

May 2017

INVEST

InVest – May 2017

This month's roundup of developments affecting banks, wealth managers, brokers and funds sees:

The FCA publishing an update on the Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, the FCA and HM Treasury publishing a joint report outlining their progress towards implementing each of the 28 Financial Advice and Markets Review (FAMR) recommendations and the PRA issuing its second policy statement (PS9/17) on implementation of the MiFID II Directive (2014/65/EU).

General Developments

- ▶ New guidance urges FTSE companies to demonstrate how they act long-term to get better returns for savers and investors
- ▶ FCA publishes its 2017-2018 Business plan, Sector Views and Mission Statement
- ▶ EMMI report on outcome of EURIBOR pre-live verification programme
- ▶ European Commission communication on future legislative proposals
- ▶ OECD report on investment governance and integration of environmental, social and governance factors
- ▶ Council of EU Presidency compromise proposal on Regulation on CCP recovery and resolution dated 28 April 2017
- ▶ ECB contribution to European Commission's CMU mid-term review 2017
- ▶ ECON table's amendments on proposed pan-European covered bonds framework
- ▶ SONIA recommended as the sterling near risk-free interest rate benchmark
- ▶ ESMA advises commission on fees for trade repositories
- ▶ IA welcomes the FCA's Mission Statement
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EMIR & Derivatives

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- ▶ Delegated Regulation delaying EMIR clearing obligation for financial counterparties with a limited activity volume published in the Official Journal

- ▶ European Parliament does not object to Delegated Regulation delaying EMIR clearing obligation for financial counterparties with a limited activity volume
- ▶ ESMA final report: Technical advice to EC on fees for trade repositories under SFTR and EMIR
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Funds

- ▶ Final text of the proposed Regulation on Money Market Funds

Investments & Investment Services

- ▶ FCA reporting instructions for trading venues and investment firms submitting position reports under MiFID II
- ▶ PRA second policy statement on implementation of MiFID II
- ▶ AFME publishes MiFID II fixed income and currencies trading venues questionnaire
- ▶ BBA guidance on MiFIR transaction reporting short selling indicator
- ▶ European Parliament concerns about MiFID II systematic internalisers operating broker crossing networks

Market Conduct

- ▶ ESMA publishes opinion on points for convergence and accepted market practices on liquidity contracts under MAR

General Developments

New guidance urges FTSE companies to demonstrate how they act long-term to get better returns for savers and investors

The Investment Association has published new [long-term reporting guidance](#) aimed at driving change in FTSE listed companies, which will help to boost investor confidence and address falling UK productivity levels.

Investment Association, 9 May 2017

FCA publishes its 2017-2018 Business plan, Sector Views and Mission Statement

The FCA has published its 2017-2018 [Business Plan](#), Sector Views and Mission Statement. The Business Plan listed the FCA's cross-sector priorities as being: Firms' culture and governance; Financial crime and anti-money laundering (AML); Technological change and resilience; Treatment of existing customers; Consumer vulnerability and access; and Promoting competition and innovation. The following were listed as sector priorities: Wholesale financial markets; Retail banking; General insurance and protection; Investment management; Retail lending; and Retail investments.

FCA, 18 April 2017

EMMI report on outcome of EURIBOR pre-live verification programme

A [report](#) has been published by the European Money Markets Institute (EMMI) which announces the outcome of the Euro Interbank Offered Rate (EURIBOR) pre-live verification programme and next steps. EMMI's analysis of the data they have collected through this programme from September 2016 to February 2017 has led them to conclude that it will not be

feasible to evolve the current EURIBOR methodology under the current market conditions following a seamless transition path.

EMMI, 5 May 2017

European Commission communication on future legislative proposals

The European Commission has [published](#) a communication to the European Parliament, the Council and ECB, on responding to challenges for critical financial market infrastructures and further developing the Capital Markets. The Communication outlines the Commission's intention to present further legislative proposals to amend EMIR in June 2017.

EC, 4 May 2017

OECD report on investment governance and integration of environmental, social and governance factors

The OECD has published a [report](#) on investment governance and the integration of environmental, social and governance (ESG) factors. The report examines how pension funds, insurance companies and asset managers approach ESG risks and opportunities in their portfolio investments, and whether current investment governance standards in legal and regulatory frameworks encourage or discourage them from integrating ESG factors in investment decision-making.

OECD, 2 May 2017

Council of EU Presidency compromise proposal on Regulation on CCP recovery and resolution dated 28 April 2017

The Council of the EU has published its first Presidency [compromise proposal](#) (8612/17) on the proposed Regulation on the recovery and resolution of central counterparties (CCPs). The cover note for the compromise proposal states that, with respect to the original Commission proposal, the new text is marked in underlined bold and deletions are indicated in strikethrough.

Council of EU, 28 April 2017

ECB contribution to European Commission's CMU mid-term review 2017

European Central Bank (ECB) published a [document](#) setting out its views on the European Commission's capital markets union (CMU) mid-term review 2017. The ECB states that it is a strong supporter of the CMU and that the Commission's action plan on CMU, which was published in September 2016, is a step in the right direction. However, it believes that all CMU stakeholders should increase their efforts towards achieving CMU. In particular, the ECB states that further action is needed to foster robust cross-border capital flows and sound financial integration. It also notes that new perspectives have emerged since the CMU was designed in 2015 (this includes the UK's decision to leave the EU).

ECB, 2 May 2017

ECON table's amendments on proposed pan-European covered bonds framework

The Committee on Economic and Monetary Affairs has issued a [draft report](#) containing amendments to the proposed pan-European covered bonds framework. A committee vote is scheduled for 19 June 2017.

Committee on Economic and Monetary Affairs, 28 April 2017

SONIA recommended as the sterling near risk-free interest rate benchmark

The Bank of England's Working Group on Sterling Risk-Free Reference Rates – a group of major dealers active in sterling interest rate swap markets – has [announced](#) SONIA as its preferred near risk-free interest rate benchmark (RFR) for use in sterling derivatives and relevant financial contracts.

ESMA advises commission on fees for trade repositories

ESMA has [published](#) its final technical advice to the European Commission regarding supervisory fees for Trade Repositories (TRs) under the Securities Financing Transactions Regulation (SFTR). ESMA is also proposing some changes to the way ESMA's fees for TRs are calculated under the European Market Infrastructure Regulation (EMIR). ESMA also proposes lower fees in the case of extension of registration under SFTR, or in the case of concurrent application under both regimes. ESMA has also proposed the calculation of fees for recognition of third country TRs and the reimbursement of the cost to NCAs in the case of delegation of tasks.

ESMA, 21 April 2017

IA welcomes the FCA's Mission Statement

Following the publication of the FCA's Mission Statement, Chris Cummings, Chief Executive of the Investment Association (IA), has released a [statement](#) saying they will "support the focus of the FCA's Mission Statement and Business Plan on ensuring that the entirety of the UK's financial sector works in the best interests of consumers and society as a whole".

IA, 18 April 2017

EMMI adopts governance framework for EONIA

European Money Markets Institute (EMMI) published a [press release](#) announcing that it has adopted an overarching governance framework for the Euro Overnight Index Average (EONIA). The [EONIA governance framework](#) (dated 12 April 2017) specifies the governance and control framework for EONIA, including the obligations of parties that play a role in its determination. It is in line with regulatory requirements and comprises of the following elements:

- ▶ The [governance code of conduct](#) (GCC), which sets out the governance arrangements and control framework established by EMMI, the selection of panel banks, and the general specification and approach for the determination of EONIA.
- ▶ The [code of obligations of panel banks](#) (COPB), which sets out the requirements for panel banks in acting as contributors of data to EMMI for the determination of EONIA.
- ▶ The code of obligations of calculation agent (COCA), which sets out the requirements for the calculation agent in acting as an agent of EMMI for the determination of EONIA. (A footnote to the press release explains that the COCA is not available. A section on the responsibilities of the calculation agent is included in section 9 of the GCC, which has been drafted reflecting the requirements of the Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (Regulation (EU) 2016/1011) (Benchmarks Regulation or BMR) and accordingly does not apply to central banks.)
- ▶ The [benchmark determination methodology](#) (BDM), which sets out the determination methodology for the calculation of EONIA under both regular and contingency circumstances.

The EONIA governance framework will enter into force on 1 August 2017. This gives all parties involved a three month implementation period, to enable compliance.

EMMI, 13 April 2017

FCA update on Benchmarks Regulation: April 2017

The FCA has published an [update](#) on the Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds.

FCA, 13 April 2017

ESMA speech at CMU Mid-Term Review Public Hearing: work on Brexit and calls for stronger power and tools

The ESMA has [published](#) a closing keynote speech given by Steven Maijor, ESMA Chair, at the European Commission's capital markets union (CMU) mid-term review public hearing. The speech focuses on how supervisory convergence can support the CMU, and notes that the ESMA has recently started convergence work in relation to Brexit. The work aims to avoid competition on regulatory and supervisory practices between member states, which might be detrimental to the CMU. The speech also calls for stronger convergence powers and tools: stronger powers would allow more effective and timely intervention to promote the convergence of practices across the EU; and different combinations of tools may be needed to address specific convergence issues.

ESMA, 11 April 2017

ESMA to hold CRA Regulation open hearing

The European Securities and Markets Authority has published a [press release](#) announcing they will hold an open hearing on the 17 May 2017 on the proposed update of the ESMA guidelines on the application of the endorsement regime under Article 4(3) of the Credit Rating Agencies Regulation.

ESMA, 11 April 2017

FAMR progress report

The FCA and HM Treasury have published a [joint report](#) outlining their progress towards implementing each of the 28 Financial Advice and Markets Review (FAMR) recommendations, intended to help both consumers and the industry benefit from new and more cost-effective ways of delivering high quality, affordable and accessible financial advice and guidance.

FCA & HM Treasury, 11 April 2017

FCA guidance consultation on implementation of FAMR

The FCA has published guidance consultation, [Financial Advice Market review \(FAMR\): Implementation part 1](#), the FCA's consultation on measures to address the recommendations set out in the March 2016 final report of the Financial Advice and Markets Review.

FCA, 11 April 2017

Financial Advice Working Group recommendations following FAMR

The Financial Advice Working Group has published three reports for HM Treasury and the FCA, as well as a [forward](#) from its Chair, Nick Prettlejohn. The three reports cover [the rules of thumb and nudges: improving the financial well-being of UK consumers](#), [financial well-being in the workplace: a way forward](#), and [consumer explanations of "advice" and "guidance."](#)

Financial Advice Working Group, 11 April 2017

Bank of England launches UK Money Markets Code

The [UK Money Markets Code](#) sets out the standards and best practice expected from participants in the deposit, repo and securities lending markets in the United Kingdom. It supersedes existing guidance for participants in these markets provided by the NIPs Code, the Gilt Repo Code and the Securities Borrowing and Lending Code. By bringing these together it will more clearly establish the framework for transacting in UK money markets.

BoE, 26 April 2017

EMIR & Derivatives

European Commission adopts legislative proposal to amend EMIR

The European Commission has adopted a [legislative proposal](#) for a Regulation that it has adopted amending EMIR (the Regulation on OTC derivative transactions, central counterparties and trade repositories). The following documents have also been published by the Commission:

- ▶ An [impact assessment](#) and [executive summary](#) of the impact assessment
 - ▶ A [factsheet](#) setting out questions and answers on the proposal.
- EC, 4 May 2017*

Delegated Regulation delaying EMIR clearing obligation for financial counterparties with a limited activity volume published in the Official Journal

[Delegated Regulation \(EU\) 2017/751](#) relating to the EMIR clearing obligation to prolong, by two years, the phase-in period for financial counterparties with a limited volume of OTC derivatives activity has been published in the Official Journal of the EU (OJ). The Commission adopted the Delegated Regulation in March 2017 and the Delegated Regulation comes into force 20 days after publication in the OJ (that is, on 19 May 2017).

OJ, 29 April 2017

European Parliament does not object to Delegated Regulation delaying EMIR clearing obligation for financial counterparties with a limited activity volume

The European Parliament does not [object](#) to a Delegated Regulation relating to the EMIR clearing obligation to prolong, by two years, the phase-in period for financial counterparties with a limited volume of OTC derivatives activity.

European Parliament, 26 April 2017

ESMA final report: Technical advice to EC on fees for trade repositories under SFTR and EMIR

ESMA has published its [final report](#) on technical advice to the European Commission about fees for trade repositories (TRs) under the Regulation on reporting and transparency of securities financing transactions and on certain amendments to the fees under EMIR.

ESMA, 20 April 2017

ESRB report on revision of EMIR

The European Systemic Risk Board (ESRB) has [published](#) a report on the revision of EMIR. In the report the ESRB welcomes the European Commission's November 2016 report on the outcome of its EMIR review, and agrees with the Commission that no fundamental change to EMIR is needed at present, although it does recognise that some aspects of the Regulation could be improved. A comprehensive review of EMIR will be needed in the future.

ESRB, 21 April 2017

ESMA signs MoU on CCPs with New Zealand regulators under EMIR

ESMA has published a [memorandum of understanding](#) (MoU) that it has entered into with the Reserve Bank of New Zealand and the Financial Markets Authority of New Zealand under Article 25 of EMIR.

ESMA, 18 April 2017

Funds

Final text of the proposed Regulation on Money Market Funds

The Council of the EU has [published](#) the text (PE-CONS 59/16) of the proposed Regulation on Money Market Funds. The adopted text states that the MMF Regulation shall apply from the date twelve months after the date of entry into force, with the exception of a number of Articles (that is, Articles 11(4), 15(7), 22 and 37(4)), which shall apply from the date of entry into force.

EU, 27 April 2017

Investments & Investment Services

FCA reporting instructions for trading venues and investment firms submitting position reports under MiFID II

The FCA has published a document containing [reporting instructions](#) for trading venues and investment firms submitting position reports under the MiFID II Directive (2014/64/EU).

FCA, 3 May 2017

PRA second policy statement on implementation of MiFID II

The PRA has issued its [second policy statement](#) (PS9/17) on implementation of the MiFID II Directive (2014/65/EU). PS9/17 follows on from the PRA's second consultation paper on MiFID II implementation (CP43/16), which it published in November 2016.

Prudential Regulation Authority, 28 April 2017

AFME publishes MiFID II fixed income and currencies trading venues questionnaire

A [questionnaire](#) providing a standardised set of questions that can be sent by MiFID II investment firms to trading venues has been published by the Association for Financial Markets in Europe (AFME), and a related [webpage](#).

AFME, 24 April 2017

BBA guidance on MiFIR transaction reporting short selling indicator

British Bankers' Association (BBA) has published [guidance](#) on the short selling requirements in the transaction reporting regime under the Markets in Financial Instruments Regulation (MiFIR). The BBA explains that MiFIR transaction reporting introduces a number of new requirements, including a new field requiring the completion of a "short sale indicator" for transaction reports. Requiring firms to indicate whether or not a transaction is a short sale is a significant change from the current provisions under the Markets in Financial Instruments Directive (MiFID). The guidance discusses the key issues identified by the working group and sets out regulatory references to the rules.

BBA, 20 April 2017

European Parliament concerns about MiFID II systematic internalisers operating broker crossing networks

The European Parliament's Economic and Monetary Affairs Committee has published a [letter](#) from the MiFID II negotiating team to the European Commission's Vice-President on concerns over systematic internalisers operating

broker crossing networks.

European Parliament, 11 April 2017

Market Conduct

ESMA publishes opinion on points for convergence and accepted market practices on liquidity contracts under MAR

ESMA has published an [opinion](#) on points for convergence in relation to accepted market practices on liquidity contracts under the Market Abuse Regulation.

ESMA, 25 April 2017

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