

Financial Services Alerter

MAY 2020



Introduction

May 2020

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 May 2020.

- UK developments
- EU developments
- International developments

UK Government published draft legal texts

On 19 May 2020, the UK Government published draft [legal texts](#) to accompany its [Policy Paper](#) “The Future Relationship with the EU: The UK’s Approach to Negotiations”. The Government states that the legal texts are the legal articulation of its approach in the Policy Paper and have already formed the basis of discussion with the EU.

FCA publishes guidance on payment firms and safeguarding customer funds

On 22 May 2020, the Financial Conduct Authority (FCA) published [guidance](#) focussing on strengthening payment firms’ prudential risk management and arrangements for safeguarding customers’ funds. The guidance clarifies several areas that the FCA considers important:

- record keeping
- reconciliations
- safeguarding accounts and
- acknowledgement letters.

FCA publishes response to Treasury Committee inquiry on the impact of COVID-19

On 21 May 2020, the Financial Conduct Authority (FCA) published a [letter](#) on its support for borrowers, small and medium – sized enterprises during COVID-19. The letter covers several topics including:

- rules on temporary financial relief for customers affected by coronavirus
- what will be needed after the initial three-month period
- whether the FCA’s interventions have been sufficient to protect vulnerable customers.

FCA publishes statement on the Corporate Insolvency and Governance Bill

On 14 May 2020, the Financial Conduct Authority (FCA) published a [statement](#) on the forthcoming corporate governance measures designed to assist businesses effected by COVID-19. These measures will be included into the Corporate Insolvency and Governance Bill 2020 to ensure that the special insolvency regimes for the financial sector remain effective. The FCA states that the Bill will also include a new Restructuring Plan for financial services firms.

FCA publishes statement on handling post and paper documents

On 13 May 2020, the Financial Conduct Authority (FCA) published a [statement](#) on how firms should handle post and paper documents. The FCA recognizes that due to COVID-19 some firms may face difficulties in complying with the rules on post and paper-based processes.

FCA updates its webpage on customers in temporary financial difficulty

On 7 May 2020, the Financial Conduct Authority (FCA) updated its [webpage](#) “Coronavirus and customers in temporary financial difficulty: draft guidance for insurance and premium finance firms” confirming that the guidance will come into force on 15 May 2020.

FCA updates its statement on complaints handling

On 7 May 2020, the Financial Conduct Authority (FCA) updated its [statement](#) on complaints handling by firms during the COVID-19 crisis. The statement provides information to firms on matters including:

- complaint handling capacity and priorities
- vulnerable consumers
- maintaining the quality of complaint handling
- firms experiencing difficulties
- the FOS' general approach.

FCA updates a webpage on its expectations of general insurance firms

On 5 May 2020, the Financial Conduct Authority (FCA) updated a [webpage](#) in which it sets out its expectation that general insurance firms will treat their customers fairly and address customer's inability to access the insured premises.

FCA publishes digital sandbox webpage

On 4 May 2020, the Financial Conduct Authority (FCA) published a new [webpage](#) "Digital sandbox – coronavirus (Covid-19) pilot" announcing plans to provide enhanced regulatory support to innovative firms tackling COVID-19 related challenges. The FCA plans to pilot aspects of the digital sandbox on a modular basis. Applications open in summer 2020.

FCA publishes Handbook Notice 76

On 1 May 2020, the Financial Conduct Authority (FCA) published [Handbook Notice 76](#) setting out a number of changes to the FCA Handbook through the following instruments:

- COVID-19: Deferral of Commencement (Pension Transfers, Investment Pathways, Platform Switching, Access to Insurance) Instrument 2020 (FCA 2020/15).
- COVID-19 Credit Cards and Personal Loans Instrument 2020 (FCA 2020/16).
- COVID-19 Motor Finance and High Cost Credit Instrument 2020 (FCA 2020/17).
- COVID-19 Mortgages Instrument 2020 (FCA 2020/18).
- Pension Guidance and Relevant Provisions (Miscellaneous Amendments) Instrument 2020 (FCA 2020/19).

FCA publishes guidance on customers in temporary financial difficulty

On 1 May 2020, the Financial Conduct Authority (FCA) published a [statement](#) with guidance for insurance and premium finance firms on customers in temporary financial difficulty. The guidance sets out guidelines on the actions firms should take when dealing with customers, namely that firms should:

- re-assess the risk profile of customers.
- consider multiple products to meet the customers need and revising the insurance cover accordingly.
- consider payment deferrals to avoid the need to cancel the cover.
- waive any fees associated with adjusting a qualifying customer's policy in addition to waiving cancellation fees.

FSB publishes guidance on assessing adequacy of financial resources for CCP resolution

On 4 May 2020, the Financial Stability Board (FSB) published a [Consultation Paper](#) (CP) on financial resources to support central counterparty (CCP) resolution and the treatment of CCP equity in resolution. Increased central clearing of standardised over-the-counter (OTC) derivatives has simplified derivative exposures and more collateral has supported a reduction in counterparty risk.

PRA publishes PS on ISPV authorisation and supervision

On 22 May 2020, the Prudential Regulatory Authority (PRA) published a [Policy Statement](#) (PS) updating the requirements for the authorisation and supervisions of insurance special purpose vehicles (ISPVs). The PS makes a number of key points, covering:

- amendments to the ISPV part of the PRA rulebook
- updates to the [Supervisory Statement](#): authorisation and supervision of ISPVs
- updates to the multi-arrangement ISPV new risk assumption [notification form](#).

The new policy took effect on 22 May 2020.

PRA publishes guidance on application of the CRR and IFRS9 requirements to payment holidays

On 22 May 2020, the Prudential Regulatory Authority (PRA) published a [statement](#) on the application of the Regulatory Capital and International Financial Reporting Standard 9 (IFRS 9) to granting or extending payment holidays, in light of COVID-19.

PRA publishes policy on probability default and loss given default estimation of credit risk

On 14 May 2020, the Prudential Regulatory Authority (PRA) published a [Policy Statement](#) (PS) "Credit risk: Probability of Default and Loss Given Default estimation" making a number of changes to the [Consultation Paper](#) to:

- extend the implementation deadlines for the EBA roadmap
- amend the approach to discount cured exposures
- accept temporary divergence between accounting impairment and approved IRB models for defaulted exposures
- clarify the use of Sterling Overnight Index Average (SONIA).

The requirements under the PS will take effect on 1 January 2022.

PRA publishes statement on Capital Requirements.

On 7 May 2020, the Prudential Regulatory Authority (PRA) published a [statement](#) on conversion of Pillar 2A capital requirements from a risk weighted assets (RWA) percentage to a nominal amount. To assist firms impacted by the COVID-19 pandemic, the PRA is setting the Pillar 2A requirements as a nominal amount in 2020 and 2021 Supervisory Review and Evaluation Processes, instead of a percentage of total RWA.

PRA publishes statement on loans under BBLs

On 4 May 2020, the Prudential Regulatory Authority (PRA) published a [statement](#) “on credit risk mitigation eligibility and leverage ratio treatment of loans under the Bounce Back Loan Scheme (BBLs)”, setting out its observations on the risk weighted treatment of exposures under the BBLs. The PRA has also introduced a change in the UK leverage ratio framework, offering a [modification by consent](#) for banks subject to the Leverage Ratio Part of the PRA Rulebook to exclude loans under the BBLs.

BoE publishes speech on insurance regulation beyond Solvency II

On 22 May 2020, the Bank of England (BoE) published a [speech](#) on regulatory views and life beyond Solvency II. The speech noted that insurers should increase the monitoring of risks arising out of the COVID-19 crisis, update their risk assessments and focus on operational resilience.

BoE publishes notice on collateral referencing of LIBOR

On 7 May 2020, the Bank of England (BoE) published a [notice](#) on its approach to collateral referencing LIBOR for use in the Sterling Monetary Framework. The BoE pushes back the dates on which the increased haircuts on LIBOR-linked collateral would apply as follows:

- the 10% haircut will apply from 1 April 2021 (rather than 1 October 2020) and;
- the 40% will apply from 1 September 2021 (rather than 1 June 2021).

CMA updates timetable in competition investigation

On 21 May 2020, the Competition and Markets Authority (CMA) updated its [timetable](#) on the ongoing investigation under Chapter 1 of the Competition Act 1998 and Article 101 of the TFEU. The CMA announced that its initial investigation will continue until December 2020 and now includes a review and analysis of additional evidence.

BBRS publishes report business banking dispute resolution

On 22 May 2020, the Business Banking Resolution Service (BBRS) published a [report](#) on the impact of government loan schemes on business banking dispute resolution, in light of COVID-19. BBRS reports that the loan schemes have played a crucial role in saving businesses but at the same time have the potential to give rise to a number of disputes.

ESMA publishes statement on financial reporting

On 20 May 2020, the European Securities and Markets Authority (ESMA) published a [statement](#) with its recommendations for preparing half-yearly financial statements and management reports, in light of COVID-19. ESMA recognises that some issuers may publish their reports later than usual but stresses that reports must not be delayed unduly.

ESMA publishes report on CRA's practices and challenges concerning CLO credit ratings

On 13 May 2020, the European Securities and Markets Authority (ESMA) published a [report](#) on collateralised loan obligations (CLO) ratings, highlighting the challenges that credit rating agencies face when assessing the creditworthiness of underlying loans and tranches of CLOs.

ESMA updates its webpage on the supervision of CRAs

On 11 May 2020, the European Securities and Markets Authority (ESMA) updated its [webpage](#) on COVID-19 with new information on the supervision of credit rating agencies (CRAs). ESMA explained that it will continue to engage with CRAs focussing on business continuity and compliance with the key requirements of the CRA Regulation.

EC adopts Delegated Regulation on revisions to RTS on prudent evaluation under CRR

On 28 May 2020, the European Commission (EC) adopted a [Delegated Regulation](#) supplementing the Capital Requirements Regulation (CRR) with regard to regulatory technical standards (RTS) on prudent valuation. The adopted Delegated Regulation is part of a series of measures taken to respond to the extreme volatility, systemic shock caused by the COVID-19 pandemic.

EC publishes adjusted work programme for 2020

On 27 May 2020, the European Commission (EC) published a [communication](#) outlining its adjusted work programme for 2020 as part of a package that aims to deliver a recovery plan for Europe in light of COVID-19. Changes to the work programme include:

- Sustainable Finance
- Capital Markets Union
- Consumer Credit
- Distance Marketing
- the eIDAS framework.

The EC postpones entry into force of Delegated Regulation under CSDR.

On 8 May 2020, the European Commission (EC) adopted a [Delegated Regulation](#) amending the Delegated Regulation supplementing the regulatory technical standards (RTS) of Central Securities Depositories Regulation (CSDR) on settlement discipline. The EC postponed the entry into force of the amended Delegated Regulation relating to the CSDR from 13 September 2020 to 1 February 2021.

The EC adopts new Delegated Regulation amending high risk third countries under MLD4

On 7 May 2020, the European Commission (EC) adopted a [Delegated Regulation](#) amending the list of high-risk third countries under the Fourth Money Laundering Directive . High-risk countries with Anti-Money Laundering (AML) and Counter Terrorist Financing (CTF) deficiencies are identified and added to the list. Countries previously in the list that no longer present strategic AML and CTF deficiencies will be removed.

ESAs publish final report with RTS on amendments to EMIR

On 4 May 2020, the Joint Committee of the European Supervisory Authorities (ESAs) published a [final report](#) on Regulatory Technical Standards (RTS) under EMIR amending bilateral margin requirements. The amendments provided by the report are necessary to extend the implementation deadlines of counterparties by one year and make changes to the draft RTS deadline for application.

EBA publishes action plan on dividend arbitrage trading schemes

On 12 May 2020, the European Banking Authority (EBA) published a [10-point action plan](#) on dividend arbitrage schemes. The EBA intends to strengthen the future regulatory anti-money laundering and its prudential guidelines particularly on the assessment of the suitability of members of the management body and key function holders.

EBA publishes ITS on benchmarking

On 4 May 2020, the European Banking Authority (EBA) published a [statement](#) on the publication of an update to its Implementing Technical Standards (ITS) on benchmarking of internal approaches. The updated ITS include all benchmarking portfolios that will be used for the 2021 exercise. The main novelty is the inclusion of the IFRS9 template.

EBA publishes guidelines on determination of weighted average maturity of contractual payments

On 4 May 2020, the European Banking Authority (EBA) published a [final report](#) on the determination of the weighted average maturity (WAM) of the contractual payment under the tranche with guidelines for institutions opting to use the WAM approach. The report covers a number of areas including:

- The meaning of contractual payments due under the tranche.
- Data and information requirements.
- Methodologies for determining the contractual payments of the securitised exposures due under the tranche.
- The implementation and use of the WAM model.

EBA publishes draft ITS on reporting requirements for market risk under CRR

On 4 May 2020, the European Banking Authority (EBA) published a [final report](#) on draft implementing technical standards (ITS) on reporting requirements under Article 433B of the Capital Requirements Regulation (CRR). The ITS introduce the first elements of the Fundamental Review of the Trading Book into the EU prudential framework by means of a reporting requirement.

ECB publishes a consultation on climate related and environmental risks for SSM Banks

On 20 May 2020, the European Central Bank (ECB) published a draft [consultation](#) on climate related and environmental risks for banks in the single supervisory mechanism (SSM), setting out what it considers to be safe and prudent management of climate-related and environmental risks under the Capital Requirements IV Directive. The ECB also sets out specific supervisory expectations relating to:

- business models and strategy
- governance and risk appetite
- risk management and
- disclosures.

ECB publishes opinion on CRR Amending Regulation

On 20 May 2020, the European Central Bank (ECB) published an [opinion](#) with general comments on the proposed Regulation containing amendments to the Capital Requirements Regulation in light of COVID-19. The ECB aims to increase the capacity of credit institutions to lend and absorb losses related to the COVID-19 pandemic, while still ensuring their continued resilience.

ECB publishes ECB Blog on digitisation of the banking businesses

On 8 May 2020, the European Central Bank (ECB) published a [blog](#) “The first lesson from the pandemic: state-of-the-art technology is vital” explaining that since the majority of people are currently working from home, banks have had to rely on technology enabled remote solutions when dealing with clients and in carrying on their daily business.

ECB publishes amendments to the Financial Reporting Regulation

On 7 May 2020, the European Central Bank published a [Regulation](#) in the Official Journal of the EU amending Financial Reporting Regulation’s annex I, II, IV and V. The Regulation enters into force on 27 May 2020 and applies from 1 June 2020.

Publication of the COVID-19 related amendment to the FSMA

On 1 May 2020, the [Financial Services and Markets Act \(Regulated Activities\) \(Coronavirus\) \(Amendment\) Order 2020](#) was published together with an [explanatory memorandum](#). The amendment creates a new type of exempt agreement for loans entered under the Bounce Bank Loan Scheme (BBLs) of £25,000 or less for the purposes of a business carried by the borrower.

EIOPA publishes speech on digital responsibility

On 4 May 2020, the European Insurance and Occupational Pensions Authority (EIOPA) published a [speech](#) by EIOPA Chair on digital responsibility and the role of actuaries. EIOPA will provide guidance to the market in the operationalisation of digital ethics principles for insurance.

ESRB publishes recommendation on liquidity risk in investment funds

On 14 May 2020, the European Systemic Risk Board (ESRB) published a [recommendation](#) on liquidity risk in investment funds. The ESRB clarifies that in light of COVID-19, it is particularly important for EU authorities co-ordinate when safeguarding financial stability, namely, the ESRB urges ESMA to:

- co-ordinate with the national competent authorities (NCAs) to undertake a focused piece of supervisory work with investment funds that have significant exposures to corporate debt
- report to the ESRB on its analysis and on the conclusions reached regarding the preparedness of the relevant investment funds.

EBF publishes guidance on Cross-Border Payments Regulation

On 13 May 2020, the European Banking Federation (EBF) published [Implementation Guidance](#) on Cross-Border Payments (CBP) Regulation. In the guidance the EBF Payment Systems Committee responds to a large number of questions from its members, in order to assist them in their implementation of the CBP Regulation.

SRB launches consultation on standardised valuation data set

On 19 May 2020, the Single Resolution Board (SRB) published a [statement](#) announcing the launch of a consultation on standardised valuation data set which supplements its framework for valuation relating to the data that banks will need to provide to the SRB for valuation. The consultation [webpage](#) contains an [instructions document](#) and [explanatory note](#).

ECON publishes report on CRR Amending Regulation

On 25 May 2020, the European Parliament's Economic and Monetary Affairs Committee (ECON) published a [report](#) on the proposed amendments to the Capital Requirements Regulation, in light of COVID-19.

FATF publishes report on ML and TF risks and policy responses

On 5 May 2020, the Financial Action Task Force (FATF) published a [report](#) “COVID-19-related Money Laundering (ML) and Terrorist Financing (TF) Risks and Policy Responses” identifying an increase in COVID-19 related crimes such as fraud, cybercrime, misdirection or exploitation of government funds and international financial assistance.

ICMA publishes response confirming proposals for reporting of central banks repos under MiFIR

On 21 May 2020, the International Capital Markets Association (ICMA) published a [response](#) it had received from the European Securities and Markets Commission (ESMA) on reporting of central bank repos under the MiFIR. ICMA developed a proposal to repo trades and submitted [sample reports](#) and an [explanatory note](#) for review and validation and ESMA confirmed the main aspects of the ICMA proposals.

ICMA publishes briefing note on CSDR

On 21 May 2020, the International Capital Market Association (ICMA) published a [briefing note](#) on the deficiencies identified in the CSDR provisions for cash compensation in the case of bond markets. The note highlights some possible market solutions and the associated challenges.

FIA and ISDA comment on reforms to MiFID/MiFIR

On 17 May 2020, the Futures Industry Association (FIA) and the International Swaps and Derivatives Association (ISDA) published a joint [statement](#) containing their comments on key areas of the MiFIR and MiFID regimes. The comments made relate to the following areas:

- commodities
- consolidated tape
- derivatives trading obligation
- post-trade transparency regime for non-equities
- non-discrimination access
- foreign exchange (FX)

ISDA publishes responses to its consultation on the implementation of pre-cessation fallbacks

On 14 May 2020, the International Swaps and Derivatives Association (ISDA) published a [report](#) summarising the responses to its [Consultation Paper](#) (CP) on how to implement pre-cessation fallbacks in derivatives. The report indicates that the majority of respondents support including pre-cessation and permanent cessation fallbacks without optionality or flexibility in the amended 2006 ISDA Definitions for LIBOR.

IOSCO publishes CP on principles of outsourcing

On 28 May 2020, the International Organisation of Securities Commissions (IOSCO) published a Consultation Paper (CP) outlining updates to its 2005 outsourcing principles for market intermediaries and to its 2009 principles for markets. IOSCO aims to expand the application of these principles to include

- trading venues
- market participants acting on a proprietary basis
- credit rating agencies and
- financial market infrastructures.

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

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