevant developments

International role of the euro	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.	
REMIT	There were no significant development in the past 2 weeks.	