



Key highlights from the last two weeks:

EMIR. On 8 April, ESMA published [Regulatory Technical Standards](#) (RTS) elaborating cases in which additional additional services or activities undertaken by a CCP are not covered by the CCP's initial authorization. The RTS also specify when changes to the CCP's model and/or parameters qualify as significant.

On 31 March, ESMA published updated [Q&As](#) on EMIR. The Q&As clarify the treatment of transactions that are no longer eligible for the reporting exemption for intragroup transactions. ESMA specifies that in cases where conditions have changed and an outstanding transaction no longer qualifies for the intragroup reporting exemption the counterparties concerned should report the outstanding derivatives and provide all relevant details of those derivatives as they stand on the date when the exemption ceases to be valid. They should then subsequently report all lifecycle events. Unusually, the European Commission also provided clarifications in the ESMA Q&As in relation to the proper application of Article 9(1) of EMIR. **The Commission states explicitly that the intragroup reporting exemption does not apply to intragroup transactions where the parent undertaking is established in a third-country even if the transaction occurs between two counterparties which are both established in the EU.**

SFTR. On 6 April, ESMA published updated [Q&As](#) on SFTR reporting. ESMA clarifies that where reporting of SFTs involves an external portfolio manager that entity should be included in the relevant field. Furthermore, ESMA reiterates that it is the responsibility of the counterparty to the SFT to provide all the relevant details pertaining to the SFT in cases where reporting has been delegated. Accordingly, the counterparty to the SFT should also perform the relevant calculations itself or it should provide the proper SFT details to the entity to which it delegated the calculations.

MiFID II/MiFIR. On 8 April, ESMA published a [review report](#) providing recommendations on possible reforms to simplify the requirements governing Organised Trading Facilities (OTFs). The report suggests that the trading venue perimeter be more clearly defined. ESMA also recommends that the Commission introduce a specific definition of bulletin boards in MiFID II in the interest of enhancing the prohibition on Matched Principal Trading (MPT) between trading venues.

NFRD. According to a leaked draft proposal revising the NFRD the Commission intends to dramatically extend the scope and the granularity of sustainability reporting requirements. In terms of scope, the draft proposal applies sustainability reporting requirements to all undertakings with shares listed on an EU regulated market. This will result in many non-EU firms having to adhere to EU sustainability reporting standards. Moreover, if non-public EU-based companies meet two out of three criteria set out in the draft proposal – namely; the company or corporate group to which it belongs has 250 or more employees, the company's turnover exceeds EUR 40 million, and/or the company has more than EUR 20 million on its balance sheet – the NFRD will apply. In terms of the disclosures mandated by the NFRD, the draft proposal envisages far more granular reporting on a range of ESG performance metrics. It will also require undertakings in scope to disclose the extent of their activities' alignment with the EU Taxonomy.

I. ACTIVE PRIORITIES

General Developments	
<i>CMCE priorities: Ancillary activity test, access to UK and EU trading venues, CCPs and TRs</i>	
Latest developments & CMCE action	Next steps
<p>According to a leaked draft proposal revising the Non-Financial Reporting Directive (NFRD) the Commission intends to dramatically extend the scope and granularity of sustainability reporting requirements.</p> <p>In terms of scope, the draft proposal applies sustainability reporting requirements to all undertakings with shares listed on an EU regulated market. This will result in many non-EU firms having to adhere to EU sustainability reporting standards. Moreover, if non-public EU-based companies meet two out of three criteria set out in the draft proposal – namely; the company, or corporate group to which it belongs, has 250 or more employees, the company’s turnover exceeds EUR 40 million, and/or the company has more than EUR 20 million on its balance sheet – the NFRD will apply.</p> <p>In terms of the disclosures mandated by the NFRD, the draft proposal envisages far more granular reporting on a range of ESG performance metrics. It will also require undertakings in scope to disclose the extent of their activities and operations’ alignment with the EU Taxonomy.</p> <p>The Commission justifies the revisions to the NFRD by citing the significant gap that has emerged between the sustainability information reported by undertakings and the needs of the users of that information (primarily investors & NGOs). Closing this gap requires sustainability reporting to which undertakings are subject to be enhanced significantly.</p> <p>According to the impact assessment in the preamble of the draft proposal, the revisions to the NFRD suggested by the Commission would significantly increase the number of companies subject to sustainability reporting requirements.</p> <p>At present, 11,600 undertakings are within scope of the NFRD – accounting for 47% of turnover of all limited liability undertakings. The revision to the scope envisaged by the Commission would result in approximately 49,000 undertakings being subject to sustainability reporting requirements under the revised NFRD. Collectively, these undertakings would account for 75% of turnover of all limited liability undertakings.</p>	

MiFID II

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

Latest developments & CMCE action

On 8 April, ESMA published a [review report](#) providing recommendations on possible reforms to simplify the requirements governing Organised Trading Facilities (OTFs). The report suggests that the trading venue perimeter be more clearly defined. ESMA also recommends that the Commission introduce a specific definition of bulletin boards in MiFID II in the interest of enhancing the prohibition on Matched Principal Trading (MPT) between trading venues.

On 24 March, the FCA [updated](#) its statement on the application of the UK DTO. The FCA does not observe any market or regulatory developments that would warrant a change in their approach to applying the UK DTO according to the Temporary Transitional Power (TTP). As a reminder, on 31 December 2021, the FCA issued a statement clarifying the post-Brexit application of the UK DTO – whereby, firms subject to the UK DTO would be able to continue transacting on EU venues with or on behalf of EU clients provided; (i) the firm took reasonable steps to be satisfied the client does not have arrangements in place to execute the trade on a trading venue to which both the UK and EU have granted equivalence; and, the EU venue has the necessary regulatory status to do business in the UK.

On 19 March, ESMA issued a [public statement](#) on the supervisory approach to position limits in view of the recent legislative revisions introduced during the MiFID II ‘quick fix’. While the changes to the position limits regime only apply as of early 2022, in the interim ESMA has instructed NCAs **not to prioritise supervisory action** towards entities holding positions in commodity derivatives with a net open interest below 300,000 lots – except in the case of agricultural commodity derivatives. Similarly, ESMA expects NCAs not to prioritise supervisory actions towards positions that arise in the context of liquidity provision.

Next steps

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 31 March, ESMA published updated [Q&As](#) on EMIR. The Q&As clarify the treatment of transactions that are no longer eligible for the reporting exemption for intragroup transactions. ESMA specifies that in cases where conditions have changed and an outstanding transaction no longer qualifies for the intragroup reporting exemption the counterparties concerned should report the outstanding derivatives and provide all relevant details of those derivatives as they stand on the date when the exemption ceases to be valid. They should then subsequently report all lifecycle events.

Unusually, the European Commission also provided clarifications in the ESMA Q&As in relation to the proper application of Article 9(1) of EMIR. The Commission states explicitly that the intragroup reporting exemption does not apply to intragroup transactions where the parent undertaking is established in a third-country even if the transaction occurs between two counterparties which are both established in the EU.

The Commission provides the basis for this interpretation of EMIR provisions. According to the Commission;

1. The definition of parent undertaking refers to an undertaking governed by the law of a Member State and nothing in EMIR indicates a will to modify that reference.
2. This interpretation fits the actual purpose of Article 13 of EMIR: deference is granted where there is equivalence with the jurisdiction hosting the parent undertaking.
3. This interpretation ensures a meaningful use and purpose of the transparency objective of Article 9 while limiting the exemption in Article 9(1) to the minimum necessary.

On 19 March, the Joint ESAs published [Q&As](#) on bilateral margining requirements under EMIR. The Q&As address questions related to the partial intragroup exemption from bilateral margin requirements; the procedure to grant intragroup exemptions from bilateral margin requirements between a financial counterparty and a non-financial counterparty based in a different EU Member State, and the exemption from the regime from bilateral margin requirements for derivatives entered into in relation to covered bonds.

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 onboarding process for new clearing clients, fees & costs, risk assessments, contractual terms and the structure of their contracts, notice periods and IT requirements. The

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.

obligation to provide clearing services on a FRANDT basis will apply as of 18 June 2021.	
Benchmarks	
<i>CMCE priorities: commodity benchmarks, critical benchmarks, third-country equivalence</i>	
Latest developments & CMCE action	Next steps
<p>On 24 March, ESMA published an updated public statement on the post-Brexit application of the BMR. ESMA has updated the public statement to reflect the recent extension of the transitional period for the use of third-country benchmarks introduced during the BMR 'quick fix'. ESMA reiterates that despite UK benchmark administrators now qualifying as third-country administrators, the change in their status on the ESMA register will not effect the ability of EU27 supervised entities to use the benchmarks provided by UK benchmark administrators due to the BMR 'quick fix' reform. ESMA adds that UK recognized and endorsed third-country benchmarks – which refers to non-UK and non-EU benchmarks recognized or endorsed in the UK - can still be used by EU27 third-country entities during the BMR transitional period (which runs until 31 December 2023).</p>	<p>30 April 2021 – Deadline to submit response to ESMA consultation on guidelines for alternative benchmark methodologies</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>26 June 2021 – Application of IFR</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 IRF/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 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 24 March, ESMA opened a consultation in relation to draft technical advice to the European Commission on the simplification and harmonization of fees for trade repositories (TRs) under EMIR and SFTR. The consultation will remain open until 24 April 2021. In the consultation, ESMA makes proposals in relation to the general approach to fees determination; the calculation of turnover and of annual supervisory fees; the calculation of fees for registration, for the extension of registration and in the case of concurrent applications; the calculation of fees for recognition and on-going supervision of third-country TRs; and the payment and reimbursement modalities. ESMA, the Internal Audit Service (IAS) of the European Commission and the European Court of Auditors have identified several areas where the regulatory framework governing the collection of fees could be simplified so as allow for more efficient use of ESMA's resources.</p>	<p>24 April 2021 – Deadline to submit response on ESMA consultation on simplification and harmonisation of fees for TRs.</p>	
Other relevant developments		
International role of the euro	<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</p>	

	<p>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>	
REMIT	There were no significant development in the past 2 weeks.	