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Ladies and gentlemen,

I would like to thank P.R.I.M.E. for inviting me to speak. It is a real pleasure to be here today with you and to have the opportunity to speak at this important conference.

I would like to talk to you today about two major regulatory reforms taking place in EU financial markets: the reform of the OTC derivatives markets and the reform of the way benchmarks are compiled and administered. I know that PRIME has a keen interest in these topics and these reforms form, of course, an integral part of ESMA's work, although the work for each is at a very different stage: while the OTC derivatives reforms are advanced, those impacting benchmarks are much more recent.

I will also touch upon the so-called third country policies in both of these EU reforms. As you will be aware, for EU bureaucrats countries outside the EU are called 'third countries'. As both OTC derivatives and benchmarks are or serve global markets, the third country policies are key elements of these reforms. And, of course, as we are all aware, recent political developments mean the third country policies of the EU are attracting more attention now than ever before, both in- and outside the EU.

But before I introduce these topics, let me say a few words on arbitration which is the core business of P.R.I.M.E. It might be surprising to hear, but arbitration is a topic P.R.I.M.E. and ESMA have in common. Both in the case of benchmarks and CCPs, ESMA has been designated as a non-voting member of supervisory colleges, and in both cases we have been granted by EU law a binding mediation role in certain circumstances. ESMA´s decision on a binding mediation prevails, legally, over the decisions of individual national regulators. Binding mediation has not been formally exercised so far by us in these areas but, interestingly, in some instances the possibility of ending up in a mediation procedure has probably fostered agreement between national regulators on some controversial matters within supervisory colleges. Additionally, I should mention that ESMA did complete its first binding mediation case in another area: last year ESMA applied binding meditation to a dispute concerning an investment fund between a home and host regulator.

Derivatives reform is for the most part complete and the focus has now turned to ensuring a consistent outcome

Let me now turn to giving you an insight to, and some of my reflections on, the changes in the OTC derivatives markets. These reforms were implemented mainly through the EU legislation known, for the sake of brevity, as ‘EMIR’. EMIR followed the G20 commitment in 2009 to improve the OTC derivatives markets and aims at promoting transparency and standardisation in derivatives markets as well as reducing systemic risk through the application of its core requirements such as promoting central clearing and specifying risk management techniques.

I believe that EMIR is an example of successful financial reform in the EU for three main reasons:

- First, EMIR is in the legal form of a Regulation which means it applies directly in all Member States without national discretions or different transpositions. This is especially relevant in the area of OTC derivatives where small differences in requirements can affect where business is conducted;
- Secondly, a significant number of the more detailed rules, which underpin EMIR, were defined through what we call ‘Technical Standards’, drafted by ESMA. This approach allows technical experts to focus on preparing well-calibrated, detailed rules and again, I would stress the importance of details in OTC derivatives rules and getting them right, because they determine the costs of transactions and ultimately, where business is conducted. Equally like Regulations, Technical Standards are legal instruments which apply directly to each EU Member State but

have the advantage that the process to amend them is quicker when we identify that something needs changing; and

- Thirdly, EMIR provides us with a gateway to strengthening supervisory convergence, that is consistency of supervision across the EU, a topic I will return to later in my speech.

We cannot yet assess the full impact of EMIR given its relative newness and that some core elements, such as the classes of derivatives that are subject to the clearing obligation, are very recent, but I think it is the right time to take stock of what has been accomplished and what can still be improved. Of course, this is very much in line with the upcoming review of EMIR.

As of today all EMIR-related Technical Standards have been finalised and the corresponding obligations have entered into force. In brief, the main ones include:

- Requirements for Trade Repositories (TR), which led to six TRs, collecting in total nearly 44 billion derivatives reports in 2016, being registered and under the direct supervision of ESMA;
- The reporting of all derivative trades to TRs. This reporting first started three years ago and the resulting TR data, which are critical for identifying the build-up of risks in the derivatives markets, are used by regulators for monitoring, supervision and policy purposes. For example, ESMA's Board has taken a number of decisions to centrally clear certain classes of OTC derivatives, all of which are based on the evidence of TR data;
- CCP Requirements, which led to 17 CCPs being authorised in the past three years and 22 third country CCPs being recognised. Many more third country CCPs are in the pipeline for recognition following new equivalence decisions by the European Commission;
- Central clearing of standardised OTC derivative contracts, also known as the clearing obligation, which mandates the interest rate swaps and CDS classes that account for the vast majority of the activity in OTC derivatives to be cleared; and
- Last but not least, margin requirements for OTC derivative contracts that are not centrally cleared entered into force earlier this month and will follow a gradual phase-in based on the internationally agreed implementation calendar.

Before I move on to the topic of supervisory consistency, let me make one more remark on these OTC derivatives reforms. As already stated, EMIR's purpose is to bring transparency and stability to OTC derivatives markets. However, we should also recognise that with these reforms we have been able to establish a truly EU internal market for an activity that was, until recently, largely fragmented along national borders. At the risk of sounding like a true European bureaucrat, I dare to say that we have been able to lay the foundations of an 'EU derivatives union'.

So, now that this extensive set of rules has been finalised and entered into force, what comes next? Well, although some of the requirements are still in the process of being phased-in, ESMA's focus has moved from developing a single rulebook to ensuring supervisory convergence when implementing these rules. Indeed, having a consistent application of the requirements by CCPs and their national regulators within the EU is key to ensuring that the overall objectives of EMIR are met and that a level playing field exists for all market participants.

EU CCPs are a key priority for ESMA in terms of supervisory convergence work.

CCPs represent one of ESMA's priorities in terms of supervisory convergence. These market infrastructures have been given a starring role in the future management of systemic risks and financial stability. Therefore, it is imperative that they are supervised in a robust and coherent way across the EU. To illustrate what ESMA is doing here, let me mention in particular three activities that are central to our supervisory convergence work for CCPs: our annual stress test exercise of CCPs, our annual peer review of CCP supervisory practices and validations of changes to risk models and parameters, and our active coordination role across colleges, which has led to the development of guidelines, common processes, opinions and a number of Q&As.

Our first EU-wide CCPs stress test, conducted last year, gathered a lot of attention in the EU and beyond. We consider it a fundamental piece of work in the wider objective of ensuring a resilient CCP market place. Building on the experience gained from this first exercise, ESMA is currently running its second set of stress tests, through a renewed and thorough framework.

The second activity that has proved to be a very powerful tool in promoting supervisory convergence of CCPs is the annual peer review where we assess national regulators' supervisory practices. ESMA has conducted two to date and is initiating work for its third one. The peer review exercise has been valuable in both identifying best practices and areas of improvements, which in turn has triggered further work for ESMA to address these, through recommendations or opinions for example.

Last but not least, for the third activity I would like to quickly remind you of ESMA's responsibility in validating changes to EU-CCPs' margin models, which complements ESMA's work in the CCP colleges towards supervisory convergence. This third activity is important because it ensures there is a consistent assessment of the changes introduced by CCPs in their margin models and there have been quite a few: close to ten up to now with almost as many upcoming ones in the pipeline.

EMIR has been a success story but we need an ambitious EMIR Review to ensure its intended objectives are achieved even more effectively and efficiently.

Going back to EMIR as a whole, as I mentioned earlier, we see the successful implementation of EMIR requirements as one of our main priorities. I have already highlighted some of the key benefits and achievements which I believe have resulted from EMIR's implementation. However, through various consultations conducted by ESMA and during the European Commission's EMIR Review consultation, we have also been able to obtain our stakeholders' perspectives.

Broadly speaking, the vast majority of respondents to these consultations agree that, overall, EMIR has been able to deliver on its promises. However, they have also indicated that some amendments to EMIR could lead to a more effective and efficient implementation whilst not compromising on its objectives of transparency, standardisation and risk mitigation. Of course, as I mentioned earlier, when it relates to ESMA's own Technical Standards, we are already proactive and propose amendments when we believe they can be improved.

To illustrate this point, ESMA has already put forward amendments to the CCP requirements for the margin period of risk under certain conditions and for certain liquid products. ESMA has for example also proposed some important amendments relating to the clearing obligation phase-in for smaller financial counterparties facing certain difficulties in securing clearing arrangements.

However, some improvements cannot be made without changes to the overall framework – the EMIR Regulation itself. In this context, ESMA submitted four EMIR Review reports to the

European Commission on 13 August 2015 on a wide range of topics and we were pleased to see many of ESMA's suggestions acknowledged in the EMIR review report published by the European Commission in November last year.

Looking at TRs and trade reporting first, it is essential that ESMA is seen as a credible supervisor. For that, we need to strengthen ESMA's sanctioning powers and the level of TR fines we can levy.

Moving to other obligations under EMIR, ESMA also identified a wide range of aspects which should be considered in the context of the EMIR Review to improve the regulatory framework. I'll mention two obvious examples, first, introducing a mechanism which allows suspension of the clearing obligation, to respond to changing market conditions. Second, the application of EMIR to non-financial counterparties should be reviewed so that it captures only the most significant ones while reducing the compliance burdens for smaller non-financial counterparties.

ESMA's work on Benchmarks

I'll now turn to the second of these big regulatory reforms: those pertaining to benchmarks.

Benchmarks, in particular the interest rate benchmarks, or "IBORs", have been the focus of intense scrutiny in recent regulatory initiatives. The manipulations of LIBOR and EURIBOR ignited supervisory scrutiny worldwide and some jurisdictions have already taken action to ensure a higher degree of integrity of the IBORs and to ensure they are fit for purpose.

The IOSCO principles for financial benchmarks have become a global standard in this field in a way which I think is unprecedented and back in 2013 ESMA, in partnership with the European Banking Authority, established principles for the benchmark setting processes in the EU. As an aside, I would add I believe this is precisely the role that IOSCO should have: taking the lead on areas jurisdictions are contemplating regulating and supervising.

On a global scale, the Financial Stability Board has established its Official Sector Steering Group. This Group, which includes an advisory group comprising important market players, issued its first report in 2014. The FSB recommended the continuation of work on the enhancement of the IBORs by founding them on a new methodology that privileged transactions in the money markets. The FSB also suggested that market specialists look for alternative rates, particularly for the derivatives markets, and develop plans to transition to these different rate sources.

While the FSB recommended alternatives to the IBORs primarily as substitutes in derivative markets, it has become apparent that the money markets have changed drastically due to the financial crisis and even more so as a result of the low interest rate environment. Alternative rates may therefore become more important as fall-back options for the remaining markets, too. The new IBOR methodologies that are still under development will also have to take this into account and develop alternative methods where transactions become insufficient.

In Europe, the administrator of EURIBOR, the European Money Markets Institute, is currently testing its new, transaction based methodology and a transition to the “EURIBOR+” is expected to start soon. But for the current EURIBOR, as well as for the “EURIBOR+”, it is essential that a sufficient number of banks contribute data to ensure that the benchmark accurately measures the market. The slowing down of money markets – and actual or perceived compliance risks following the IBOR investigations – have led to continuously decreasing panels with now only 20 banks left on the EURIBOR panel as opposed to more than twice as many only five years ago. ESMA continues to be very concerned by these developments and will maintain its support of the EURIBOR’s administrator in the effort to enhance this important benchmark, including its panel membership, and to make it fit for the future.

And this, of course, leads me to the biggest regulatory reform for benchmarks in the EU to date: the European Benchmarks Regulation which came into force in June 2016. This piece of legislation is globally unique in its wide scope and will be largely applicable from the beginning of next year. It is based on the IOSCO principles for financial benchmarks and covers a wide variety of benchmarks with its most stringent regime targeted at so-called “critical benchmarks”, for which some provisions already apply.

So far, the European Commission has only designated EURIBOR as a critical benchmark under the Benchmarks Regulation and consequently, a college for the supervision of EURIBOR was set up in September, of which ESMA is a permanent member. Regulators already have strong supervisory powers over EURIBOR, including the power to mandate contributions, should the panel of contributing banks become too small to ensure that EURIBOR represents the underlying markets accurately. The combined efforts of supervisors in the college will further help to support the development of EURIBOR.

The new Benchmarks Regulation also requires ESMA to draft Technical Standards to ensure it is applied coherently across the EU. These standards include further specifying benchmark integrity and reliability requirements in relation to governance, input data and the methodology used as well as on benchmarks' transparency. We will deliver the Technical Standards to the European Commission by the first of April 2017.

ESMA has already provided Technical Advice to the European Commission on some crucial aspects of the Benchmarks Regulation such as the calculation methods for determining the thresholds for critical and so-called significant benchmarks, some definitions, and transitional provisions to ensure that users' are not negatively impacted as we move into the new regime.

To sum up, important steps have been made to increase integrity and reliability in the benchmarks landscape but there is no doubt that this topic will continue to be on the agenda for supervisors, regulators, and probably arbitrators worldwide.

Policies regarding countries outside the EU: the third country arrangements in the reforms

I would like to conclude my speech with a few words on how these two EU regulatory reforms interact with third country markets and participants and some general reflections on the so-called equivalence system. Clearly, as both benchmarks and OTC derivatives concern global markets, their third country policies are extremely important and ESMA is very much involved in their implementation and execution. In fact, ESMA has already considerable experience with the equivalence approach under EMIR, an approach which will also apply under the Benchmarks Regulation once it comes into force, although there are some differences in approaches in the two pieces of legislation.

Under the equivalence approach, a country is considered equivalent when its rules are similar and compatible with EU rules. When the regulatory outcomes are determined to be equivalent, subject to certain conditions, an individual market participant can be recognised and provide its services in the EU. Under the equivalence mechanism, there is a heavy reliance on the home regulator. As indicated earlier, under EMIR ESMA has already recognised more than 20 CCPs from outside the EU and we are processing 25 other applications.

ESMA raised two main concerns regarding the equivalence mechanism in its earlier mentioned reports on the EMIR review in 2015. First, the main benefits of the equivalence system are envisaged to materialise when all main jurisdictions apply this approach: an internationally active CCP would then in principle mainly be supervised by its home regulator. This is beneficial from the perspective of avoiding overlaps and duplications in supervision and regulation.

However, it is also true that the EU is “an island” of equivalence and third-country reliance in a world that has mostly opted for registering individually those infrastructures and market participants which want to do cross-border business. Hence, third country CCPs have benefited from the EU’s equivalence system, while EU CCPs are still required to be authorised and to be subject to the supervision of the third country regulator when they want to be active outside the EU. Obviously, this was not the intended result when designing the equivalence mechanism.

The second concern expressed in our review reports of 2015 relates to the strong reliance on the home country regulator: do we have sufficient assurance that risks of the third country infrastructures’ activities in the EU are adequately assessed and addressed by the home regulator in the third country? ESMA has very limited opportunities to see the specific risks that third country CCPs might be creating in the EU as we have very limited powers regarding information collection and risk assessment. This second concern is especially relevant the more important the role of the third country in the EU’s financial system.

To conclude, I think the EU should consider redesigning the equivalence approach taking the two concerns identified above into account.

Thank you for your attention.