

November 2016

INVEST

InVest – November 2016

This month's roundup of developments affecting banks, wealth managers, brokers and funds sees a report from the European Commission on CRA regulation, the PRA publish a policy statement on MiFID II implementation and an updated Q&A on the application of AIFMD.

General Developments

- ▶ September statistics published by The Investment Association show mixed asset as the best-selling asset class and global as the best-selling sector
- ▶ Delegated Regulation supplementing PRIIPs Regulation regarding product intervention published
- ▶ GLEIF publishes information on registration agents
- ▶ IFSB publishes exposure draft on guiding principles on disclosure requirements for Islamic capital market products
- ▶ FCA publishes feedback statement for its call for input on regulatory barriers to social investments
- ▶ Compromise proposal on Regulation amending EuVECA Regulation and EuSEF Regulation published by the Presidency of the Council of the EU
- ▶ Report from the European Commission on CRA Regulation
- ▶ FCA thematic review of annuity sales practices
- ▶ Guidance on charity authorised investment funds from the IA
- ▶ 2017 work programme from ESMA
- ▶ FMLC paper on CCPs and clearing member obligations under Companies Act 1989 Part VII
- ▶ BoE consultation on reform of SONIA
- ▶ FCA consultation on proposals to improve transaction costs disclosure in pensions
- ▶ ESMA report on securities financing transactions and leverage in EU

EMIR & Derivatives

- ▶ FCA signs memorandum of understanding with US CFTC
- ▶ Delegated Regulation on ITS on format and frequency of reports to trade repositories adopted by EC
- ▶ Delegated Regulation on RTS on minimum details of data reporting to trade repositories adopted
- ▶ ISDA publishes trends in clearing for small derivatives users
- ▶ ECB publishes results of derivatives market survey findings
- ▶ Delegated Regulation on RTS on risk mitigation techniques for OTC derivative contracts not cleared by a central party has been adopted by the European Commission

Funds

- ▶ HM Treasury responds to consultation on implementation of UCITS V Directive

- ▶ ESMA publishes Remuneration Practice Guidelines under UCITS and AIFMD
- ▶ Q&A on application of UCITS updated by ESMA
- ▶ Updated Q&A on application of AIFMD
- ▶ FSB consultation responses on recommendations to address structural vulnerabilities from asset management

Investments & Investment Services

- ▶ FCA updates MiFID II market data processor system webpage
- ▶ Joint ESMA and EBA guidelines on assessment of suitability of management body and key function holders
- ▶ Policy statement on MiFID II implementation from PRA
- ▶ European Parliament does not object to Regulation supplementing the PRIIPs Regulation regarding product intervention
- ▶ EACB and ESBG call for urgent decision to delay PRIIPs Regulation
- ▶ ESMA publishes Q&A on CFDs and other speculative products
- ▶ ESMA publishes Q&A on MiFID II and MiFIR investor protection topics
- ▶ ESMA transaction reporting final guidelines published
- ▶ MiFID II corrigendum published
- ▶ ESMA consultation on MiFID II guidelines relating to trading halts
- ▶ ESMA consultation on guidelines on suitability of management bodies of market operators and data reporting services providers
- ▶ ESMA consultation paper on MiFID II product governance guidelines

Market Conduct

- ▶ CLLS and Law Society update MAR Q&A
- ▶ ESMA publishes trade reporting instructions under MiFIR
- ▶ Updated Q&A from ESMA on corporate aspects of MAR
- ▶ MAR Q&A updated by ESMA
- ▶ MAR corrigendum published
- ▶ ESMA publishes guidelines on market soundings and delayed disclosure of inside information under MAR

General Developments

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

Delegated Regulation supplementing PRIIPs Regulation regarding product intervention published

A European Commission Delegated Regulation ((EU) [2016/1904](#)) supplementing PRIIPs Regulation with regard to product intervention has been published in the Official Journal.

Official Journal of the European Union, 29 October 2016

GLEIF publishes information on registration agents

The Global Legal Entity Identifier Foundation has published new [information](#) on registration agents.

Global Legal Entity Identifier Foundation, 31 October 2016

IFSB publishes exposure draft on guiding principles on disclosure requirements for Islamic capital market products

The Islamic Financial Services Board (IFSB) has published an [exposure draft](#) of guiding principles on disclosure requirements for Islamic capital market products. Comments required by 31 December 2016.

The Islamic Financial Services Board, 31 October 2016

FCA publishes feedback statement on its call for input on regulatory barriers to social investments

The FCA has published a Feedback statement ([FS16/11](#)) following its call for input on regulatory barriers to social investments.

FCA, October 2016

Compromise proposal on Regulation amending EuVECA Regulation and EuSEF Regulation published by the Presidency of the Council of the EU

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

Council of the European Union, 24 October 2016

Report from the European Commission on CRA Regulation

A [report](#) has been published by the European Commission, responding to reporting obligations set out under the CRA Regulation. This report gives:

- Analysis of references to external credit ratings in EU legislation and private contracts in financial markets
- Assessment of the impact and effectiveness of the CRA Regulation's measures relating to competitiveness
- Evaluation of the impact of CRA Regulation on governance and internal processes
- Analysis of provisions relating to SFIs and potential extension to other asset classes
- Consideration of the feasibility of establishing a European CRA for the assessment of sovereign debt and a European credit rating foundation for all other credit ratings

European Commission, 19 October 2016

FCA thematic review of annuity sales practices

The Financial Conduct Authority has published the findings from its [thematic review](#) into non-advised annuity sales practices.

FCA, 14 October 2016

Guidance on charity authorised investment funds from the IA

The Investment Association has announced in a [press release](#) the publication of industry [guidance](#) on CAIFs. The guidance explains how CAIFs are regulated and contains details about the application process and ongoing regulatory requirements. There is also a model trust deed to assist with setting up schemes.

Investment Association, 12 October 2016

2017 work programme from ESMA

ESMA has published its [2017 work programme](#) plus revised [2016 regulatory work programme](#). Key areas of focus will include:

- Supervisory convergence
- Assessing risks
- Single rulebook
- Direct supervision

ESMA, 11 October 2016

FMLC paper on CCPs and clearing member obligations under Companies Act 1989 - Part VII

The Financial Markets Law Committee (FMLC) has published a [paper](#) on the obligations of central counterparties and their clearing members under Part VII of the Companies Act 1989 and includes proposed amendments to the Act and Client Assets Sourcebook.

FMLC, 10 October 2016

BoE consultation on reform of SONIA

The Bank of England has published a [consultation](#) paper seeking views on their proposals for the reform of SONIA, a sterling unsecured overnight interest rate benchmark administered by the Bank. The consultation closes on 31 December 2016.

Bank of England, October 2016

FCA consultation on proposals to improve transaction costs disclosure in pensions

A consultation [paper](#) published by the FCA sets out proposed rules and guidance aimed at standardising the disclosure of the transaction costs incurred by pension investments. There is currently no duty on asset managers to provide full disclosure of transaction costs in a standard form and the FCA feels this could impact on the ability of governance bodies to assess whether scheme members are receiving value for money. The deadline for responses is 4 January 2017 and the FCA intends to publish a final statement in the second quarter of 2017.

FCA, 5 October 2016

ESMA report on securities financing transactions and leverage in EU

ESMA has released a [report](#) on securities financing transactions and leverage in the EU prepared under Article 29(3) of the Securities Financing Transactions Regulation.

ESMA, 4 October 2016

EMIR & Derivatives

FCA signs memorandum of understanding with US CFTC

The FCA has published a [MoU](#) entered into with the US Commodity Futures Trading Commission relating to OTC derivatives. The memorandum of understanding which came into effect on 6 October 2016 and relates to the FCA and CFTC cooperating and exchanging information in supervising dual regulated firms that trade in OTC derivatives or swaps.

FCA, 27 October 2016

Delegated Regulation on ITS on format and frequency of reports to trade repositories adopted by EC

The EC has [adopted](#) a Delegated Regulation amending Implementing Regulation laying down implementing technical standards with regards to the format and frequency of trade reports to trade repositories under EMIR. The text of the Regulation is yet to be published.

European Commission, 26 October 2016

Delegated Regulation on RTS on minimum details of data reporting to trade repositories adopted

The European Commission has adopted a [Delegated Regulation](#) supplementing EMIR as regards to regulatory technical standards on the minimum details of the data to be reported to trade repositories. This updates existing standards published in February 2013 and aims to clarify data fields, adapt fields to prescribed reporting logic and introduce new fields and values to reflect market practice. An [Annex](#) has also been published, setting out the counterparty data and common data details to be reported.

European Commission, 19 October 2016

ISDA publishes trends in clearing for small derivatives users

The International Swaps and Derivatives Association (ISDA) has published a research [note](#) on key trends in clearing for small derivatives users looking at the U.S and European Union.

ISDA, 17 October 2016

ECB publishes results of derivatives market survey findings

The European Central Bank has published the [results](#) of the September 2016 survey on credit terms and conditions in euro-denominated securities financing and over-the-counter derivatives markets.

European Central Bank, 14 October 2016

Delegated Regulation on RTS on risk mitigation techniques for OTC derivative contracts not cleared by a central counterparty adopted

A [Delegated Regulation](#) supplementing EMIR in relation to regulatory technical standards (RTS) on risk mitigation techniques for OTC derivative contracts not cleared by a central counterparty has been adopted by the European Commission.

European Commission, 4 October 2016

Funds

HM Treasury responds to consultation on implementation of UCITS V Directive

HM Treasury has published its [response](#) to the consultation on the UK's implementation of the UCITS V Directive.

HM Treasury, October 2016

ESMA publishes Remuneration Practice Guidelines under UCITS and AIFMD

The European Securities and Markets Authority has published two [sets](#) of Remuneration Guidelines under UCITS and AIFMD.

ESMA, 14 October 2016

Q&A on application of UCITS updated by ESMA

Updated [Q&As](#) on the application of the UCITS Directive have been published by ESMA. The Directive has recently been revised by UCITS V and the updated Q&As aim to promote common approaches to the application of the UCITS Directive and include amongst other things information about the meaning of a "regulated market" and reporting under the Regulation.

ESMA, 12 October 2016

Updated Q&A on application of AIFMD

ESMA has issued an updated version of its [Q&A](#) paper on the application of the Alternative Investment Fund Managers Directive. Amendments include a new section on the impact of the Regulation on reporting and transparency of SFT and the aim of the Q&As is to promote common supervisory approaches and practices when applying AIFMD.

ESMA, 6 October 2016

FSB consultation responses on recommendations to address structural vulnerabilities from asset management

[Responses](#) have been published by the FSB relating to its consultation on recommendations to address structural vulnerabilities from asset management activities. Those responding include EFAMA, AIMA, SIFMA, The Investment Association and Financial Services Roundtable, to the consultation which took place in June 2016.

FSB, 5 October 2016

Investments & Investment Services

FCA updates MiFID II market data processor system webpage

The FCA has updated [information](#) on its Market Data Processor (MDP) system under MiFID II.

FCA, 31 October 2016

Consultation: Joint ESMA and EBA guidelines on assessment of suitability of management body and key function holders

The EBA and ESMA have published a joint [consultation](#) on guidelines for the assessment of the suitability of members of the management body and key function holders under the CRD IV and MiFID II Directives.

EBA & ESMA, 28 October 2016

Policy statement on MiFID II implementation from PRA

A [policy statement](#) on the implementation of MiFID II and MiFIR has been published by the PRA. This follows a first consultation which took place in March 2016 and responses received have not necessitated significant change to the original proposals. The PRA has also published two non-final instruments:

- [PRA Rulebook: CRR Firms: Algorithmic Trading Instrument 2016](#)
- [PRA Rulebook: CRR Firms: Passporting Instrument 2016](#)

PRA, 27 October 2016

European Parliament does not object to Regulation supplementing the PRIIPs Regulation regarding product intervention

The European Parliament has decided not to [object](#) to the Commission Delegated Regulation supplementing the Regulation on key information documents (KIDs) for packaged retail and insurance-based investment products (PRIIPs) in relation to product intervention.

European Parliament, 21 October 2016

EACB and ESBG call for urgent decision to delay PRIIPs Regulation

The EACB and ESBG has [called](#) on the European Commission to postpone the application date of the PRIIPs Regulation currently set for 31 December 2016.

EACB, 14 October 2016

ESMA publishes Q&A on CFDs and other speculative products

ESMA has published an updated version of its [Q&As](#) on the application of MiFID to the marketing and sale of CFDs and other speculative products. There are five new questions and answers and the purpose is to promote common supervisory approaches and practices.

ESMA, 11 October 2016

ESMA publishes new Q&A on MiFID II and MiFIR investor protection topics

ESMA has published a new set of [questions and answers](#) on MiFID II and MiFIR investor protection topics.

ESMA, 10 October 2016

ESMA transaction reporting final guidelines published

ESMA has published its [final guidelines](#) on transaction reporting, order record keeping and clock synchronisation under the MiFID II Directive.

ESMA, 10 October 2016

MiFID II Directive corrigendum published

A [corrigendum](#) to the MiFID II Directive has been published in the Official Journal of the European Union.

Official Journal of the EU, 8 October 2016

ESMA consultation on MiFID II guidelines relating to trading halts

A [consultation paper](#) has been published by ESMA on guidelines on the calibration, publication and reporting of trading halts under the MiFID II Directive. ESMA is seeking views on a draft version of the guidelines which covers:

- Dissemination of information regarding the activation of mechanisms to manage volatility on a specific trading venue
- Procedure and format to submit reports on trading halts' parameters from NCAs to ESMA

The consultation ends on 6 December 2016 and a final report will be published in the first quarter of 2017.

ESMA, 6 October 2016

ESMA consultation on guidelines on suitability of management bodies of market operators and data reporting services providers

ESMA has published [consultation paper](#) ESMA/2016/1437 on guidelines on the suitability of the management bodies of market operators and DRSPs under MiFID II. Suitability criteria at level 1 is clarified and the draft guidelines meet the mandate to issue guidance under Article 45(9) and 63(2) of MiFID II. The guidelines in Annex V cover:

- Sufficient time commitment: general
- Sufficient time commitment: calculation of the number of directorships
- Knowledge, skills and experience
- Honesty and integrity
- Independence of mind
- Adequate human and financial resources devoted to the induction and training of members
- Diversity
- Record-keeping

The deadline for responses is 5 January 2017 and the final report is expected in the first half of 2017.

ESMA, 5 October 2016

MiFID II product governance guidelines: ESMA consults

A [consultation paper](#) has been published by ESMA on product governance guidelines under MiFID II. The product governance requirements are being introduced to ensure firms act in client's best interests during all life stages of products and services, and the draft guidelines aim to promote greater convergence in the implementation of MiFID II requirements. The deadline for responses is 5 January 2017 and the final guidelines will apply from 3 January 2018.

ESMA, 5 October 2016

Market Conduct

CLLS and Law Society update MAR Q&A

An updated version of the Market Abuse Regulation [Q&As](#) has been published by the City of London Law Society and the Law Society Company Law Committees' Joint Working Parties on Market Abuse, Share Plans and Takeovers Code.

The City of London Law Society, 28 October 2016

ESMA publishes trade reporting instructions under MiFIR

A number of trade reporting instructions for entities reporting under MiFIR have been published by ESMA. The detailed reporting introductions and schemas come under Financial Instruments Reference Data System which covers MiFIR and MAR requirements on data collection and publication. The instructions comprise:

- [Technical reporting instructions: MiFIR transaction reporting](#) with [Annex 1: Data validation rules](#) and [Annex 2: Messages schemas](#)
- [Reporting instructions: FIRDS reference data system](#) and [Annex 6: XML schemas](#)
- [Reporting instructions: FIRDS transparency system](#) and [Annex 2: File format: XML schemas](#)
- [Reporting instructions: Double volume cap system](#) and [Annex 1: XML schemas for the double volume cap system](#) and [Annex 2: File naming convention](#)

ESMA, 27 October 2016

Updated Q&A from ESMA on corporate aspects of MAR

ESMA has published an updated version of its [Q&As](#) on MAR. This includes the following new questions on:

- Transactions carried out under Article 19 (1) of MAR in a currency which is not the Euro and the exchange rate to be used to determine crossing of the threshold set out in Article 19 (8) of MAR of EUR5 000. The daily euro foreign exchange reference rate as published on the ECB website should be used.
- Whether material intended for distribution channels or for the public concerning financial instruments containing statements such as "undervalued", "fairly valued" or "overvalued" fall within the definition of "investment recommendation" set out under MAR.

The Q&As are accompanied by a [press release](#).

ESMA, 26 October 2016

MAR Q&A updated by ESMA

An updated version of [Q&As](#) relating to Market Abuse Regulation has been published by ESMA. The updated version includes the following new Q&As:

- Managers' transactions
- Investment recommendations

ESMA, 26 October 2016

MAR corrigendum published

A [corrigendum](#) to the Market Abuse Regulation has been published in the Official Journal.

Official Journal of the EU, 21 October 2016

ESMA publishes guidelines on market soundings and delayed disclosure of inside information under MAR

ESMA has published final guidelines under the Market Abuse Regulation in relation to the following:

- Persons receiving market soundings ([ESMA/2016/1477](#)).
- Delay in the disclosure of inside information ([ESMA/2016/1478](#)).

ESMA, October 2016

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