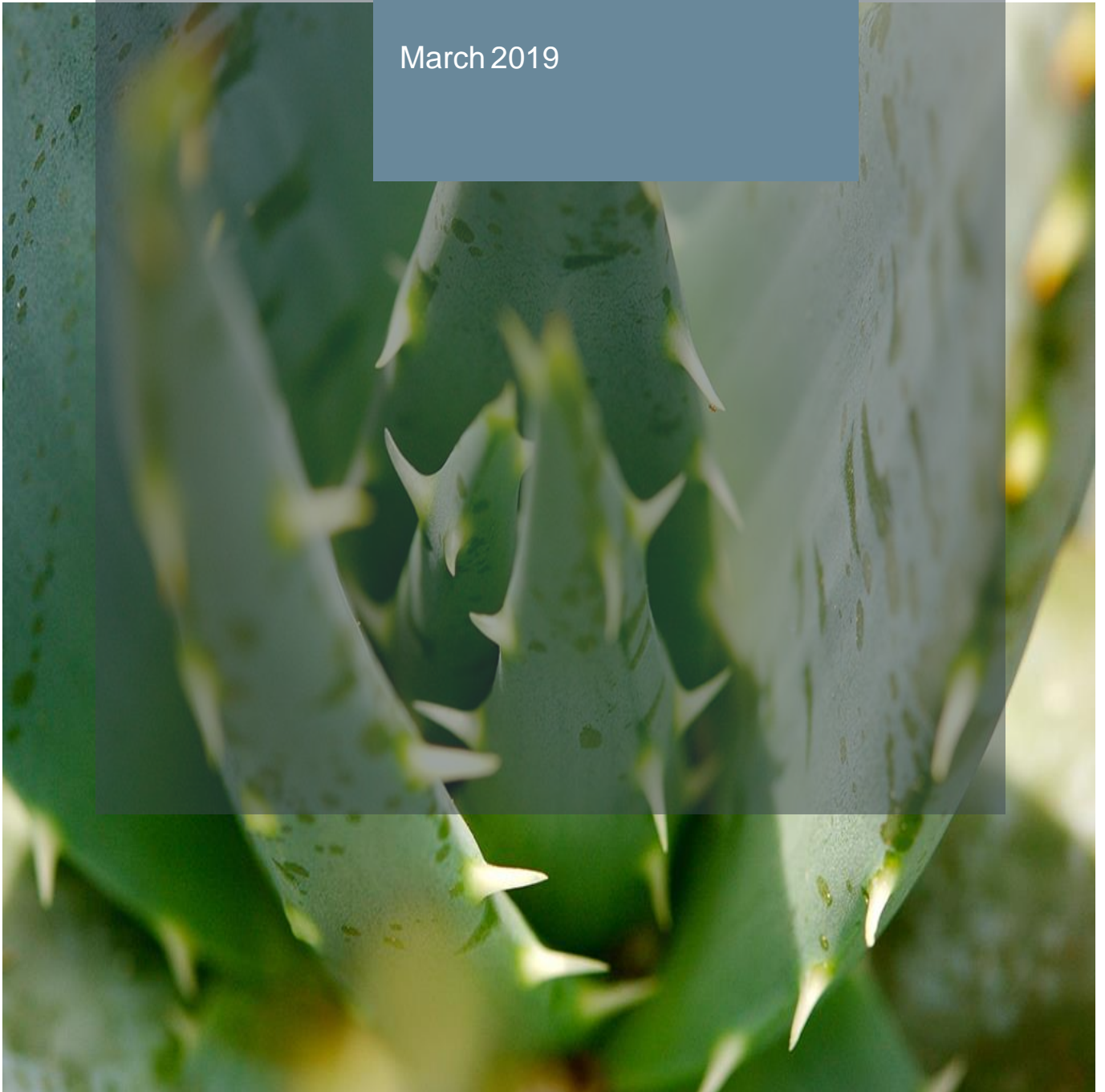


Financial Services Alerter

March 2019





Financial Services Alerter

Introduction

March 2019

Welcome to Simmons & Simmons' Financial Services Alerter, our monthly bulletin containing brief details of significant legal and regulatory developments of relevance to the fund management and investment banking communities.

Although the primary focus of Financial Services Alerter is the UK, we also cover EU and other international developments of relevance to the UK.

The information contained in Financial Services Alerter is based exclusively on publicly available sources and relates to developments taking place in March 2019.

- **UK developments**
- **EU developments**
- **International developments**
- **Lexis and other client items**

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For further information, please contact [Darren Fox](#), [Charlotte Stalin](#), [Jonathan Melrose](#), [Penny Miller](#), or your usual contact at Simmons & Simmons.



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UK developments

FCA publishes Handbook Notice 63

On 01 March 2019, the FCA published [Handbook Notice 63](#), setting out changes made to the FCA Handbook under instruments made by the FCA Board on 24 January 2019 and 28 February 2019.

FCA publishes statements of policy on operation of UK MiFIR transparency regime following no-deal Brexit

On 04 March 2019, the FCA published a [webpage](#) providing statements of policy on how it will operate the transparency regime under the retained EU law version of the Markets in Financial Instruments Regulation (UK MiFIR) if the UK leaves the EU without a withdrawal deal. The webpage covers the following themes:

- suspending the use of pre-trade transparency waivers for a trading venue for the purposes of the Double Volume Cap under Article 5(3B) UK MiFIR
- withdrawing a pre-trade transparency waiver granted for a trading venue in respect of non-equity financial instruments under Article 9(3) UK MiFIR
- suspending the pre-trade transparency obligations for trading venues in respect of non-equity financial instruments referred to in Article 8 under Article 9(4A) of UK MiFIR and suspending the post-trade transparency obligations for trading venues in respect of non-equities referred to in Article 10 under Article 11(2A) of UK MiFIR
- determining the standard market size of equity instruments for the purposes of the pre-trade transparency regime for Systematic Internalisers under Article 14(6A) of UK MiFIR
- suspending the post-trade transparency obligations for non-equity transactions taking place outside a trading venue referred to in Article 21(1) under Article 21(4A) of UK MiFIR and
- directing that an equity instrument is to be treated as not having a liquid market under Articles 5(1) and 5(1A) of Commission Delegated Regulation 2017/567.

Bank of England/PRA and FCA agree no-deal Brexit MoUs with EIOPA and EU insurance supervisors

- a multilateral MoU with EU and EEA National Competent Authorities covering supervisory cooperation, enforcement and information exchange between UK and EU/EEA national supervisors and
- an MoU with EIOPA covering information exchange and mutual assistance between UK authorities and EIOPA in the field of insurance regulation and supervision.

This document is provided for information purposes only and does not constitute legal advice. Professional legal advice should be obtained before taking or refraining from any action as a result of the contents of this document

FCA publishes statement on derivatives reporting under UK EMIR regime in event of hard Brexit

On 11 March 2019, the FCA published a [statement](#), “FCA statement on the reporting of derivatives under the UK EMIR regime in a no-deal scenario”, setting out what Trade Repositories (TRs), and the UK counterparties that use them, should do to ensure compliance with EMIR reporting obligations after the Brexit.

Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 made

On 12 March 2019, HM Government made statutory instrument [SI 2019/54](#), “The Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019” and published an associated [explanatory memorandum](#). Regulations 7 and 8 and Schedule 2 will come into force on exit day. The other provisions came into force on 13 March 2019.

Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019 made

On 12 March 2019, HM Government made statutory instrument [SI 2019/542](#), “Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019 and published an associated [explanatory memorandum](#). The Regulations come into force on exit day.

FCA publishes statement on MiFID2 obligations and BMR in event of hard Brexit

On 13 March 2019, the FCA published a [statement](#), “Statement on various MiFID obligations and benchmarks regulation if the UK leaves the EU without an implementation period”, clarifying its position on the following:

- post trade transparency and position limits
- post-trade transparency for OTC transactions between UK investment firms and EU counterparties
- trading obligation for derivatives and
- benchmarks.

FCA publishes supervisory statement on operation of UK MiFIR transparency regime in event of hard Brexit

On 14 March 2019, the FCA published a [supervisory statement](#), “Supervisory Statement on the Operation of the MiFID Transparency Regime post-Brexit” outlining how it will operate the pre- and post-trade transparency regime for the secondary trading of financial instruments if the UK leaves the EU without a withdrawal agreement. The supervisory statement covers the following:

- FIRDS, FITRS, investment firms register, trading venues register, and systematic internalisers register
- concept of Traded on a Trading Venue
- submission of transparency data to the FCA
- double volume cap (DVC)
- transparency waivers and deferrals

- equity transparency
- non-equity transparency
- systematic internalisers
- territorial scope of trade reporting
- trade reporting and the temporary permission regime
- trade reporting and the temporary transitional power and
- tick sizes.

Financial Services (Distance Marketing) (Amendment and Savings Provisions) (EU Exit) Regulations 2019 made

On 14 March 2019, HM Government made statutory instrument [SI 2019/574](#), “Financial Services (Distance Marketing) (Amendment and Savings Provisions) (EU Exit) Regulations 2019” and published an associated [explanatory memorandum](#). The Regulations come into force on exit day, except for Parts 1 and 2, which came into force on 14 March 2019.

Financial Regulators' Powers (Technical Standards etc) and Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2019 made

On 15 March 2019, HM Government made statutory instrument [SI 2019/576](#), “Financial Regulators' Powers (Technical Standards etc) and Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2019” and published an associated [explanatory memorandum](#). The Regulations came into force on 15 March 2019.

Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 made

On 22 March 2019, HM Government made statutory instrument [SI 2019/63](#), “Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019” and published an associated [explanatory memorandum](#). The Regulations come into force on exit day, except for the provisions specified in regulation 1, which came into force on 23 March 2019.

Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 made

On 22 March 2019, HM Government made statutory instrument [SI 2019/63](#), “Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019” and published an associated [explanatory memorandum](#). The Regulations come into force on exit day, except for the provisions specified in regulation 1, which came into force on 23 March 2019.

Insurance Distribution (Amendment) (EU Exit) Regulations 2019 made

On 25 March 2019, HM Government made SI 2019/663 the [Insurance Distribution \(Amendment\) \(EU Exit\) Regulations 2019](#) and published an associated [explanatory memorandum](#). The Regulations come into force on exit day.

Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019 made

On 25 March 2019, HM Government made statutory instrument [SI 2019/662](#), “Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019” and

published an associated [explanatory memorandum](#). Regulation 1 and Part 2 of the Regulations came into force on 26 March 2019. The rest of the provisions come into force on exit day.

Payment Accounts (Amendment) (EU Exit) Regulations 2019 made

On 25 March 2019, HM Government made statutory instrument [SI 2019/661](#), “Payment Accounts (Amendment) (EU Exit) Regulations 2019” and published an associated [explanatory memorandum](#). Chapter 2 of Part 2 of the Regulations came into force on 26 March 2019. The rest of the provisions come into force on exit day.

Securitisation (Amendment) (EU Exit) Regulations 2019 made

On 25 March 2019, HM Government made statutory instrument [SI 2019/660](#), “Securitisation (Amendment) (EU Exit) Regulations 2019” and published an associated [explanatory memorandum](#). The Regulations come into force on exit day.

Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019 made

On 26 March 2019, HM Government made statutory instrument [SI 2019/681](#), “Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019” and published an associated [explanatory memorandum](#).

Parts 1 and 3 of the Regulations came into force on 27 March 2019. Part 2 of the Regulations comes into force on exit day.

Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019 made

On 26 March 2019, HM Government made statutory instrument [SI 2019/680](#), “Gibraltar (Miscellaneous Amendments) (EU Exit) Regulations 2019” and published an associated [explanatory memorandum](#). Regulations 2, 3, 4, 5, 11 and Schedules 1 and 2 to the Regulations come into force on exit day. The rest of the provisions come into force immediately before exit day.

Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019 made

On 28 March 2019, HM Government made statutory instrument [SI 2019/710](#), “Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019” and published an associated [explanatory memorandum](#). The Regulations come into force on exit day, except for (a) changes to statutory instruments made under the European Union (Withdrawal) Act 2018, which come into force immediately before exit day and (b) a transitional provision on EEA overseas investment exchanges, which comes into force on the day before exit day.

FCA publishes policy statement on product intervention measures for retail binary options

On 29 March 2019, the FCA published [policy statement](#) PS19/11, “Product intervention measures for retail binary options”, summarising the feedback received from CP18/37. The rules proposed on retail binary options came into force on 02 April 2019.



Financial Services Alerter

EU developments

ESMA will recognise UK CSD in event of no-deal Brexit

On 01 March 2019, the European Securities and Markets Authority (ESMA) published a [press release](#), “ESMA to recognise the UK Central Securities Depository in the event of a no-deal Brexit”, confirming that ESMA will recognise Euroclear UK and Ireland Ltd as a third country CSD under the Central Securities Depositories Regulation (CSDR).

ESMA publishes statement on application of MiFID, MiFIR and BMR provisions in event of no-deal Brexit

On 07 March 2019, the European Securities and Markets Authority (ESMA) published a [statement](#), “Impact of Brexit on MiFID2/MiFIR and the Benchmark Regulation (BMR)”, setting out its approach to the application of key provisions in MiFID2, MiFIR and the Benchmarks Regulation. The statement covers the following:

- the trading obligation for derivatives
- MiFID II "C(6) carve-out"
- ESMA opinions on third-country trading venues for the purpose of post-trade transparency and the position limits regime and
- post-trade transparency for OTC transactions between EU investment firms and UK counterparties.

Commission Delegated Regulations under EMIR published in OJ

On 13 March 2019, the following Delegated Regulations under EMIR were published in the OJ:

- [\(EU\) 2019/396](#) amending Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 supplementing EMIR on the date at which the clearing obligation takes effect for certain types of contracts and
- [\(EU\) 2019/397](#) amending Delegated Regulation (EU) 2016/2251 supplementing EMIR on the date until which counterparties may continue to apply their risk-management procedures for certain OTC derivative contracts not cleared by a central counterparty (CCP).

The Delegated Regulations came into force on 14 March 2019. They will apply from the day following the day the UK leaves the EU, unless a withdrawal agreement has by then entered into force or the Article 50 process has been extended.

Regulations on EBA electronic central register under PSD2 published in OJ

On 15 March 2019, the following Regulations were published in the OJ:

- [\(EU\) 2019/411](#) supplementing PSD2 with regulatory technical standards (RTS) setting technical requirements on the development, operation and maintenance of the electronic central register and
- [\(EU\) 2019/410](#) laying down implementing technical standards (ITS) regarding the details and structure of the information to be notified, in the field of payment services, by competent authorities to the EBA under PSD2.

Both the Delegated Regulation and the Implementing Regulation came into force on 04 April 2019.

ESMA publishes statement on impact of no-deal Brexit on trading obligation for shares under MiFIR

On 19 March 2019, the European Securities and Markets Authority (ESMA) published a [statement](#), “Impact of Brexit on the trading obligation for shares (Article 23 of MiFIR)”, setting out its approach to the application of the trading obligation for shares after a no-deal Brexit.

ESMA publishes statement setting out data operational plan under no deal Brexit scenario

On 19 March 2019, the European Securities and Markets Authority (ESMA) published a [statement](#), “ESMA’s Data Operational Plan under a no-deal Brexit scenario on 29 March” providing details on the operation of ESMA data systems during the period after a potential no-deal Brexit on 29 March 2019.

Delegated Regulation amending MiFID2 tick size regime published in OJ

On 20 March 2019, [Commission Delegated Regulation \(EU\) 2019/443](#) amending Delegated Regulation (EU) 2017/588 as regards the possibility to adjust the average daily number of transactions for a share where the trading venue with the highest turnover of that share is located outside the EU was published in the OJ. It entered into force on 09 April 2019.

Delegated Regulation under MiFIR relating to systematic internalisers' quote obligations published in OJ

On 20 March 2019, [Commission Delegated Regulation \(EU\) 2019/442](#) amending and correcting Delegated Regulation (EU) 2017/587 to specify the requirement for prices to reflect prevailing market conditions and to update and correct certain provisions was published in the OJ. It entered into force on 09 April 2019.

Delegated Regulations under SFTR relating to trade repositories published in OJ

On 22 March 2019, two Delegated Regulations under SFTR were published in the OJ:

- [\(EU\) 2019/361](#) amending Delegated Regulation (EU) 151/2013 with regard to access to the data held in trade repositories and
- [\(EU\) 2019/362](#) amending Delegated Regulation (EU) 151/2013 (which also relates to EMIR) as regards regulatory technical standards (RTS) specifying the details of the application for registration as a trade repository.

The Delegated Regulations entered into force on 11 April 2019.

Delegated and Implementing Regulations under SFTR published in OJ

On 22 March 2019, the following Delegated Regulations and Implementing Regulations supplementing SFTR were published in the OJ:

- [Delegated Regulation \(EU\) 2019/356](#) supplementing SFTR with regard to regulatory technical standards (RTS) specifying the details of securities financing transactions (SFTs) to be reported to trade repositories
- [Delegated Regulation \(EU\) 2019/358](#) supplementing SFTR with regard to RTS on the collection, verification, aggregation, comparison and publication of data on SFTs by trade repositories
- [Delegated Regulation \(EU\) 2019/360](#) supplementing SFTR with regard to fees charged by ESMA to trade repositories
- [Delegated Regulation \(EU\) 2019/357](#) supplementing SFTR with regard to RTS on access to details of SFTs held in trade repositories
- [Delegated Regulation \(EU\) 2019/359](#) supplementing Regulation SFTR with regard to RTS specifying the details of the application for registration and extension of registration as a trade repository
- [Implementing Regulation \(EU\) 2019/363](#) laying down implementing technical standards (ITS) with regard to the format and frequency of reports on the details of SFTs to trade repositories in accordance with the SFTR and amending Implementing Regulation (EU) 1247/2012 with regard to the use of reporting codes in the reporting of derivative contracts
- [Implementing Regulation \(EU\) 2019/365](#) laying down ITS with regard to the procedures and forms for exchange of information on sanctions, measures and investigations in accordance with the SFTR and
- [Implementing Regulation \(EU\) 2019/364](#) laying down ITS with regard to the format of applications for registration and extension of registration of trade repositories in accordance with the SFTR.

The Regulations came into force on 11 April 2019.

ESMA decision on binary options product intervention decision published in OJ

On 27 March 2019, the European Securities and Markets Authority (ESMA) Decision [\(EU\) 2019/509](#) renewing the temporary prohibition on the marketing, distribution or sale of binary options to retail clients was published in the OJ. The Decision came into force on 28 March 2019 and applies from 02 April 2019 until 01 July 2019.

ESMA renews restriction on CFDs for further three months

On 27 March 2019, the European Securities and Markets Authority (ESMA) published a [press release](#), “ESMA to renew restrictions on CFDs for a further three months from 01 May 2019” confirming that it is renewing the restriction on the marketing, distribution or sale of contracts for differences (CFDs) to retail clients, in effect since 01 August 2018, for a further three-month period from 01 May 2019. The measures were renewed on the same terms as the previous renewal that applied from 01 February 2019.

ESMA publishes updated MiFID2 and MiFIR commodity derivatives Q&As

On 27 March 2019, the European Securities and Markets Authority (ESMA) published [updated Q&As](#) on MiFID2 and MiFIR commodity derivatives topics, illustrating the scope of the ancillary activity test and amending a Q&A on the deadline for the notification to make use of the ancillary activity exemption.

ESMA publishes updated MiFID2 Q&As on investor protection and intermediaries topics

On 28 March 2019, the European Securities and Markets Authority (ESMA) published updated [Q&As](#), “MiFID2 and MiFIR investor protection and intermediaries topics”, adding new Q&As on the following topics:

- best execution
- suitability and appropriateness
- information on costs and charges
- provision of investment services and activities by third-country firms
- the meaning of durable medium and
- product governance.

ESMA also updated two Q&As on the use of products' costs presented in the PRIIPs KID the suitability report.

ESMA publishes updated Q&As on MAR

On 29 March 2019, the European Securities and Markets Authority (ESMA) published updated [Q&As](#) on the Market Abuse Regulation (MAR), covering the following topics:

- disclosure of inside information by collective investment undertakings without legal personality voluntarily admitted to trading or traded on a trading venue
- potential cases of inside information in relation to collective investment undertakings without legal personality voluntarily admitted to trading or traded on a trading venue
- meaning of ‘parent’ and ‘related undertaking’ in Article 17(2) of MAR
- disclosure of inside information concerning emission allowances / referring to installations of other undertakings of the group of Emission Allowances Market Participants (EAMP).



Financial Services Alerts

International
developments

BCBS publishes statement on crypto assets

On 13 March 2019, the Basel Committee on Banking Supervision (BCBS) published a [statement](#) on crypto assets, outlining the BCBS' prudential expectations related to banks' exposures to crypto-assets and related services.

ellexica and other client items

- 04 March 2019 [Brexit: First measures \(including a TPR\) published in Spain in preparation for a hard Brexit](#)
- 05 March 2019 [EMIR Newsflash: BCBS/IOSCO statement on regulatory margin requirements](#)
- 06 March 2019 [Ireland – Trust Beneficial Ownership Information](#)
- 08 March 2019 [FCA raises concerns about asset managers' disclosure of costs and charges](#)
- 11 March 2019 [Brexit: the data protection implications](#)
- 13 March 2019 ["Manufactured" Credit Events and proposed amendments to the 2014 ISDA Credit Derivative Definitions](#)
- 14 March 2019 [Don't delay! The FCA's notification window for the TPR closes on 28 March 2019](#)
- 15 March 2019 [Government responds to CMA's recommendations in connection with adverse effects on competition within the investment consultancy and fiduciary management markets](#)
- 15 March 2019 [Brexit: impact on UK takeovers regime](#)
- 18 March 2019 [Central Bank of Ireland offers some reassurance to UCITS and Retail Investor AIFs in the event of a Hard Brexit](#)
- 19 March 2019 [Updating UK authorised fund documentation in preparation for a hard Brexit](#)
- 19 March 2019 [Mining Masterclass – Battery Metals in Europe](#)
- 20 March 2019 [FCA anti-money laundering spot checks on hedge funds](#)
- 26 March 2019 [BaFin publishes clarification on the distribution of UK-domiciled funds in Germany in the event of a no-deal Brexit](#)
- 26 March 2019 [More good news for Irish funds industry as Central Bank permits investment in Chinese bonds through Bond Connect](#)
- 26 March 2019 [ESG – Sustainable Investment from a Regulatory Perspective](#)
- 26 March 2019 [SFTR Newsflash: Reporting RTS published in OJ](#)
- 26 March 2019 [Brexit: Luxembourg takes specific measures to treat breaches of investment policies/rules of Luxembourg UCIs and marketing of UK 26 UCITS to retail investors](#)
- 27 March 2019 [Ireland – Central Credit Register and business loans](#)
- 27 March 2019 [Bank of England embraces the promise of FinTech](#)
- 29 March 2019 [EMIR Newsflash: ESMA public statement on calculation against clearing thresholds](#)

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