



FINANCIAL REGULATION
Investment services, asset management
and market infrastructure

May & June 2019

INTRODUCTION

Thank you for your interest in Uría Menéndez's *Newsletter on Financial Regulation*.

As a result of an evolving regulatory landscape, it is very important for institutions to identify, assimilate and implement changes in a timely and proper manner. The purpose of this newsletter is to assist financial institutions in this monitoring exercise. It will periodically compile at the international, European and national level the regulatory developments applicable to certain fields of financial activity, that is, investment services, asset management and market infrastructures. It will also include a section which will cover other matters of general interest.

For the May-June period, we highlight the Spanish Preliminary Draft Law amending the Companies Law and other financial regulations, to adapt them to Directive (EU) 2017/828 of the European Parliament and of the Council, of 17 May 2017, as regards the promotion of the long-term involvement of shareholders and the CNMV Technical Guide on ancillary services provided by investment firms.

We hope you find this newsletter interesting and that it helps you to stay up to date on the financial regulatory framework applicable to the areas mentioned above.

INVESTMENT SERVICES & INVESTMENT FIRMS

Spain

CNMV

 **CNMV public consultation on the amendment of Circular 1/2017 of 26 April on liquidity contracts.**

The National Securities Market Commission (CNMV) has submitted proposed amendments to Circular 1/2017 of 26 April on liquidity contracts for public consultation.

Particular amendments include: (i) establishing a new operating limit of EUR 20,000 per session, applicable to those contracts entered into by issuing companies whose shares do not have a liquid market and are traded on a multilateral trading system or on a regulated market through a fixed trading system; and (ii) eliminating the existing restriction on the possibility to simultaneously maintaining purchase and sale orders for shares at any time during the auction periods.

 **CNMV adopts the Guidelines on the application of the definitions laid down in Annex 1(C)(6) and (7) of MIFID II.**

On 5 June 2019, the European Securities and Markets Authority (ESMA) published translations of the “Guidelines on the application of the definitions laid down in Annex 1(C)(6) and (7) of Directive 2014/65/EU of the European Parliament and of the Council (MiFID II) on markets in financial instruments” into the official languages of the EU on its website.

In this regard, the CNMV has notified ESMA of its intention to comply with the guidelines. Therefore, the CNMV shall take into account these guidelines in its investor protection and supervisory tasks.

The aim of the guidelines is to establish a uniform and consistent interpretation of the scope of the concept of financial instruments to include physically-settled commodity derivatives contracts as referred to in Annex 1(C)(6) and (7) of MiFID II, to prevent regulatory arbitration.

 **CNMV resolution of 27 June 2019 on product intervention measures relating to binary options and financial contracts for difference.**

Due to the alarming increasing number of retail clients that invest in complex financial products such as binary options and financial contracts for difference (CFDs), the CNMV has decided to issue a resolution to protect their interests and those of the investors. The resolution (i) prohibits the marketing, distribution or selling of binary options to retail clients, (ii) it sets out several conditions for the marketing, distribution or selling of CFDs to such clients and (iii) prohibits all practices to circumvent the above.

The measures adopted with respect to binary options will enter into force on 2 July 2019 and on 1 August 2019 with respect to CFDs.

 **CNMV Technical Guide on the ancillary services provided by investment firms.**

The CMV has published a Technical Guide on the provision of ancillary services by investment firms (IFs) which main objectives are to: (i) identify the main aspects that IFs may consider when deciding whether to provide ancillary services or not; (ii) establish its interpretation criteria on this matter and; (iii) establish the scope under which these services may be provided by IFs.

DGT

 **Binding consultation CV0490-19: INVERCO asks the DGT whether research services provided to funds by research providers may be exempted from invoicing.**

INVERCO (the Spanish Association of Investment and Pension Funds) has asked the General Directorate of Taxes (*Dirección General de Tributos*) (DGT) whether research services provided to funds by research providers are services that may be exempted from the obligation to issue an invoice.

The DGT has confirmed that, although the research services provided to funds by research providers are subject to and exempt from VAT, that kind of service still has to be invoiced as it is a service provided by third parties other than the management company. This does not prevent providers from requesting an exemption from the Tax Management Department of the Spanish Tax Agency (*Departamento de Gestión Tributaria de la Agencia Estatal de la Administración Tributaria*) for the obligation to issue an invoice, when this is justified by commercial or administrative practices in the sector or by the technical conditions under which such invoices are issued.

 **Binding consultation CV608-19: INVERCO asks the DGT whether in the event that research expenses were charged to the funds, the allocation of the research service and cost to each fund conducted by the management company may be exempted from VAT.**

INVERCO has asked the DGT whether in the event that research expenses were charged to funds, the allocation of the research service and cost to each fund conducted by the management company may be exempted from VAT. The rationale behind this is that these are activities which are part of the management activity performed by the management company vis-à-vis its funds, which are covered by article 20.one.18° letter n) of the VAT Law and, therefore, subject to and exempt from VAT.

The DGT has responded favourably to this consultation and therefore confirms that the allocation of the cost of research to each fund by the management company would be subject to and exempt from VAT, with no obligation on the management company to issue an invoice to each fund.

Consequently, the research provider will be allowed to issue a single invoice to the management company for the aggregate amount (subject to and exempt from VAT) of the research service provided to its funds, and the management company may subsequently internally break down such aggregate amount in order to allocate the corresponding cost to each fund, without the need to issue an individualised invoice for each fund.

Europe

LEGISLATION

 **Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 as regards the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts the registration and supervision of trade repositories and the requirements for trade repositories.**

Regulation 2019/834 amends Regulation (EU) 648/2018 regarding, among other matters, the following: (i) the definition of financial counterparty; (ii) introduction of new regulation on financial counterparties that are subject to the clearing obligation and the possibility to temporarily suspend the clearing obligation; (iii) the requirement to clear certain OTC derivative contracts concluded before the clearing obligation takes effect is removed as it creates legal uncertainty and operational complications; (iv) the requirement to report historic contracts is removed; and (v) clearing members and their clients that provide clearing services directly or indirectly, should be required to do so under fair, reasonable, non-discriminatory and transparent commercial terms.

ESMA

 **MIFID II: ESMA issues latest double volume cap data.**

ESMA has updated its public register with the latest set of double volume cap (DVC) data under the markets in MIFID II for the period 1 May 2018 to 30 April 2019 as well as has updated to already published DVC periods.

 **ESMA updates its Q&As regarding the benchmark regulation.**

ESMA has issued an update of its Q&As on the European Benchmarks Regulation (BMR). The new Q&As provide clarification on the following issues: (i) the information included in the ESMA register of administrators of benchmarks; (ii) the determination of the Member State of reference; and (iii) the role of IOSCO principles and of external audit in the recognition of third country administrators.

 **ESMA updates its Q&As on MiFID II and MiFIR investors protection and intermediaries.**

ESMA has updated its Q&As on the implementation of investor protection topics under MiFID II & MiFIR. The updated Q&As provide new answers on best execution and information on costs and charges, among others.

 **ESMA updates MiFID II Q&As on transparency issues.**

ESMA has updated its Q&As regarding transparency issues under MiFID II & MiFIR.

The updated Q&As provide clarification on the following topics: (i) the mandatory systematic internaliser (SI) regime; (ii) the voluntary SI regime; and, (iii) quoting obligation for SI in non-Trading On a Trading Venue in the EU (TOTV) instruments. ESMA also reviewed its published Q&As on transparency issues with the objective of deleting or amending obsolete questions.

 **ESMA publishes translations for Guidelines on non-significant benchmarks**

ESMA has issued the official translation of its Guidelines on non-significant benchmarks under the Benchmarks Regulation.

 **ESMA consults on short-termism in financial markets**

ESMA has published a questionnaire which aims to gather evidence on potential short-term pressures on corporations stemming from the financial sector.

ASSET MANAGEMENT

Spain

LEGISLATION

 **Preliminary draft law amending the consolidated text of the Companies Law and other financial regulations, to adapt them to Directive (EU) 2017/828 of the European Parliament and of the Council, of 17 May 2017, as regards the promotion of the long-term involvement of shareholders.**

The purpose of this law is to transpose Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the promotion of the long-term involvement of shareholders in listed companies into Spanish law. The main novelties are regarding the following topics: (i) the identification of shareholders, transmission of information and facilitation of exercise of shareholder rights (ii) transparency of institutional investors, asset managers and proxy advisors; (iii) the regulation on say on pay; (iv) transparency and approval of related party transactions and (v) information to be provided in and right to vote on the remuneration report.

CNMV

 **CNMV submits the technical guide on procedures for the selection of CIS management companies intermediaries for public consultation.**

The CNMV has submitted a proposed technical guide on procedures for the selection of intermediaries for Collective Investment Scheme Management Companies (CISMCs) for public consultation.

The aim of the guide is to provide CISMCs with a series of criteria based on the CNMV's supervisory experience on the procedures to select the financial intermediaries involved in transactions relating to CIS and other managed portfolios.

Europe

LEGISLATION

 **Commission Delegated Regulation (EU) 2019/819 of 1 February 2019 supplementing Regulation (EU) No 346/2013 of the European Parliament and of the Council with regard to conflicts of interest, social impact measurement and information to investors in the area of European social entrepreneurship funds.**

This Regulation defines the different types of conflicts of interest followed by a list of procedures and measures in order to prevent, manage and monitor them, as well as managing their consequences. In addition to this, it sets out a number of strategies for the exercise of voting rights to prevent conflicts of interest and a final article on disclosure of conflicts.

In terms of positive social impact, apart from laying out procedures to measure it, it describes the investment strategy and objectives linked to it.

Finally, it lists the non-qualifying assets and information about support services that is required under Regulation (EU) No 346/2013.

ESMA

 **ESMA publishes updated AIFM and UCITS Q&As.**

ESMA has published updated Q&As on the application of the Alternative Investment Fund Managers Directive (AIFMD) and the Undertakings for the Collective Investment in Transferable Securities (UCITS) Directive.

The Q&As relate to the following: (i) distinction between depositary functions and mere supporting tasks that are not subject to the delegation requirements set out in the AIFMD and UCITS Directive; (ii) delegation of safekeeping functions; (iii) performance of depositary functions where there are branches in other Member States; (iv) supervision of depositary functions in case of branches in other Member States; and (v) delegation of depositary functions to another legal entity within the same group.

MARKET INFRASTRUCTURES

Europe

ESMA

 **ESMA launches call for evidence on position limits in commodity derivatives.**

ESMA has launched a call on the impact of position limits on liquidity, market abuse and orderly pricing and settlement conditions in commodity derivatives.

 **ESMA updates its opinion on ancillary activity calculations.**

ESMA has published an updated opinion on ancillary activity calculations. This provides the estimation of the market size of commodity derivatives and allowances for 2018.

 **ESMA updates EMIR Q&A.**

ESMA has updated its Q&A on the implementation of the European Market Infrastructure Regulation (EMIR).

The overall update mainly provides new answers on the implementation of the Regulation (EU) 2019/8341 amending EMIR (EMIR Refit) framework with regards to: (i) the clearing obligation for financial (FC) and non-financial counterparties (NFC); (ii) the procedure for notifying when a counterparty exceeds or ceases to exceed the clearing thresholds; (iii) how counterparties should report derivatives novations and (iv) the removal of some obsolete references to frontloading when populating field “Clearing Obligation”.

Finally, this update also includes an amendment to the existing Q&A 20 in the OTC Section, clarifying that for the purpose of applying the clearing obligation, all types of novations of derivative contracts are covered.

 **ESMA adjusts application of the trading obligation for shares in a no-deal Brexit.**

ESMA has issued this new statement to further mitigate potential adverse effects of the application of the share trading obligation, within the constraints of the extraordinary circumstances of a no-deal Brexit and taking into account the concerns expressed by some stakeholders about the guidance published on 19 March 2019.

 **ESMA publishes a supervisory briefing on pre-trade transparency requirements in commodity derivatives.**

ESMA has published a Supervisory Briefing to increase supervisory convergence among national competent authorities (NCAs), in their implementation of the requirements on MiFIR pre-trade transparency requirements in commodity derivatives.

 **ESMA updates the CSDR Q&As.**

ESMA has updated its Q&A regarding the implementation of the Central Securities Depository Regulation (CSDR).

The updated Q&As:

(i) clarify the interaction between the main authorisation procedure (CSDR Art. 17) and the passporting procedure (CSDR Art. 23(2)), and the benefit of the grandfathering rule for notary and central maintenance services provided on a cross-border basis prior to the authorisation of the CSD;

(ii) details what should be considered as a change in the range of services provided on a cross-border basis (provision of new core service or provision of same service in respect of a new type of financial instrument);

(iii) clarify how “where relevant” used in Article 23(3)(e) of CSDR should be understood: whenever there are requirements under the national law of the host Member State that the CSD has determined as being relevant for the users of each cross-border service it provides or intends to provide; and

(iv) address the process to be followed in case a host Member State authority disapproves the assessment of the measures proposed by the CSD to comply with the law of that host Member State.

 **ESMA updates Q&A on EMIR data reporting.**

ESMA has issued an update of its Q&As, which provide further clarity regarding the implementation of EMIR Refit with respect to: (i) Q&A OTC no. 3 on the calculation framework towards the clearing thresholds; and (ii) Trade Repositories Q&A no. 51 regarding the notifications to be made by market participants to their competent authorities to apply an intragroup exemption from reporting.

 **ESMA updates register of derivatives to be traded on-venue under MiFIR.**

ESMA has updated the public register of those derivative contracts that are subject to the MiFIR trading obligation, adding to the list several UK venues where some of the classes of derivatives subject to the trading obligation are available for trading.

OTHERS

Europe

LEGISLATION

 **Commission delegated regulation (EU) 2019/758 of 31 January 2019 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council with regard to regulatory technical standards for the minimum action and the type of additional measures credit and financial institutions must take to mitigate money laundering and terrorist financing risk in certain third countries.**

This Regulation lays down a set of additional measures, including minimum action, that credit institutions and financial institutions must take to effectively handle the money laundering and terrorist financing risk where a third country's law does not permit the implementation of group-wide policies and procedures as referred to in Article 45(1) and (3) of Directive (EU) 2015/849 at the level of branches or majority-owned subsidiaries that are part of the group and established in the third country.

It shall apply from 3 September 2019.

FSB

 **FSB reports on work underway to address crypto-asset risks.**

The Financial Stability Board (FSB) has published a report on crypto-assets, which considers work underway, regulatory approaches and potential gaps. International organisations are mainly focused on investor protection, market integrity, anti-money laundering, bank exposures and financial stability monitoring.

The report notes that gaps may arise in cases where such assets are outside the perimeter of market regulators and payment system oversight. To some extent, this may reflect the nature of crypto-assets, which may have been designed to function outside established regulatory frameworks. Gaps may also arise from the absence of international standards or recommendations.

IOSCO

 **IOSCO requests feedback on key considerations for regulating crypto-asset trading platforms.**

The Board of IOSCO is seeking comments on a consultation paper that describes the issues associated with crypto-asset trading platforms (CTPs) and sets forth key considerations to assist regulatory authorities in addressing these issues. The primary topics covered include: (i) access to CTPs; (ii) safeguarding participant assets; (iii) conflicts of interest; (iv) operations of CTPs; (v) market integrity; (vi) price discovery; and (vii) technology.

ESMA

 **ESMA updates its Q&A on the securitisation regulation.**

ESMA has provided clarification on various aspects of the templates contained in ESMA's draft technical standards on disclosure requirements.

BIG TECH

 **Big tech in finance: opportunities and risks**

The Bank for International Settlements (BIS) writes in its Annual Economic Report a special chapter on large technology firms ("**big techs**") in finance.

The main conclusions are that: (i) the entry of big techs into financial services holds the promise of efficiency gains and can enhance financial inclusion; (ii) regulators need to ensure a level playing field between big techs and banks, taking into account big techs' wide customer base, access to information and broad-ranging business models; and (iii) big techs' entry presents new and complex trade-offs between financial stability, competition and data protection.

EUROPEAN COMMISSION

 **The European Commission publishes its Technical report on EU taxonomy.**

On 18 June 2019, the technical expert group established by the European Commission published its Technical report on EU taxonomy. The report sets out the basis for a future EU taxonomy in legislation. The report contains: (i) technical screening criteria for 67 activities across 8 sectors that can make a substantial contribution to climate change mitigation; (ii) a methodology and worked examples for evaluating substantial contribution to climate change adaptation; and (iii) guidance and case studies for investors preparing to use the taxonomy.

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