

January 2017

INVEST

InVest – January 2017

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

- ▶ the European Commission publish an overview of its level 2 measures in the area of financial services;
- ▶ the FCA consult on its review of the funding of the Financial Services Compensation Scheme; and
- ▶ the European Securities and Markets Authority's (ESMA's) proposal to introduce a new digital format for issuers' financial reporting.

General Developments

- ▶ ESMA proposes new digital format for issuers' financial reporting
- ▶ European Commission overview of level 2 financial services measures: December 2016

Investments & Investment Services

- ▶ The Wealth Management Association publishes response to MiFID Consultation Paper III
- ▶ FCA publishes fourth consultation paper on implementing MiFID II

EMIR & Derivatives

- ▶ European Commission adopts Delegated Regulation further extending temporary clearing exemption for Pension Scheme Arrangements under EMIR
- ▶ FCA opens applications for intragroup exemption from EMIR margin requirements

Funds

- ▶ Council of the EU press release on regulation amending EuVECA Regulation and EuSEF Regulation
- ▶ Council of the EU approves text of proposed Money Market Funds Regulation

Market Conduct

- ▶ ESMA has updated its Q&A's on the Market Abuse Regulation

General Developments

[Maltese Presidency of Council of EU work programme for 1 January to 30 June 2017: financial services aspects](#)

On 9 January 2017, the Maltese Presidency of the Council of the EU published its [work programme](#) for 1 January to 30 June 2017. The main items in the programme of interest to financial services practitioners relate to the Capital Markets Union, venture capital, banking, EMIR and the Fifth Money Laundering Directive.

The Maltese Presidency of the Council of the European Union, 9 January 2017

ESMA proposes new digital format for issuers' financial reporting

ESMA has [published](#) a feedback statement setting out the digital format which issuers in the European Union (EU) must use to report their company information from 1 January 2020. It concludes that Inline XBRL is the most suitable technology to meet the EU requirement for issuers to report their annual financial reports in a single electronic format, primarily because it enables both machine and human readability in one document. ESMA will focus on developing the detailed technical rules, field test its proposed solution and afterwards submit the technical standard to the European Commission for endorsement towards the end of 2017.

ESMA, 21 December 2016

EBA data collection exercise for the revision of prudential framework for investment firms

The European Banking Authority (EBA) has published [instructions](#) for a data collection exercise for commodity derivatives firms in light of the revision of the prudential framework for investment firms under the Capital Requirements Regulation and the Capital Requirements Directive IV (CRD IV).

EBA, 20 December 2016

FSB consults on guidance on continuity of access to FMIs for a firm in resolution

The Financial Stability Board (FSB) is seeking views on a consultative document it [issued](#) on continuity of access to financial market infrastructures (FMIs) for a firm in resolution. Responses to be sent by 10 February 2017.

FSB, 16 December 2016

FSCP research report on robo-advice

The Financial Services Consumer Panel (FSCP) has [published](#) a research report which assesses online investment and advice services. A [position paper](#) has also been published on the consumer experience.

Financial Services Consumer Panel, 16 December 2016

Complaints regarding FCA's handling of query relating to high portfolio turnover in UK investment funds

The Complaints Commissioner published a [decision](#) (dated 21 November 2016) upholding a complaint regarding the FCA's failure to adequately respond to a query relating to portfolio turnover, and subsequent delays in the handling of the related complaint.

Complaints Commissioner, 13 December 2016

European Commission overview of level 2 financial services measures: December 2016

The European Commission has published a [document](#) (dated 7 December 2016) setting out an overview of its level 2 measures in the area of financial services, in relation to level 1 legislation including:

- ▶ Alternative Investment Fund Managers Directive
- ▶ Bank Recovery and Resolution Directive
- ▶ Benchmarks Regulation
- ▶ CRD IV Directive and the Capital Requirements Regulation
- ▶ European Market Infrastructure Regulation (EMIR)
- ▶ Insurance Distribution Directive
- ▶ Market Abuse Regulation
- ▶ MiFID II Directive and MiFIR
- ▶ Solvency II Directive
- ▶ UCITS IV Directive

EC, 9 December 2016

FCA publishes interim feedback following a call for input to the post-implementation review of the rules for crowdfunding

The FCA has [published](#) an update on the post-implementation review of the loan-based and investment-based crowdfunding market. Based on a review of the feedback received concerning issues surrounding the supervision of crowdfunding platforms currently trading, the FCA believes it is appropriate to modify a number of rules for the market.

FCA, 9 December 2016

European Parliament, Council and Commission agree revamped prospectus regulation

The European Parliament, the Council and the Commission have [agreed](#) on revamped prospectus regulation. The reform was proposed by the Commission on 30 November 2015 as part of its Capital Markets Union Action Plan in order to improve access to finance for companies and simplify information for investors. The agreed text now goes to the European Parliament and the Council of the EU for a final vote.

EU, 8 December 2016

ESMA publishes responses to consultation on technical standards under Benchmarks Regulation

ESMA has [published](#) the responses it has received to its consultation paper 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 (2016/1011/EU) (Benchmarks Regulation).

ESMA, 6 December 2016

FCA consults on conduct of business rules for firms providing CFD products to retail clients

The FCA has published a [consultation paper](#) on conduct of business rules for firms providing contract for difference (CFD) products to retail clients

FCA, 6 December 2016

Investments & Investment Services

WMA publishes response to MiFID consultation paper III

The Wealth Management Association (WMA) has [published](#) its response to CP 16/29 – Markets in Financial Instruments Directive Implementation – Consultation Paper III

Wealth Management Association, 3 January 2017

ESMA Q&A's on data reporting under MiFIR and MiFID II

ESMA has [published](#) new Q&A's relating to data reporting under the MiFID II Directive (2014/65/EU) and the Markets in Financial Instruments Regulation (Regulation 600/2014) (ESMA/2016/1680). It provides responses to questions posed on:

- ▶ Legal entity identifiers (LEIs) of the issuer; and
- ▶ Date and time of the request of admission, and admission.

ESMA, 20 December 2016

FCA writes to operators of trading venues on UK process for pre-trade transparency waivers

The FCA has published a [letter](#) that it has sent to the UK operators of trading venues on the issue of pre-trade transparency waivers, setting out the process for waiver applications in the UK under the MiFID II directive and MiFIR. Enclosed with the letter is a [pre-trade transparency waiver request form](#).

FCA, 19 December 2016

ESMA updates MiFID II Q&A on investor protection

ESMA has published an [updated version](#) of its Q&A's on investor protection topics under the MiFID II Directive and MiFIR.
ESMA, 19 December 2016

New ESMA Q&A's on commodity derivatives under MiFID II and MiFIR

ESMA has published [new Q&A's](#) relating to the commodity derivatives topics under the MiFID II Directive and MiFIR. They clarify a number of points relating to position limits and ancillary activities requirements.
ESMA, 19 December 2016

ESMA updates MiFID II and MiFIR Q&A's on market structures and transparency

ESMA has published an update to its [Q&A's on market structures](#), with new questions on algorithmic trading and mandatory tick size regime. They have also updated the [Q&A's on transparency](#) in relation to MiFIR.
ESMA, 19 December 2016

FCA consultation paper on the UK implementation of the MiFID II Directive

The FCA has [published](#) its fourth consultation paper (CP16/43) on implementing the MiFID II Directive (2014/65/EU). The consultation focuses on changes to the Handbook relating to: specialist regimes, tied agents, market data, SME growth market, miscellaneous changes to the handbook and fees. The deadline for responses to fee proposals is 16 January 2016. The deadline for all other responses is 17 February 2017.
FCA, 16 December 2016

Responses to ESMA consultation on consolidated tape for non-equity products' RTS under MiFID II

ESMA has [published](#) the responses it has received to its consultation on draft regulatory technical standards (RTS) specifying the scope of the consolidated tape for non-equity financial instruments under Article 65(8)(c) of the MiFID II Directive (2014/65/EU).
ESMA, 8 December 2016

EMIR & Derivatives

ESMA methodology for mandatory peer reviews of CCPs' authorisation and supervision under EMIR

ESMA has [published](#) the methodology for mandatory peer reviews relating to central counterparties' authorisation and supervision under EMIR.
ESMA, 5 January 2017

FCA opens applications for intragroup exemption from EMIR margin requirements

The FCA has [updated](#) its webpage on EMIR notifications and exemptions, confirming that from 4 January 2017 it will start accepting applications for intragroup exemptions from the margin requirements for non-cleared derivatives under Article 11 of EMIR.
FCA, 4 January 2017

ESMA peer review report on CCP compliance with margin and collateral requirements

ESMA has [published](#) a report outlining the results of a peer review it has conducted on how national competent authorities assess compliance by central counterparties (CCPs) with the margin and collateral requirements under EMIR. The review, which launched on 1 September 2015, compared the supervisory approaches of 16 National Competent Authorities supervising the 17 CCPs established at that time. The report sets out good practice examples that emerged during the review, which include having direct access to supervised CCPs data and requesting the CCPs to verify the marketability of collateral and reliability of prices.
ESMA, 22 December 2016

European Commission adopts Delegated Regulation further extending temporary clearing exception for PSAs under EMIR

The European Commission (EC) has adopted a [Delegated Regulation](#) amending EMIR. The amendment concerns the extension of the transitional periods related to pension scheme arrangements (PSAs). In a related [press release](#), the EC explains that it has decided to extend the transitional relief for the PSAs from central clearing for their OTC derivative transactions until 16 August 2018.

EC, 20 December 2016

HM Treasury memorandum on European Commission report under Article 85(1) of EMIR

The Cabinet Office has published an [explanatory memorandum](#), submitted by the HM Treasury, on the European Commission's November 2016 report under Article 85(1) of EMIR.

HM Treasury, 20 December 2016

ESMA consults on supervision fees for trade repositories under SFTR and EMIR

The European Securities and Markets Authority has published a [consultation paper](#) providing draft technical advice to the European Commission to assist them in formulating a regulation on fees for Trade Repositories under the Securities Financing Transactions Regulation (SFTR) by a delegated act. It also discusses certain amendments to the fees under EMIR.

ESMA, 19 December 2016

Delegated Regulation on RTS on risk mitigation techniques for uncleared OTC derivative contracts under EMIR published in OJ

Commission Delegated Regulation ((EU) 2016/2251) supplementing EMIR with regulatory technical standards (RTS) on risk mitigation techniques for uncleared OTC derivative contracts under Article 11(15) of EMIR has been [published](#) in the Official Journal of the EU. The Delegated Regulation comes into force on 4 January 2017.

Official Journal of the EU, 15 December 2016

Sixth Implementing Regulation extending transitional periods related to own fund requirements for CCP exposures published in OJ

The European Commission [Implementing Regulation](#) on the extension of the transitional periods related to own funds requirements for exposures to central counterparties (CCPs), set out in the Capital Requirements Regulation (CRR) and EMIR, has been published in the Official Journal.

Official Journal of the EU, 10 December 2016

Responses to ESMA consultation on draft technical standards under SFTR and related amendments to EMIR RTS

ESMA has [published](#) the responses it has received to its consultation on draft regulatory technical standards (RTS) and draft implementing technical standards (ITS) implementing SFTR.

ESMA, 8 December 2016

Funds

House of Commons European Scrutiny Committee considers proposed Regulation to amend EuVECA Regulation and EuSEF Regulation: December 2016

The House of Commons European Scrutiny Committee has published its [twenty-fourth report](#) of the 2016-17 parliamentary session (dated 14 December 2016). The report highlights the European Commission's legislative proposal for a regulation to amend the European Venture Capital Funds Regulation (EuVECA Regulation) and the European Social Entrepreneurship Funds Regulation (EuSEF Regulation).

House of Commons European Scrutiny Committee, 20 December 2016

Bank levy: regulations providing double tax relief for EU Single Resolution Fund payments

[The Bank Levy \(Double Taxation Relief\) \(Single Resolution Fund Levy\) Regulations](#) have been published on legislation.gov.uk. The Regulations provide relief from double tax in cases where the UK bank levy overlaps with the EU Single Resolution Fund levy.

HMRC, 13 December 2016

Council of EU press release on Regulation amending EuVECA Regulation and EuSEF Regulation

The Council of the EU [published](#) a press release announcing it has agreed its negotiating stance on amendments to EU rules aimed at boosting investment in venture capital and social enterprises. Some of the amendments are in respect of the European Venture Capital Funds Regulation (EuVECA Regulation) and European Social Entrepreneurship Funds Regulation (EuSEF Regulation).

Council of the EU, 16 December 2016

FCA consults on review of FSCS funding

The FCA has published a [consultation paper](#) on reviewing the funding of the Financial Services Compensation Scheme (FSCS). The FCA discuss a range of options on changes to the funding of the FSCS in relation to the following:

- ▶ Professional indemnity insurance market
- ▶ Product provider contributions
- ▶ Funding classes for intermediation activities
- ▶ Risk-based levies
- ▶ Pensions freedoms

The deadline for responses to this consultation is 31 March 2017

FCA, 14 December 2016

Council of the EU invites COREPER to confirm approval of final compromise text of MMF Regulation

The Council of the EU [published](#) an "I" item note (14940/16) (dated 2 December 2016) from the Council's General Secretariat to its Permanent Representatives Committee (COREPER) on the approval of the final compromise text of the proposed Regulation on Money Market Funds (MMF Regulation).

EU, 8 December 2016

The Council of the EU approves text of proposed MMF Regulation

The Council of the EU has [announced](#) that its Permanent Representatives Committee (COREPER) has approved, on the Council's behalf, the political agreement reached with the European Parliament on the text of the proposed Regulation on Money Market Funds (MMF Regulation).

Council of the EU, 7 December 2016

Market Conduct

ESMA updates Q&A on MAR: December 2016

ESMA has published an [updated version](#) of its Q&A's on the Market Abuse Regulation. The updated Q&A's include three new additions (questions 3 to 5) in section 2: managers' transactions. There are also four new additions (questions 5 to 8) in section 3: investment recommendations and information recommending or suggesting an investment strategy.

ESMA, 20 December 2016

FICC Markets Standards Board guidelines on surveillance and training in wholesale markets

The FICC Markets Standards Board (FMSB) has published statements of good practice for wholesale fixed income, currency and commodities (FICC) market participants; primarily relating to [surveillance](#) and [conduct training](#) in wholesale fixed income markets.

FMSB, 8 December 2016

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