

EU MATTERS: your newsletter on EU matters



October, 2018

Institutional affairs

Brexit

- ESMA has written to the European Commission on **third country regimes in relation to investor protection and intermediaries**, aiming to input to any work the European Commission may undertake due to Brexit. The letter follows a previous communication on trading venues, and now highlights a number of items, in particular:
 - Third country regime for firms providing investment services and activities to eligible counterparties and *per se* professional clients;
 - Third country regime for firms providing investment services and activities to retail and professional clients on request;
 - Third country firms providing investment services and activities at the exclusive initiative of EU clients (reverse solicitation); and
 - Investment firms outsourcing critical or important functions other than those related to portfolio management to third country providers

Read more here:

<https://www.esma.europa.eu/press-news/esma-news/esma-letter-european-commission-mifid-ii-mifir-third-country-regimes>

Review of the European System for Financial Supervision

- Following the European Parliament ECON Committee's publication of the draft report on the review of the European System for Financial Supervision earlier this year, Members of the European Parliament have now **tabled further amendments** to the European Commission's original proposal. The over 1100 amendments have been debated in ECON. Topics covered:
 - Maintaining supervision at national level rather than centralizing
 - Strengthening the European Supervisory Authorities' (ESAs') product intervention powers for consumer protection purposes
 - More efficient decision-making in the ESAs
 - Third country regimes, equivalence decisions and possible 'no-action letters'

The ECON Committee aims at voting on the final report before the end of 2018.

Read the draft report and amendments here:

<http://www.europarl.europa.eu/committees/en/econ/search-in-documents.html?ufolderComCode=ECON&ufolderLegId=8&ufolderId=11084&linkedDocument=true&urefProcYear=&urefProcNum=&urefProcCode=#sidesForm>

Legislative files

EU Benchmark Regulation (BMR)

- ESMA has updated its **Q&As** on BMR. The updates cover for instance:
 - The reference to systematic internaliser in the definition of financial instruments;
 - When banks issuing certificates classify as users of benchmarks;
 - The application for endorsement of family of benchmarks;
 - The language of benchmark statements.

To read the Q&As:

https://www.esma.europa.eu/sites/default/files/library/esma70-145-114_qas_on_bmr.pdf

MiFID/MIFIR

- The European Parliament's ECON Committee has voted its final report on the **Investment Firm Review/Supervision**. Beyond changes to capital requirements for investment firms, the report also includes proposed changes to MiFID/MiFIR on the extension of the tick size regime to systematic internalisers and on equivalence regimes. The European Council's negotiations on the file are still ongoing, whereafter the negotiations can enter the final stage, the trilogies.

Read the ECON report here:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2018-0296+0+DOC+PDF+V0//EN>

- ESMA has sent an opinion and a revised draft RTS 1 to the European Commission for endorsement, **extending the tick size regime to systematic internalisers' quotes**, but limiting it to shares and depositary receipts. ESMA had originally proposed the extension to apply for all equity and equity-like instruments. The revision followed the European Commission's request for ESMA's agreement to limit the application. Read more:

<https://www.esma.europa.eu/press-news/esma-news/esma-agrees-limit-application-tick-sizes-systematic-internalisers-quotes-shares>

- ESMA has updated its **Q&A on market structure and transparency** topics. The updates concern for instance:
 - Classification of derivatives on derivatives for transparency purposes;
 - Default liquidity status of bonds;
 - Scope of the pre-trade transparency waiver;
 - Market Making activities and incentives to be provided during stressed market conditions;
 - Treatment of bulk quotes for the calculation of the Order to Trade Ratio;
 - Registration of a segment of an MTF as an SME growth market; and
 - Maker Taker schemes

Link:

<https://www.esma.europa.eu/press-news/esma-news/esma-updates-its-qas-mifid-ii-and-mifir-market-structure-and-transparency>

- ESMA has issued an update of its Q&As regarding **data reporting**. The updated document includes the following two new Q&As:
 - FX Swaps reporting
 - Interest Rate Swaps reportingThe updated Q&A also includes an amendment to the existing Q&A 1 on total issued nominal amount.

See the link:

https://www.esma.europa.eu/file/21278/download?token=7gCWzi_l

- ESMA has updated its Q&As on **commodity derivatives** topics. These Q&As provide clarification on position limits, position reporting and ancillary activity.

Link to the Q&As:

https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-36_gas_commodity_derivatives.pdf

- ESMA has updated its Q&As on the implementation of **investor protection** topics. New answers address:
 - Best execution - Reporting for firms using a venue's RFQ system to agree a trade.
 - Investment advice on an independent basis – Use of a 'look-through' approach.

Read the Q&As:

https://www.esma.europa.eu/sites/default/files/library/esma35-43-349_mifid_ii_qas_on_investor_protection_topics.pdf

Market Abuse regulation (MAR)

- ESMA has updated its Q&As document regarding the implementation of MAR. The Q&As include an update on **delayed disclosure of inside information**.

Read the update:

https://www.esma.europa.eu/sites/default/files/library/esma70-145-111_qa_on_mar.pdf

Anti-money laundering

- The European Commission has published legislative proposals in order to strengthen the EU supervision and enforcement of anti-money laundering rules. The proposals include **giving the European Banking Authority (EBA) a strengthened role**, such as:
 - Requesting national anti-money laundering supervisors to investigate breaches and targeted actions;
 - Provide that the national anti-money laundering supervisors comply with EU rules and cooperate properly with prudential supervisors.
 - Address decisions directly to individual financial sector operators;
 - Enhance the quality of supervision;
 - Enable the collection of information on anti-money laundering risks and trends and fostering exchange of such information between national supervisory authorities (so-called data hubs);
 - Facilitate cooperation with non-EU countries on cross-border cases

- establish a new permanent committee that brings together national anti-money laundering supervisory authorities

These proposals to strengthen EBA's role will now be negotiated by the European Parliament and the Council, in relation to already ongoing negotiations on the Commission's proposals on the Review of the European System of Financial Supervision.

Read more here:

[http://europa.eu/rapid/press-release MEMO-18-5725_en.htm](http://europa.eu/rapid/press-release_MEMO-18-5725_en.htm)

EMIR & supervision of CCPs

- ESMA issued an update of its **Q&A regarding the implementation of EMIR**. The new Q&A document includes clarification on access models and also on reporting to trade repositories of FX swap derivatives.

Read the Q&As:

https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-52_qa_on_emir_implementation.pdf

- ESMA has published its Final Report and a new set of draft RTS on the Clearing Obligation under EMIR. The draft RTS relates to the **deferred date of application for the treatment of certain intragroup transactions** concluded with a third country group entity. ESMA has now sent the draft RTS to the European Commission for endorsement.

To read the final report:

[https://www.esma.europa.eu/sites/default/files/library/esma70-151-1768_final_report no.6 on the clearing obligation intragroup.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-151-1768_final_report_no.6_on_the_clearing_obligation_intragroup.pdf)

CSDR

- ESMA has updated its **Q&As regarding the practical implementation of the EU CSD Regulation (CSDR)**. This batch of CSDR Q&As covers book-entry form requirements, organisational requirements and several questions on settlement discipline.

Link:

<https://www.esma.europa.eu/press-news/esma-news/esma-updates-csdr-qas-1>

OTHER

Fintech

- The European Parliament has adopted a resolution on **Distributed ledger technologies and blockchains: building trust with disintermediation**. In the resolution, the European Parliament for instance stresses that any regulatory approach toward DLT should be innovation-friendly, should enable passporting, and should be guided by the principles of technology neutrality and business-model neutrality, and calls for the convergence and harmonisation of regulatory approaches.

Read a provisional version of the resolution here:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2018-0373+0+DOC+PDF+V0//EN>

Retail

- ESMA has renewed the restriction on the marketing, distribution or sale of **contracts for differences (CFDs)** to retail clients, in effect since 1 August, from 1 November 2018 for a further three-month period.

Read more:

<https://www.esma.europa.eu/press-news/esma-news/esma-renew-restriction-cfds-further-three-months>

- ESMA has updated its **Q&A on its temporary product intervention measures** on the marketing, distribution or sale of CFDs and binary options to retail clients, providing clarification on the application of the temporary product intervention measures in relation to rolling spot forex.

Link:

https://www.esma.europa.eu/sites/default/files/library/esma35-36-1262_technical_gas_product_intervention.pdf

ESMA

- ESMA published its 2nd 2018 **Report on Trends, Risks and Vulnerabilities** setting out the details of its analysis of volatility in financial markets. The potential of market volatility to undermine financial stability as well as to impose unexpected losses on investors, is a subject of concern for securities market regulators, and is a key element of ESMA's market monitoring.

Read the report here:

https://www.esma.europa.eu/sites/default/files/library/esma_50-165-632_report_on_trends_risks_and_vulnerabilities_no.2_2018.pdf#page=76

- ESMA has published a working paper examining **liquidity in EU fixed income markets**. ESMA has found that sovereign bond market liquidity has increased recently, potentially due to the effects of supportive monetary policy. However, in parallel, it has seen evidence of several episodes of deteriorating secondary market liquidity for corporate bonds, especially between 2014 and 2016.

Read more here:

<https://www.esma.europa.eu/press-news/esma-news/esma-finds-deterioration-in-liquidity-in-stressed-financial-markets-both>

IOSCO

- IOSCO has published a guidance to help its members address **conflicts of interest and conduct risks in equity capital raising**.

Read the release:

<http://www.iosco.org/news/pdf/IOSCONEWS510.pdf>

- IOSCO issued a report providing measures for securities regulators to consider when addressing the risks arising from the **marketing and sale of OTC leveraged products to retail investors**.

View the release:

<http://www.iosco.org/news/pdf/IOSCONEWS511.pdf>

- IOSCO issued a public statement on the **risks of binary options** and the response of regulators for mitigating the risks and harm to retail investors transacting in these products.

Read the statement:

<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD614.pdf>

EVENTS:

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| 10 Oct | CEPS-ECMI Sustaining Growth through Innovation in Capital Markets, Brussels; speakers include Daiga Auzina-Melalksne, Vice President, Nasdaq Latvia |
| 17 Oct | QED - 6th Annual QED Conference on Cybersecurity, Brussels |
| 17-19 Oct | European Summit, including EU 27 meeting on Brexit |
| Oct/Nov | Deadline for finalising the Withdrawal Agreement and the political declaration on the future EU-UK relationship |
| 5 Nov | Commission conference: Europe as an investment destination, Brussels |
| 6 Nov | EPFSF - Brexit, Brussels, speakers include Henrik Husman, President of Nasdaq Helsinki |
| 28 Nov | The Nordic Financial Ecosystem Forum, organised by Nasdaq and EQT, Brussels |
| 4 Dec | Annual European Small and Mid-Cap Awards, Brussels |
| 4 Dec | EPFSF - Competitive positioning EU 27 in Financial Markets, Brussels |
| 4-5 Dec | European Issuers on capital markets, Brussels |

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