



FINANCIAL REGULATION

Investment services, asset management
and market infrastructure

June, July, August & September 2020

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 June-September period, we highlight the public consultation of the draft Circular on advertising of investment products and services submitted by the CNMV and the approval by the Spanish Government of the draft Law for the creation of a Sandbox, which is a controlled testing space for technological innovation in the financial field. Additionally, the European Commission has launched a proposal for a regulation of the European and of the Council on Markets in Crypto-assets, as part of the Digital Finance package.

Finally, the Spanish Government has submitted to the Parliament the draft Law that amends the current Spanish Anti-Money Laundering Law and transposes the V EU directive regarding the prevention of money laundering and financing of terrorism, and that includes relevant changes such as the inclusion of virtual currency service providers, electronic purse custody providers or code safeguard providers as new entities subject to AML regulation or the creation of a unique registration system that will include the information of the beneficial owners already existing in the Commercial Registry and notarial databases.

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

Europe

ESMA

ESMA publishes 2019 Annual Report and updates 2020 Annual Work Programme

ESMA has published its Annual Report, which reviews the achievements from 2019 against its mission of enhancing investor protection and promoting stable and orderly financial markets in the European Union (EU). ESMA has also published a revised version of its 2020 Annual Work Programme, which includes its additional work on its immediate reaction to the crisis and indicates potential deprioritization regarding mandates.

ESMA's 2019 key achievements include: (i) preparing for the expanded mandates by the revision of its founding regulation and the European Market Infrastructure Regulations (EMIR); (ii) monitoring Brexit-associated risks and ensuring a consistent approach to authorising and supervising relocating firms; (iii) promoting supervisory convergence; (iv) assessing risks to investors, markets and financial stability; (v) completing a single rulebook for EU financial markets; and (vi) directly supervising specific financial entities.

ESMA updates its opinion on ancillary activity calculations

On 10 July 2020, ESMA published an updated Opinion on ancillary activity calculations. The opinion provides the estimation of the market size of commodity derivatives and emission allowances for 2019.

Under MiFID II, market participants are required to measure their own activity against total market sizes in commodity derivatives. These sizes are important to enable market participants to assess whether they exceed the ancillary activity thresholds in MiFID II and consequently would have to apply for authorisation as an investment firm.

ESMA publishes guidelines on securitisation repository data completeness and consistency thresholds

ESMA published on 10 July 2020 its final report on the Guidelines on securitisation repository data completeness and consistency thresholds. The Guidelines provide clarity for market participants and securitisation repositories (SRs) on the accepted levels of No-Data (ND) options contained in the securitisation data submitted to SRs.

ESMA issues second report on sanctions under MIFID II


ESMA published on 13 July 2020 its second report on sanctions and measures imposed under MiFID II by National Competent Authorities (NCA) during the year 2019.

Although the information included in this report does not provide at this time the basis for detailed statistics or clear trends in the imposition of sanctions, it will contribute to ESMA's work aimed at fostering supervisory convergence in the application of MiFID II.

 **ESMA updates its Q&As on MiFID II and MiFIR transparency**


On July 2020, ESMA updated its Questions and Answers (Q&As) regarding transparency issues under MiFID II and MiFIR with the purpose of promoting a common supervisory approach and practices in the EU.

The new Q&A document provides technical clarifications for the performance of the mandatory systematic internaliser (SI) test. The Q&A specifies how the number of transactions and the nominal amount traded of a derivative shall be allocated when a derivative contract changes over the observation period from one sub-class to another.

 **ESMA publishes updated annual transparency calculations**

On July 2020, ESMA made available the updated results of the annual transparency calculations for a limited number of equity and equity-like instruments.


These updated annual transparency calculations apply since 13 July and include: (i) the liquidity assessment as per Articles 1 to 5 of the Commission Delegated Regulation (CDR) 2017/567; (ii) the determination of the most relevant market in terms of liquidity (MRM) as per Article 4 of CDR 2017/587; (iii) the determination of the average daily turnover (ADT) relevant for the determination of the pre-trade and post-trade large in scale (LIS) thresholds; (iv) the determination of the average value of the transactions (AVT) and the related standard market size (SMS); and (v) the determination of the average daily number of transactions on the most relevant market in terms of liquidity relevant for the determination of the tick-size regime.

 **ESMA makes new bond liquidity data available**

ESMA made available on July 2020 new data for bonds subject to the pre- and post-trade requirements of MiFID II and MiFIR through its data register.

The full list of assessed bonds will be available through FITRS in the XML files with publication date from 31 July 2020 and through the Register web interface.

The transparency requirements for bonds deemed liquid on 31 July 2020 apply from 16 August 2020 to 15 November 2020.

 **ESMA updates Q&A on MiFIR data reporting**

ESMA updated on July 2020 its Q&As on data reporting under the MiFIR, which provides clarification in relation to the reporting requirements for submission of transaction reports under Article 26 of MiFIR.

The new Q&A provides two reporting scenarios where an Investment Firm executed a transaction through an execution algorithm provided by another Firm. The amendments to the existing Q&A on MiFIR data reporting became effective from 8 July 2020.

 **ESMA publishes the MiFID/MiFIR Annual Review Report**

ESMA published on 23 July 2020 the MiFID/MiFIR Report under CDR (EU) 2017/583. In the report, ESMA suggests to the European Commission (EC) to move to the next stage for: (i) the criterion average daily number of trades used for the quarterly liquidity assessment of bonds, and (ii) the trade percentiles that determine the pre-trade sizes specific to the financial instrument for bonds.

ESMA does not recommend moving to the next stage for the trade percentiles that determine the pre-trade sizes specific to the financial instrument for other non-equity

financial instruments. ESMA considers such move premature since the first annual transparency calculation for these non-equity instruments will only be published this year.

ESMA issues latest Double Volume Cap data

ESMA has updated its public register on 7 September 2020 with the latest set of double volume cap (DVD) data under MiFID II. Updates include DVC data and calculations for the period 1 August 2019 to 31 July 2020 as well as updates to already published DVC periods.

The number of new breaches is 37: (i) 26 equities for the 8% cap, applicable to all trading venues, and (ii) 11 equities for the 4% cap, that applies to individual trading venues. Trading under the waivers for all new instruments in breach of the DVC thresholds should be suspended from 11 September 2020 to 10 March 2021.

ESMA provides for the option to apply the annual transparency calculations for non-equity instruments from 21 september

ESMA has decided that trading venues and investment firms may postpone, for operational reasons, the application of the annual transparency calculations for non-equity instruments other than bonds to 21 September 2020.

ESMA has been approached by stakeholders raising concerns that the application of the non-equity transparency calculations coincides with the quarterly expiry week of many equity derivatives. In order to avoid technical issues that might be exacerbated by high market volatility during the current sensitive period, ESMA agreed that trading venues and investment firms may apply the non-equity transparency calculations from 21 September instead of 15 September 2020.

ESMA agrees position limits under MIFID II

ESMA has published three opinions on position limits regarding commodity derivatives under MiFID II/MiFIR. All of them agree with the proposed position limits regarding: (i) the EEX TTF Gas contract; (ii) the Nasdaq Oslo Nordic Power contract; and (iii) the Fish Pool Farmed Salmon contract.

ESMA found that the proposed position limits are consistent with the objectives established in MiFID II and with the methodology developed for setting those limits, and will continue to assess the notifications received.

ESMA publishes draft rules for third-country firms under new MiFIR and MiFID II regimes

ESMA has published its Final Report containing draft regulatory and implementing technical standards (RTS and ITS) on the provision of investment services and activities in the EU by third-country firms under MiFIR and MiFID II.

ESMA has developed under Article 46(7) and (8) of MiFIR: (i) draft RTS to specify the information that third-country firms must provide to ESMA for the registration in the ESMA register of third-country firms, and for the information that third-country firms have to report annually to ESMA; and (ii) draft ITS to specify the format in which the information for the registration of the firm and for the annual report to ESMA should be submitted.

 **ESMA launches a proposal for a Directive of the European Parliament and of the Council amending MiFID II as regards information requirements, product governance and position limits**

The proposal for a Directive of the European Parliament and of the Council to modify MiFID II aims to recalibrate some areas in order to strike the right balance between a sufficient level of transparency, the highest standards of investor protection and an acceptable level of compliance costs for institutions.

The most relevant measures that the proposal includes are the following: (i) gradual elimination of paper as the default method of communication with clients; (ii) exemption of cost and expense reporting for eligible counterparties and professional clients, for services other than advice and discretionary portfolio management; (iii) possibility of communication of information on costs and expenses once the transaction has been carried out, in the case of non-presential operations; (iv) flexibilization of ex-post reporting requirements and of the cost-benefit analysis in the event of a proposal to change the financial instrument; (v) suspension of best execution reports; and (vi) simplification of the framework for corporate bond issues with "make-whole" clauses

 **ESMA launches a proposal for a Commission Delegated Directive (EU) amending delegated directive (EU) 2017/593 as regards the regime for research on small and mid-cap issuers and on fixed-income instruments**

The proposal recognises that SMEs have suffered a drastic reduction in coverage by the research service, while acknowledging the increased need for alternative financing mechanisms as a result of the pandemic. It also notes that the market for debt instruments has also been penalised, since the cost of research has not traditionally been included in the spreads, and the introduction of unbundling rules has led not only to increased compliance costs, but also to additional costs in obtaining research.

The proposal therefore introduces a derogation for the research service, so that, as opposed to the general "unbundling" framework derived from Mifid II, joint payment for execution and analysis services on small- and mid-cap issuers and debt instruments would be authorised. In the case of joint payment for the execution of transactions in these market segments, the current requirement to establish a research payment account (RPA) or to issue separate invoices would not apply, although, as a counterpart, joint payments (which in any case should be informed to the clients) would only be allowed in case of an ex ante agreement with the analysis provider on the part of them that is attributable to the research service.

Spain

CNMV

 **Public consultation of the draft circular on advertising of investment products and services**

The CNMV submits to public consultation a proposal for a circular that will develop Order EHA 1717/2010, of June 11, on regulation and control of advertising of investment products and services. The Circular will contain rules on the procedures and controls that entities must have in this area, their possible adherence to self-regulation systems and the content and format of the advertising message, setting out the criteria that the CNMV has been applying in its supervisory actions.

The Circular will apply to all entities supervised by the CNMV that carry out advertising activities in relation to investment products and services and to entities operating in Spain under freedom to provide services, as well as to other entities in principle not

subject to CNMV supervision that carry out either on their own initiative or by assignment to third parties advertising activities aimed at investors resident in Spain.

 **CNMV approves the Technical Guide on Foreign Currency Derivatives used as payment means that are not considered to be financial instruments**

The CNMV has approved a Technical Guide on currency derivatives used as means of payment that are not considered to be financial instruments for the purposes of MiFID.

The Technical Guide contains the following criteria that the CNMV intends to apply: (i) in order to be considered payment means, they must be forward contracts whose purpose is to make or receive payments in foreign currency for specific goods, services or direct investments by the customer that contracts them; (ii) it is considered generally acceptable that verification of compliance with the aforementioned requirement be carried out by obtaining from the customer descriptive information on each transaction, or in the case of customers whose activity is sufficiently well known, by means of an express statement by the customer regarding the purpose of the contract; and (iii) institutions must carry out ex post reviews on sufficiently representative samples of the transactions carried out in order to confirm that the requirements are met..

ASSET MANAGEMENT

Europe

ESMA

ESMA publishes translations for Guidelines on the reporting to competent authorities under Article 37 of the MMF Regulation

On June 2020, ESMA issued the official translations of its guidelines on standardised procedures and messaging protocols under Article 37 of the Money Market Funds Regulation (MMFR).

NCA's, to which this guidelines apply, must notify ESMA whether they comply or intend to comply with the Guidelines, within two months of the date of publication by ESMA of the Guidelines in all EU official languages.

ESMA clarifies external support within the meaning of Article 35 of the Money Market Funds (MMF) Regulation

ESMA published a statement on 9 July 2020 on external support under Article 35 of the Money Market Funds Regulation, in the context of authorities' actions to mitigate the impact of COVID-19 on the EU's financial markets.

In the second half of March 2020, certain MMFs faced significant liquidity challenges. Measures taken by central banks and securities and markets regulators to ensure the proper and orderly functioning of markets and financial stability were also relevant for MMFs. In particular, the market liquidity brought by some of these measures may have also indirectly benefited MMFs through the intermediation of credit institutions.

ESMA recommends priority topics in AIFMD review

ESMA has written to the EC highlighting areas to consider during the forthcoming review of the Alternative Investment Fund Managers Directive (AIFMD).

ESMA's letter includes recommendations for changes in 19 areas including: (i) harmonising the AIFMD and UCITS regimes; (ii) delegation and substance; (iii) liquidity management tools; (iv) leverage; (v) the AIFMD reporting regime and data use; and (vi) the harmonisation of supervision of cross-border entities.

ESMA encourages the EC to support the areas identified in the letter in order to improve the effectiveness and soundness of the AIFMD.

ESMA publishes a working paper on Closet Indexing Indicators and Investor Outcomes

Closet indexing refers to the situation in which asset managers claim to manage their funds in an active manner while in fact tracking or staying close to a benchmark index. The authors of the study looked at annual fund-level data for the period from 2010 to 2018.


The study reveals that investors saw both lower expected returns and higher fees when they invest in closet indexers compared with active funds. Overall, the net performance of potential closet indexers was worse than the net performance of genuinely active funds, as the marginally lower fees of potential closet indexers are outweighed by reduced performance.

ESRB

 **The ESRB provides a recommendation about the liquidity risks of investment funds**

On 15 June 2020, the European Systemic Risk Board (ESRB) provided a recommendation regarding liquidity risks of investment funds (JERS/2020/4). The key topic of this recommendation refers to the coordination of the supervisory action regarding investment funds in order to assess their degree of readiness.


EUROPEAN COMMISSION

 **Targeted consultation on the establishment of an EU Green Bond Standard**

The EC launched on 12 June 2020 a targeted consultation on the establishment of an EU Green Bond Standard (GBS), which will be open until Friday 2 October 2020. Green bonds play an increasingly important role in financing assets needed for the low-carbon transition. However, there is no uniform green bond standard within the EU.

This public consultation targets all citizens, Member States and organizations, with the aim of collecting the views and opinions of interested parties in order to inform the establishment of an EU Green Bond Standard.

ESAS

 **ESAs notify the EC about the outcome of the review of the PRIIPs key information document**

The European Supervisory Authorities (ESAs) informed the EC on July 2020 of the outcome of the review conducted by the ESAs of the key information document (KID) for packaged retail and insurance-based investment products (PRIIPs).


This follows the ESA's consultation paper published on 16 October 2019 on draft regulatory technical standards (RTS) to amend the technical rules on the presentation, content, review and revision of KID (Delegated Regulation (EU) 2017/653).

 **ESAs launch survey on environmental and/or social financial product templates**

ESAs published on 21 September 2020 a survey seeking public feedback on presentational aspects of product templates, pursuant to Article 8(3), Article 9(5) and Article 11(4) of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services (SFDR). The survey is open for comments until 16 October 2020.

ESAs propose to standardise the disclosure of information for financial products that promote environmental and/or social characteristics or have a sustainable objective. The use of such mandatory templates will improve comparability of different financial products in different EU Member States


CNMV

 **CNMV's report on scenarios for the stress tests of investment funds**

The CNMV published on 22 July 2020 its quarterly newsletter for the second quarter of 2020, which includes a report regarding the quantification of uncertainty about adverse liquidity scenarios for investment funds.

The report describes the most relevant trends in the financial markets during the second quarter of the year, which was marked by the coronavirus crisis. It highlights that the most relevant stock markets experienced notable revaluations during this second quarter, after the heavy losses of the first.

The article analyses the response of Spanish investment funds to stress scenarios in terms of the repayment coverage ratio. Spanish investment funds responded resiliently to redemption shocks with the exception of a few funds that hold significant percentages of illiquid assets such as high-yield corporate bonds.

 **Compliance with ESMA's Guidelines on presentation of information by money market funds to the competent authorities**

On 20 July 2020, the CNMV informed ESMA of its intention to comply with the Guidelines on the presentation of information to the competent authorities under Article 37 of the Money Market Funds Regulations published on 22 July 2020.

 **CNMV launches a public consultation regarding the proposal for a Technical Guide on the appointment of non-registered persons or entities as advisors to CIS**

CNMV has submitted to public consultation a proposal for a Technical Guide aimed at collective investment schemes management companies (SGIIC) and self-managed investment companies which contains the criteria that the CNMV considers should be applied and it follows when registering and supervising the requirements to which non-authorised entities or persons are subject in order to act as collective investment scheme (SIC) investment advisers.

The deadline for comments from stakeholders is 14 October 2020. All comments received will be published after the public consultation period.

MARKET INFRASTRUCTURES

Europe

ESMA

ESMA publishes statement on MIFIR open access

ESMA issued on 11 June 2020 a public statement to clarify the application of MiFIR to open access provisions (OAP) for trading venues (TVs) and central counterparties (CCPs).

NCA's are expected to take into consideration the relevant adverse developments when taking decisions on open access requests, and CCPs and TVs are expected to have the necessary operational capacity to process access requests once the exceptional market circumstances have cleared up.

The current exemptions under MiFIR, which allow NCA's to temporarily exempt TVs and CCPs from the OAP for exchange traded derivatives (ETDs), expired on 3 July and from 4 July the OAP for ETDs applies.

ESMA's third EU-wide CCP stress test finds system resilient to shocks

ESMA published on July 2020 the results of its third stress test exercise regarding Central Counterparties (CCPs) in the EU, which confirm the overall resilience of EU CCPs to common shocks and multiple defaults for credit, liquidity and concentration stress risks.

The credit stress test and the liquidity test did not reveal any systemic risk. The new concentration component added a new dimension to the exercise and highlighted the need for EU CCPs to accurately account for liquidation cost within their risk frameworks.

Despite the increased market volatility and operational risk caused by the COVID-19 outbreak, the EU CCPs, which were closely monitored by ESMA, remained resilient during the crisis.

ESMA updates the ESEF Reporting Manual

ESMA published on July 2020 an update of its Reporting Manual on the European Single Electronic Format (ESEF), which is intended to provide guidance on issues commonly encountered when generating Inline XBRL instance documents in compliance with the ESEF Delegated Regulation.

The update expands existing guidance and reflects relevant developments in the technical specifications.

SFTR reporting regime sees successful first day

On July 2020, ESMA received reports from trade repositories (TRs) indicating that the first day of reporting by financial and non financial market participants under the Securities Financing Transactions Regulation (SFTR) had gone smoothly.

ESMA will continue to engage with market participants to clarify any remaining issues and will assess the need for further supervisory convergence measures to facilitate compliance with the new reporting requirements.

ESMA consults on Guidelines on calculation of positions under SFTR

ESMA launched on July 2020 a consultation on draft Guidelines on the calculation of positions by Trade Repositories (TRs) under the Securities Financing Transactions Regulation (SFTR).

The aim of the Guidelines is to ensure consistency of position calculation across TRs. The proposed Guidelines cover two main types of aggregation: (i) the named positions between counterparties, and (ii) the sectorial positions for the purposes of FSB reporting.

The closing data for responses was 15 September. ESMA will consider the responses to this consultation with a view to finalise the proposed Guidelines and to publish a final report in Q4 2020/Q1-2021.

ESMA updates the CSDR Q&As

On July 2020, ESMA updated its Q&As regarding the implementation of the Central Securities Depositories Regulation (CSDR), which purpose is to harmonise certain aspects of settlement cycle and settlement dispute.

The latest Q&As relate to the implementation of the settlement discipline regime and clarify that, for the purpose of initiating a buy-in process, the concept of “business days” under CSDR refers to the definition given in the rules of the securities settlement systems where the settlement fail occurred.

ESMA publishes updates to EMIR Q&As

ESMA updated on July 2020 its Q&As document on practical questions regarding data reporting issues under EMIR.

The updated TR Q&A 11(b) clarifies that the counterparties should follow their local time and the relevant calendar of their Member State to specify the “working day” in the context of determining the deadline for reporting under EMIR. This clarification should be applied even if the two counterparties to the same derivative follow different calendars and/or are located in different time zones.

ESMA updates list of trading venues temporarily exempted from open access under MiFIR

ESMA updated on July 2020 the list of trading venues which have a temporary exemption from the OAP under MiFIR.

This temporary exemption allows trading venues to notify ESMA and the NCA of their intention to temporarily opt-out from the access provisions for exchange-traded derivatives (ETDs) provided that certain conditions are met. The initial exemption under Article 36(5) of MiFIR applies for a period of 30 months and can be extended for subsequent periods of 30 months.

ESMA approved the extension of the opt-out of five EU venues, for a further 30-month period until 4 January 2023. Those venues are Athens Stock Exchange (Greece), GPW (Poland), MEFF (Spain), Nasdaq Stockholm (Sweden) and OMIP (Portugal).

ESMA publishes its first Review Reports on the MiFID II/MiFIR transparency regime

ESMA published on July 2020 two final Reports reviewing key provisions of the MiFID II/MiFIR transparency regime, with the aim to simplify the current complex transparency regime while trying to improve the transparency available.

The first Report reviews the MiFIR transparency regime for equity instruments and contains proposals for targeted amendments regarding the transparency obligations for trading venues and specifically the DVC mechanism. It also includes recommendations on other key transparency provisions. The second Report reviews the pre-trade transparency obligations applicable to systematic internalisers in non-equity instruments.

ESMA publishes data for the systematic internaliser calculations for equity, equity-like instruments, bonds and other non-equity instruments

On 31 July 2020, ESMA published data for the systematic internaliser quarterly calculations for equity, equity-like instruments, bonds, and, for the first time, for other non-equity instruments under MiFID II and MiFIR.

ESMA has published, on a voluntary basis, the total number of trades and total volume over the period January-June 2020 for the purpose of the systematic internaliser (SI) calculations under MiFID II for: (i) 20,204 equity and equity-like instruments; (ii) 121,040 bonds; and (iii) as announced on 9 April 2020, for 5,896 sub-classes of derivatives.

However, despite ESMA's support to the industry, market participants made ESMA aware that a number of technical issues for the implementation and performance of the SI test for derivatives still exist independently from the availability of such templates (e.g. the fact that RTS 2 reference data is not publicly available makes it difficult to easily classify instruments for the SI test).

ESMA proposes to further postpone CSDR settlement discipline

ESMA published on 28 August 2020 a final report on draft regulatory technical standards (RTS) definitively postponing the date of entry into force of the CDR (EU) 2018/1229 (RTS on settlement discipline) until 1 February 2022.

This postponement is due to the impact of the COVID-19 pandemic on the implementation of regulatory projects and IT deliveries by Central Securities Depositories.

The RTS on settlement discipline cover measures to prevent and address settlement fails including: (i) rules for the trade allocation and confirmation process; (ii) cash penalties on failed transactions; (iii) mandatory buy-ins; and (iv) monitoring and reporting of settlement fails.

ESMA to recognise three UK CCPs from 1 January 2021

ESMA has announced that the three CCPs established in the United Kingdom (UK) – ICE Clear Europe Limited, LCH Limited, and LME Clear Limited – will be recognised as TC-CCPs eligible to provide their services in the EU-

The recognition decisions will only take effect on the day following the end of the transition period after the end of the transition period following the withdrawal of the UK

from the EU on 31 December 2020 and will continue to apply for 18 months until 30 June 2022.

ESMA consults on OTF regime

ESMA has issued a Consultation Paper (CP) seeking input on the functioning of the Organised Trading Facility (OTF) required under Article 90 (1) (a) MiFID II. The paper provides an overview of the functioning of the OTF regime and discusses the definition of OTFs, the use of discretion in the execution of orders and the current practice concerning the use of matched principal trading.

In addition, the CP also at the trading venue perimeter including a discussion on the definition of multilateral systems and the boundaries of trading venues' authorisation, which are essential to a well-functioning OTF regime.

ESMA updates Q&A on data reporting under EMIR

ESMA has updated its Q&As document on practical questions regarding data reporting issues under EMIR.

The updated TR Q&A 11(b) clarifies that the counterparties should use the underlying to determine the asset class of total return swaps when reporting under EMIR. A new TR Q&A clarifies that the reporting of the field reference entity for credit derivatives can be made with a country code only in the case where the reference entity is a supranational, a sovereign or a municipality. And finally, another new TR Q&A indicates how the fields execution timestamp, effective date, maturity date and settlement date should be reported for Forward Rate Agreement derivatives (FRAs).

ESMA updates Q&A on MiFIR data reporting

ESMA has updated its Q&A document on data reporting under MiFIR, which includes a new Q&A and two amendments to existing Q&As.

The first amended Q&A provides an additional reporting scenario to an existing Q&A where an Investment Firm executes a transaction through an execution algorithm using the membership of its client to execute the order in the market. The second amended Q&A relates to the Q&A on national client identifiers for natural persons clarifying on how different national identifiers are represented. The amendments also provide clarification on the requirements for Swedish national client identifiers. The newly added Q&A clarifies which Legal Entity Identifier (LEI) should be used to identify the "issuer" when reporting reference data on funds has observed that the lack of a public Q&A on this matter created uncertainty and resulted in inconsistent reporting of the LEI.


ESMA proposes amendments to the MiFIR transparency regime for non-equity financial instruments

ESMA has published the Final Report on the MiFID II/MiFIR transparency regime applicable to non-equity financial instruments. The proposals contained in the report aim at simplifying and bringing more efficiency to an overly complex regime and fostering harmonised application across the EU.

The main proposals are: (i) deleting the specific waiver and deferral for respectively orders and transactions above the "size-specific to the instrument" threshold; (ii) streamlining the deferral regime with both a simplified system based on volume masking and full publication after two weeks as well as removing the supplementary

deferral options left to NCAs under the current MiFIR text; (iii) transforming the possibility granted to NCAs to temporarily suspend MiFIR transparency provisions into a mechanism coordinated at EU-level; (iv) including the possibility to suspend on short notice the application of the derivative trading obligation similarly to the mechanism available in EMIR; and (v) complementing the criteria used to grant equivalence to third-country trading TV purpose of the derivative trading obligation with conditions relating to transparency and non-discriminatory access.

ERSB

 **ERSB Secretariat staff's response to ESMA's consultation paper on technical standards on reporting, data quality, data access and registration of trade repositories under EMIR Refit.**

The European Systemic Risk Board (ESRB), in partnership with the ECB, ESMA and all of its member institutions, has worked on the analysis of data collected under EMIR since the early stages of that reporting mandate.

With this reply, the ESRB Secretariat aims to highlight how the elements and principles in ESMA's proposal will improve the reporting regime and enhance the ability to monitor and detect risks. The amendments proposed by ESMA in this consultation represent a remarkable step forward in terms of the enhancement of the reporting framework. The ESRB Secretariat strongly supports both the scope of those amendments and the technical principles highlighted in the paper.

The ESRB Secretariat particularly welcomes the following: (i) the further standardisation of the reporting framework, including global standards such as the Unique Product Identifier (UPI), and the adoption of ISO 20022 XML along the whole of the reporting chain, and (ii) the higher level of granularity in the information provided, which will, in turn, provide policymakers with a richer set of information.

OTHERS

Europe

ESMA

ESMA renews its Decision requiring net short position holders to report positions of 0.1% and above

ESMA renewed its decision to temporarily require the holders of net short positions in shares traded on a EU regulated market to notify the NCA if the position exceeds 0.1% of the issued share capital.

The measure applies from 17 June 2020 for a period of three months and to any natural or legal person, irrespective of their country of residence. However, this temporary transparency obligation does not apply to shares admitted to trading on a regulated market where the principal venue for the trading of the share is located in a third country, market making or stabilisation activities.

ESMA responds to EC consultation on the Digital Finance Strategy

On 29 June 2020, ESMA submitted a response to the EC consultation on a new digital finance strategy for the EU.

In its response, ESMA focused on: (i) risks and benefits of digitalisation of the financial sector; (ii) ensuring a technology-neutral EU financial services regulatory framework that supports innovation; (iii) removing fragmentation in the single market for digital financial services; and (iv) promoting a well-regulated data-driven financial sector.

ESMA responds to EC consultation on Renewed Sustainable Finance Strategy

On 16 July 2020, ESMA submitted a response to the EC consultation on the renewed sustainable finance strategy. ESMA believes that facilitating access to sustainability data is essential in order to put sustainability at the forefront of the financial sector.

In the response of the consultation, ESMA focused on the following aspects: (i) Environmental, Social and Governance (ESG) disclosure, highlighting the lack of a standardised disclosure regime and expressing its readiness to assist the EC regarding standard setting in this area; (ii) ESG ratings, highlighting the lack of a legally binding definition along with legal requirements to ensure transparency of underlying methodologies; (iii) ESG benchmarks, highlighting the growing need in Europe for methodologically reliable ESG benchmarks; (iv) EU green bonds, referring to the establishment of supervision of third-party verifiers of green bond standards at the European level; and (v) Ecolabel for retail sustainable financial products, referring to the effects of ecolabelling of products and whether broadening the scope of ecolabels to a wider range of financial products is necessary.

EUROPEAN COMMISSION


 **EC launches a proposal for a regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937**

The proposal is part of the Digital Finance package, a package of measures to further enable and support the potential of digital finance in terms of innovation and competition while mitigating the risks.

This proposal, which covers crypto-assets falling outside existing EU financial services legislation, as well as e-money tokens, has four general objectives: (i) legal certainty, as there is a need for a sound legal framework, clearly defining the regulatory treatment of all cryptoassets that are not covered by existing financial services legislation; (ii) support innovation, as it is necessary to put in place a safe and proportionate framework to support innovation and fair competition; (iii) instil appropriate levels of consumer and investor protection and market integrity; and (iv) ensure financial stability, which is difficult due to the continuous evolution of crypto-assets.

Spain

LEGISLATION

 **Draft Law that amends the Anti-Money Laundering Law (Ley 10/2010) and transposes EU directives regarding the prevention of money laundering and terrorism financing**

The draft Law implements the EU Directive 2018/843 regarding the prevention of money laundering and financing of terrorism (V Directive) and amends the Spanish anti-money laundering Law (Ley 10/2010).


The main changes introduced by the V Directive are the following: (i) the inclusion of virtual currency service providers, electronic purse custody providers or code safeguard providers as new entities subject to AML regulations; (ii) the creation of a unique registration system that will include the information of the beneficial owners already existing in the Commercial Registry and notarial databases; and (iii) the mandatory registration of trusts and similar entities that operate in Spain, along with their beneficial owners.

 **The Government approves the draft Law for the establishment of a secure testing framework (sandbox) for technological innovation in the financial field**

The Council of Ministers has approved the draft Law for the creation of a sandbox, or controlled testing space, to accompany the digital transformation of the financial system. The sandbox will allow the implementation of innovative technological projects in the financial system with full compliance with the legal and supervisory framework.

This initiative responds to the need to promote innovation as an essential element for sustainable and equitable economic development. It also ensures that technological change protects the consumer of financial services, maintains financial stability and market integrity and prevents the use of the financial system for money laundering or financing of terrorism.

CNMV

 **CNMV's notification on a new fee charging procedure through online means**

CNMV has started to make all the notifications related to its fees by electronic means through the CIFRADOCC system since September 2020.

To this end, all affected parties must provide their contact details, and must have a user certificate and access to CIFRADOCC. In the event that a taxpayer acts in its relations with the CNMV through a representative, it will be the representative the one who must register.

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