

# Financial Services Alerter

July 2016





## Financial Services Alerter

Introduction

July 2016

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 July 2016.

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

### Follow us on Twitter

For updates on the developments covered in this newsletter as they happen, follow the Financial Services Alerter Twitter feed [@Simmons\\_FS](#).

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



## Financial Services Alerter

UK developments

### FCA Chair speech on global regulation in post-crisis era

On 01 July 2016, the Financial Conduct Authority (FCA) published a [speech](#) delivered by John Griffith-Jones, FCA Chair, on global regulation in the post-crisis era.

### FCA publishes quarterly consultation paper No.13

On 04 July 2016, the FCA published [consultation paper](#) CP 16/17, "Quarterly Consultation Paper No.13". The FCA consults quarterly on proposed miscellaneous amendments to its Handbook. Amongst other proposals, the FCA is proposing to make changes to the transparency reporting requirements for certain alternative investment fund managers, to reduce information gaps and allow effective monitoring of their risk-taking activities. The consultation closed on 01 August 2016 for Chapter 5 and closes on 12 August 2016 for Chapter 3 and 01 September 2016 for all other chapters.

### FCA board minutes

On 06 July 2016, the FCA published the [board minutes](#) of its meeting held on 25 and 26 May 2016 which refers to the work being carried out following the Fair and Effective Market Review (FEMR) recommendations, in particular on how to implement a market abuse regime for spot foreign exchange trading.

### FCA launches call for input on crowd funding rules

On 08 July 2016, the FCA published a [call for input](#) to the post-implementation review of the FCA's crowd funding rules. The FCA is seeking views on which areas should be considered as part of its upcoming review of the rules surrounding both investment-based and loan-based crowd funding. The FCA is asking for responses by 08 September 2016.

### Financial Services and Markets Act 2000 (Transparency of Securities Financing Transactions and of Reuse) Regulations 2016 published

On 08 July 2016, the [Financial Services and Markets Act 2000 \(Transparency of Securities Financing Transactions and of Reuse\) Regulations 2016](#) and [explanatory memorandum](#) were published on [www.legislation.gov.uk](http://www.legislation.gov.uk). The collateral reuse requirements under the Securities Financing Transactions Regulation (SFTR) entered into force on 13 July 2016 and many funds, including non-EU funds with non-EU investment managers, were required to send collateral reuse information statements to their counterparties by that date.

## FCA guidance on fund suspensions

On 08 July 2016, the FCA provided [updated guidance](#) on fund suspensions. The guidance follows the decision by a number of funds to announce the temporary suspension of trading in their property portfolios and feeder funds. The guidance reminds fund managers of their obligations to investors and outlines the FCA's expectations in relation to the suspension of dealings in their funds.

## FCA publishes annual and competition reports

On 12 July 2016, the FCA published: (i) its [third Annual Report](#), which looks back on the key pieces of work undertaken by the organisation throughout 2015/16; and (ii) a [Competition Report](#) summarising the activities it has undertaken to promote competition in financial services in its first three years.

## FCA speech on getting culture and conduct right; the role of the regulator

On 13 July 2016, the FCA published a [speech](#) by Jonathan Davidson, Director of Supervision – retail and authorisations at the FCA, delivered at the 2nd Annual Culture and Conduct Forum for the Financial Services Industry in London. In particular, the speech refers to the Senior Managers and Certification Regime (SMCR) where the FCA wants senior individuals be held accountable for, the decisions they make and oversee.

## New FCA financial services register extract service subscribers Handbook

On 13 July 2016, the FCA published a financial services register extract service subscribers [Handbook](#). The register extract service forms part of the FCA's Publication Scheme, which has been compiled in line with its obligations under the Freedom of Information Act 2000.

## FCA consults on changes to disclosure rules in the FCA Handbook to reflect the direct application of the PRIIPs Regulation

On 18 July 2016, the FCA published a [consultation paper](#) CP 16/18, "Changes to disclosure rules in the FCA Handbook to reflect the direct application of the PRIIPs Regulation". The PRIIPs Regulation will require firms to prepare, publish and provide a Key Information Document (KID) for each PRIIP manufactured. In order to prepare for the direct application of the PRIIPs Regulation, the FCA expects all affected firms to plan for changes to their retail disclosure documents and related processes. In this CP, the FCA details its approach and proposals to amend affected disclosure provisions in the FCA Handbook so they reflect the PRIIPs Regulation, in particular so they do not duplicate or conflict with the requirement to produce a KID. The consultation closes on 19 September 2016. The PRIIPs Regulation takes effect on 31 December 2016.

## FCA feedback statement- supporting the development and adopters of RegTech

On 20 July 2016, the FCA published [Feedback Statement](#) FS 16/4, "Call for input on supporting the development of RegTech". The FS summarises the responses received to its [Call for Input: Supporting the development and adopters of RegTech](#) (November 2015), and outlines its approach to RegTech for 2016/17. The Feedback Statement summarises the responses into four main themes: (i) efficiency and collaboration; (ii) integration, standards and understanding; (iii) predict, learn and simplify; and (iv) new directions. The FCA aims to be fully engaged with the FinTech community and is keen to improve the interface between the regulator and the regulated.

## FCA speech about recent work and future challenges

On 20 July 2016, the FCA published a [speech](#) delivered by Andrew Bailey, Chief Executive at the FCA, at its 2016 Annual Public Meeting held on 19 July 2016.

## FCA publishes thematic review on UK equity market dark pools

On 21 July 2016, the FCA published [thematic review](#) TR 16/5, “UK equity market dark pools - Role, promotion and oversight in wholesale markets”. Equity market dark pools are subject to a regulatory framework in the UK that places clear requirements on users and operators of these services. However, dark pools have recently gained increased public attention in respect of price transparency, perceived unfairness and the potential exploitation of some dark pool users by dark pool operators or other more technologically advanced dark pool users. This review explores and seeks to address specific concerns that have been raised in relation to dark pools in the UK equity market. The FCA ‘Business Plan 2016/17’ included the ‘Wholesale financial markets’ as one of its priority themes.

## PRA publishes occasional consultation paper

On 22 July 2016, the Prudential Regulation Authority (PRA) published [occasional consultation paper OCP 26/16](#). The OCP sets out proposed changes to the PRA rulebook parts and supervisory statements. The consultation closes for chapters 2-6 on 21 October 2016 and Appendix 7 on 05 August 2016.

## FEMR chairs publish implementation report

On 28 July 2016, the Chairs of FEMR published a full [implementation report](#) to the Chancellor of the Exchequer, the Governor of the Bank of England and the Chairman of the FCA, detailing the significant progress that has been made to implement the Review’s recommendations.

## New FCA webpage on FX remediation programme

On 28 July 2016, the FCA published a new [webpage](#) setting out next steps in its foreign exchange (FX) remediation programme. The FCA launched a remediation programme in 2014 to ensure UK FX firms addressed the root causes of failings and to drive up standards across the market.

## FCA publishes second consultation paper on the MiFID2 implementation

On 29 July 2016, the FCA published [consultation paper](#) CP16/19, “MiFID2 Implementation.” The FCA clarifies that it will keep the proposals under review to assess whether any amendments will be required due to changes in the UK regulatory framework, including as a result of any negotiations following the UK’s vote to leave the EU. The consultation closes on 28 October 2016. There will be a further consultation paper later this year on changes to the Conduct of Business sourcebook (COBS), material on product governance and some further changes to the Perimeter Guidance Manual (PERG). A single policy statement covering all aspects of the FCA implementation is expected in 2017.



## Financial Services Alerter

EU and International developments

### ESMA amends MiFIR RTS 22

On 01 July 2016, the European Securities and Markets Authority (ESMA) submitted [two amendments](#) to the European Commission in relation to the [draft RTS](#) on reporting obligations under Article 26 MiFIR (RTS 22). The amendments concern the identifiers for natural persons which must be used in transaction reports, specified in Annex II of RTS 22. Each Member State has specified which identifier should be used for its citizens and, in accordance with the wishes of the relevant national regulators, ESMA proposes the following amendments: (i) only “CONCAT” codes are to be used for identifying natural persons of German nationality instead of a “personal identity card number” or “national passport number”; and (ii) the English translation for the Icelandic identifier “Kennitala” is corrected to “Personal Identity Code” from “National Passport Number”. ESMA anticipates that the amendments can be taken into account in the context of the European Commission’s endorsement of RTS 22.

### European Supervisory Authorities plan to issue Q&As on PRIIPS

On 01 July 2016, the Joint Committee of the three European Supervisory Authorities (ESAs) – EBA, EIOPA and ESMA – [published a letter](#) to the European Parliament and European Council on the supervisory convergence work by the ESAs in relation to the draft RTS on Key Information Documents (KIDs) for Packaged Retail and Insurance-based Investment Products (PRIIPs).

### ESMA opinion on Danish pension scheme exempt from central clearing

On 01 July 2016, ESMA issued an [opinion](#) regarding the exemption of a Danish pension scheme from the obligation to centrally clear OTC derivative contracts under EMIR.

### ESAs' letter to the European Commission on margin requirements

On 01 July 2016, the ESAs published a [letter](#) (dated 30 June 2016) to Jonathan Hill, the then European Commissioner for Financial Stability, Financial Services and Capital Markets Union, on the delayed adoption of the Joint draft RTS on risk mitigation techniques for non-centrally cleared OTC derivatives. In the letter, the ESAs urge the European Commission to keep the delay “as short as possible” to avoid “substantial uncertainty regarding the overall implementation [of the margin rules]”. In their view, the delay may raise a number of cross-border issues, including re-negotiations of existing agreements and uncertainty for those who are subject to third-country rules. The ESAs also consider that adhering to the international timeline is of “utmost importance” for systemically important large banks.

## European Commission recognises US exchanges/markets as equivalent for EMIR definition of OTC derivative contracts

On 02 July 2016, the European Commission [Implementing Decision](#), recognising the equivalence of named exchanges/markets in the US for the purposes of the definition of “OTC derivative contracts” under Article 2(7) of EMIR, was published in the Official Journal of the EU (OJ) and entered into force on 22 July 2016.

## The Investment Association amends principles of remuneration regarding MAR and closed periods

On 04 July 2016, the Investment Association published an [amendment](#) to its principles of remuneration regarding the Market Abuse Regulation (MAR) and closed periods.

## Joint Working Parties MAR Q&A

On 05 July 2016, the City of London Law Society and Law Society Company Law Committees’ Joint Working Parties published [Q&As](#) on Market Abuse: Share Plans and Takeovers Code. MAR came into force on 03 July 2016.

## ESMA publishes responses to Benchmarks consultation

On 07 July 2016, ESMA published the [responses](#) received to its [consultation paper](#) on technical advice on the Benchmarks Regulation (May 2016). These include responses from: (i) [AIMA](#); (ii) [EFAMA](#) (iii) [The Investment Association](#); (iv) [London Metal Exchange](#); and (v) [GFMA/FIA/ISDA](#). The Benchmarks Regulation entered into force on 30 June 2016.

## ESMA readies MAR guidelines on market soundings and delayed disclosure of inside information

On 13 July 2016, ESMA issued [final guidelines](#) clarifying the implementation of MAR for persons receiving market soundings and on delayed disclosure of inside information. The final guidelines detail: (i) *the factors* that such persons are to take into account when information is disclosed to them as part of a market sounding in order for them to assess whether the information amounts to inside information; (ii) *the steps* that such persons are to take if inside information has been disclosed to them; and (iii) *the records* that such persons are to maintain in order to demonstrate that they have complied with MAR. On legitimate interests of issuers to delay disclosure of inside information and on situations in which the delay of disclosure is likely to mislead the public, ESMA’s guidelines provide a non-exhaustive and indicative list of: (i) legitimate interests of the issuer that are likely to be prejudiced by immediate disclosure of inside information; and (ii) situations in which delay of disclosure is likely to mislead the public. Within two months of the issuance of the different language versions of these guidelines, national competent authorities (NCAs) will have to confirm whether or not they intend to comply with those guidelines. In the event that a NCA does not comply or does not intend to comply, it will have to inform ESMA, stating its reasons. MAR came into force on 03 July 2016.

## ESMA updates its MAR Q&As

On 13 July 2016, ESMA updated today its [Q&As](#) regarding the implementation of MAR, including new answers regarding managers’ transactions. MAR came into force on 03 July 2016.

## Corrigendum on MiFID2 Directive published in OJ

On 13 July 2016, a [corrigendum](#) to the text of the MiFID2 Directive was published in the OJ. The corrigendum makes a minor amendment to the definition of "structured deposit" set out in Article 4(1)(43) of MiFID2.

## ESMA consults on proposed central clearing delay for small financial counterparties

On 13 July 2016, ESMA published [consultation paper](#) CP 2016/1125, "On the clearing obligation for financial counterparties with a limited volume of activity." The CP proposes to change the phase-in period for central clearing of OTC derivatives applicable to financial counterparties with a limited volume of derivatives activity under the European Market Infrastructure Regulation (EMIR). ESMA proposes to amend EMIR's Delegated Regulations on the clearing obligation to prolong, by two years, the phase-in for financial counterparties with a limited volume of derivatives activity - those ones classified in Category 3 under EMIR Delegated Regulations. The consultation closes on **05 September 2016** and ESMA will consider all received with a view to publishing a final report by the end of 2016.

## On 14 July 2016, the European Commission adopted the following:

- [Delegated Regulation](#) supplementing MiFID2 with regard to regulatory technical standards (RTS) for the exchange of information between competent authorities when co-operating in supervisory activities, on-the-spot verifications and investigations.
- [Delegated Regulation](#) supplementing MiFID2 with regard to RTS on information and requirements for the authorisation of investment firms.
- [Delegated Regulation](#) supplementing MiFIR with regard to RTS on the data standards and formats for financial instrument reference data, and technical measures in relation to arrangements to be made by ESMA and competent authorities and associated [Annex](#).
- [Delegated Regulation](#) supplementing MiFIR with regard to RTS on transparency requirements for trading venues and investment firms in respect of equity instruments, and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser and associated [Annex](#).
- [Delegated Regulation](#) supplementing MiFIR with regard to RTS on the information for registration of third-country firms and the format of information to be provided to clients.
- [Delegated Regulation](#) MiFID2 with regard to RTS on the tick size regime for shares, depositary receipts and exchange-traded funds and associated [Annex](#).
- [Delegated Regulation](#) supplementing the MiFID2 with regard to RTS specifying organisational requirements of trading venues and associated [Annex](#).
- [Delegated Regulation](#) supplementing the Regulation on KIDs for PRIIPs with regard to product intervention. The European Commission also published workshop slides on the on the implementation of the PRIIPs framework: (i) [Performance KID \(Annex IV & V\)](#); (ii) [Risk section KID \(Annex II & III\)](#); (iii) [Section II: Costs](#); and (iv) [Cross-cutting PRIIPs KID RTS Questions](#).

Each Delegated Regulation will now be considered by the Council of the EU and the European Parliament. If neither object, it will enter into force 20 days after its publication in the OJ



## European Commission legislative proposal for Regulation amending EuVECA and EuSEF

On 14 July 2016, the European Commission published: (i) a [legislative proposal](#) that it has adopted for a Regulation amending the European Venture Capital Funds Regulation (EuVECA) and the European Social Entrepreneurship Funds Regulation (EuSEF); (ii) a [fact sheet](#); (iii) an [impact assessment](#); and (iv) a [summary](#) of the impact assessment. The European Fund and Asset Management Association (EFAMA) published a [statement](#) that it welcomes the Commission proposal.

## ISDA 2016 Bail-In Article 55 BRRD Protocol published

On 14 July 2016, ISDA published the 2016 Bail-In Article 55 BRRD Protocol in order to give cross-border contractual recognition of bail-in powers in respect of in-scope EU financial institutions.

## European Commission publishes summary of contributions of Green Paper on retail financial services

On 14 July 2016, the European Commission published a [summary](#) of contributions received to its [Green Paper on retail financial services](#) (December 2015), together with an [Annex](#) with a more detailed summary of individual responses. Work is ongoing at the European Commission through a follow-up initiative, which might take the form of an Action Plan.

## European Commission publishes financial services offer of the EU made in the context of Transatlantic Trade and Investment Partnership negotiations

On 14 July 2016, the European Commission published a [document](#) containing the financial services offer of the EU made in the context of Transatlantic Trade and Investment Partnership negotiations. It was tabled for discussion with the US in the negotiating round of 11-15 July 2016.

## ESMA consults on asset segregation and custody services under AIFMD and UCITS

On 15 July 2016, ESMA published a [Call for Evidence](#) on Asset Segregation and Custody Services under AIFMD and UCITS. ESMA first consulted on asset segregation under the AIFMD in December 2014 ([Guidelines on asset segregation under the AIFMD](#)). However, given that the majority of respondents objected strongly to both of ESMA's originally proposed options, coupled with the fact that the new UCITS V Directive has recently introduced asset segregation requirements which are broadly aligned to the AIFMD, ESMA has decided to carry out a further consultation. This call for evidence has a broader scope than the initial consultation as it also covers asset segregation rules under the UCITS Directive and any residual uncertainty on how the depositary delegation rules should apply to central securities depositories. ESMA is particularly interested in gathering views on any asset segregation regime which ensures assets are clearly identifiable as belonging to the AIF or UCITS, and which provides investors with robust protection by avoiding ownership of the assets being called into question in the event of insolvency. The consultation closes on 23 September 2016.

## MiFID2 Delegated Directive not objected by European Parliament

On 15 July 2016, the European Parliament updated its [procedure file](#) on the European Commission [Delegated Directive](#) supplementing MiFID2 regarding the safeguarding of financial instruments and funds belonging to clients.

## EBA launches data collection to support the new prudential framework for investment firms

On 15 July 2016, the European Banking Authority (EBA) [launched a data collection](#) aimed at supporting the response to the European Commission's Call for Advice (June 2016) on a new prudential framework for MiFID investment firms, which should be less complex, more risk sensitive and more proportionate than the current regime. For the purpose of this data collection, the EBA published templates and instructions which are addressed to MiFID investment firms and to UCITS/AIFMD firms that conduct MiFID activities or services. The templates should be filled in and submitted to the respective Competent Authorities by 07 October 2016. The EBA will launch an ad-hoc data collection for commodity dealers at a later stage.

## European financial associations call for outstanding issues on PRIIPs Regulation to be addressed in the RTS

On 18 July 2016, the EFAMA [published a letter](#) to the European Commission, Parliament, Council and ESA's regarding outstanding issues on the PRIIPs Regulation.

## ESMA advises on extension of funds passport to 12 non-EU countries

On 19 July 2016, ESMA published its [Advice](#) in relation to the application of the AIFMD passport to non-EU AIFMs and AIFs in twelve countries: Australia, Bermuda, Canada, Cayman Islands, Guernsey, Hong Kong, Japan, Jersey, Isle of Man, Singapore, Switzerland, and the United States. This Advice, required under the AIFMD, will now be considered by the European Commission, Parliament and Council.

## ESMA publishes updated AIFMD Q&A

On 19 July 2016, ESMA published updated [Q&As](#) on the application of AIFMD. There is one new Q&A on the impact of EMIR on the AIFMD framework, regarding the valuation of centrally cleared OTC derivatives by AIF managers, which states that: (i) the AIFMD framework requires AIFMs to have in place a process for proper and independent verification of the value of the OTC financial derivative transactions, even if they are centrally cleared; and (ii) the valuation provided by the CCP can only serve as a point of reference for the verification performed by the AIFM. Nevertheless, the AIFM should be able to justify any deviation from the valuation provided by the CCP.

## ESMA publishes updated UCITS Q&A

On 19 July 2016, ESMA published updated [Q&As](#) on the application UCITS. There is one new Q&A on the impact of EMIR on the UCITS framework, regarding the valuation of centrally cleared OTC derivatives by UCITS management companies, which states that: (i) the UCITS framework requires UCITS management companies to have in place a process for accurate and independent verification of the value of the OTC financial derivative transactions, even if they are centrally cleared; (ii) the valuation provided by the CCP can only serve as a point of reference for the verification performed by the UCITS management company; and (iii) the UCITS management company should be able to justify any deviation from the valuation provided by the CCP.

## European Commission publishes visual summary on EuVECA and EuSEF

On 19 July 2016, the European Commission published a [visual summary](#): Boosting funding for venture capital and social enterprises.

## FSB second interim progress report on reforming major interest rate benchmarks

On 19 July 2016, the Financial Stability Board (FSB) published a [progress report](#) on reforming major interest rate benchmarks.

## Improvements in EU and US Regulatory Cooperation

On 19 July 2016, the European Commission published a [joint statement](#) with the US Treasury on improvements in US-EU regulatory co-operation.

## EEA Currency IR Clearing Obligation RTS published in Official Journal

On 20 July 2016, [Commission Delegated Regulation](#) (EU) 2016/1178 supplementing EMIR as regards RTS on the clearing obligation was published in the Official Journal of the EU (OJ) and will enter into force on **09 August 2016**. Under the RTS, additional interest rate products will become subject to mandatory clearing: (i) fixed-to-float interest rate swaps denominated in NOK, PLN and SEK; and (ii) forward rate agreements denominated in NOK, PLN and SEK.

## Delegated Regulation on RTS on clearing obligation under EMIR published in OJ

On 20 July 2016, [Commission Delegated Regulation](#) (EU) 2016/1178 supplementing EMIR as regards RTS on the clearing obligation was published in the Official Journal of the EU (OJ) and will enter into force on **09 August 2016**. Under the RTS, additional interest rate products will become subject to mandatory clearing: (i) fixed-to-float interest rate swaps denominated in NOK, PLN and SEK; and (ii) forward rate agreements denominated in NOK, PLN and SEK.

## Corrigendum to Delegated Regulation on RTS on clearing obligation under EMIR published in OJ

On 21 July 2016, a [corrigendum](#) to the text of the Delegated Regulation (EU) 2016/1178 supplementing EMIR as RTS on the clearing obligation was published in the OJ.

## European Parliament position Benchmarks

On 21 July 2016, the European Parliament [published its position](#) on the adoption of the Benchmarks Regulation.

## FSB reports on July meeting

On 21 July 2016, the FSB published [a press release](#) reporting on its meeting in Chengdu which outlines current vulnerabilities and progress in addressing priority areas and deliverables for the G20 Leaders' Summit in Hangzhou in September

## FMSB publishes second standard for wholesale FICC markets

On 22 July 2016, the FICC Markets Standards Board (FMSB) published its [second standard](#) aimed at improving conduct in the wholesale Fixed Income, Currency and Commodities (FICC) markets. The standard, which is being issued in draft form for comment, covers binary options in the commodities markets.

## ESMA publishes list of third-country markets in relation to OTC derivatives

On 22 July 2016, ESMA [published a list](#) of third-country markets considered as equivalent to a regulated market in the Union for the purposes of the definition of OTC derivatives.

## European Commission letter to ESAs' on delay of draft RTS on risk mitigation techniques for non-centrally cleared OTC derivatives

On 22 July 2016, the ESA's published a [letter](#) from the European Commission on the delayed adoption of the Joint draft RTS on risk mitigation techniques for non-centrally cleared OTC derivatives.

## ESMA publishes updated Q&A on CFDs and other speculative products

On 25 July 2016, the European Securities and Markets Authority (ESMA) published [updated Q&As](#) on the application of MiFID to the marketing and sale of financial contracts for difference (CFDs) and other speculative products to retail clients (such as binary options and rolling spot forex). The Q&A includes 9 new questions and answers in sections 3 to 5, which address: (i) the information provided to clients and potential clients about how CFDs and other speculative products work and the risks involved, including marketing communications; (ii) the assessment of a retail client or potential retail client's ability to understand the risks involved in order to determine whether trading in CFDs or other speculative products is appropriate for them; and (iii) factors for supervisors to consider when firms offering CFDs or other speculative products to retail clients enter into certain commercial arrangements with other authorised firms. ESMA has also issued today a [warning](#) about the sale of CFDs, binary options and other speculative products to retail investors who are unaware of the risks associated with these products, and also highlights the regulatory action taken in relation to several Cyprus-based investment firms. ESMA aims to publish further Q&As in the coming months. ESMA will also consider the need for any further work in light of MiFID2 requirements.

## ESMA finalises standards on sanctions and measures under MAR

On 26 July 2016, ESMA issued [final implementing technical standards \(ITS\)](#) regarding sanctions and measures which will implement MAR. The ITS prescribe how national competent authorities (NCAs) should notify ESMA annually of the investigations they conduct and the sanctions and measures imposed in their Member States under MAR. The Regulation provides for two types of submission of information, which are as follows: (i) NCAs shall provide ESMA annually with aggregated information regarding all administrative and criminal sanctions and other administrative measures imposed in accordance with Articles 30, 31 and 32 of MAR as well as regarding administrative and criminal investigations undertaken in accordance with those articles; and (ii) administrative and criminal sanctions and other administrative measures that are disclosed to the public by NCAs shall simultaneously be reported to ESMA. ESMA has [submitted](#) the final ITS for endorsement to the European Commission which is followed by a non-objections period by the European Parliament and Council respectively.

## UCITS Commission Implementing Regulation published in OJ

On 26 July 2016, [Commission Implementing Regulation 2016/1212](#) (25 July 2016) laying down implementing technical standards with regard to standard procedures and forms for submitting information in accordance with UCITS was published in the OJ.

## EFAMA reports on ESMA's supervisory work on potential closet index tracking

On 26 July 2016, the EFAMA published its [report](#) on ESMA's supervisory work on potential closet index tracking. EFAMA fully corroborates ESMA's view that there are difficulties in coming up with a

suitable identification criterion that could serve as a common basis for analysis of different fund markets.

### **ESMA publishes updated EMIR Q&A**

On 27 July 2016, ESMA published [updated Q&As](#) on practical questions regarding the EMIR implementation. The updated Q&A includes a new answer in relation to reporting of trades cleared by a clearing house which is not a CCP under the EMIR definition. The Q&A clarifies that such entities should not be identified in the “CCP ID” field of EMIR reports. In the case of trades that are executed in an anonymised market and cleared by a clearing house, the counterparty executing the transaction should request the trading venue or the clearing house that matches the counterparties to disclose the identity of the other counterparty before the reporting deadline.

### **European Commission to endorse draft RTS on risk mitigation techniques for uncleared OTC derivative contracts under EMIR**

On 28 July 2016, the European Commission published a [letter](#) to the Joint Committee of the European Supervisory Authorities (ESAs) stating that it intends to endorse, with amendments, the draft RTS on risk mitigation techniques for OTC derivative contracts not cleared by a central counterparty (CCP) under Article 11(15) of EMIR. The Commission also published the [revised text](#) of the draft RTS and accompanying [annexes](#).

**lexica and other client items**

- 01 July 2016 [US-Luxembourg double tax treaty - draft law proposes changes in respect to permanent establishment](#)
- 04 July 2016 [Webinar on German court decision on validity of contractual netting under German law](#)
- 04 July 2016 [New Dutch restrictions on the use of derivatives by educational institutions](#)
- 04 July 2016 [PRIIPs for the asset management and insurance sectors](#)
- 05 July 2016 [EMIR Newsflash: EC recognises US exchanges/markets as equivalent for EMIR definition of "OTC derivative contracts"](#)
- 05 July 2016 [Breakfast briefing - an update on BaFin's sanctioning practice](#)
- 05 July 2016 [Seward & Kissel briefing: SEC approves increased net worth threshold for "qualified clients"](#)
- 06 July 2016 [Cash settlement under squeeze-out](#)
- 07 July 2016 [Annex IV reporting - FCA proposes significant changes](#)
- 07 July 2016 [Regulatory update in China - Increase on foreign shareholding in fund management industry - Part II](#)
- 07 July 2016 [Action by 13 July 2016: send SFTR collateral reuse information statement](#)
- 08 July 2016 [HM Treasury's review of implementation of UCITS IV in the UK](#)
- 11 July 2016 [France seeks to attract Brexit leavers](#)
- 12 July 2016 [Appropriate consideration under stock takeover offer](#)
- 12 July 2016 [La France cherche à attirer les exilés post-Brexit](#)
- 14 July 2016 [AMF introduces new rules on pre-marketing of funds](#)
- 14 July 2016 [UK manufactured overseas dividend scheme not contrary to EU law](#)
- 14 July 2016 [Brexit toolkit: Priority checklist](#)
- 15 July 2016 [ISDA 2016 Bail-In Article 55 BRRD Protocol published](#)
- 18 July 2016 [Brexit decision - implications for Japanese companies \(bilingual\)](#)
- 22 July 2016 [ESMA updates its Q&As on AIFMD and UCITS - the impact of EMIR](#)
- 22 July 2016 [Cash settlement in case of Squeeze-Out](#)
- 26 July 2016 [ESMA approves extension of AIFMD passport to some non-EU countries - US, Cayman and others must continue to wait](#)

- 26 July 2016 [Legal Headwinds: UK/EU - Quarterly Report - Q3 2016](#)
- 26 July 2016 [Brexit implications for UK asset managers](#)
- 27 July 2016 [ESMA proposes delay to clearing start date for Category 3 financial counterparties](#)
- 28 July 2016 [EMIR Newsflash: EEA Currency Interest Rates Clearing Obligation RTS published in Official Journal](#)
- 29 July 2016 [Luxembourg Law on RAIFs now in force](#)
- 29 July 2016 [UK infrastructure policy summit](#)

## Offices

### Amsterdam

Simmons & Simmons LLP  
PO Box 79023 1070 NB  
Claude Debussylaan 247 1082 MC Amsterdam  
The Netherlands  
T +31 20 722 2500 F +31 20 722 2599

### Beijing

Simmons & Simmons  
33rd Floor China World Tower 3  
1 Jianguomenwai Avenue  
Beijing 100004 People's Republic of China  
T +86 10 8588 4500 F +86 10 8588 4588

### Bristol

Simmons & Simmons LLP  
One Linear Park Temple Quay  
Bristol BS2 0PS United Kingdom  
T +44 20 7628 2020 F +44 20 7628 2070

### Brussels

Simmons & Simmons LLP  
Avenue Louise 149 b 16 1050 Brussels Belgium  
T +32 2 542 09 60 F +32 2 542 09 61

### Doha

Simmons & Simmons Middle East LLP  
Level 5 Al Mirqab Tower Al Corniche Street  
PO Box 23540 Doha State of Qatar  
T +974 4409 6700 F +974 4409 6701

### Dubai

Simmons & Simmons Middle East LLP  
Level 7 The Gate Village Building 10  
Dubai International Financial Centre  
PO Box 506688 Dubai United Arab Emirates  
T +971 4 709 6600 F +971 4 709 6601

### Düsseldorf

Simmons & Simmons LLP  
Kö-Bogen  
Königsallee 2a  
40212 Düsseldorf Germany  
T +49 2 11-4 70 53-0 F +49 2 11-4 70 53-53

### Frankfurt

Simmons & Simmons LLP  
MesseTurm Friedrich-Ebert-Anlage 49  
60308 Frankfurt am Main Germany  
T +49 69-90 74 54-0 F +49 69-90 74 54-54

### Hong Kong

Simmons & Simmons  
13th Floor One Pacific Place  
88 Queensway Hong Kong  
T +852 2868 1131 F +852 2810 5040

### Jeddah

Hammad & Al-Mehdar in alliance with Simmons & Simmons  
Office #1209, King Road Tower, Malik Road,  
PO Box 864 Jeddah 21421  
Kingdom of Saudi Arabia  
T +966 92 000 4626 F +966 2 606 9190

### Lisbon

Sociedade Rebelo de Sousa in association with  
Simmons & Simmons  
Rua D. Francisco Manuel de Melo 21  
1070-085 Lisbon Portugal  
T +351 21 313 2000 F +351 21 313 2001

### London

Simmons & Simmons LLP  
CityPoint One Ropemaker Street  
London EC2Y 9SS United Kingdom  
T +44 20 7628 2020 F +44 20 7628 2070

### Luxembourg

Simmons & Simmons Luxembourg LLP  
Royal Monterey 26A Boulevard Royal  
Luxembourg L-2429 Luxembourg  
T +352 26 21 16 01 F +352 26 21 16 02

### Madrid

Simmons & Simmons LLP  
Calle Miguel Angel 11 5th floor 28010 Madrid Spain  
T +34 91 426 2640 F +34 91 578 2157

### Milan

Studio Legale Associato in affiliation with  
Simmons & Simmons LLP  
Corso Vittorio Emanuele II 1 20122 Milan Italy  
T +39 02 72505.1 F +39 02 72505.505

### Munich

Simmons & Simmons LLP  
Lehel Carré, Thierschplatz 6  
80538 Munich Germany  
T +49 89-20 80 77 63-00 F +49 89-20 80 77 63-01

### Paris

Simmons & Simmons LLP  
5 boulevard de la Madeleine 75001 Paris France  
T +33 1 53 29 16 29 F +33 1 53 29 16 30

### Riyadh

Hammad & Al-Mehdar in alliance with Simmons & Simmons  
Level 18 Princess Al-Anood Tower 2  
King Fahad Road Olaya  
Riyadh Kingdom of Saudi Arabia  
T +966 92 000 4626 F +966 12 606 9190

### Shanghai

Simmons & Simmons  
40th Floor Park Place 1601 Nanjing Road West  
Shanghai 200040 People's Republic of China  
T +86 21 6249 0700 F +86 21 6249 0706

### Singapore

Simmons & Simmons Asia LLP  
168 Robinson Road #11-01  
Capital Tower  
Singapore 068912  
T +65 6831 5600 F +65 6831 5688

### Tokyo

Simmons & Simmons Gaikokuho Jimu Bengoshi Jimusho  
(Gaikokuho Joint Enterprise TMI Associates)  
23rd floor Roppongi Hills Mori Tower  
6-10-1 Roppongi Minato-ku Tokyo 106-6123 Japan  
T +81 3 6438 5255 F +81 3 6438 5256

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

© Simmons & Simmons LLP 2016. 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](http://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.