

## DERIVATIVES

See “FCA Updates Webpage on MiFID II Position Limits for Commodity Derivative Contracts,” “FCA Publishes Evaluation Paper Relating to Bringing Additional Benchmarks Into Regulatory and Supervisory Regime,” and “HM Treasury Publishes Draft Brexit Statutory Instrument Relating to EMIR” in the *Brexit/UK Developments* section.

## DIGITAL ASSETS AND VIRTUAL CURRENCIES

See “FCA Announces Launch of Green FinTech Challenge” in the *Brexit/UK Developments* section and “ESMA Publishes Stakeholder Group Advice on Containing Risks of ICOs and Crypto Assets” in the *EU Developments* section.

## BREXIT/UK DEVELOPMENTS

### FCA Announces Launch of Green FinTech Challenge

On October 19, the UK Financial Conduct Authority (FCA) published a webpage announcing the launch of its “Green FinTech Challenge”, an initiative to support firms developing innovative products and services in the green, financial technology (FinTech) sector.

The Challenge is open to start-ups, incumbents and technology providers. Firms developing broader ethical, environmental, social or governance products and services also may apply, so long as there is a link with or associated benefit to the green finance agenda (for further details on the FCA’s discussion paper on green finance, see the October 19 edition of [Corporate & Financial Weekly Digest](#)). The Challenge encourages firms to apply to participate if they require specific regulatory support. Applications are assessed according to the following criteria:

1. ability to assist in the United Kingdom’s transition to a greener economy;
2. ability to benefit UK markets and consumers; and
3. a demonstrated need for the FCA’s Innovate services (which promote innovation in financial services by supporting innovator businesses with a range of services).

Examples of green solutions offered by firms to help them to become eligible to participate in the Challenge include:

1. supporting capital flows and investment towards green products and services;
2. driving efficiency in the issuance, distribution or adoption of green products and delivering new green financial products; and
3. managing climate-related risk posed to market participants.

The deadline for applications to participate in the Challenge is January 11, 2019. Successful applicants will be notified by the end of the first quarter of 2019 and will be listed on the FCA’s website. Successful firms will benefit from dedicated advice from the FCA’s Innovate services, authorization support (if needed) and live market testing

within the FCA's "Regulatory Sandbox" (the FCA's testing environment where technology start-ups can evaluate prototypes of their financial products in a safe environment).

The Challenge is a pilot approach for FCA Innovate. Once complete, the FCA will consider rolling out additional FinTech challenges.

The FCA's webpage is available [here](#).

### **FCA Updates Webpage on MiFID II Position Limits for Commodity Derivative Contracts**

On October 22, the UK Financial Conduct Authority (FCA) updated its webpage for bespoke position limits set for a number of commodity derivatives traded on UK trading venues, namely contracts traded on ICE Futures in the United Kingdom.

Following ICE Futures' recent update of its range of products, the FCA has made the following amendments to its webpage:

1. under the FCA's data for bespoke contracts, Gasoil Diff – Singapore Gasoil (Platts) vs Singapore Gasoil 0.05% (Platts) Future, now has an aggregating contract;
2. the FCA's data for bespoke contracts also includes a new contract launched by ICE Futures on October 22, based on Permian WTI oil, but the limit for the venue product code (VPC) of HOU, has a limit set as "TBA." This indicates that the FCA will set a specific numerical limit at a point in the future to be advised when the contract has developed sufficient maturity to accurately apply the position limit setting methodology of the European Securities and Markets Authority (ESMA); and
3. in the FCA's table of *de minimis* aggregated contracts, two new contracts have been added: TD19 Cross Med (Ceyhan to Lavera) (Baltic) Future and TD9 FFA – Caribbean to US Gulf (Baltic) Future.

Additionally, the FCA is reviewing the spot month limit it has published for ICE Futures Natural Gas due to a discrepancy with ESMA's published limit. The FCA believes that this is a simple typographical mistake, and it will make an appropriate adjustment, which will apply from that point.

The FCA also has updated its spreadsheet listing the full aggregation of all possible VPCs for the purpose of monitoring position limits.

The FCA's webpage on position limits for commodity derivative contracts is available [here](#).

The FCA's spreadsheet of full aggregation of all possible VPCs is downloadable [here](#).

### **FCA Publishes Evaluation Paper Relating to Bringing Additional Benchmarks Into Regulatory and Supervisory Regime**

On October 22, the UK Financial Conduct Authority (FCA) published an evaluation paper that considers the impact that bringing seven additional benchmarks into its regulatory and supervisory regime had on the market.

The paper evaluates the Benchmarks (Amendment) Instrument 2015 (Benchmarks Instrument), by which the FCA made amendments to the *FCA Handbook* to reflect the additional benchmarks.

The FCA highlights the following:

1. most stakeholders believed that the FCA rules made benchmarks more robust to manipulation and more representative of the underlying market, reassuring users about the integrity of the benchmarks;
2. the FCA's empirical findings support such claims and find that trading costs and liquidity improved for already liquid markets (especially in swaps markets); and
3. for less liquid markets, the fines, the methodology changes and the FCA's regulatory intervention may have increased the perceived regulatory risk, worsening liquidity and participation.

The evaluation has informed the FCA's current and future work, including its work to understand the trade-offs regulation of benchmarks need to solve.

The paper is available [here](#).

## **HM Treasury Publishes Draft Brexit Statutory Instrument Relating to EMIR**

On October 22, HM Treasury published the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (Draft EMIR (Brexit) SI), a draft statutory instrument (SI) relating to the European Market Infrastructure Regulation (EMIR). It also has published a supporting explanatory memorandum.

The purpose of the Draft EMIR (Brexit) SI is to ensure that on-shored aspects of EMIR relating to over-the-counter derivatives, central counterparties (CCPs) and trade repositories continue to operate effectively after the United Kingdom's withdrawal from the European Union (Brexit) on March 29, 2019 (Exit Day).

The Draft EMIR (Brexit) SI includes provisions designed to:

1. ensure that requirements imposed by EMIR continue to apply in the United Kingdom and transfer responsibilities in this regard to UK regulators;
2. transfer the power to make third-country regime equivalence decisions from the European Commission to HM Treasury;
3. establish a temporary intragroup exemption regime to ensure that intragroup transactions can continue to be exempted from EMIR requirements, where this is the case to date. This regime will last three years and may be extended by HM Treasury in certain circumstances; and
4. remove provisions relating to sharing information with other EU authorities and the oversight of central counterparties by regulatory colleges.

The Draft EMIR (Brexit) SI sits alongside the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 and the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (for further details of each, see the [October 5](#) and [October 12](#) editions of *Corporate & Financial Weekly Digest*, respectively).

HM Treasury will present the Draft EMIR (Brexit) SI to Parliament prior to Exit Day, and the SI will go into effect on Exit Day.

The Draft EMIR (Brexit) SI is available [here](#).

The explanatory memorandum is available [here](#).

## **EU DEVELOPMENTS**

### **ESMA Publishes Stakeholder Group Advice on Containing Risks of ICOs and Crypto Assets**

On October 19, the European Securities and Markets Authority (ESMA) published an own-initiative report, produced by its Securities and Markets Stakeholder Group (SMSG), on initial coin offerings (ICOs) and crypto assets. The report gives advice to ESMA on steps it can take to contain the risks of ICOs and crypto assets, on top of existing regulation.

The SMSG advises ESMA on producing level 3 guidelines or aiming at supervisory convergence on:

1. the interpretation of the definitions of "transferable securities" and "commodities" contained in the revised Markets in Financial Instruments Directive (MiFID II), clarifying whether transferable crypto asset tokens that have features of transferable securities are subject to MiFID II and the Prospectus Regulation;
2. the interpretation of the concepts of multilateral trading facilities (MTF) and organized trading facilities (OTF), clarifying whether the organization of a secondary market in crypto asset tokens that qualify as MiFID II financial instruments is an MTF or OTF;

3. the application of the Market Abuse Regulation to MTFs and OTFs organized by issuers of crypto asset tokens; and
4. the fact that if a crypto asset token is considered to be a MiFID II financial instrument, persons giving investment advice on those crypto asset tokens, or executing orders in those crypto asset tokens, should be considered investment firms requiring a license as such under MiFID II (unless they qualify for an exemption).

As ESMA is not able to amend the level 1 MiFID II text defining financial instruments, the SMSG urges it to consider sending a letter to the European Commission asking the latter to consider adding second, transferable payment and utility tokens to the MiFID II list of financial instruments.

Finally, the SMSG is opposed to the over-regulation of regulatory sandboxes and innovation hubs (offering testing environments for technology start-ups), but that some coordination is necessary. It advises ESMA to provide guidelines with minimum criteria for national authorities that operate or want to operate a regulatory sandbox or innovation hub.

The report is available [here](#).

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