

Financial Services Alerter

January 2019





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Introduction

January 2019

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 2019.

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

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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 opens applications for post-Brexit CRAs and TRs operations

On 07 January 2019, the FCA published a [press release](#), “Advance applications for credit rating agencies and trade repositories now open”, announcing the start of advance applications for credit rating agencies (CRAs) and trade repositories (TRs) looking to register a new UK entity or convert their ESMA registration into an FCA registration.

FCA opens notification window for temporary permissions regime

On 07 January 2019, the FCA published a [press release](#), “Notification window for the temporary permissions regime now open”. If Brexit takes place without an implementation period, the temporary permissions regime (TPR) will allow EEA-based firms currently passporting into the UK to continue new and existing regulated business within the scope of their current permissions in the UK for a limited period, while they seek full FCA authorisation.

HM Treasury publishes Draft Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019

On 08 January 2019, HM Treasury published a [draft version](#) of the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 with [explanatory information](#). The Regulations come into force on exit day (29 March 2019).

FCA publishes consultation paper on contractual continuity post-Brexit

On 08 January 2019, the FCA published [consultation paper](#) CP19/2, “Brexit and contractual continuity”, outlining details of the financial services contracts regime (FSCR) and the rules the FCA proposes should apply to firms during the regime.

The consultation period closed on 29 January 2019.

FCA publishes consultation paper on recovering costs of regulating securitisation repositories after Brexit

On 08 January 2019, the FCA published [consultation paper](#) CP19/1, “Recovering the costs of regulating securitisation repositories after the UK leaves the European Union”. After Brexit, the FCA will replace the European Securities and Markets Authority (ESMA) as the regulatory authority in the UK for firms wishing to establish securitisation repositories (SRs). The Treasury intends to introduce regulations to recover fees from them. CP19/1 sets out the proposals for this.

The consultation period closed on 11 February 2019.

HM Treasury publishes Draft Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019

On 09 January 2019, HM Treasury published a [draft version](#) of the Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019 with [explanatory information](#). Parts 1 and 3 of the Regulations will come into force on the day after the day on which the Regulations are made, with Part 2 coming into force on exit day (29 March 2019).

HM Treasury publishes Draft Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019

On 14 January 2019, HM Treasury published a [draft version](#) of the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019. The Regulations come into force on the day after the day on which they are made, except for Parts 2 and 3 of the Regulations, which will come into force on exit day (29 March 2019).

HM Government makes the Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019

On 14 January 2019, HM Government published [statutory instrument](#) SI 2019/38, “the Credit Institutions and Insurance Undertakings Reorganisation and Winding Up (Amendment) (EU Exit) Regulations 2019” with an [explanatory memorandum](#). Most of the Regulations come into force on exit day (29 March 2019).

HM Government makes the Competition (Amendment etc.) (EU Exit) Regulations 2019 made

On 22 January 2019, HM Government published [statutory instrument](#) SI 2019/93, “Competition (Amendment etc.) (EU Exit) Regulations 2019” with an [explanatory memorandum](#). The Regulations come into force on Brexit exit day (29 March 2019).

FCA publishes consultation paper on guidance on regulation of cryptoassets

On 23 January 2019, the FCA published [consultation paper](#) CP19/3, “Guidance on Cryptoassets”. CP 19/3 examines different types of cryptoassets, explains whether they are within the FCA’s regulatory remit, and if so, what the consequences are for market participants.

The consultation closes on 05 April 2019.

FCA publishes consultation paper on optimising SMCR

On 23 January 2019, the FCA published [consultation paper](#) CP19/4, “Optimising the Senior Managers and Certification Regime and feedback to DP16/4 – Overall responsibility and the legal function”. CP19/4 provides clarification around some areas of SMCR and sets out proposals around how it applies to the legal and client dealing certification function.

The consultation period closes on 23 April 2019.

FCA publishes Handbook Notice 62

On 25 January 2019, the FCA published [Handbook Notice 62](#), outlining changes made to the FCA Handbook under instruments made by the FCA board on 13 December 2018, 02 January 2019 and 24 January 2019. It also outlines amendments made by the Financial Ombudsman Service board on 14 December 2018.



Financial Services Alerter

EU developments

ESMA publishes updated MiFID2 Q&As on transparency topics

On 04 January 2019, the European Securities and Markets Authority (ESMA) updated its [Q&As](#) on transparency topics under MiFID2 and MiFIR, amending the following topics:

- publication of request for market data (RFMD) transactions
- the default transparency regime for equity instruments
- default large-in-scale (LIS) and size-specific-to-the-instrument (SSTI) transparency thresholds for bonds.

ESMA publishes updated MiFID2 and MiFIR commodity derivatives Q&As

On 04 January 2019, the European Securities and Markets Authority (ESMA) updated its [Q&As](#) on MiFID2 and MiFIR commodity derivative topics, summarising the correct application of the "price multiplier" field for electricity contracts.

Joint Committee of ESAs publishes report on innovation hubs and regulatory sandboxes

On 07 January 2019, the Joint Committee of the European Supervisory Authorities (ESAs) published a [report](#), "FinTech: Regulatory sandboxes and innovation hubs", providing a comparative analysis of the innovation facilitators established in the EU to date.

EBA publishes crypto-assets advice

On 09 January 2019, the European Banking Authority (EBA) published a [report](#), "Report with advice for the European Commission on crypto-assets", providing advice on the need for a cost/benefit analysis to determine what action is required to address the opportunities and risks presented by crypto-asset activities and new technologies that may use crypto-assets.

ESMA publishes advice on ICOs and cryptoassets

On 09 January 2019, the European Securities and Markets Authority (ESMA) published [advice](#), "Initial Coin Offerings and Crypto-Assets", providing an assessment of the suitability of the EU regulatory framework with regards to ICOs and crypto-assets in general.

European Commission publishes report on operation of AIFMD

On 10 January 2019, the European Commission published a [report](#), “Report on the Operation of the Alternative Investment Fund Managers Directive (AIFMD)”, putting forward evidence for a review of the directive under Article 69 of AIFMD. The Commission will continue its work on the review and will report to the Council of the EU and European Parliament later in 2019.



Financial Services Alert

International
developments

ISDA publishes updated Brexit FAQs

On 22 January 2019, the International Swaps and Derivatives (ISDA) updated its [webpage](#), “Brexit FAQs” outlining possible effects for the derivatives market after the UK leaves the EU. The FAQs have been updated reflect events up until 31 December 2018.

Lexica and other client items

09 January 2019	<u>Disputes - What to look out for in 2019: Brexit</u>
09 January 2019	<u>Investor protection withers within the EU; but Brexit delivers?</u>
09 January 2019	<u>Disputes - What to look out for in 2019: Crypto-asset disputes</u>
10 January 2019	<u>Exempt management of SIFs and single supplies</u>
10 January 2019	<u>Regulatory Initial Margin: the time for the buy-side to act is now</u>
10 January 2019	<u>FCA Consultation Paper on Overdraft Reforms</u>
11 January 2019	<u>ESMA and EBA Publications on Crypto Assets</u>
17 January 2019	<u>FCA review of MAR implementation</u>
17 January 2019	<u>Simmons & Simmons Amsterdam contributes to 8th edition of International Capital Markets Review</u>
21 January 2019	<u>HMRC VAT no-deal Brexit planning</u>
22 January 2019	<u>Cultivating Green Sukuk</u>
23 January 2019	<u>HMRC VAT no-deal Brexit planning</u>
24 January 2019	<u>New FCA CP19/04 - optimising SMCR and feedback to DP16/4 Overall Responsibility and the legal function</u>
24 January 2019	<u>Brexit: First tangible measures published by French Government in order to prepare for a Hard Brexit</u>
24 January 2019	<u>Brexit: Italy ready with transitional measures to ensure continuity for markets and intermediaries in a "no-deal" scenario</u>
28 January 2019	<u>Brexit: the CSSF made a positive statement regarding delegation of investment/portfolio management to UK investment managers</u>
28 January 2019	<u>Crypto Assets Frankfurt</u>
29 January 2019	<u>EU infringements proceedings in relation to UK VAT treatment of commodity derivatives</u>
30 January 2019	<u>Branch input VAT recovery</u>
30 January 2019	<u>New Growth in the Green Securitisation Market</u>
30 January 2019	<u>Registration of Schedule 2 Firms</u>
31 January 2019	<u>ESMA encourages regulatory forbearance on imminent clearing, trading and reporting deadlines</u>
30 January 2019	<u>All change - the review of Irish limited partnership law in 2019 should be good news for private fund managers</u>

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