

February 2017

# INVEST

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# InVest – February 2017

This month's roundup of developments affecting banks, wealth managers, brokers and funds sees: Capital Asset Management criticise wealth management advice fees, ESMA update its MiFID II Q&As on transparency and market structure, a request from EACT to keep the corporate hedging exemption in EMIR, ESMA publish an opinion on UCITS share classes and update its Q&A on the Market Abuse Regulation

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## General Developments

### ESMA 2017 work programme for credit rating agencies, trade repositories and third country CCPs

ESMA's 2016 [annual report and work programme](#) was published on 3 February 2017, which relates to its supervision of credit rating agencies and trade repositories, and its monitoring of third country central counterparties.

*ESMA, 3 February 2017*

### Corrigendum to Delegated Regulation on RTS on risk mitigation techniques for uncleared OTC derivative contracts under EMIR

The Official Journal of the EU has published a [corrigendum](#) to the Commission Delegated Regulation which supplements EMIR with regulatory technical standards (RTS) on risk mitigation techniques for over-the-counter (OTC) derivative contracts not cleared by a central counterparty under Article 11(15) of EMIR.

*Official Journal of the EU, 3 February 2017*

### ISDA updates OTC derivatives compliance calendar

The latest version of the compliance calendar for over-the-counter (OTC) derivatives has been [published](#) by the International Swaps and Derivatives Association (ISDA). The ISDA calendar is used as the global calendar of compliance deadlines and regulatory dates for OTC derivatives, and now runs to September 2020.

*ISDA, 31 January 2017*

### ESMA Q&A on alternative performance measures

ESMA has [published](#) a new Q&A document on the implementation of its guidelines for issuers when presenting alternative performance measures in publicly available documents containing regulated information and in prospectuses.

*ESMA, 27 January 2017*

### Report criticises wealth management advice fees

A [study](#) compiled by Capital Asset Management entitled *Fixing the broken model* questions the wealth management advice fee, arguing that it 'eats away at the money being invested but the real consequence is rarely seen, known, or understood by the investor.'

*Wealth Manager, 27 January 2017*

## FSB reports on re-hypothecation of client assets and collateral re-use

The Financial Stability Board (FSB) has published two reports which form part of its work to transform shadow banking into resilient market-based finance. They are:

- [Re-hypothecation and collateral re use: potential financial issues, market evolution and regulatory approaches](#). In this report, the FSB describes potential financial stability issues and explains the evolution of market practices and current regulatory approaches to the re-hypothecation of client assets and collateral re-use. It also examines the possible harmonisation of regulatory approaches to the re-hypothecation of client assets and any residual financial stability risks associated with collateral re-use.
- [Non-cash collateral re-use: measure and metrics](#). In this report, the FSB sets out the finalised measure and metrics of non-cash collateral re-use in securities financing transactions (SFTs), which authorities will monitor for financial stability purposes.

*FSB, 25 January 2017*

## FCA updates responsibilities for advisers and firms accepting business from introducers

The FCA has [published](#) updated information on investment advisers' and authorised firms' responsibilities when accepting business from unauthorised introducers or lead generators, noting that many authorised firms receive instructions from unauthorised introducers and expressing concern at the rise in cases where the introducer has an inappropriate influence on how the authorised firm carries out its business.

*FCA, 24 January 2017*

## FCA consults on changes to CASS in light of SAR review

The FCA has published a [consultation paper](#) on Chapter 7A of the Client Assets sourcebook (CASS) and the special administration regime (SAR) review. The FCA is seeking feedback on proposed changes to CASS relating to investment firm failures, and the interaction of CASS with the SAR. Collectively, the changes proposed aim to speed up the distribution of client assets, improve consumer outcomes and reduce the market impact of an investment firm failure.

*FCA, 23 January 2017*

## Euan Munro joins Investment Association Board

Aviva Investors Chief Executive Officer Euan Munro has [joined](#) the Investment Association Board. The appointment follows the announcement in November 2015 that the former Board member and Invesco Perpetual Chief Executive Mark Armour, was to retire from Invesco at the end of last year.

*The Investment Association, 18 January 2017*

## FSB publishes Policy Recommendations to Address Structural Vulnerabilities from Asset Management Activities

The Financial Stability Board (FSB) has published Policy Recommendations to Address Structural Vulnerabilities from Asset Management Activities. The [document](#) sets out its final policy recommendations to address structural vulnerabilities from asset management activities.

*FSB, 12 January 2017*

## Investment Association's monthly statistics of UK investor behaviour in November 2016

The Investment Association has [published](#) its monthly investor behaviour statistics from November 2016. They highlight that net retail sales of equity funds were positive for the first time in 2016 at £583 million and the total net retail fund sales were £1.5 billion.

*Investment Association, 11 January 2017*

# Investments & Investment Services

## ESMA updates MiFIR data reporting Q&As

ESMA has [published](#) an updated version of its Q&As on data reporting under MiFIR.  
*ESMA, 2 February 2017*

## ESMA updates MiFID II Q&As on transparency and market structure

ESMA has published new Q&A documents on the issues of [transparency](#) and on [market structures](#) under the MiFID II and MiFIR.  
*ESMA, 31 January 2017*

## FCA direction relating to forms and MiFID II

The FCA has published a [direction](#) under sections 55U and 60 of the Financial Services and Markets Act 2000 (FSMA), which:

- Creates a "Long Form A – UK and Overseas Forms (not Incoming EEA) for MiFID authorisation applications".
- Amends the Supervision manual (SUP) to add the Long Form A and associated notes for completion.
- Specifies when the Long Form A and notes are to be used.

The Long Form A has been introduced because of the regulatory technical standards (RTS) under Article 7(4) and the implementing technical standards (ITS) under Article 7(5) of the MiFID II Directive, which require firms to submit information for the approval of individuals who will be members of the management body or effectively direct the business of MiFID firms.  
*FCA, 30 January 2017*

## FCA releases MiFID II market data processor application form

The FCA has updated its [webpage](#) on its market data processor system (MDP) under MiFID II to include a [MDP application form](#). The website indicates that to submit an application, the MDP must have already completed a confidentiality agreement and received a market interface specification (MIS). New entities applying for authorisation or recognition must submit a relevant MiFID II application in order to receive a case reference number.  
*FCA, 30 January 2017*

## AFME publishes MiFID II exchange questionnaire

Through collaboration with major European Equities Exchanges, the Association for Financial Markets in Europe (AFME) has [published](#) a questionnaire which provides a standardised set of questions that can be sent by MiFID II investment firms to EU equities exchanges that are within the scope of MiFID II.  
*Association for Financial Markets in Europe, 20 January 2017*

## ESMA briefing on MiFID II technical data reporting requirements

ESMA has published a [briefing paper](#) summarising technical data reporting requirements under the MiFIR.  
*ESMA, 13 January 2017*

## FCA guide to applications and notifications under MiFID II

The FCA has published a MiFID II application and notification [user guide](#), addressing applications for new authorisation as investment firms or data reporting service providers (DRSPs), recognition of investment exchanges, variation of permission (VoPs) and change of legal status, notifications to provide the FCA with regulatory information from firms, recognised investment exchanges (RIEs) and others, including passport notifications.  
*FCA, 13 January 2017*

## ESMA opinion on impact of exclusion of fund managers from scope of MiFIR intervention powers

ESMA has published an [opinion](#) on the impact of the exclusion of fund management companies from the scope of MiFIR. Articles 40 and 42 of MiFIR give power to temporarily prohibit or restrict the marketing, distribution or sale of certain financial instruments or shares in UCITS and Alternative Investment Funds (AIFs), to ESMA and national competent authorities (NCAs). The powers apply only to MiFID firms and credit institutions and do not apply to alternative investment fund managers (AIFMs)

authorised under the Alternative Investment Fund Managers Directive or to UCITS management companies authorised under UCITS IV.

*ESMA, 12 January 2017*

### [Follow-up Report to the Peer Review on Best Execution](#)

ESMA has published a follow-up [report](#) on its peer review on the best execution under MiFID. The initial report published in February 2015 found that the level of implementation of best execution provisions and the level of convergence in the supervisory practices by national competent authorities (NCAs) was relatively low. In this follow-up report, ESMA concludes that there have been improvements in the level of attention paid by NCAs to the supervision of best execution requirements, although a number of deficiencies have not yet been addressed.

*ESMA, 11 January 2017*

### [ESMA publishes responses to consultation on suitability of management bodies of market operators and data reporting services providers](#)

ESMA has [published](#) the responses it has received to its consultation paper on the guidelines on the suitability of the management bodies of market operators and data reporting services providers (DRSPs) under the MiFID II Directive (2014/65/EU).

*ESMA, 10 January 2017*

### [Responses to ESMA consultation on draft RTS on package orders under MiFID II](#)

ESMA has [published](#) the responses it has received to its consultation paper on the draft regulatory technical standards (RTS) required under MiFIR and MiFID II.

*ESMA, 10 January 2016*

### [Questionnaire to help firms meet MiFID II requirements relating to IT outsourcing](#)

The Futures Industry Association (FIA) has published a [due diligence questionnaire](#) for MiFID II investment firms that outsource IT software and hardware. You will need a FIA account to be able to access the content through their website.

*FIA, 9 January 2017*

## **EMIR & Derivatives**

### [FCA updates webpage on margin requirements for uncleared derivatives](#)

The FCA has updated its [webpage](#) on margin requirements for uncleared derivatives under EMIR, which took effect from 4 February 2017, subject to phase-ins that are based on firms' categorisation and derivative volumes.

*FCA, 6 February 2017*

### [Council endorses EMIR delegated regulations](#)

A [recommendation](#) has been made by the General Secretariat of the Council of the European Union confirming that the Council has no objection to two delegated regulations adopted by the European Commission in connection with EMIR.

*European Parliament, 3 February 2017*

### [ESMA updates Q&A on EMIR implementation](#)

ESMA has [published](#) an updated version of its Q&A on the implementation of EMIR. The updated Q&A include a new answer that relates to the transition to revised technical standards on reporting, which will apply from 1 November 2017.

*ESMA, 2 February 2017*

### [European Commission will publish legislative proposal to revise EMIR in spring 2017](#)

The European Commission (EC) has published a [speech](#) by Valdis Dombrovskis, the EC's Vice President, on finance for growth in manufacturing. The speech covers a range of matters, including the EC's recent review of EMIR. Mr Dombrovskis comments that, during the review process, the EC received a great deal of feedback on the rules governing derivatives. Many respondents, from regulators and industry, argued that there is scope to make the rules and reporting obligations in this area more

proportionate, particularly for non-financial counterparties.

*EC, 31 January 2017*

### Keep corporate hedging exemption, says EACT in EMIR Review response

The European Association of Corporate Treasurers (EACT) has published a [response](#) to the European Commission's EMIR review report published on 23 November 2016, highlighting the need to maintain the corporate hedging exemption and not to replace it with clearing and margin requirements based simply on the volume of transactions.

*EACT, 31 January 2017*

### ESMA consults on guidelines on transfer of data between trade repositories

ESMA has published a [consultation paper](#) detailing the guidelines on the transfer of data between trade repositories under EMIR.

*ESMA, 31 January 2017*

### EMIR Review and ESMA sanctioning powers under EMIR and CRAR

ESMA has published a [letter](#) to the European Commission (EC) concerning several elements of the review of EMIR, including the Regulation on OTC derivative transactions, central counterparties (CCPs) and trade repositories and its advice on credit ratings and credit rating agencies (CRAs) required under the CRA Regulation. In the letter, ESMA invites the EC to consider its suggested amendments to EMIR and the CRA Regulation as a matter of urgency. ESMA also asks the EC to consider, within the scope of its Regulatory Fitness and Performance (REFIT) programme, further harmonisation of the supervisory and enforcement frameworks applicable to trade repositories (TRs) and CRAs.

*ESMA, 27 January 2017*

### ESMA issues opinion on Spanish pension schemes to be exempt from central clearing under EMIR

ESMA has issued an [opinion](#) regarding the exemption of Spanish pension schemes from the obligation to centrally clear OTC derivative contracts under EMIR. Pension schemes have to ask their national competent authority to be exempted from the clearing obligation. Before deciding on an exemption, the relevant competent authority needs to obtain the opinion of ESMA which also needs to consult the European Insurance and Occupational Pensions Authority (EIOPA).

*ESMA, 25 January 2017*

### Delegated and Implementing Regulations on technical standards on EMIR reporting requirement

[Commission Delegated Regulation \(EU\) 2017/104](#) and [Commission Implementing Regulation \(EU\) 2017/105](#) which contain regulatory technical standards (RTS) and implementing technical standards (ITS) respectively relating to data reporting under Article 9 of EMIR (the Regulation on OTC derivative transactions, central counterparties and trade repositories) have been published in the Official Journal of the EU (OJ). These will enter into force on 10 February 2017.

*OJ, 21 January 2017*

### European Commission amends phase-in of margin requirements under EMIR

The European Commission has [adopted](#) Delegation Regulation (C(2017) 149 final) amending Delegated Regulation (EU) 2016/2251, which supplemented EMIR with regulatory technical standards (RTS) on risk mitigation techniques for uncleared OTC derivative contracts. The correcting Delegated Regulation adds two new paragraphs to Article 37, which specifies the phase-in schedule for variation margin requirements

*European Commission, 20 January 2017*

### EBA and ESMA call to clarify margin requirements between CRR and EMIR

The EBA and ESMA has published a [report](#) on the functioning of the Capital Requirements Regulation (CRR) with EMIR and trade repositories. The report analyses the requirements in the CRR and EMIR that may potentially duplicative and inconsistent, with a particular focus on the position of firms regulated under the CRR that operate as central counterparties.

## Funds

### ESMA opinion on UCITS share classes

ESMA has published a [press release](#) and an [opinion](#) about share classes of UCITS. The UCITS Directive recognises the possibility for a UCITS to offer different share classes to investors, but it does not prescribe whether, and to what extent, share classes of a particular fund can differ from one another. ESMA's opinion sets out the following principles that UCITS must follow when setting up different share classes:

- Common investment objective.
- Non-contagion.
- Pre-determination.
- Transparency.

ESMA, 30 January 2017

## Market Conduct

### EMMI update on second phase pre-live verification programme for evolution of EURIBOR

The European Money Markets Institute (EMMI) has [published](#) a press release providing an update on the second phase of the pre-live verification programme for the evolution of the Euro Interbank Offered Rate (EURIBOR). The second (and last) phase of the programme sets out the environment to test daily transmission of eligible data for a EURIBOR transaction-based methodology. It is aimed at ensuring the operational readiness of the infrastructure to collect and store daily transaction data. At this stage, 31 banks are participating in the programme.

EMMI, 1 February 2017

### ESMA updates Q&A on the Market Abuse Regulation

ESMA has [published](#) an updated version of its Q&A on Market Abuse Regulation (MAR) on its website. The new version includes:

- Question 6 relating to managers' transactions.
- Questions 9 to 11 relating to investment recommendation and information recommending an investment strategy.

ESMA, 27 January 2017

### ECB speech on the repo market

The European Central Bank has [published](#) a speech by Executive Board Member Yves Mersch at the GFF summit. The speech notes that banks and other market participants are reporting a decrease in market making activities and collateral scarcity in repo-markets.

ECB, 26 January 2017

### BoE speech on market functioning

The Bank of England has [published](#) a speech given by Chris Salmon, Executive Director of Markets, which considers the importance of central banks understanding the structure and functioning of core financial markets, with reference to two recent developments in different markets.

BoE, 24 January 2017

### ESMA Chair speaks on reforms in OTC derivatives markets and benchmarks at Prime Conference.

The European Securities and Markets Authority Chair, Steven Maijoor, gave a keynote [speech](#) at the P.R.I.M.E. Finance 6th Annual Conference. Mr. Maijoor focused on two major regulatory reforms taking place in EU financial markets currently: the reform of the OTC derivatives markets and the reform of the way benchmarks are compiled and administered.

ESMA, 23 January 2017



## ESMA: official translations of MAR guidelines on commodity derivatives

ESMA has [published](#) official translations of its final guidelines on inside information and commodity derivatives under the Market Abuse Regulation (Regulation 596/2014) (MAR). The guidelines have been translated into all official EU languages and will become effective two months after their publication.

ESMA, 17 January 2017

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