

# TradingTech Summit

The EU Regulatory Agenda in the trading space

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London, 25<sup>th</sup> February 2020



TradingTech EU regulatory updated - David  
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## Completing the regulatory trading agenda

...more pre & post trading transparency, better data, multiple platforms and third-country considerations...

- ❑ **MiFIDMiFIR:** targeted revisions
  - Equity and non-equity transparency regime
  - Consolidated tape
  - Double volume cap (DVC)
  - Derivatives Trading Obligation
  - Share Trading Obligation
  - Systematic Internalisers in equity & equity-like instruments
  - Third-country transparency rules
- ❑ **Climate change and ESG risks:** integration of sustainability factors into decisions/duties, expose ESG/climate change risks
- ❑ **Investment Firm prudential regime:** capital/liquidity rules +€15bn consolidated assets
- ❑ **Cybersecurity** – EU-wide guidelines to encourage convergence in the regulatory approach to IT risk management and cyber resilience testing, via proper data protection and data quality management
- ❑ **UK/EU Equivalency** negotiations



## The future of the EU equivalency regime – the only route to the Single Market for 3<sup>rd</sup> countries

### Equivalence decisions *vis-à-vis* the UK

- Time-limited (one year) EC equivalence decision – UK CCPs granted temporary recognition by ESMA: valid until end January 2021
- Central Securities Depositories: conditional equivalence decision for 24 months
- ESMA recognises three UK CCPs (Art. 25 EMIR): 18 February 2019
- ESMA authorises EU banks and investors to continue to trade UK shares in London after UK withdrawal: Share Trading Obligation (February 2020)
- ESMA and NCAs, incl. BOE, agree to Memorandum of Understanding (MOU): exchange of information related to the supervision of credit rating agencies (CRAs) and trade repositories (TRs)
- ESMA and FCA MOU: 'will allow certain activities, such as fund manager **outsourcing and delegation**, to continue to be carried out by UK- based entities on behalf of EEA counterparties

### What's at stake?

- UK investment firms operating a trading/execution venue lose MiFID licence
- UK-based regulated markets, multilateral trading facilities, SI's ineligible to trade shares under MiFIR Share Trading Obligation
- EU counterparts lose right to trade shares on RK platforms
- Both lose rights to trade derivatives under MiFIR Derivatives Trading Obligation
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### Political Declaration on future EU/UK relations (Nov, 2018)

- ▶ Freezes current arrangements, i.e. passporting until end 2020 transition
- ▶ Equivalence: EU/UK to conduct assessments of each other's rulebooks after UK withdrawal, to conclude before the end of June 2020
- ▶ Outcome to include *"adoption, suspension and withdrawal of equivalence decisions, information exchange and consultation on regulatory initiatives"*

### EC expectations on revised equivalence regime:

- ▶ Post-monitoring of enforcement and compliance
- ▶ On-site assessments
- ▶ Dual coverage: financial stability and market integrity risks, regulatory and supervisory equivalence
- ▶ Size of the relevant third country market
- ▶ Interconnectedness between the markets and actors in the third country
- ▶ Risks of circumvention of EU rules
- ▶ Tax and anti money laundering considerations as part of the assessment

## What can we expect from MiFID II – MiFIR revisions?



- ❑ ESMA consultation on draft technical standards on off-exchange and dark pools for equity & equity-like instruments – restricted conditions on waivers under double-cap rules
- ❑ ESMA final report on derivatives trading obligation under MiFIR – aligning it with the EMIR REFIT with central clearing derogations for small financial counterparties + non-financial counterparties above the clearing threshold
- ❑ Pre-trade transparency obligations applicable to systematic internalisers for bonds, structured finance products, emission allowances and derivatives (non-equity instruments)

### • Other Targeted Revisions to MiFID/MiFIR (2020)

- ❑ Review of products subject to the DTO: requirement for derivatives cleared via CCPs and deemed sufficiently liquid to trade on a 'trading venue'.
- ❑ Calibration of MiFID rules when UK no longer included in calculation of EU metrics collected by ESMA
- ❑ Direct reporting obligation of all Third-country entities not subject to MiFIR, esp, 3<sup>rd</sup> country branches trading derivatives (unlike STO)
- ❑ Costs & distribution of market data, i.e., consolidated trading tape to record flows, transaction sizes and prices for equities, and non-equities (review in 2021)
- ❑ Research for small companies – unbundling of research costs Vs execution of clients' trades
- ❑ Create new category of individuals between retail and professional clients who trade frequently – less onerous investor protection rules
- ❑ Review requirement to record all telephone conversations
- ❑ EC study into functioning of EU secondary markets 'possible development paths for future architecture of primary and equity markets in the EU...as well as technological developments...'

## ESMA priorities – Trading

Drilling down...



- Data Service Providers: ESMA acquires in 2022 supervisory powers to authorise and supervise different data service providers, i.e. Approved Publication Arrangements, Authorised Reporting Mechanisms and Consolidated Tape Providers
- Enhancement of data quality for the different reporting regimes under its mandate (AIFMD, MMF, Prospectus, EMIR, SFTR, MIFIR/MIFID II, MAR).
- Providing advice under MiFiD II/MiFIR on pre- and post-trade transparency regime, algorithmic trading, functioning of organised trading facilities (OTFs) and the impact of MiFID II on commodity derivatives markets.
- ESMA, arising from Brexit may propose amendments to RTS 2 on transparency for bonds, derivatives and other asset classes
- Revised Market Abuse Regulation – inside information definitions, buy-back programmes, delayed disclosure of inside information, PDMR notification rules

- **Supervisory Convergence** – enhance via Q&As, collective supervisory actions and EU Strategic Supervisory Priorities, EU supervisory handbook: covering market surveillance, investment firms, trading venues and the asset management sector.
- **Investor Protection** – retail investment products, develop retail risk indicators, and collect, analyse and report on consumer trends;
- **International** - new tasks for 3rd country equivalence assessments i.e., monitoring regulatory and supervisory developments in equivalent 3<sup>rd</sup> countries, assisting the EC in preparing equivalence decisions.
- **Direct Supervision:**
  - 3rd country central counterparties
  - critical benchmarks, 3rd country benchmarks and data service providers from 1 January 2022;
  - Securitisation repositories under the Securitisation Regulation
  - Securities financing transactions under the Securities Financing Transactions Regulation.

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