

# Financial Services Alerter

MARCH 2020



## ESMA confirms application date of equity transparency calculations

On 30 March 2020, the European Securities and Markets Authority (ESMA) published a [press release](#) that confirms that the date for the application of transparency calculations for equity instruments is 1 April 2020.

## ESMA publishes a call for evidence

On 30 March 2020, the European Securities and Markets Authority (ESMA) published a [call for evidence](#) on the availability and use of credit rating information and data. The aim of the call for evidence is to gather information on the specific uses of credit ratings as well as how the users of credit ratings are currently accessing this information.

## ESMA publishes final draft RTS for CCP colleges under EMIR 2.2

On 30 March 2020, the European Securities and Markets Authority (ESMA) published a [final report](#) containing draft regulatory technical standards (RTS) for central counterparty (CCP) colleges under EMIR 2.2.

The proposed amendments concern the practical arrangements for the functioning of colleges relating to:

- Voting procedures.
- The procedures for setting the agenda of college meetings.
- Review and evaluation of the arrangements, strategies, processes and mechanisms implemented by the CCP and the risks to which the CCP is exposed.
- The minimum timeframes for the assessment of the relevant documentation by the college members.
- The modalities of communication between college members.

## ESMA publishes CP on PTRR services

On 27 March 2020, the European Securities and Markets Authority (ESMA) published a [Consultation Paper](#) “Report on post trade risk reduction (PTRR) services with regards to the clearing obligations (EMIR Article 85(3a))”. ESMA is looking into the different types of PTRR services being offered, their purpose and whether there is a need for the new trades that these may generate to be exempted from the clearing obligation, and if such an exemption could lead to the risk of some counterparties circumventing the clearing obligation

## ESMA publishes guidance on financial reporting

On 27 March 2020, the European Securities and Markets Authority (ESMA) published a [Public Statement](#) on the implications of the COVID-19 pandemic on the deadlines for publishing financial reports which apply to listed issuers under the transparency directive.

## ESMA publishes public statement on approach to SFTR Implementation

On 26 March 2020, the European Securities and Markets Authority (ESMA) published a [Public Statement](#) “Actions to mitigate the impact of COVID-19 on the EU financial markets – postponement of the reporting obligations related to securities financing transactions under the Securities Financing Transactions Regulation (SFTR) and under Markets in Financial Instruments Regulation”, to ensure coordinated supervisory actions on the application of the SFTR.

## ESMA publishes CP on technical standards on RTs

On 26 March 2020, the European Securities and Markets Authority (ESMA) published a [Consultation Paper](#) “Technical standards on reporting, data quality, data access and registration of Trade Repositories under EMIR REFIT” on developing implementing technical standards on reporting of derivatives to the Trade Repositories (TRs), implementing and regulatory technical standards on registration of TRs, regulatory technical standards on the procedures to be applied by the TRs to reconcile and validate the data as well as regulatory technical standards on the publication and provision of data by the TRs to the relevant authorities.

## ESMA statement on calculating expected credit losses in accordance with IFRS 9

On 25 March 2020, European Securities and Markets Authority (ESMA) published a [statement](#) on the implications of COVID-19 on calculating expected credit losses in accordance with International Financial Reporting Standard 9 (Financial Instruments).

## ESMA publishes OPs on Short Selling ban

On 18 March 2020, the European Securities and Markets Authority (ESMA) published an [Opinion](#) “On a proposed emergency measure by the Autorité des marchés financiers (AMF) under Section 1 of Chapter V of Regulation (EU) No 236/2012”, agreeing to an emergency short selling prohibition, for a period of one month, by the AMF of France on all transactions which might constitute or increase net short positions on shares admitted to trading on French trading venues.

On 17 March 2020, the European Securities and Markets Authority (ESMA) published an [Opinion](#) “On a proposed emergency measure by the Commissione Nazionale per le Società e la Borsa (CONSOB) under Section 1 of Chapter V of Regulation (EU) No 236/2012”, agreeing to an emergency short selling prohibition, for a period of three months, by the CONSOB on all transactions which might constitute or increase net short positions on all shares traded on the Italian MTA regulated market

## ESMA publishes decision on net short positions holders to report positions of 0.1% and above

On 16 March 2020, the European Securities and Markets Authority (ESMA) published a [Decision](#) to require natural or legal persons who have net short positions to temporarily lower the notification thresholds of net short positions in relation to the issued shares capital of companies whose shares are admitted to trading on a regulated market above a certain threshold to notify the competent authorities in accordance with point (a) of Article 28(1) of the Short Selling Regulation.

## ESMA publishes CP on MIFIR transparency regime for non-equity instruments

On 10 March 2020, the European Securities and Markets Authority (ESMA) published a [Consultation Paper](#) “MiFID II/ MiFIR review report on the transparency regime for non-equity instruments and the trading obligation for derivatives”. The CP contains ESMA’s proposals for amendments to the transparency regime in order to simplify the current complex trade reporting regime and create a uniform set of rules in the European Union to improve the overall trade transparency available to market participants for non-equity instruments.

## ESMA publishes CP on draft technical standards for benchmarks

On 9 March 2020, the European Securities and Markets Authority (ESMA) published a [Consultation Paper](#) on draft Regulatory Technical Standards under the Benchmarks Regulation covering governance, methodology, infringements reporting, critical benchmarks.

## ESMA publishes 2020 Supervisory Work Programme

On 9 March 2020, the European Securities and Markets Authority (ESMA) published its [Supervisory Work Programme](#) “Annual Report 2019 and Work Programme 2020” detailing the areas of focus for its supervision of Credit Rating Agencies, Trade Repositories and the monitoring of third-country [Central](#) Clearing Counterparties and Central Securities Depositories.

## ESMA publishes report on Energy Derivatives

On 2 March 2020, the European Securities and Markets Authority (ESMA) published a [report](#) “MIFID II: C6 energy derivative contracts and the EMIR requirements”, in which it assesses the adequacy of mandating C6 energy derivative contracts, which currently benefit from a special exemption regime, subject to the clearing obligation and margin requirements of EMIR.

## EBA publishes final draft on key areas for implementing FRTB

On 27 March 2020, the European Banking Authority (EBA) published three reports:

- [Final draft RTS on liquidity horizons for IMA](#) on how institutions are to map the risk factors to the relevant category and sub-category.
- [Final draft RTS on back-testing and profit and loss attribution \(PLA\) requirements](#) on the elements to be included for the purpose of the back tests in the hypothetical, actual and risk- theoretical profit and loss.
- [Final draft RTS on criteria for assessing the modellability of risk factors under the IMA](#) on the criteria for identifying the risk factors that are modellable and that institutions are, therefore, allowed to include in their expected shortfall calculations.

## EBA publishes statement on postponed activities

On 25 March 2020, the European Banking Authority (EBA) published a [statement](#) on the activities it is postponing in light of COVID-19. EBA explains that, as a follow up to the decision to support banks' focus on key operations and to limit any non-essential requests in the short term it has reviewed all ongoing activities requiring inputs from banks in the next months.

## EBA publishes statement on consumer and payment issues in light of COVID19

On 25 March 2020, the European Banking Authority (EBA) published a [statement](#) on consumer and payment issues in the light of COVID-19. Governments and financial institutions are taking immediate measures to mitigate any adverse systemic impact. These measures include general debt moratoria, payment holidays stemming from public measures or industry-wide initiatives taken by credit institutions.

## EBA publishes statement on application of prudential framework regarding default, forbearance and IFRS 9

On 25 March 2020, the European Banking Authority (EBA) published a [statement](#) on the application of the prudential framework regarding default, forbearance and International Financial Reporting Standard 9 (Financial Instruments) in the light of the measures taken to mitigate the impact of COVID-19 on the EU banking sector.

## EBA publishes statement on COVID-19 on the EU banking sector

On 12 March 2020, the European Banking Authority (EBA) published a [statement](#) on actions to mitigate the impact of COVID-19 on the EU banking sector such as the postponement of the Stress test to 2021 to allow banks to prioritise to operational continuity.

## **EBA concludes that no specific regulatory LGD should be set for credit insurance claims**

On 9 March 2020, the European Banking Authority (EBA) published an [Opinion](#) on the treatment of credit insurance in the prudential framework. The Opinion is the EBA's response to feedback received to the public consultation on its draft [Guidelines](#) on credit risk mitigation for institutions applying the Internal Ratings-Based Approach with own estimates of Loss Given Default.

## **ECB recommendation to delay dividend payments**

On 27 March 2020, the European Central Bank (ECB) published a [recommendation](#) to credit institutions on dividend distributions. The ECB recommends that credit institutions should not pay dividends for the financial years 2019 and 2020 until at least 1 October 2020 and should refrain from share buy-backs aimed at remunerating shareholders.

## ICMA and ISLA publishes Impact of COVID-19 on SFTR implementation programmes

On 16 March 2020, the International Capital Markets Association and the International Securities Lending Association published a [letter](#) to the European Securities and Markets Authority (ESMA) asking ESMA (a) to initiate, as a matter of urgency, the procedure for obtaining a formal delay of the Securities Financing Transaction Regulation (SFTR) reporting go-live date to an appropriate date that falls well outside the expected critical phase of the pandemic and (b) to consider equivalent measures that would provide forbearance and sufficient reassurance for firms that they are not expected by ESMA and their respective NCA to ensure strict compliance with SFTR reporting obligations for an appropriate period of time following the legal reporting start date.

## ICMA publishes FAQs on CSDR Mandatory By-ins and non-cleared SFTs

On 5 March 2020, the International Capital Markets Association published [Frequently Asked Questions](#) (FAQs) on Central Securities Depositories Regulation Mandatory By-ins and non-cleared Securities Financing Transactions (SFTs), intended to outline considerations and, where possible, to provide clarity with respect to the application of CSDR buy-ins in the case of repos and other SFTs. The FAQs will be updated in light of new guidance from ESMA and agreed market best practice.

## FIA urges CFTC to exclude proprietary positions from FCM risk margin calculations

On 3 March 2020, the Future Industry Association (FIA) submitted a [response](#) to a Commodity Future Trading Commission request for additional comment on its proposed capital requirements for swap dealers and major swap participants. FIA focused its response on the potential impact to futures commission merchants (FCMs), and in particular a provision in the proposal that would require FCMs to include proprietary positions in swaps and security-based swaps in their calculations of the eight-percent risk-margin capital requirement.

## FIA, Greenwich Associates publishes new derivatives market research

On 11 March 2020, the Futures Industry Association published a [study](#) on trading and clearing trends in derivatives markets, assessing market sentiment towards several major market structure trends, including the impact of capital requirements, the adoption of central clearing, the transition away from LIBOR, and the implementation of margin requirements on uncleared derivatives.

## ISDA publishes a summary of Equivalence Determinations for Non-Cleared Margin Requirements

On 2 March 2020, the International Swaps and Derivatives Association published a [summary](#) setting out its understanding of the current state of substituted compliance across the different margin jurisdictions with respect to one another.

For additional information on our firm, please visit our website at [simmons-simmons.com](https://www.simmons-simmons.com).

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