CMC EUROPE

CMCE Bi-weekly Update (12 March 2021)

Key highlights from the last two weeks:

EU-UK MoU. According to restricted drafts of the Memorandum of Understanding (MoU) for regulatory cooperation in financial services prepared by the European Commission, the MoU envisages a general framework for cooperation in the form of an EU-UK Financial Regulatory Forum. The purpose of the Forum would be to facilitate dialogue on financial regulation, monitor the implementation of international standards and enable regulatory collaboration. However, the MoU prominently highlights the fundamental importance of 'regulatory autonomy' for both parties. The draft text also establishes how the Forum should function; stressing that cooperation should improve transparency, address cross-border implementation issues, concerns over regulatory arbitrage and allow for informal consultations on proposed or planned regulatory initiatives.

EMIR. On 10 March the European Commission published a draft Delegated Act (DA) specifying the conditions under which the commercial terms for clearing services for OTC derivatives are to be considered to be fair, reasonable, non-discriminatory and transparent (FRANDT). The draft DA is subject to a public feedback period until 7 April 2021. The annex to the draft DA outlines the obligations of entities providing clearing services with regard to the transparency of the commercial terms that they offer, the on-boarding process for new clearing clients, fees & costs, risk assessments, contractual terms and the structure of their contracts, notice periods and IT requirements. The obligation to provide clearing services on a FRANDT basis will apply as of 18 June 2021.

BMR. On 5 March, the FCA announced the dates on which panel bank submissions for all LIBOR settings will cease, and thus, after which representative LIBOR rates will no longer be available. The FCA has confirmed that LIBOR settings will effectively cease immediately after 31 December 2021 in the case of all sterling, euro, Swiss franc and Japanese yen settings, and the 1-week and 2-month US dollar settings. All remaining US dollar settings will cease immediately after 30 June 2023. The FCA does not anticipate LIBOR settings to become unrepresentative before the dates set out above due to commitments made by panel banks.

UK ETS. On 8 March, the FCA published a consultation paper (CP21/6) proposing how the UK intends to regulate the bidding for emission allowances under the UK Emission Trading Scheme. The consultation paper provides draft UK rules for the authorization and supervision of firms that bid for emission allowances on UK auction platforms. The regulatory framework governing the UK ETS is designed to provide continuity for bidding firms, their clients and auction platform providers despite the UK's departure from the EU. The consultation will remain open until 6 April 2021.

ESMA. On 2 March, ESMA published a call for candidates to join the newly established Consultative Working Group (CWG) for ESMA's CCP Policy Committee. Candidates are invited to submit their applications by 9 April 2021. The CWG will advise the CCP Policy Committee in preparing ESMA technical advice, technical standards and other guidance under EMIR and the CCP Recovery and Resolution regulation.

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
According to restricted drafts of the Memorandum of Understanding (MoU) for regulatory cooperation in financial services prepared by the European Commission, the MoU envisages a general framework for cooperation in the form of an EU-UK Financial Regulatory Forum. The purpose of the Forum would be to facilitate dialogue on financial regulation, monitor the implementation of international standards and enable regulatory collaboration. However, the MoU prominently highlights the fundamental importance of 'regulatory autonomy' for both parties. The draft text also establishes how the Forum should function; stressing that cooperation should improve transparency, address cross-border implementation issues, concerns over regulatory arbitrage and allow for informal consultations on proposed or planned regulatory initiatives. On 2 March, ESMA published a call for candidates to join the newly established Consultative Working Group (CWG) for ESMA's CCP Policy Committee. Candidates are invited to submit their applications by 9 April 2021. The CWG will advise the CCP Policy Committee in preparing ESMA technical advice, technical standards and other guidance under EMIR and the CCP Recovery and Resolution regulation.	**9 April 2021 –** Deadline for applications to the CWG-CCP PC

MiFID II

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

Latest developments & CMCE action	Next steps
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.	*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	Next steps
On 10 March the European Commission published a draft Delegated Act (DA) specifying the conditions under which the commercial terms for clearing services for OTC derivatives are to be considered to be fair, reasonable, non-discriminatory and transparent (FRANDT). The draft DA is subject to a public feedback period until 7 April 2021. The annex to the draft DA outlines the obligations of entities providing clearing services with regard to the transparency of the commercial terms that they offer, the on-boarding process for new clearing clients, fees & costs, risk assessments, contractual terms and the structure of their contracts, notice periods and IT requirements. The obligation to provide clearing services on a FRANDT basis will apply as of 18 June 2021.	**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.

Benchmarks

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

Latest developments & CMCE action	Next steps
On 5 March, the FCA announced the dates on which panel bank submissions for all LIBOR settings will cease, and thus, after which representative LIBOR rates will no longer be available. The FCA has confirmed that LIBOR settings will effectively cease immediately after 31 December 2021 in the case of all sterling, euro, Swiss franc and Japanese yen settings, and the 1-week and 2-month US dollar settings. All remaining US dollar settings will cease immediately after 30 June 2023. The FCA does not anticipate LIBOR settings to become unrepresentative before the dates set out above due to commitments made by panel banks.	**30 April 2021** – Deadline to submit response to ESMA consultation on guidelines for alternative benchmark methodologies

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 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.	

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.	