

# Financial Services Alerter

MARCH 2021



# Introduction

## March 2021

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 January 2021.

- UK developments
- EU developments
- International developments

## FCA and BoE publishes joint statement on SONIA

On 29 March 2021, the Financial Conduct Authority (FCA) and the Bank of England (BoE) published a [joint statement](#) to encourage liquidity providers in the sterling non-linear derivatives market to adopt new quoting conventions for inter-dealer trading based on SONIA instead of LIBOR from 11 May 2021. SONIA will be the primary pricing point for swaptions, caps and floors, and other non-linear products. These changes do not prohibit trading in GBP LIBOR non-linear derivatives but do mean the primary source of pricing and liquidity will switch from GBP LIBOR to SONIA.

## FCA publishes webpage on business interruption insurance test case 22

On 22 March 2021, the Financial Conduct Authority (FCA) published a [webpage](#) on the business interruption insurance test case, setting out the [claims data](#) collected from insurers that provided their records of claims and the values of interim/initial payments and final settlement meetings. The data published is based on insurer submissions made to the FCA on 3 March 2021. FCA publishes statement on review of regulatory permissions

## FCA publishes list of BI insurance policies

On 12 March 2021, the Financial Conduct Authority (FCA) published a [list](#) of business interruption (BI) insurance policies capable of responding to the COVID-19 pandemic. The FCA will send out information requests to insurers for updated details on all non-damage BI policies that are, in principle, capable of responding to the COVID-19 pandemic. The policies cover over 200,000 policyholders and may be subject to further update.

## FCA publishes CP on emission allowances

On 8 March 2021, the Financial Conduct Authority (FCA) published a [Consultation Paper](#) (CP) on its proposal to regulate bidding for emissions allowances on the UK auction platform under the UK Emissions Trading Scheme (ETS). The FCA is consulting on:

- draft UK Emission Trading Scheme Instrument 2021 and
- draft Technical standards on the Market Abuse Regulation.

The Consultation period closes on 6 April 2021 and the FCA intends to publish its rules no later than Q2 2021.

## FCA publishes PS on operation of UK MiFIR DVC mechanism

On 4 March 2021, the Financial Conduct Authority (FCA) published a [Policy Statement](#) (PS) on its power to suspend the use of pre-trade transparency waivers for a trading venue under the double volume cap (DVC mechanism). The FCA has a temporary power under the UK MiFIR to choose to apply the DVC if it considers it necessary to advance its integrity objective, for example if dark trading is hampering the ability of market participants to make well-informed decisions.

## FCA publishes PS on amendments to single and cumulative transaction thresholds for contactless payments

On 3 March 2021, the Financial Conduct Authority (FCA) published a [Policy Statement](#) (PS) on amendments to the single and cumulative transaction for contactless payments. The PS summarises the response the FCA received on its proposed changes relating to the contactless payments limits on which it consulted in January 2021.

The FCA intends to publish a further PS on the other questions posed in the [Consultation Paper](#) (CP) later in 2021. The deadline in respect of those questions is 30 April 2021.

## FCA publishes webpages on TPR

On 4 March 2021, the Financial Conduct Authority (FCA) published three webpages on the temporary permissions regime (TPR).

- [Landing slots for firms in the TPR](#) sets out the next steps for firms once they have received a “landing slot” to apply for full authorisation in the UK
- [Cancelling a temporary permission](#) explains the steps for cancelling a temporary permission if the firm is in the TPR and
- [Supervising firms in the TPR](#) explains how the FCA supervises firms in the TPR.

## PRA publishes PS on outsourcing and third-party risk management

On 29 March 2021, the Prudential Regulatory Authority (PRA) published a [Policy Statement](#) (PS) on outsourcing and third party-risk management. The PRA made revisions to its final policy in the following areas:

- definitions, scope and proportionality
- governance and record keeping
- agreements; and
- data and access.

[Appendix 1](#) contains the Supervisory Statement on outsourcing and third-party risk management, with which firms are expected to comply by 31 March 2022.

## PRA publishes PS on UK Solvency II regime

On 18 March 2021, the Prudential Regulatory Authority (PRA) published a [Policy Statement](#) (PS) setting out its expectations and guidance relating to auditors’ work on the matching adjustment (MA) under the UK Solvency II regime. Respondents to the PRA’s earlier [consultation](#) welcomed the enhanced transparency for firms, their auditors and wider stakeholders in relation to auditors’ work on the MA. The PRA has, among other things:

- delayed the effective date for the changes to [SS11/16](#) by six months, to 1 July 2021

- updated SS11/16 to confirm that its expectation that auditors form their own views in relation to MA calculation would be subject to materiality.
- included examples in SS11/16 of specific calculation methodologies and judgments that can be used to determine the scale of the MA.

The final version of the updated SS11/16 is set out in an appendix to the PS.

## **HMT publishes statement on regulatory co-operation in financial services**

On 26 March 2021, the HM Treasury published a [statement](#) announcing that technical discussions on the text of the memorandum of understanding (MoU) on UK-EU regulatory co-operation in financial services had concluded. The text of the final version of the MoU has not yet been published and HMT states that both sides need to take formal steps before the MoU can be signed.

## **FATF publishes guidance on VA and VASP**

On 22 March 2021, the Financial Action Task Force (FATF) published [guidance](#) on the risk-based approach to virtual assets (VA) and virtual asset service providers (VASP) clarifying the definitions of VA and VASP and updating existing guidance on:

- how the FATF standards apply to stablecoins
- implementation of the 'travel rule'
- licensing and registration of VASPs; and
- the risks and potential risk mitigants for peer-to-peer transactions.

## **FMLC publishes response to HM Treasury CP on regulatory approach to cryptoassets and stablecoins.**

On 22 March 2021, the Financial Markets Law Committee (FMLC) published its [response](#) to HM Treasury's [Consultation Paper](#) (CP) on the UK regulatory approach to stablecoins and a call for evidence on cryptoassets used for investment and the broader use of distributed ledger technology (DLT) in financial markets.

The FMLC highlights a number of uncertainties relating to the proposal, including that:

- the term 'token' should not be used interchangeably with cryptoasset
- the new regulatory regime will need to assess any regulatory overlap of definitions
- the consultation only provides guiding principles in relation to stablecoins; and
- further consideration needs to be given to taxonomies.

## LSB publishes report on credit card market remedies

On 25 March 2021, the Lending Standards Board (LSB) published a [report](#) on its review of how the package of remedies set out in the Financial Conduct Authority's (FCA) [final findings report](#) on the credit cards market (CCM) has impacted on consumers' use of their credit card. LSB highlighted a number of areas for improvement:

- promotional rate expiry
- borrowing prompt
- payment date
- unsolicited credit limit increases

## ESAs publish Q&As on Securitisation Regulation

On 26 March 2021, the Joint Committee of the European Supervisory Authorities (ESAs) published a set of [Q&As](#) on the Securitisation Regulation, covering questions that fall outside the scope of any one of the three ESAs. The Q&As aim to help market participants comply with their obligations relating to:

- the content and format of information that should be disclosed by the originator, sponsor and the SSPE
- the transaction documents in a simple, transparent and standardised (STS) securitisation that should be made publicly available; and
- the type of STS certification services that can be provided by third party verifiers to the securitisation parties.

## EBA publishes CP on guidelines for institutions and resolution authorities on improving resolvability

On 17 March 2021, the European Banking Authority (EBA) published a [Consultation Paper](#) (CP) on draft guidelines for institutions and resolution authorities on improving resolvability. The guidelines seek to implement existing international standards on resolvability and take stock of the best practices so far developed by EU resolution authorities on resolvability topics, in areas of:

- operational continuity in resolution
- access to financial market infrastructures (FMIs)
- funding and liquidity in resolution
- bail-in execution; and
- business reorganisation and communication.

The consultation period closes on 17 June 2021 – in the meantime. The EBA will hold a virtual public hearing on 20 April 2021.

## EBA publishes report on implementation of the liquidity coverage ratio (LCR) in EU

On 15 March 2021, the European Banking Authority (EBA) published a [report](#) on monitoring the implementation of the liquidity coverage ratio (LCR) in the EU. The report focuses on the usage of liquidity buffers, guidance on unwinding mechanism waivers, recourse to central bank support, and additional outflows from derivatives. The EBA sets out guidance on:

- the treatment of fiduciary deposits
- LCR optimisation risk
- interdependent inflows and outflows for LCR purposes; and
- the treatment of deposit guarantee scheme (DGS) deposits.

## EBA publishes CP on CAM for credit institution authorisation under CRD IV Directive

On 10 March 2021, the European Banking Authority (EBA) published a [Consultation Paper](#) (CP) on draft guidelines on a common assessment methodology (CAM) for granting authorisation as a credit institution under Article 8(5) of the Capital Requirements Directive IV (CRD IV). Article 8(5) requires the EBA to specify a CAM for granting authorisations in accordance with the CRD IV, with a view to fostering supervisory convergence across the EU. The EBA will hold a public hearing on 22 April 2021 and the consultation period will close on 10 June 2022.

## EBA publishes CP on stress tests of deposit guarantee schemes

On 11 March 2021, the European Banking Authority (EBA) published a [Consultation Paper](#) (CP) on draft revised guidelines on stress tests concluded by national guarantee schemes (NGSs) under the Deposit Guarantee Schemes Directive (DGSD). The proposed framework will enable the EBA to carry out a more robust peer review of national deposit guarantee schemes stress tests in 2024/25.

The consultation period closes on 11 June 2021 and the EBA will hold a public hearing on its proposals on 26 May 2021.

## EBA publishes opinion on ML and TF risks affecting the EU financial sector

On 3 March 2021, the European Banking Authority (EBA) published an [opinion](#) on the risks of money laundering (ML) and terrorist financing (TF) that are affecting the EU's financial sector. The opinion examines:

- cross-sectoral ML and TF risks and
- sector-specific ML and TF risks.

The EBA has also published an [interactive tool](#) to complement the opinion that gives EU citizens, competent authorities and credit and financial institutions a user-friendly way to access all the ML/TF risks covered in the opinion.

## ESMA publishes statement on reporting net short positions to expire

On 15 March 2021, the European Security Markets Authority (ESMA) published a [statement](#) announcing that it will not renew its decision to require holders of net short positions in shares traded on an EU regulated market to notify the relevant national competent authority (NCA) if the position reaches, exceeds or falls below 0.1% of the issued share capital. ESMA will coordinate with National Competent Authorities (NCAs) and continue to monitor developments in financial markets as a result of the COVID-19 pandemic and is prepared to use its powers to ensure the orderly functioning of markets, financial stability, and investor protection.

## ESMA publishes Q&As on investor protection and intermediaries

On 29 March 2021, the European Securities and Markets Authority (ESMA) published updated [Q&As](#) on investor protection and intermediaries under MiFID II. A new Q&A was included on the conditions to be met for inducements to be considered to enhance the quality of services to clients. ESMA outlines what it means to provide services to a relevant client, and the need for firms to demonstrate that quality enhancements are proportional to the level of inducements received.

## ESMA publishes Final Report on administrative and criminal sanction under MiFID

On 29 March 2021, the European Securities and Markets Authority (ESMA) published a [Final Report](#) with technical advice to the European Commission on the application of administrative and criminal sanctions under MiFID II. ESMA's proposal includes provisions to:

- amend MiFID II requirements for national competent authorities (NCAs) to disclose and report information on sanctions
- amend the MiFID II requirement for NCAs to liaise with judicial authorities to gather information on criminal sanction
- include settlement powers in the range of sanctions and measures available to NCAs to increase the efficiency of their enforcement proceedings and
- amend the current requirements on precautionary measures in Article 86(1) of the MiFID II.

## ESMA publishes statement on calculations for equity and equity-like instruments

On 2 March 2021, the European Securities and Markets Authority (ESMA) published a [statement](#) announcing that its result of the annual transparency calculations for equity and equity-like instruments are available. The full list is available through the [financial instruments transparency system](#) (FITRS) and through the [register web interface](#).

The calculations apply from 1 April 2021 and the next annual transparency calculations for equity and equity like instruments, apply from April 2022.

## ECB publishes guide on SSM Regulation

On 2 March 2021, the European Central Bank (ECB) published a [guide](#) on the method for determining administrative pecuniary penalties for regulatory breaches under Article 18(1) and (7) of the Single Supervisory Mechanism Regulation (SSMR). The ECB may increase or reduce the base amount to ensure that the penalty is proportionate, effective and dissuasive. The ECB may also adjust the base amount for multiple breaches derived from the same set of facts, if a penalty corresponding to the sum of the individual penalties for the various breaches would not be proportionate in all the circumstances.

## EC publishes roadmap on CSDR review

On 8 March 2021, the European Commission (EC) published an [impact inception assessment](#) on a review of the EU rules on central securities depositories (CSDs) under the Central Securities Depositories Regulation (CSDR). The review assesses:

- how CSDs are able to operate in different countries across the EU
- how requests to use their services are handled; and
- whether there are other substantive barriers to competition in this sector that need to be addressed.

Comments on the roadmap can be made until 5 April 2021.

## IRSG publishes a report promoting regulatory coherence in financial services

On 18 March 2021, the International Regulatory Strategy Group (IRSG) published a [report](#) on promoting regulatory coherence in financial services for pandemic recovery. The report notes that, over the last year, there have been an increasing number of bodies expressing concern about the risks of market fragmentation, notably the Financial Stability Board (FSB) and the International Organization of Securities Commissions (IOSCO).

The IRSG calls on stakeholders to reaffirm their commitments to global regulatory coherence and brings forward a case for a renewed commitment to ‘global solutions to global problems’.

## IAIS publishes application paper on macroprudential supervision

On 17 March 2021, the International Association of Insurance Supervisors (IAIS) published for consultation an [application paper](#) on macroprudential supervision, aiming to help with the practical application of the supervisory material related to macroprudential supervision in [ICP 24](#).

The guidance focuses on:

- developing and applying a macroprudential supervision framework in a proportionate way
- ways to tailor requirement of data collection according to jurisdictional circumstances and market structure; and
- the practical application of the elements included under ICP 24.

IAIS will hold a public background session on the application paper on 23 March 2021, and comments can be made until 7 May 2021.

## ISDA publishes statement on UK FCA LIBOR announcement

On 5 March 2021, the International Swaps and Derivatives Association (ISDA) published a [statement](#) in response to the FCA’s [announcement](#) on the future cessation and loss of representativeness of the LIBOR benchmarks. The FCA will consult on requiring ICE Benchmark Administration (IBA) to continue publishing one-month, three-month and six-month yen Libor on a non-representative, synthetic basis and will consider whether the IBA should continue to publish one-month, three-month and six-month US dollar LIBOR on a non-representative, synthetic basis for a further period after the end of June 2023.

## **IOSCO publishes statement on Liquidity Risk Management**

On 5 March 2021, the International Organisation of Securities Commissions (IOSCO) published a [statement](#) containing recommendation and market participant responses to COVID-19 induced market stress. IOSCO and the Financial Stability Board (FSB) are currently conducting a joint analysis of the availability, use and impact of liquidity risk management tools for open-ended funds (OEFs). IOSCO also issued a Market Participant's Survey designed to collect information from responsible entities:

- on their adoption and practical implementation of the Recommendations; and
- specific targeted information on their liquidity risk management practices and experiences during the March 2021 market turmoil.

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

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