

August 2016

INVEST

InVest – August 2016

This month's roundup of developments affecting banks, wealth managers, brokers and funds sees the European Commission adopting multiple delegated regulations relating to the implementation of MiFID II relevant to the tick size regime, information requirements for investment firms and transparency requirements in respect of non-equity instruments, ESMA advice published on the extension of the application of the AIFMD passport to 12 non-EU jurisdictions, and an ISDA protocol published to help market participants meet the requirements of Article 55 BBRD on contractual terms on recognition of bail-in liabilities.

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General Developments

Annuity-related complaints handled by FOS fall

Annuity [complaints](#) have fallen to lower levels than before pension freedoms were introduced. From April to June this year, the Financial Ombudsman Service (FOS) received 128 new cases compared to 150 in the same quarter prior to the introduction of the pension reforms in April 2014. Personal pension complaints rose by 57% in the first quarter of this financial year, with 461 complaints received in the first quarter of the financial year compared to 294 in the same period the previous year.

Professional Adviser, 26 July 2016

AMICE expresses concerns over Commission Delegated Regulation supplementing PRIIPs Regulation

The Association of Mutual Insurers and Insurance Cooperatives in Europe (AMICE) has published a [letter](#) sent to the European Parliament expressing concerns in relation to the European Commission Delegated Regulation supplementing the Regulation on key information documents (KIDs) for packaged retail and insurance-based investment products (PRIIPs). AMICE highlight that the delegated regulation needs to address a number of issues including risk categorisation of insurance products and the calculation of credit risk.

AMICE, 1 August 2016

ECB crisis communication exercise for euro area financial market infrastructures report

The ECB has published a [report](#) on the crisis communication exercise for euro area financial market infrastructures. The ECB reports that overall the TITUS exercise was successful and the crisis communication arrangements worked well during the exercise.

ECB, 1 August 2016

FCA Handbook Notice No 35 and response to CP16/8

The FCA has [published](#) a handbook notice setting out the responses it received to Quarterly Consultation No 12 and the relevant final instrument. The instrument amends the definition of reverse takeovers, prescribes reporting formats for reports on payments to the government and amends the Prospectus Rules to reflect ESMA opinions. It comes into force on 29 July 2016.

FCA, 29 July 2016

FX remediation programme: new webpage from FCA

A new webpage [published](#) by the FCA has set out next steps for its foreign exchange (FX) remediation programme. The programme was launched in November 2014 to address failings and improve standards across the market with participating firms undertaking extensive reviews. Further steps now include firms who were not involved in the original programme to consider implementing some of the plans for their FX business; firms should continue building on improvements taking into account publication of the FX global code of conduct; and managers should ensure staff satisfy market standards of practice.

FCA, 28 July 2016

FMSB publishes comment on draft binary options standard

The FICC Markets Standards Board (FMSB) has [published](#) for comment a draft binary options standard for the commodities markets. The standard aims to improve conduct in the FICC (fixed income, currency and commodities) markets and sets out

expected behaviours for FMSB member firms. Comments must be received by 14 October 2016 and the FSMB expects to publish a final version of the standard when responses have been evaluated.

FICC Markets Standards Board, July 2016

Dark pools and broker crossing networks report from FCA

The FCA has [published](#) findings of a thematic review into dark pools and broker crossing networks which looked at promotional activity, conflict of interest and governance, and suggests areas for improvement. Suggested areas for improvement included providing clearer detail about the design and operation of dark pools to users.

FCA, 21 July 2016

PRA issues "Dear CEO" letter on firm engagement and insurance firms in run-off

The PRA has [published](#) a "Dear CEO" letter to remind insurance firms of their continuing responsibilities in relation to run-off of their notification obligations. The PRA point out that there have been a number of instances where they have had to send out this letter to firms where the process was not engaged with by firms at a sufficiently early stage.

Bank of England, 18 July 2016

Council of EU decision on position on incorporation of financial services legislation into EEA Agreement

Published in the Official Journal (OJ), the [Council Decision](#) of 12 July 2016 sets out the position to be adopted on behalf of the EU, within the EEA Joint Committee concerning amendments to Annex IX (Financial Services) to the EEA Agreement. The next step will be for the EEA Joint Committee to adapt a joint committee decision on the amendments to Annex IX.

Official Journal of the EU, 19 July 2016

FSB: second interim progress report on reforming major interest rate benchmarks

The Financial Stability Board (FSB) has [published](#) an interim report examining progress towards implementing the FSB's recommendations for reforming major interest rate benchmarks. The FSB found that since July 2015 the administrators of three major interbank offered rates have all made good progress towards implementing the recommendations. However, more progress needs to be made to identify risk-free interest rate benchmarks.

FSB, 19 July 2016

ESMA Q&As on prospectuses published

ESMA [published](#) version 25 of its questions and answers on prospectuses on 15 July 2016 which updates the previous version with additions including two new questions around requirements of information provided at a roadshow.

ESMA, 15 July 2016

APFA annual survey of the advice industry

The Association of Professional Financial Advisers (APFA) has [launched](#) its third annual survey of the advice industry ahead of compiling the 'Cost of Regulation Index' which allows it to monitor the costs of regulation and compliance for the sector.

Advisers can take part by going to the [survey](#) online. The deadline to respond by is 8 August 2016.

APFA, 14 July 2016

Terms of reference for retirement outcomes review published by FCA

The FCA has [published](#) the terms of reference for its retirement outcomes review (MS16/1), which is intended to assess the development of competition in the retirement income market and the response of firms and consumers to the pension freedoms introduced in April 2015. Key topics explored include shopping around, switching, the non-advised consumer journey, business models and the impact of regulation on retirement outcomes. The FCA is seeking responses on a series of questions set out in the terms of reference by 31 August 2016.

FCA, 14 July 2016

Revised financial services offer in context of TTIP negotiations released by EC

The European Commission (EC) has [published](#) a document setting out the EU's revised financial services offer with a schedule of commitments and reservations, made in the context of the Transatlantic Trade and Investment Partnership negotiations. A further [press release](#) explains there are nine such documents setting out the EU's negotiating position on regulatory co-operations in a number of areas and sectors. The documents are intended to simplify technical regulations without lowering standards, and to set global rules of trade.

European Commission, 14 July 2016

ROC policy document on including data on international/foreign branches in the LEI System

The Regulatory Oversight Committee (ROC) of the Global Legal Entity Identifier (LEI) System has [published](#) a document on including data on international/foreign branches in the Global LEI System. The ROC state that the reasoning behind this is for both public sector and private sector needs.

ROC, 11 July 2016

ESMA publishes responses to its consultation on technical advice on benchmarks regulation

ESMA has [published](#) the responses received to the Consultation Paper on technical advice on Benchmarks Regulation. ESMA intends to submit a final report containing the final technical advice to the EC in October 2016.

ESMA, 7 July 2016

Call for further technical advice on prudential requirements

The EBA has received a [call for advice](#) from the EC relating to the prudential regime for investment firms under the Capital Requirements Regulation and CRD IV Directive. The EC is seeking further technical advice from the EBA on the basis that the current prudential regime for investment firms is not fit for purpose.

European Commission, 06 July 2016

Updated final standard on revisions to Basel III securitisation framework

The Basel Committee on Banking Supervision (BCBS) has issued an updated [final standard](#) on revisions to the Basel III securitisation framework (BCBS374). This is part of the BCBS' continued work relating to securitisation in the Basel framework and follows a consultation on the proposed treatment of STC (simple, transparent and comparable) securitisations in November 2015. The standard sets out additional criteria for differentiating the capital treatment of STC securitisations from other securitisation transactions.

Bank for International Settlements, 11 July 2016

EIOPA advice on development of EU single market for PPP

The European Insurance and Occupational Pensions Authority (EIOPA) have [published](#) final advice given to the EC on developing a single market for personal pension products (PPP). This assesses the opportunities to improve personal pensions that a standardised pan-European personal pensions product (PEPP) would bring. The advice does not cover conventional public pensions systems or occupational pensions systems.

European Insurance and Occupational Pensions Authority, 04 July 2016

EMIR & Derivatives

EC to endorse amendments to RTS on risk mitigation for uncleared OTC derivative contracts

The EC has said in a [letter](#) to the Joint Committee of the European Supervisory Authorities (ESAs) that it will endorse, with amendments, draft Regulatory Technical Standards (RTS) on risk mitigation techniques for uncleared OTC derivative contracts under EMIR. The [revised text](#) of the draft RTS, plus accompanying [annexes](#) has been published, and the Commission has said it intends to make a number of clarifications to the legal text in the draft and modify the timeline for implementation. ESAs now have six weeks to amend the draft RTS and resubmit it in the form of a formal opinion to the EC.

EC, 28 July 2016

EMIR implementation Q&As updated by ESMA

ESMA has revised its [Q&As](#) on the implementation of EMIR.

ESMA, 27 July 2016

EC letter on concerns regarding delay in adoption of RTS on risk mitigation techniques

The Joint Committee of the European Supervisory Authorities has [published](#) a letter from the EC responding to concerns about the delay in adopting a draft RTS on risk mitigation techniques for non-centrally cleared OTC derivatives under EMIR. Concerns

were raised in June 2016 and the Commission has responded by saying it is fully committed to implementing BCBS-IOSCO standards and delays should be kept to a minimum, but is unable to confirm amended timelines.

ESAs, 18 July 2016

[Corrigendum to Delegated Regulation on EMIR regarding RTS on clearing obligations](#)

On 21 July 2016, a [corrigendum](#) to the Delegated Regulation supplementing EMIR as regards to RTS on clearing obligation was published in the OJ. This amends several dates in EU 2016/1178.

OJ, 21 July 2016

[Delegated Regulation on RTS on clearing obligation under EMIR published](#)

The European Commission Delegated Regulation ((EU) [2016/1178](#)) which supplements EMIR as regards to RTS on the clearing obligation has been published in the OJ. It will come into force on 9 August 2016.

OJ, 20 July 2016

[ISDA protocol to meet Article 55 BRRD requirements](#)

On 14 July 2016 the International Swaps and Derivatives Association (ISDA) [launched](#) a Bail-in Protocol and FAQs to help market participants meet the requirements of Article 55 of the BRRD and amend the terms of their ISDA Master Agreements in relevant jurisdictions. Article 55 obliges in-scope entities to include a contractual term in agreements creating any relevant liability and governed by the law of a third country to ensure their creditors agree to recognize any bail-in of those liabilities.

International Swaps and Derivatives Association, 14 July 2016

[EMIR consultation paper on delaying EMIR clearing obligation for financial counterparties with a limited activity volume](#)

ESMA has [published](#) a consultation paper (ESMA/2016/1125) on delaying the phase-in period for the EMIR clearing obligation for financial counterparties with a limited volume of activity. ESMA proposes to amend EMIR's Delegated Regulations on the clearing obligation to prolong, by two years, the phase-in for financial counterparties classified as category 3 under the Delegated Regulations. ESMA explains that extending the phase-in period for these counterparties will help them mitigate the difficulties they are encountering in connecting to central clearing counterparties. The consultation closes on 5 September 2016.

ESMA, 13 July

[EU Implementing Decision on equivalence of US DCMs under EMIR](#)

The European Commission Implementing Decision on the equivalence of US designated contract markets has been [published](#) in the Official Journal of the EU, and comes into force on 23 July 2016. The decision states that for the purposes of Article 2(7) of EMIR, the boards of trade designated by the Commodities Future Trading Commission as contract markets in the US shall be considered as equivalent to regulated markets as defined in Article (4)(1)(14) of MiFID.

OJ, 04 July 2016

Disputes & Enforcement

[Updated assumptions for FOS pension review cases](#)

The Financial Ombudsman Service has published a [letter](#) setting out PwC's recommendations for revised assumptions for pension review loss assessments. The updated assumptions now cover assessments that fall outside the period covered by the FSA pension review.

Financial Ombudsman Service, 06 July 2016

Funds

[EC Implementing Regulation laying down ITS on penalties and measures under UCITS Directive](#)

The European Commission [Implementing Regulation](#) (EU) 2016/1212 laying down implementing technical standards (ITS) with regard to standard procedures and forms for submitting information in accordance with the UCITS Directive has been published

in the OJ. The ITS will enter into force on the 15th August 2016.

European Commission, 27 July 2016

[EBA consults on interim report on MREL](#)

The EBA has [published](#) a consultation on its interim report on the implementation and minimum requirement for own funds and eligible liabilities (MREL). MREL consists of own funds and debt with certain qualities that would be written down and converted into equity when required. Comments are required by 30 August 2016.

EBA, 19 July 2016

[ESMA updates Q&A on application of UCITS Directive](#)

ESMA has [published](#) an updated version of its Q&A paper on the application of the UCITS Directive (2009/65/EC), which has most recently been revised by UCITS V (2014/91/EU) (ESMA/2016/1135). The Q&A has been amended to reflect Q&As relating to the valuation of OTC derivatives.

ESMA, 19 July 2016

[ESMA updates Q&A on application of AIFMD](#)

The ESMA has [updated](#) its Q&A paper on the application of the Alternative Investment Fund Managers Directive (2011/61/EU) (AIFMD) (ESMA/2016/1136). The Q&As have been amended to include a new Q&A relating to the impact of EMIR on the AIFMD framework regarding the valuation of centrally cleared OTC derivatives by AIF managers.

ESMA, 19 July 2016

[ESMA advice on extension of application of AIFMD passport to 12 non-EU jurisdictions](#)

The ESMA has published a [press release](#) and its [advice](#) to the European Parliament, Council of the EU and European Commission on the application of the EU passport under the Alternative Investment Fund Managers Directive (2011/61/EU) (AIFMD) to non-EU alternative investment fund managers (AIFMs) and alternative investment funds (AIFs).

ESMA, 18 July 2016

[Call for evidence on asset segregation and custody services under AIFMD and UCITS V](#)

ESMA has [published](#) a call for evidence on asset segregation and custody services under AIFMD and the UCITS V Directive. An initial consultation in 2014 raised some objections and with this asset segregation requirements being recently introduced under the UCITS framework, ESMA have decided to carry out another consultation to gather further evidence and broaden the scope to cover the UCITS V asset segregation rules. Comments can be made until 23 September 2016.

ESMA, 15 July 2016

[Fund Suspension Guidance from FCA](#)

The FCA has [updated](#) its website with guidance on suspension of trading following recent increases in redemption requests since the EU referendum. The guidance reminds fund managers of their obligations to investors and outlines the FCA's expectations relating to suspension of dealings in their own funds.

FCA, 8 July 2016

[Call for input on upcoming post-implementation review of crowdfunding rules](#)

The FCA have [published](#) a call for input on the areas that should be considered as part of a review of the rules covering investment and loan-based crowdfunding. Issues which the FCA are seeking input on include whether financial promotions, due diligence and financial standards are still appropriate and how conflicts of interest should be managed. The deadline for responses is 8 September 2016.

FCA, 8 July 2016

Investments & Investment Services

Q&As on CFDs and other speculative products updated by ESMA

ESMA has [published](#) updated Q&As on the provision of contracts for difference and other speculative products under MiFID. The updated version includes 9 new questions and answers, addressing topics such as:

- ▶ Information provided to clients and potential clients;
- ▶ Assessment of appropriateness; and
- ▶ Factors for NCAs to consider when entering into commercial arrangements that result in the offer of CFDs.

ESMA aims to promote common supervisory approaches and practices in the application of MiFID with the updated Q&As, and plans to publish further updates in the coming months.

ESMA, 25 July 2016

EBA press release announces launch of data collection

The EBA has issued a [press release](#) announcing the launch of data collection relating to its proposals for a revised prudential framework and proportionality in the area of remuneration. Templates and instructions have been published for firms authorised under MiFID and those under UCITS IV Directive. The data collection follows on from the EC's call in June 2016 for further technical advice on the prudential requirements applicable to investment firms.

EBA, 15 July 2016

European Parliament updates procedure file on EC Delegated Directive supplementing MiFID II

The European Parliament has [updated](#) its procedure file on the EC Delegated Directive supplementing MiFID II regarding the safeguarding of financial instruments and funds, product governance obligations and rules applicable to the reception of fees and commissions. The Council of the EU announced in June 2016 that it would not object to the Delegated Directive and this will now be published in the Official Journal of the EU, coming into force 20 days after publication.

European Parliament, 15 July 2016

Delegated Regulation supplementing MiFIR with regard to RTS on data standards and formats

The European Commission has [adopted](#) C(2016) 4405 supplementing MiFIR with regard to RTS on the data standards and formats for financial instrument reference data and technical measures relating to arrangements to be made by ESMA and other competent authorities. There is an [annex](#) accompanying the Delegated Regulation. The RTS will come into force 20 days after its publication if it isn't objected by the Council or European Parliament.

European Commission, 14 July 2016

Delegated Regulation on transparency requirements in respect of equity instruments under MiFIR

The European Commission has [adopted](#) C(2016) 4390 supplementing MiFIR with regard to RTS on transparency requirements for trading venues and investment firms in respect of equity instruments and on transaction execution obligations of certain shares on trading venues or by a systematic internaliser (SI). This is accompanied by an [annex](#). The RTS will come into force 20 days after its publication if it not objected to by the Council or European Parliament.

European Commission, 14 July 2016

Delegated Regulation on RTS specifying organisational requirements for trading venues

The European Commission has [adopted](#) C(2016) 4387 supplementing the MiFID II Directive in relation to RTS specifying organisational requirements of trading venues. This is accompanied by an [annex](#). The RTS will come into force 20 days after its publication if it not objected to by the Council or European Parliament.

European Commission, 14 July 2016

Delegated Regulation on RTS transparency requirements in third-country firms registration

The European Commission has [adopted](#) C(2016) 4407 supplementing MiFIR with regard to RTS on the information for the registration of third-country firms and the format of information to be provided to clients. The RTS will come into force 20 days after its publication if it not objected to by the Council or European Parliament.

European Commission, 14 July 2016

EC publishes legislative proposal for amendments to EuVECA and EuSEF Regulations

The European Commission (EC) has published a [legislative proposal](#) that it has adopted for a Regulation amending the European Venture Capital Funds Regulation (EuVECA) and the European Social Entrepreneurship Funds Regulation (EuSEF). There is also [a fact sheet](#), [impact assessment](#) and a [summary](#), and the proposal forms part of the Commission's initiative to establish a Capital Markets Union. The EC states that the proposal should be seen in the broader context of work to unlock investment in growing and entrepreneurial businesses.

European Commission, 14 July 2016

Delegated Regulation on RTS on information and requirements for investment firms under MiFID II

The European Commission has [adopted](#) a Delegated Regulation (C(2016) 4417) supplementing MiFID II Directive relating to RTS on information and requirements for authorisation of investment firms. The RTS will come into force 20 days after its publication if it not objected to by the Council or European Parliament.

European Commission, 14 July 2016

Delegated Regulation on RTS on tick size regime under MiFID II

The European Commission has adopted a [Delegated Regulation](#) (C(2016) 4389) supplementing MiFID II with regard to RTS on the tick size regime for shares, depositary receipts and exchange-traded funds (ETFs). This is accompanied by an [annex](#). The RTS will come into force 20 days after its publication if it isn't objected by the Council or European Parliament.

European Commission, 14 July 2016

Delegated Regulation on RTS for the exchange of information between competent authorities

The European Commission has [adopted](#) a Delegated Regulation (C(2016) 4415) with RTS for the exchange of information between competent authorities under the MiFID II Directive. The Delegated Regulation C(2016) 4415 applies when competent authorities are co-operating in supervisory activities and investigations. The RTS will come into force 20 days after its publication if it not objected to by the Council or European Parliament.

European Commission, 14 July 2016

Delegated Regulation on RTS on transparency requirement in respect of non-equity instruments

The European Commission has [adopted](#) Delegated Regulation C(2016) 4301 with regard to RTS on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives under MiFIR. The Delegated Regulation has an accompanying [annex](#). The RTS will come into force 20 days after its publication if it not objected to by the Council or European Parliament.

European Commission, 14 July 2016

Corrigendum on MiFID II Directive

A corrigendum to the text of the MiFID II Directive (2014/65/EU) has been [published](#) in the OJ. The corrigendum makes a minor amendment to the definition of "structured deposit" set out in Article 4(1)(43) of the version of the MiFID II Directive published in the OJ.

OJ, 13 July 2016

SI 2016/715 amending FSMA published

The Financial Services and Markets Act 2000 (Transparency of Securities Financing Transactions and of Reuse) Regulations 2016 were [published](#) on 8 July 2016. This SI amends FSMA and will come into force on 13 July 2016. There is also an [explanatory memorandum](#).

SI 2016/715

MiFIR corrigendum published

A corrigendum to the Markets in Financial Instruments Regulation has been [published](#) in the Official Journal. The corrigendum amends "obvious" errors that were published in the OJ previously
Official Journal, July 2016

Market Conduct

ESMA final report - Draft ITS on sanctions and measures under MAR

ESMA has [published](#) its final report on the draft Implementing Technical Standards (ITS) on sanctions and measures under the Market Abuse Regulation. The draft ITS prescribe how national competent authorities (NCAs) should notify ESMA annually of the investigations they conduct and the sanctions and measures imposed in their member states.
ESMA, 26 July 2016

FCA updates statement on closed periods

The FCA has revised its [statement](#) of its supervisory approach to the 30-day closed period requirement under the Market Abuse Regulation (MAR). The statement now refers market participants to ESMA's Q&A on MAR.
FCA, 27 July 2016

Speech by Commissioner Jonathan Hill at the European Parliament on the Capital Markets Union

The European Commission has [published](#) the text of a speech by Commissioner Jonathan Hill at the European Parliament on the Capital Markets Union. In his speech, Mr Hill discusses the work that has been done so far as well as setting out the next steps.
EC, 13 July 2016

Principles of remuneration amended in line with MAR

The Investment Association has [published](#) revised principles of remuneration to take account of the Market Abuse Regulation which came into force on 3 July 2016. The grant period has been amended and the FCA have published guidance on this but further clarification is likely to be needed from ESMA and the EC.
Investment Association, 04 July 2016

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