

December 2016

INVEST

InVest – December 2016

This month's roundup of developments affecting banks, wealth managers, brokers and funds sees: delay in announcement of PRIIPs Regulation disclosure rules; European Commission adopts CSDR level 2 legislative acts; ESMA has published its final report on delaying EMIR; and three Delegated Regulations published in the Official Journal of the EU.

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- ▶ EBA discussion paper on designing a new prudential regime for investment firms
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- ▶ Sales in September driven by mixed asset and global equity funds

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- ▶ Supervisory approach for CCPs' product and service extensions and changes to risk models under EMIR
- ▶ ESMA has published its final report on delaying EMIR clearing obligation for financial counterparties with a limited activity volume
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- ▶ ESMA updates Q&A on application of UCITS Directive
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Market Conduct

- ▶ ESMA Risk Dashboard
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- ▶ FCA consultation on amendments to DTR 2.5 under MAR
- ▶ Financial Services and Markets Regulations 2016 announced
- ▶ ESMA Chair says safeguarding investors is key to Capital Markets Union's success
- ▶ ESMA MAR guidelines on persons receiving market soundings
- ▶ EBA responds to Commission call for advice report on standardised approach for counterparty credit risk and own funds requirements for market risk

General Developments

FMLC response to ESMA consultation on technical standards under Benchmark Regulation

The Financial Markets Law Committee (FMLC) has published its [response](#) (dated 1 December 2016) to The European Securities and Markets Authority (ESMA) consultation on draft regulatory technical standards (RTS) and implementing technical standards (ITS) required under the Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds.

FMLC, 5 December 2016

Leading investment and pension bodies publish consultation to improve pension and investment transfers and re-registrations

The Association of British Insurers (ABI) and seven other trade bodies have published a joint [consultation paper](#) on improving pension and investment transfers and re-registrations.

ABI & Others, 5 December 2016

Speech by ESMA Executive Director at the 2016 Global Capital Markets Conference

ESMA's Executive Director, Verena Ross, [spoke](#) at the ICI Global's 2016 Global Capital Markets Conference giving a broad ranging view of how ESMA's work contributes to strengthening Europe's capital markets.

ESMA, 2 December 2016

Council of EU announces final compromise text of MMR Regulation

The Council of the EU has published a [note](#) (dated 30 November 2016) setting out the final compromise text of the proposed Regulation on Money Market Funds (MMF Regulation).

Council of the EU, 2 December 2016

Implementing Regulation on ITS for reporting results of internal approach calculations under CRD IV published in OJ

[The Commission Implementing Regulation \(EU\)](#) laying down implementing technical standards (ITSs) for templates, definitions and IT-solutions to be used by institutions when reporting to the European Banking Authority (EBA) and to competent authorities has been published in the Official Journal. The Implementing Regulation will enter into force on the 22 December 2016.

Official Journal of the EU, 2 December 2016

ECON report on proposed Regulation amending date of application of PRIIPs Regulation

European Parliament's Committee on Economic and Monetary Affairs (ECON) has published its [report](#) on the proposal for a regulation of the Parliament and the Council of the EU amending the date of application of the Regulation on key information documents (KIDs) for packaged retail and insurance-based investment products (PRIIPs)

ECON, 29 November 2016

Compromise proposal on Regulation amending EuVECA Regulation and EuSEF Regulation

The Presidency of the Council of the EU has published a [compromise proposal](#) relating to the proposed Regulation amending the Regulation on European Venture Capital Funds (EuVECA) and the Regulation on European Social Entrepreneurship Funds (EuSEF).

Council of the EU, 29 November 2016

FSB discussion note on essential aspects of CCP resolution planning: responses

The Financial Stability Board (FSB) has published [responses](#) received to its August 2016 discussion note on central counterparty (CCP) resolution planning. A consultation on proposals for guidance on CCP resolution planning will take place by early 2017.

FSB, 29 November 2016

EC report on round 15 of TTIP negotiations

The European Commission has published an [updated list](#) of documents relating to the Transatlantic Trade and Investment Partnership (TTIP). The report includes a section on trade in services, referring to financial services under TTIP.

European Commission, 28 November 2016

Legislative proposal for Regulation on CCP resolution and recovery from EC

The European Commission has published a [legislative proposal](#) for a Regulation adopted on the resolution and recovery of central counterparties. This will apply to all central counterparties (CCPs) in the EU and aims to prevent taxpayers bearing the costs of restructuring and resolution of failing CCPs, setting out the following requirements:

- CCPs recovery and resolution plans
- Early intervention powers for resolution authorities
- Resolution powers and tools available to resolution authorities
- Relationships with third countries concerning the resolution of CCPs

European Commission, 28 November 2016

IA outsourcing working group updates guidance

The Investment Association has published an updated [version](#) of its outsourcing working group report. This is intended to be read in conjunction with the original report and asset managers are advised to keep on top of developments as the framework of regulation evolves.

Investment Association, 28 November 2016

Speech on regulation and distributed ledger technology published by ESMA

ESMA has published a [speech](#) given by its Senior Risk Analysis Officer, relating to regulation and Distributed Ledger Technology (DLT). A key aspect of the speech is financial innovation and the associated risk challenges this presents.

ESMA, 24 November 2016

PRIIPs Regulation disclosure rules changes: FCA announces delay until 2017

The FCA has updated its [webpage](#) on Key Information Documents (KIDs) for Packaged Retail and Insurance-based Investment Products (PRIIPs) announcing it will publish a policy statement relating to the July 2016 consultation in the first half of 2017.

FCA, 23 November 2016

FCA finds weak price competition in some areas of the asset management industry

FCA has published an [interim report](#) outlining the findings of its asset management market study, the results suggest that there is a weak price competition in a number of areas of the asset management sector.

FCA, 18 November 2016

Consultation on regulatory fees and levies 2017/18

The FCA has published a [consultation](#) on regulatory fees and levies for 2017/18. The consultation will close on 16 January 2017 and the FCA will consider responses and publish feedback in a Handbook Notice early next year.

FCA, 16 November 2016

Consultation on Handbook changes to reflect Lifetime ISA

The FCA has published a [consultation paper](#) relating to Handbook changes to reflect the introduction of the Lifetime ISA (LISA) which the government announced in the 2016 Budget. The paper sets out the FCA's proposed approach to regulating LISAs. The consultation closes on 25 January 2017.

FCA, 16 November 2016

Political agreement on MMF Regulation

A [press release](#) has been published by the Council of the EU announcing that its Presidency has reached provisional agreement with representatives of the European Parliament on the proposed Money Market Funds (MMF) Regulation. A number of technical issues are still to be finalised. A related Parliament [press release](#) describes the MMF Regulation as a complex and contentious piece of legislation.

Council of the EU, 16 November 2016

Final report on guidelines on validation and CRAs' methodologies review from ESMA

ESMA has published a [final report](#) on guidelines on the validation and review of credit rating agencies' methodologies which aims to clarify expectations and promote consistent application of articles 8(3) and 8(5) of the CRA Regulation. Section 2 of the report considers feedback received to the consultation in July 2016.

ESMA, 15 November 2016

European Parliament to consider proposed Regulation amending date of application of PRIIPs Regulation at 30 November and 1 December 2016 plenary session

The European Parliament has published a [procedure file](#) for the proposed Regulation (COM(2016) 709 final) amending the date of application of the Regulation on key information documents (KIDs) for packaged retail and insurance-based investment products (PRIIPs) (Regulation 1286/2014) (PRIIPs Regulation).

European Parliament, 14 November 2016

European Commission adopts CSDR level 2 legislative acts

The European Commission has adopted a package of six legislative acts to implement specific provisions of the Regulation on improving securities settlement and regulating central securities depositories (CSDs) (Regulation 909/2014 (CSDR)), consisting of a Commission Delegated Act, three regulatory technical standards (RTS) and two implementing technical standards (ITS).

- The [Delegated Act](#) and related [annexes](#) supplementing the CSDR regarding the parameters for the calculation of cash penalties for settlement fails and the operations of CSDs in host member states (C(2016)/7154), under Articles 7(14) and 24(7) of the CSDR.
- A [Delegated Regulation](#) and related [annex](#) supplementing the CSDR with regard to RTS on certain prudential requirements for CSDs and designated credit institutions offering banking-type ancillary services (C(2016) 7158), under Articles 47(3), 54(8) and 59(5) of the CSDR.
- A [Delegated Regulation](#) supplementing the CSDR with regard to RTS on authorisation, supervisory and operational requirements for CSDs (C(2016) 7159) and [annexes](#)
- An [Implementing Regulation](#) setting out ITS with regard to standard forms, templates and procedures for authorisation, review and evaluation of central securities depositories, for the co-operation between authorities of the home member state and the host member state, for the consultation of authorities involved in the authorisation to provide banking-type ancillary services, for access involving central securities depositories, and with regard to the format of the records to be maintained by CSDs in accordance with the CSDR.
- [Delegated Regulation](#) supplementing the CSDR with regard to RTS further specifying the content of the reporting on internalised settlements (C(2016) 7147), under the second subparagraph of Article 9(2) of the CSDR.
- [Implementing Regulation](#) setting out ITS with regard to the templates and procedures for the reporting and transmission of information on internalised settlements under the CSDR, under the third subparagraph of Article 9(3) of the CSDR.

EC, 11 November 2016

EC letter to ESAs requesting opinions on key information documents

ESMA has [published](#) a letter from the European Commission to the European Supervisory Authorities (ESAs) with regard to amendments the Commission intends to make to the draft regulatory technical standards the ESAs submitted to the Commission on 6 April 2016 under the Regulation on key information documents for packaged retail and insurance-based investment products (Regulation 1286/2014).

ESMA, 11 November 2016

ESMA publishes final report on technical advice under the Benchmarks Regulation

ESMA has published a [final report](#) providing technical advice under the Benchmarks Regulation.

ESMA, 10 November 2016

Proposal to extend PRIIPs regulation application

The European Commission has published a [press release](#) announcing a proposal to extend the date of application of the Key Information Documents (KIDs) regulation for Packaged Retail and Insurance-based Investment Products (PRIIPs) by one year. This is proposed in the interest of ensuring a smooth implementation for consumers and to ensure certainty in the sector. A [legislative proposal](#) has been published and the revised framework is expected to come into place during the first half of 2017, applying from January 2018.

European commission, 09 November 2016

EC green paper on retail financial services: ECON report

A [report](#) has been published by European Parliament's Committee on Economic and Monetary Affairs (ECON) on the European Commission's Green Paper on retail financial services. ECON voted to adopt the report on 11 October 2016 and it is tabled for the Parliament's forthcoming plenary session on 23 and 24 November 2016. A follow-up initiative, taking the form of an action plan, is also being worked upon.

European Parliament, 09 November 2016

ESMA publishes list of designated NCAs under Article 40 of the Benchmark Regulation

ESMA has [published](#) a table listing the National Competent Authorities (NCAs) that have been designated under Article 40 of the Benchmarks Regulation.

ESMA, 7 November 2016

EBA discussion paper on designing a new prudential regime for investment firms

The EBA has published a [discussion paper](#) on designing a new prudential regime for investment firms.

EBA, 4 November 2016

Equity trading costs continue to decline in the UK

[Analysis](#) by the FCA's Markets Policy Department shows that the UK's equity markets appear to be trending downwards. Certain aspects of the markets have fallen over the past three years, along with peer markets in both the US and Europe.

FCA, 02 November 2016

Sales in September driven by mixed asset and global equity funds

Monthly [statistics](#) published by The Investment Association for September 2016 have shown mixed asset was the best-selling asset class and global was the best-selling sector.

The Investment Association, 01 November 2016

Investments & Investment Services

New FCA webpage for firms subject to MiFID II transaction reporting obligations

The FCA has published a new [webpage](#) for firms subject to transaction reporting obligations under the Markets in Financial Instruments Directive II (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR)

FCA, 2 December 2016

European Commission adopts MiFID II delegated regulation on commodity derivatives

The European Commission has adopted a [Delegated Regulation](#) supplementing the MiFID II Directive with regard to regulatory technical standards (RTS) on the criteria for establishing when an activity is considered to be ancillary to a firm's main business. *European Commission, 1 December 2016*

PRA's second consultation on implementation of MiFID II

The PRA has published its second [consultation paper](#) on implementation of the MiFID II Directive and MiFIR. *PRA, 25 November 2016*

Three Delegated Regulations under MiFIR have been published in OJ

- [Delegated Regulation](#) supplementing MiFIR with regard to regulatory technical standards (RTS) on criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation.
- [Delegated Regulation](#) supplementing MiFIR with regard to RTS on access in respect of benchmarks.
- [Delegated Regulation](#) supplementing MiFIR with regard to RTS concerning the information for registration of third-country firms and the format of information provided to clients.

Official Journal of the EU, 21 November 2016

ESMA has published new Q&As on MiFID II and MiFIR market structures topics

ESMA published a new set of [Q&As](#) on market structures topics under the MiFID II Directive and MiFIR. They relate to data disaggregation and the tick size regime.

ESMA, 18 November 2016

ESMA has updated MiFID II transparency Q&As relating to waivers

ESMA has published an updated version of its [Q&As](#) on transparency topics under the MiFID II Directive and MiFIR. The two new questions relate to equity transparency and non-equity transparency.

ESMA 18 November 2016

Speech on improving outcomes for investors in EU-based investment funds

ESMA has published a [speech](#) on ways to improve outcomes for investors in EU-based investment funds. Key points include:

- Improving transparency and the information available to fund investors to help them choose funds offering value for money
- Asset management has been identified as a key activity
- ESMA will contribute to the Capital Markets Union in relation to the net returns and performance of long-term investment products
- Innovation in the private sector will improve outcomes for investors

ESMA, 16 November 2016

ESMA publishes consultation paper on draft RTS on package orders under MiFID II

ESMA has published a [consultation](#) paper on draft regulatory technical standards (RTS) on package orders under Article 9(6) of the Markets in Financial Instruments Regulation.

ESMA, 10 November 2016

Call for evidence on pension funds and social investment

The Law Commission has published a [call for evidence](#) relating to pension funds and social investment. This is part of the government's plan to support social investment as a way to access private investment funds and support charities and enterprises with a social mission.

Law Commission, 08 November 2016

Consultation on other CRA products

A [consultation](#) has been published on Other CRA Products (OCPs), which considers how market participants use non-traditional products and services in making investment decisions. The report provides feedback from two survey questionnaires published by the International Organization of Securities Commissions (IOSCO) in 2015, and summarises the main observations as follows:

- Some OCPs share common processes and features with traditional credit ratings
- CRAs tend to create separate structures to offer OCPs
- OCPs can be categorised in six primary groups

The deadline for comments is 5 December 2016.

The International Organization of Securities Commissions, 08 November 2016

MiFID II transparency Q&As updated by ESMA

ESMA has published updated questions and answers ([Q&As](#)) on transparency topics under the MiFID II Directive and MiFIR. *ESMA, 18 November 2016*

ESMA prepares for MIFID II Systematic Internaliser regime

ESMA has published an updated [Q&As](#) on the application of MiFID II/ MiFIR which clarifies when ESMA will publish the first set of data that is needed to implement the Systematic Internaliser (SI) regime as well as the date by when firms must comply with the SI regime for the first time.

European Securities and Markets Authority, 4 November 2016

EMIR & Derivatives

Outcomes of EMIR review reported by EC

The European Commission has published a [report](#) on the review of EMIR which will now be submitted to the European Parliament and the Council of the EU. Measures to simplify and increase efficiency of EMIR requirements have been highlighted as:

- Introducing a mechanism to suspend the clearing obligation
- Facilitating the predictability of margin requirements
- Streamlining trade reporting

EC, 23 November 2016

Supervisory approach for CCPs' product and service extensions and changes to risk models under EMIR

ESMA has published an [opinion](#) on common indicators for new products and services under article 15 of the Regulation on OTC central counterparties and trade repositories (EMIR), as well as significant changes to risk models under article 49. A common supervisory approach is defined for National Competent Authorities (NCAs) dealing with central counterparties. This is to ensure a more consistent and transparent approach to the application of articles 15 and 49 under EMIR.

ESMA, 15 November 2016

ESMA has published its final report on delaying EMIR clearing obligation for financial counterparties with a limited activity volume

ESMA has announced its [final report](#) on the amended application of the clearing obligation for financial counterparties with a limited volume of activity under EMIR (the Regulation on OTC derivative transactions, central counterparties and trade repositories) (Regulation 648/2012).

ESMA, 14 November 2016

ESMA corrects consultation on draft technical standards under SFT Regulation and amendments to related EMIR RTS

ESMA has corrected its September 2016 [consultation paper](#) on draft regulatory technical standards (RTS) and draft implementing technical standards (ITS) implementing the Regulation on reporting and transparency of securities financing transactions.

ESMA, November 2016

Funds

ESMA updates Q&A on application of UCITS Directive

ESMA has issued an updated version of its [Q&As](#) on the application of the Undertakings for the Collective Investment of Transferable Securities (UCITS) Directive, which has most recently been revised by UCITS V.

ESMA, 21 November 2016

FCA will not issue guidance on application of UCITS Remuneration Code

FCA has updated its [webpage](#) on the Undertakings for the Collective Investment of Transferable Securities (UCITS) Remuneration Code announcing that it does not intend to issue guidance for firms on how to apply the Code.

FCA, 18 November 2016

Updated Q&A on application of AIFMD

ESMA has published an updated version of its [Q&A](#) paper on The Alternative Investment Fund Managers Directive (AIFMD), amended to include questions relating to the notification of AIFs and delegation.

ESMA, 16 November 2016

IOSCO consultation responses on good practices for investment fund termination

The International Organization of Securities Commissions (IOSCO) has published the [responses](#) it received to its consultation on good practices for the termination of investment funds.

IOSCO, 4 November 2016

FCA bank review into sales of interest rate hedging products

The FCA has published [information](#) of how some banks sold interest rate hedging products (IRHPs).

FCA, 4 November 2016

Market Conduct

ESMA Risk Dashboard

ESMA risk assessment has updated its [Risk Dashboard](#) for the third quarter of 2016, to which it remains unchanged for the time being, characterised only by very high credit and market risks.

ESMA, 1 December 2016

ESMA to provide free credit ratings information to public

ESMA has launched a [press release](#) announcing that it has launched a new database, the European Ratings Platform (ERP), to provide access to free credit rating and rating outlooks.

ESMA, 1 December 2016

FCA consultation on amendments to DTR 2.5 under MAR

The FCA has published a [consultation paper](#) on proposed amendments to DTR 2.5 – delaying disclosure of inside information. The changes include:

- Adding a general sign post to ESMA guidelines at DTR 2.5.1BG
- Deleting DTR 2.5.3G
- Minor amendments to DTR 2.5.4G
- Deleting the third sentence in DTR 2.5.5G
- Adding a definition of the ESMA guidelines to the FCA Handbook Glossary

The consultation concludes on 6 January 2017.

FCA, 28 November 2016

Financial Services and Markets Regulations 2016 announced.

The Financial Services and Markets (Disclosure of Information to the European Securities and Markets Authority etc. and Other Provisions) [Regulations 2016 \(SI 2016/1095\)](#) have been published with an [explanatory memorandum](#).

HM Treasury, 17 November 2016

ESMA Chair says safeguarding investors is key to Capital Markets Union's success

Steven Maijoor, Chair for ESMA has given a [speech](#) entitled "Safeguarding investors is key to ensuring the Capital Markets Union's success" at the Borse Stuttgart MiFID-Kongress, Germany.

ESMA, 17 November 2016

ESMA MAR guidelines on persons receiving market soundings

ESMA has republished the [final versions](#) of its Market Abuse Regulation guidelines relating to market soundings which apply from 10 January 2017.

ESMA, 10 November 2016

EBA responds to Commission call for advice report on standardised approach for counterparty credit risk and own funds requirements for market risk

The EBA has published a [report](#) in response to the European Commission's call for advice on the standardised approach for counterparty credit risk and own funds requirements for market risk.

EBA, 3 November 2016

DAVID ELLIS

Partner

020 7160 3352

david.ellis@addleshawgoddard.com



BRIAN MCDONNELL

Partner

020 7160 3512

brian.mcdonnell@addleshawgoddard.com



CHRIS BRENNAN

Partner

020 7160 3244

chris.brennan@addleshawgoddard.com



ZACH MILLOY

Associate

020 7160 3383

zach.milloy@addleshawgoddard.com



addleshawgoddard.com

Doha, Dubai, Hong Kong, Leeds, London, Manchester, Muscat, Singapore and Tokyo*

*a formal alliance with Hashidate Law Office

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