

## **ESMA Chairman Comments on MiFID II implementation and Brexit**

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On September 29, Reuters published comments from European Securities and Markets Authority (ESMA) Chairman Stephen Maijoor on the implementation of the significantly revised and updated Markets in Financial Instruments Directive (MiFID II and its subordinate regulations and directives) and the implications of Brexit.

The article reports that in connection with the upcoming implementation of MiFID II, Mr. Maijoor believes that “We [the European legislative bodies and regulators] are prepared for the 3rd of January deadline. We are not planning at all for chaos—that is not a word we recognize [...] That is not to say there might not be some glitches at the start. It’s a very broad piece of legislation, but overall we are confident about implementation.”

Mr. Maijoor noted in the article that EU regulators would likely look differently on breaches of the new rules on January 4, 2018, from breaches that occur subsequently—which follows on from reports that the Financial Conduct Authority (FCA) has said that it will not punish firms for “not meeting all requirements straight away where there is evidence they have taken sufficient steps to meet the new obligations by the start date” (based on comments from Mark Steward, FCA executive director of enforcement, as reported on September 20). What is clear, though, is that firms across the European Union and elsewhere need to be able to show that they have taken steps to try to meet MiFID II’s requirements if they are to avoid enforcement action.

The cross-over between MiFID II implementation and Brexit was noted in Mr. Maijoor’s comments in that MiFID II had been drafted in such a way that the most liquid European markets (including, significantly, those of the United Kingdom) would be within the European Union; and the United Kingdom’s departure would have some impact on the workings of the new rules, though the extent of the impact will depend on the outcome of the ongoing Brexit negotiations. To this end, Mr. Maijoor commented that ESMA has commenced an assessment of the implications of a “hard” Brexit (where

UK and EU firms do not have easy access to each other's markets). It remains to be seen what those implications might be.

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