



European Regulatory Summary – November 2016

Despite Brexit and Sterling fluctuations dominating the headlines there have been significant developments in the EU regulatory scene. The European Commission has adopted a communication that sets out the next steps to accelerate the completion of the Capital Markets Union (CMU), a flagship project of the Juncker Commission to boost jobs and growth in Europe. With regard to MiFID II, directives, Q&As and consultation papers have been issued (see below).

MiFID II

- ESMA has issued a document (Q&A) regarding the implementation of the double volume cap under the Markets in Financial Instruments Directive and Markets in Financial Instruments Regulation (MiFID II and MiFIR). MiFID II introduces a so-called “double” volume cap mechanism which limits the use of reference price waivers and negotiated price waivers under the MiFID II new transparency regime. The purpose of the Q&A is to promote common supervisory approaches and practices in the application of MiFID II/MiFIR in relation to the double volume cap provisions. It provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of MiFID II/MiFIR. [Click here](#) to access the Q&A document.
- ESMA has issued a consultation paper on product governance guidelines under the MiFID II regarding the target market assessment by manufacturers and distributors of financial products.
- ESMA has issued another Q&A on investor protection under MiFID II. [Click here](#) to access the article and the Q&A.
- The FCA published its third consultation paper (CP16/29) on the implementation of the revised MiFID II. The latter, which comes into effect on 3 January 2018, updates and improves rules governing the way capital markets function, contributes to the reform of derivatives markets and strengthens transparency of trading. These are said to further the aim of making financial markets more efficient, transparent and responsible. MiFID II also strengthens the investor protection regime for retail and wholesale investment business and the third [consultation paper](#) focuses on a wide range of conduct of business issues, which will increase protections for retail investors.

Solvency II

The Prudential Regulatory Authority has issued a Supervisory Statement: External Audit of the Public Disclosure Requirement – SS11/16.

This supervisory statement reminds the governing body of its responsibilities in respect of the ongoing appropriateness of the information disclosed, and that it must approve the Solvency and Financial Condition Report (SFCR). It also sets out the level of assurance expected with respect to the external audit requirement on the SFCR and the audit guidance that the PRA expects auditors to follow in auditing a firm’s SFCR. It should be read alongside the External Auditors Part of the PRA Rulebook. [Click here](#) to access the supervisory statement.

Benchmarks

- ESMA has published a consultation paper regarding its draft regulatory and implementing technical standards (RTS/ITS) which will implement the Benchmarks Regulation (BR). ESMA is asking stakeholders to comment on its proposed RTS/ITS applicable to benchmark contributors, administrators and national competent authorities. [Click here](#) to access the consultation paper.

- ESMA is also conducting an open hearing on draft technical standards under the Benchmarks Regulation on the 8th November in Paris.

ESMA consults on future reporting rules for securities financing transactions

ESMA has issued a consultation paper on draft technical standards implementing the Securities Financing Transaction Regulation (SFTR), which aims to increase the transparency of shadow banking activities. Securities financing transactions (SFTs) are transactions where securities are used to borrow cash (or other higher investment-grade securities), or vice versa – this includes repurchase transactions, securities lending and sell/buy-back transactions.

The SFTR will require both financial and non-financial market participants to report details of their SFTs to an approved EU trade repository. These details will include the composition of the collateral, whether the collateral is available for reuse or has been reused, the substitution of collateral at the end of the day and the haircuts applied. [Click here](#) to access the consultation paper.

EBA recommends that only investment firms identified as GSIIIs and OSIIIs be subject to the full CRDIV/CRR

The EBA has responded to the European Commission's call for technical advice on the criteria to identify the class of investment firms for which the prudential regime laid down in the Capital Requirements Directive (CRD) and Capital Requirements Regulation (CRR) is applicable. In general, the EBA recommends that only those investment firms that are currently identified as Global Systemically Important Institutions (GSIIIs) and Other Systemically Important Institutions (OSIIIs) remain subject to the full CRD/CRR regime.

The EC establishes an expert group to develop a comprehensive European strategy on sustainable finance

This is based on the European Commission's goal to develop an overarching and comprehensive EU strategy on sustainable finance as part of the Capital Markets Union. A call for expression of interest for the selection of experts has also been launched.

Adoption of a delegated regulation on margin requirements for uncleared derivatives

On 4 October 2016 the European Commission adopted a delegated regulation that specifies how margin should be exchanged for OTC derivatives contracts that are not cleared by a CCP. The Commission amended and adopted the draft regulatory standards submitted by the European Supervisory Authorities.

Electronic Debt Markets Association Europe (EDMA Europe)

In response to the regulatory requirements arising from MiFID II / MiFIR, four leading electronic trading platforms BrokerTec Europe Ltd, MarketAxess Europe Limited, MTS Group and Tradeweb Europe Limited, are launching the Electronic Debt Markets Association Europe (EDMA Europe) to represent the interests of regulated electronic fixed income trading venues in Europe.

EDMA Europe will seek to establish a consensus between their members so that their collective view on regulatory developments can be articulated and promoted to the relevant authorities and other market participants. It intends to take into account the following principles: open access; fair, effective and appropriately transparent markets; diversity of electronic trading protocols for fixed income markets to suit the range of instruments and different needs of market participants; and equivalent regulatory treatment of all electronic trading platforms and a consistent European regulatory approach.

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and cost-effectively."*

