

Financial Services Alerter

NOVEMBER 2019



Introduction

November 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 November 2019.

- UK developments
- EU developments
- International developments

FCA calls on authorised fund managers to scrutinise liquidity management

On 4 November 2019, the FCA published a [letter](#), “Effective liquidity management: good practice for Authorised Fund Managers” sent by Nick Miller, head of the FCA Asset Management Department to the Chairs of authorised fund managers (AFMs). In the letter, Mr Miller calls on AFMs to be mindful of their obligations on portfolio composition and liquidity management, making reference to, among other things, a 2018 International Organization of Securities Commissions (IOSCO) [final report](#) on liquidity risk management for collective investment schemes.

FCA publishes UK EMIR validation rules

On 7 November 2019, the FCA updated its [webpage](#), “FCA statement on the reporting of derivatives under the UK EMIR regime in a no-deal scenario”, highlighting that if the UK leaves the EU without a deal on 31 January 2020, UK reporting counterparties and UK Trade Repositories (TRs) should use the [UK EMIR validation rules](#) when submitting derivative transactions entered into from 11.00pm on 31 January 2020 onwards.

SEC decision to continue no-action relief on MiFID2 inducements and research provisions welcomed by FCA

On 8 November 2019, the FCA published a [webpage](#), “Statement on MiFID2 inducements and research”, welcoming the United States Securities and Exchange Commission’s (SEC) [extension](#) of its ‘no action letter’, on the possibility of conflict between US regulation and MiFID2, until 3 July 2023. The existing relief was originally due to expire on 3 July 2020.

Investment Association publishes final report on responsible investment framework

On 18 November 2019, the Investment Association (IA) published a [final report](#), “IA Responsible Investment Framework”, providing a set of standard definitions that encompass different components of responsible investment. It also includes an overview of the responses received to its January 2019 consultation on the same subject and outlines next steps on developing a coordinated approach to responsible investment.

FCA publishes Handbook Notice 71

On 22 November 2019, the FCA published [Handbook Notice 71](#), setting out changes made to the FCA Handbook by the FCA Board on 24 October and 21 November 2019 and by the Financial Ombudsman Service Board on 30 October 2019.

FCA introduces temporary intervention on marketing of speculative mini-bonds to retail investors

On 26 November 2019, the FCA published a [statement](#), “Temporary intervention on the marketing of speculative mini-bonds to retail investors” detailing its decision to ban the promotion of high risk speculative mini-bonds to most retail consumers. The ban affects unlisted bonds and preference shares where the issuer uses the funds raised to lend to a third party, invest in other companies, or purchase or develop property.

The rules apply from 1 January 2020 to 31 December 2020.

FCA publishes guidance on approving unauthorised persons' financial promotions

On 26 November 2019, the FCA published a [webpage](#), “Approving financial promotions” setting out guidance on approving the financial promotions of unauthorised persons under s. 21 of FSMA. There are no new standards included in the guidance. Instead, the FCA explains the practical implications of the FCA's existing requirements on financial promotions in Chapter 4 of COBS. The guidance follows on from two Dear CEO letters sent by the FCA in January and April 2019.

FCA publishes consultation on extending SMCR to benchmark administrators

On 29 November 2019, the FCA published [consultation paper](#) CP19/31, “Extending the Senior Managers Regime to the Benchmark Administrators” in which the FCA sets out how it proposes to apply SMCR to benchmark administrators that do not undertake any other regulated activities. The consultation period closes on 28 February 2020.

ESMA publishes consultation on position limits and position management controls under MiFID2

On 5 November 2019, the European Securities and Markets Authority (ESMA) published a [consultation paper](#), “MiFID2 review report on position limits and position management: Draft Technical Advice on weekly position reports”, outlining the effects of the current MiFID2 regime of position limits and position management on commodity derivatives markets, and proposing amendments to the regime. The consultation period closes on 8 January 2020.

Delegated Regulation supplementing Securitisation Regulation on the homogeneity of underlying exposures published in OJ

On 6 November 2019, [Delegated Regulation \(EU\) 2019/1851](#) supplementing [The Securitisation Regulation] with level 2 measures on the homogeneity of the underlying exposures in securitisation was published in the OJ. The Delegated Regulation enters into force on 26 November 2019.

Council of the EU adopts Regulations on Sustainable Finance

On 8 November 2019, the Disclosures Regulation and the Low Carbon Benchmarks Regulation were adopted by the Council of the EU, representing one of the final stages before the Regulations are published in the Official Journal of the EU (OJ) and become law. The adopted texts can be viewed [here](#) and [here](#).

The European Commission also [confirmed](#) that the texts will be published in the OJ in the week beginning 25 November 2019.

The Disclosures Regulation will enter into force 20 days following its publication in the OJ, and the Low Carbon Benchmarks Regulation will enter into force on the day following its publication in the OJ.

Commission Delegated Regulation amending Delegated Regulation under PRIIPs published in OJ

On 8 November 2019, [Commission Delegated Regulation \(EU\) 2019/1866](#) amending Delegated Regulation (EU) 2017/653 was published in the OJ. The Delegated Regulation aligns the transitional arrangement for PRIIP manufacturers offering units of funds under Article 32 of the PRIIPS Regulation as underlying investment options with the prolonged exemption period under that Article. The Delegated Regulation enters into force on 28 November 2019.

ESMA publishes final reports under EMIR 2.2 on tiering, comparable compliance and fees for third-country CCPs

On 11 November 2019, the European Securities and Markets Authority (ESMA) published the following final reports on a proposed Regulation amending EMIR 2.2:

- [Technical advice](#) on criteria for tiering under Article 25(2a) of EMIR 2.2
- [Technical advice](#) on comparable compliance under Article 25a of EMIR 2.2
- [Technical advice](#) on ESMA fees for Third Country C-CCPs under EMIR 2.2

ESMA consulted on the advice between May and July 2019.

ESMA publishes updated Q&As on Securitisation Regulation

On 15 November 2019, the European Securities and Markets Authority (ESMA) published updated [Q&As](#) on the Securitisation Regulation, re-ordering the questions and answers and including a summary table.

BCBS publishes consultation on guidelines on co-operation between prudential and AML/CTF supervision

On 11 November 2019, the Basel Committee on Banking Supervision (BCBS) published a [consultation paper](#), "Introduction of guidelines on interaction and cooperation between prudential and AML/CFT supervision". The proposed guidelines put forward recommendations for information exchange and cooperation between prudential and AML/CFT supervisors and amends existing guidelines on the sound management of risks on money laundering and the financing of terrorism. The consultation period closes on 6 February 2020.

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

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