CMC EUROPE

Key highlights from the last two weeks:

MIFID II/MIFIR. On 12 May, ESMA launched a consultation on the MiFID II/MiFIR Annual Review Report under RTS 2. The consultation provides for the assessment of the operation of the thresholds for the liquidity determination of bonds and the trade percentiles determining the pre-trade SSTI-threshold. ESMA stresses its interest in receiving feedback on the transparency regime for non-equity instruments and the trading obligations for derivatives in particular. The consultation closes on 11 June.

Benchmarks Regulation. On 20 May, the FCA released a public consultation on the Benchmarks Regulation (BMR). The FCA is seeking views on the possible use it can give to the new two FCA powers that were introduced in the Financial Services Act 2021 in the form of amendments to the Benchmarks Regulation. These powers are the "legacy use" power (it would allow FCA to permit the use of a benchmark that have become permanently unrepresentative) and the "new use restriction" power (through which FCA would be allowed to prohibit some or all new use of a critical benchmark when it has been notified that its administrator intends to stop providing it at a future date). This consultation will remain open until 17 June. Following this consultation, FCA will publish (Q3) a Statement of Policy and feedback statement.

Supervisory data strategy. On 18 May, the European Commission published a roadmap for its supervisory data strategy. Based on the information collected in its fitness check of supervisory reporting requirements carried out in 2019, the Commission wants to put forward a strategy to set out a framework with the overall objective of improving supervisory data collection. The Commission aims to overcome the inconsistencies in the requirements within the current supervisory reporting scheme in EU financial services. In short, the Commission identifies 5 areas of further improvement with this strategy: the legislative process and instruments, governance, data needs and uses, data consistency and harmonization, and technology. The Commission plans to publish the strategy in Q4 2021.

Taxonomy Delegated Act. On 17 May, ECON and ENVI Committees hosted Commissioner for Financial Services, Mairead McGuinness to discuss the draft EU Taxonomy Climate Delegated Act. During the exchange of views, Commissioner McGuinness reiterated the importance of the role of the Parliament in the legislative process of the Delegated Act, asking for its support given the short amount of time remaining for implementation of the EU Taxonomy. For those MEPs that have serious concerns, she said that they should try to look at the Taxonomy in a wider perspective, appreciating how solid it is already. She stressed that the Taxonomy is a living document which will evolve over time. Regarding the Platform of Sustainable Finance, she praised its work, especially on how to finance transition. Finally, regarding gas and nuclear, she said it was more convenient to review them separately, as the Commission is expecting expert reports by this summer. Parliamentarians expressed their concerns over the DA process, timeline and content. At this point it was evident that even within the political groups there are divergences in identifying the crucial issues to tackle, and the level of criticism the Commission should face in this regard.

1. ACTIVE PRIORITIES

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<tr><td>On 7 May, the European Commission published a draft Delegated Act specifying disclosure requirements for non-financial and financial undertakings in accordance with Article 8 of the Taxonomy. The draft Delegated Act is open for public feedback until 8 September 2021. By way of background, Article 8 of the Taxonomy introduces additional disclosure requirements in the Non-Financial Reporting Directive (NFRD). According to these Taxonomy-related disclosures, non-financial and financial undertakings must provide information on the extent to which their commercial activities and/or operations are Taxonomy-aligned. In other words, they must indicate the degree to which their activities and operations qualify as environmentally sustainable as defined by the Taxonomy. Three key performance indicators (KPIs) must be used to illustrate the extent of Taxonomy-alignment; turnover derived from taxonomy-aligned activities, capital expenditure related to such activities, and operational expenditure associated with such activities. Please be advised that a proposal to revise the NFRD – to be renamed as the Corporate Sustainability Reporting Directive (CSRD) - was published on 21 April. The CSRD proposal, if adopted, will dramatically increase the scope of sustainability disclosure requirements by capturing a much broader range of companies. By extension, the Taxonomy-related disclosures described above would apply.

On 5 May, The BCBS, CPMI & IOSCO have launched a review of margining practices in cleared and uncleared derivatives and securities markets which will encompass an assessment of the use of margin calls during the period of market volatility in March 2020. There is a possibility that IOSCO may propose a requirement for margin to be set at the highest/stress period scenario levels at all times. This would clearly imply higher margin and hedging costs for market participants. As part of its review, IOSCO is conducting two surveys; one addressed to non-bank intermediaries and the other to clients and end-users. The deadline for responses to the survey is 17 May 2021. We would strongly advise CMCE members to respond.</td><td>8 September 2021 – Public feedback period on draft Delegated Act specifying Taxonomy-related disclosures to close.</td></tr>
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MiFID II

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

Latest developments & CMCE action	Next steps
On 12 May, ESMA launched a consultation on the MiFID II/MiFIR Annual Review Report under RTS 2. The consultation provides for the assessment of the operation of the thresholds for the liquidity determination of bonds and the trade percentiles determining the pre-trade SSTI-threshold. ESMA stresses its interest in receiving feedback on the transparency regime for non-equity instruments and the trading obligations for derivatives in particular. The consultation closes on 11 June. On 6 May, ESMA updated its Opinion on ancillary activity calculations. The opinion provides the estimation of the market size of commodity derivatives and emission allowances for 2020 thereby facilitating the determination of ancillary activity relative to overall market trading activity. ESMA had calculated the extent of trading activity or market size on the basis of trading venues' submissions to the ESMA FITRS system for the years 2020 and 2019, as well as trading figures from trading venues located in the EEA for the year 2018. Data on OTC trading activity has been sourced from reports submitted to Trade Repositories (TRs). The total market size for both on-venue and OTC markets – gross notional value traded in EUR – was calculated on a dual-sided basis whereby both buyers' and sellers' notional values of each transaction were added to together to reach a gross notional figure. Based on this methodology, ESMA has provided calculations of market size for various contract types and asset classes. **CMCE action** On 28 April 2021, the CMCE Brexit & MiFID WGs held a call with Paul Willis, technical specialist commodities at the FCA, to discuss potential reform to the UK's regulatory framework for commodity derivatives markets.	**11 June 2021** – ESMA consultation on MiFID II/MiFIR Annual Review Report *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 28 April, the European Commission published a draft [Implementing Regulation](#) extending the transitional provisions concerning own funds requirements for exposures to third-country CCPs. The draft act is open for public feedback until 26 May 2021. The measure seeks to extend by 12 months - until 28 June 2022 - the transitional period during which EU-based financial institutions with exposures to third-country CCPs that are not recognized in accordance with EMIR may treat those exposures as if they were exposures to a recognized CCP. This would ensure that EU-based financial institutions with such exposures would not be subject to higher own funds requirements during the recognition process for certain third-country CCPs.	**26 May 2021** – Public feedback period on draft Implementing Regulation extending transitional relief from own funds requirements related to CCP exposures to close. **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 20 May, the FCA released a public consultation on the Benchmarks Regulation (BMR). The FCA is seeking views on the possible use it can give to the new two FCA powers that were introduced in the Financial Services Act 2021 in the form of amendments to the Benchmarks Regulation. These powers are the "legacy use" power (it would allow FCA to permit the use of a benchmark that have become permanently unrepresentative) and the "new use restriction" power (through which FCA would be allowed to prohibit some or all new use of a critical benchmark when it has been notified that its administrator intends to stop providing it at a future date). This consultation will remain open until 17 June. Following this consultation, FCA will publish (Q3) a Statement of Policy and feedback statement. 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	**17 June 2021** – FCA consultation on the UK BMR

2023).	

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 19 April, the FCA opened a public consultation (CP21/7) on the UK Investment Firm Prudential Regime (IFPR). The consultation will remain open until 28 May 2021. It is the second consultation that the FCA is conducting on proposed prudential standards for UK investment firms. The FCA's overarching aim is to streamline and simplify the prudential requirements applicable to MiFID investment firms. However, the IFPR will also take greater account of the risks of potential harm that investment firms can pose to consumers and markets. The FCA clarifies that this simplified IFPR will apply to specialist commodity derivatives investment firms that benefit from the current exemption on capital requirements and large exposures, including; (i) oil market participants (OMPS), and (ii) energy market participants (EMPS). 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	**28 May 2021 –** Closing date for FCA CP on IFPR **26 June 2021** – Application of IFR

framework for the UK market following Brexit.	
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 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.		
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.	