

EU MATTERS: your newsletter on EU matters



July, 2018

General and Institutions

Brexit

- Ahead of the June European Summit, the European Commission and the UK published a **Joint Statement** outlining the progress on the terms of the draft Withdrawal Agreement since the negotiation round that took place on 16-19 March 2018.

Read the full joint statement below:

https://ec.europa.eu/commission/sites/beta-political/files/joint_statement.pdf

- At the June European Summit, the Council insisted on the need for intensified efforts so that the **Withdrawal Agreement** as well as preparing a political declaration on the framework for the **future relationship**, amongst others, can be concluded as soon as possible.

See the European Council's statement:

<http://www.consilium.europa.eu/media/35966/29-euco-art50-conclusions-en.pdf>

Legislative files

Capital Markets Union (CMU)

- European Commission held a public hearing on: '**Making the capital markets union work for retail investors**'. The keynote speech was by Valdis Dombrovskis, Commissioner for Financial Stability, Financial Services and the CMU. Other speakers included Steven Maijoor, Chair, ESMA and Eva Kaili, MEP. The input from the hearing will feed in to the Commission's future work on retail investors.

Link to the hearing program: https://ec.europa.eu/info/sites/info/files/finance-events-180629-programme-cmu_en.pdf

Link to a study on "Distribution systems of retail investment products across the European Union": https://ec.europa.eu/info/publications/180425-retail-investment-products-distribution-systems_en

MiFID/MIFIR

- ESMA has confirmed that the temporary period allowing for a smooth introduction of the use of **Legal Identity Identifiers (LEIs)**, originally brought-in in December 2017, will not be further extended and cease in July 2018. Reporting firms have to use LEIs to report trades under MiFIR. See below:

https://www.esma.europa.eu/sites/default/files/library/esma70-145-872_public_statement_on_lei.pdf

- The European Commission Vice-President Dombrovskis has written a letter to ESMA on the '**ancillary activity test**' in Article 2 of MiFID II, applicable to firms that provide investment services in relation to commodity derivatives. The letter clarifies "that the ancillary activities test needs to be calculated by each person within a group that engages in either of the two relevant MiFID activities mentioned in Art.2(1)(j). In consequence, the ancillary activities test must be calculated as many times as necessary for each separate person who trades in commodity derivatives within a group."

You can read it here:

https://www.esma.europa.eu/sites/default/files/library/letter_from_commission_vp_dombrovskis_answer_to_esma_letter_esma70-154-5851.pdf

EMIR & Supervision of CCPs

- The Plenary of the European Parliament approved, without any change, the Economic and monetary affairs Committee's amendments to the Commission's proposal for a **review of EMIR (Refit)**, as regards clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories. The approved text will be the basis for the political dialogue negotiations with the Council, to finalise a revised EMIR.

Link to the Parliament's text:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0244+0+DOC+PDF+V0//EN>

- ESMA has published an opinion on **CCPs' liquidity risk assessments**. ESMA clarifies that CCPs should include, in the measurement of their liquidity needs, the default of their top two clearing members in all their capacities vis-à-vis the CCP, in addition to assessing in their stress testing scenarios all entities towards which the CCP has a liquidity exposure.

See the opinion below:

https://www.esma.europa.eu/sites/default/files/library/esma70-151-1149_opinion_on_ccp_liquidity_risk_assessment.pdf

- ESMA has issued a statement on the **exemption from the clearing obligation for pension scheme arrangements**, which expires on 17 August 2018. ESMA expects National Competent Authorities to not prioritise their supervisory actions towards entities that are expected to be exempted again in a relatively short period of time (a permanent exemption is under negotiation as part of the review of EMIR), and to generally apply their risk-based supervisory powers in their day-to-day enforcement of applicable legislation in a proportionate manner.

Read the statement here:

https://www.esma.europa.eu/sites/default/files/library/esma70-151-1462_communication_on_clearing_obligation_for_pension_scheme_arrangements_0.pdf

- ESMA has issued its first annual report regarding **supervisory measures carried out and penalties imposed** by national competent authorities (NCAs) under EMIR. The report especially focuses on the supervisory actions undertaken by NCAs, their supervisory powers and the interaction between NCAs and market participants when monitoring the compliance of the following EMIR requirements:
 - the clearing obligation for certain OTC derivatives
 - the reporting obligation of derivative transactions to TRs
 - requirements for non-financial counterparties
 - risk mitigation techniques for non-cleared OTC derivatives

See the link here:

https://www.esma.europa.eu/sites/default/files/library/esma70-151-1400_report_on_supervisory_measures_and_penalties_emir.pdf

- ESMA has issued a statement on the **clearing obligation for pension scheme arrangements** (PSAs), with the objective to avoid, to the extent possible, disruption to certain PSAs who may face potential challenges clearing their OTC derivative contracts on 17 August 2018, when the current, and final, exemption from the clearing obligation under EMIR expires.

https://www.esma.europa.eu/sites/default/files/library/esma70-151-1462_communication_on_clearing_obligation_for_pension_scheme_arrangements_0.pdf

- The European Parliament's Economic and monetary affairs and constitutional affairs committee MEPs backed the **European Central Bank proposal to bring central counterparties within the scope of its regulatory powers**. The new ECB powers with regard to clearing systems for financial instruments should have to be restricted to monetary policy purposes. MEPs included an indicative list of regulatory powers that the ECB would apply under the amended Article 22 of the ECB Statute. Moreover, MEPs ensured that the new ECB competences could be only exercised within the legal framework established by other EU institutions and that ECB actions are transparent and are accountable to the European Parliament and the Council. The text is now going to be voted by the European Parliament's Plenary 4th July.

<http://www.europarl.europa.eu/news/en/press-room/20180619IPR06114/econ-and-afco-meps-want-ecb-to-be-able-to-regulate-clearing-houses>

OTHER

Digital Single market

- The European Parliament, Council and the European Commission have reached a political agreement on new rules on **free-flow of non-personal data**. The new rules will ensure free flow of data cross borders, ensure data availability for regulatory

control and encourage creation of codes of conduct for cloud service providers. Read the press release below:

http://europa.eu/rapid/press-release_IP-18-4227_en.htm

Cybersecurity

- The European Commission organised a public-private workshop on: "**promoting information sharing in financial sector cybersecurity**". The meeting was opened by Olivier Guersent, European Commission's Directorate-General for Financial Stability, Financial Services and Capital Markets Union, DG FISMA.

ESMA

- ESMA has issued the latest iteration of its **Risk Dashboard**, covering risks in the EU's securities markets for 1Q2018. ESMA's overall risk assessment remains unchanged from 4Q17 at high. See below:
https://www.esma.europa.eu/sites/default/files/library/esma50-165-584_risk_dashboard_2-18.pdf

Federation of European Securities Exchanges (FESE)

- FESE held its **Annual Convention** in Vienna with over 150 participants, including board members of listed companies, trading participants, MEPs and representatives from 22 exchanges. The panellists included Lauri Rosendahl, President Nasdaq Stockholm and president of Nordics, MEPs Markus Ferber, Burkhard Balz and Kay Swinburne as well as ESMA Chair Steven Maijoor. See the link to the convention below:
<https://www.wienerbourse.at/en/news/videos/fese-convention-2018/>

EVENTS:

9 July	UK to publish the Brexit white paper
25 July	Deadline for comments to the Commission's proposals amending the MAR, supporting a proportionate regime for SME listing
5-7 September	EUROFI Conference, Vienna
10 October	CEPS-ECMI Annual Conference: Sustaining Growth through Innovation in Capital Markets, Brussels; speakers include Arminta Saladziene; Nasdaq Vice President for Lithuania
17 October	QED - 6th Annual QED Conference on Cybersecurity, Brussels
6 November	EPFSF - Brexit, Brussels
4 December	EPFSF - Competitive positioning EU 27 in Financial Markets, Brussels
4 December	Annual European Small and Mid-Cap Awards, Brussels

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