

Financial Services Alerter

April 2019





Financial Services Alerter

EU developments

ESMA publishes updated MiFID2 Q&As on market structures and transparency

On 02 April 2019, the European Securities and Markets Authority (ESMA) published updated Q&As on MiFID2 and MiFIR [market structures](#) and [transparency issues](#). The following transparency Q&As were amended:

- determination of the turnover to be used for the average value of transactions (AVT) calculation
- money market instruments (MMIs)
- impact for systematic internalisers of an instrument changing liquidity status in between the systematic internaliser determination dates
- reporting of prime brokerage transactions
- quoting obligation for systematic internalisers in non-equity financial instruments
- branches of third country firms operating as SI in the EU and
- third-country trading venues' access to an EU CCP

ESMA amended or deleted the following Q&As on market structures:

- identification and authorisation of HFT
- timing of notification for transitional arrangements under Article 35(5) of MiFIR
- timing and procedure of notification for temporary opt out under Article 36(5) MiFIR and
- timing of application for transitional arrangements under Article 54(2) of MiFIR.

ESMA publishes updated opinion on FCA binary option product intervention measure

On 02 April 2019, the European Securities and Markets Authority (ESMA) published an [Opinion](#), "Product intervention measure relating to binary options proposed by the Financial Conduct Authority of the United Kingdom".

On 25 January 2019, the FCA notified ESMA that it would take a product intervention measure under Article 42 of MiFIR by introducing a permanent prohibition on the marketing, distribution or sale of binary options to retail clients in or from the UK. ESMA's Opinion concludes this measure, which came into force on 02 April 2019, is justified and proportionate.

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

Commission Implementing Decisions on temporary equivalence of UK regulatory framework for CCPs and CSDs published in OJ

On 04 April 2019, the following Commission Implementing Decisions were published in the OJ:

- [\(EU\) 2019/544](#) amending Implementing Decision (EU) 2018/2031 on the temporary equivalence of the UK's regulatory framework for central counterparties (CCPs) under EMIR and
- [\(EU\) 2019/545](#) amending Implementing Decision (EU) 2018/2030 on the temporary equivalence of the UK's regulatory framework for central securities depositories (CSDs) under CSDR.

The Commission Implementing Decisions entered into force on 05 April 2019.

ESMA publishes report on use of UCITS supervisory sanctions

On 04 April 2019, the European Securities and Markets Authority (ESMA) published a [report](#), "Penalties and measures imposed under the UCITS Directive in 2016 and 2017", providing information on the penalties and measures imposed by national competent authorities from 01 January 2016 to 31 December 2016 and from 01 January 2017 to 31 December 2017.

Joint Committee of ESAs updates Q&As on PRIIPs KID

On 04 April 2019, the Joint Committee of the European Supervisory Authorities (ESAs) published updated [Q&As](#) on the PRIIPs Key Information Document (KID), introducing new Q&As in the following sections of the document:

- General topics and
- Multi-option products (MOPs).

No-deal Brexit Commission Delegated Regulations under EMIR published in OJ

On 10 April 2019, the following Commission Delegated Regulations supplementing EMIR were published in the OJ:

- [\(EU\) 2019/564](#) amending Delegated Regulation (EU) 2016/2251, supplementing EMIR regarding the date until which counterparties may continue to apply their risk-management procedures for certain OTC derivative contracts not cleared by a CCP and
- [\(EU\) 2019/565](#) amending Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 supplementing EMIR regarding the date at which the clearing obligation takes effect for certain types of contracts.

The Commission Delegated Regulations apply from the date the UK leaves the EU.

ESMA publishes updated MiFIR data reporting Q&As

On 09 April 2019, the European Securities and Markets Authority (ESMA) published [updated Q&As](#) on MiFIR data reporting, incorporating one new Q&A on a defined list of instruments.

Delegated Regulation amending RTS on clearing obligation under EMIR to extend dates of deferred application published in OJ

On 29 April 2019, [Delegated Regulation \(EU\) 2019/667](#) amending regulatory technical standards on the clearing obligation under EMIR to extend the dates of deferred application of the clearing obligation for certain OTC derivatives contracts was published in the OJ. The Delegated Regulation entered into force on 30 April 2019.

European Commission publishes report on application and review of BRRD and SRM Regulation

On 30 April 2019, the European Commission published a report, “The application and review of [BRRD] and [the Single Resolution Mechanism Regulation (SRM)]”, outlining the current status of the resolution framework brought in by BRRD and SRM. The report also analyses the following areas:

- the application of BRRD and SRMR
- the interaction between resolution and insolvency and reflection on possible further harmonisation of insolvency and
- the functioning of the SRM and Single Resolution Board (SRB).

ESMA publishes final reports on technical advice on integrating sustainability risks and factors into MiFID2, UCITS and AIFMD

On 30 April 2019, the European Securities and Markets Authority (ESMA) published the following Final Reports with technical advice to the European Commission on integrating sustainability risks and factors in

- [MiFID2](#) (investment services) and
- [UCITS and AIFMD](#) (investment funds).

ESMA first published consultations on the draft technical advice in December 2018. ESMA will now assist the European Commission in producing delegated acts based on the technical advice.

ESMA temporary restriction on CFDs applicable from 01 May 2019 published in OJ

On 30 April 2019, [ESMA Decision \(EU\) 2019/679](#) renewing the temporary restriction on the marketing, distribution or sale of contracts for differences to retail clients was published in the OJ. The decision applied from 01 May 2019 for a period of three months.



Financial Services Alerts

International
developments

BCBS publishes consultation on consolidated Basel framework

On 09 April 2019, the Basel Committee on Banking Supervision (BCBS) published a [consultation paper](#), “Consolidated Basel Framework”, requesting feedback on a new section of its website setting out a consolidated version of its global standards for the regulation and supervision of banks. It also proposes various other technical amendments to its standards. The consultation period closes on 09 August 2019.

elexica and other client items

01 April 2019	<u>Preventing abuse of R&D tax relief for SMEs: consultation</u>
03 April 2019	<u>UCITS KIIDs - ESMA updates its Q&As with clarification on disclosure of past performance and benchmark indices</u>
04 April 2019	<u>ESMA updates its Market Abuse Q&As</u>
04 April 2019	<u>Calculation of leverage - ESMA updates Q&As on the AIFMD</u>
04 April 2019	<u>Breakfast Briefing: Transitional / Emergency Measures Implemented in Germany and Ireland</u>
04 April 2019	<u>Hague - more delay?</u>
05 April 2019	<u>Brexit: CNMV publishes guidelines on interpretation of the Spanish Brexit Measures</u>
08 April 2019	<u>ESMA's updated Q&As on UCITS KIIDs – key changes and action points for managers</u>
08 April 2019	<u>Financial Markets Legal Update 2019</u>
10 April 2019	<u>Mining Database Expansion</u>
11 April 2019	<u>Brexit Draft Law 7401 for Luxembourg Financial Services Adopted</u>
11 April 2019	<u>Brexit Draft Law 7426 Adopted - Treatment of breaches of investment policies/rules of Luxembourg UCIs and marketing of UK UCITS to Luxembourg retail investors</u>
12 April 2019	<u>Belgian Brexit contingency measures regarding migration and social security in the event of a “no-deal”</u>
15 April 2019	<u>UK TPR - FCA further extends the period to make notifications to 30 May</u>
15 April 2019	<u>FCA fires warning shot over approval of financial promotions</u>
17 April 2019	<u>SEC decision could enable active ETF Managers to reach their full potential - will ESMA follow suit?</u>
18 April 2019	<u>CSSF guidance for third country investment firms</u>
26 April 2019	<u>Guidance from the CSSF on third country firms providing investment services and performing investment activities in Luxembourg</u>

elexica.com is the award winning online legal resource of Simmons & Simmons

© Simmons & Simmons LLP 2019. All rights reserved, and all moral rights are asserted and reserved.

This document is for general guidance only. It does not contain definitive advice. SIMMONS & SIMMONS and S&S are registered trade marks of Simmons & Simmons LLP.

Simmons & Simmons is an international legal practice carried on by Simmons & Simmons LLP and its affiliated practices. Accordingly, references to Simmons & Simmons mean Simmons & Simmons LLP and the other partnerships and other entities or practices authorised to use the name "Simmons & Simmons" or one or more of those practices as the context requires. The word "partner" refers to a member of Simmons & Simmons LLP or an employee or consultant with equivalent standing and qualifications or to an individual with equivalent status in one of Simmons & Simmons LLP's affiliated practices. For further information on the international entities and practices, refer to simmons-simmons.com/legalresp

Simmons & Simmons LLP is a limited liability partnership registered in England & Wales with number OC352713 and with its registered office at CityPoint, One Ropemaker Street, London EC2Y 9SS. It is authorised and regulated by the Solicitors Regulation Authority.

A list of members and other partners together with their professional qualifications is available for inspection at the above address.