

Financial Services Alerter

AUGUST 2020



Introduction

August 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 August 2020

- UK developments
- EU developments
- International developments

FCA updates its webpage on liquidity mismatch in open-ended funds

On 26 August 2020, the Financial Conduct Authority (FCA) updated its [webpage](#) announcing that, it will review the liquidity mismatch in open-ended funds. The Financial Policy Committee (FPC) highlighted three principles in Q4 2019:

- measures of liquidity
- pricing and;
- redemption notice period.

The review will examine the creation of a framework around these principles.

FCA publishes CP on financial crime reporting obligations

On 24 August 2020, the Financial Conduct Authority (FCA) published a [Consultation Paper](#) (CP) on financial crime reporting obligations outlining the potential money laundering risks faced by a firm. The changes in the FCA Handbook are to the Supervision Manual (SUP) and General Provisions (GEN). The consultation period closes on 21 November 2020 and a Policy Statement is expected to be published in Q1 2021.

FCA updates webpage on TPR

On 20 August 2020, the Financial Conduct Authority (FCA) updated a [webpage](#) on the temporary permissions regime (TPR), creating a number of sub-webpages on TPR-related topics:

- [Firms and investment funds that can use the TPR](#)
- [Rules that will apply to firms and fund operators in the TPR](#)
- [The notification process for firms](#)
- [Considerations for firms leaving the TPR](#)
- [The notification process for funds](#)
- [TPR fees](#)
- [Financial services contracts regime \(FSCR\)](#)

FCA publishes webpage on High Court insurance test case

On 18 August 2020, the Financial Conduct Authority (FCA) published a [webpage](#) on the High Court business interruption insurance test case. The test case ran for eight days to 30 July 2020 and its result will be legally binding on the insurers that are parties to the case. The test case aims to resolve some key contractual uncertainties and 'causation' issues in order to provide clarity for policyholders and insurers.

FCA publishes new webpage on fitness, propriety and conduct rules

On 13 August 2020, the Financial Conduct Authority (FCA) published a [webpage](#) on conduct rules reporting for solo-regulated firms under the Senior Managers and Certification Regimes (SM&CR). The webpage explains when to submit and who to include in a REPO08 a report that a FCA solo-regulated firm must submit if disciplinary action has been taken against an individual for a breach of the conduct rules.

FCA publishes Dear CEO Letter

On 12 August 2020, the Financial Conduct Authority (FCA) published a [Dear CEO letter](#) relating to the increase in levels of client money held by firms providing non-discretionary investment services. In light of COVID-19, a number of firms have reported an increase in client money balances, as clients rebalanced their portfolios to mitigate the volatility caused by the pandemic. The FCA urges firms to communicate the increase in money balances to their clients in order to determine whether the money should be reinvested or returned to the clients.

FCA publishes Feedback Statement on customers in temporary financial difficulty

On 11 August 2020, the Financial Conduct Authority (FCA) published a [Feedback Statement](#) (FS) to help customers who are in financial difficulty because of COVID-19 and who hold insurance and premium finance products. Respondents asked for more clarification or amendments but supported the proposition that customers in financial difficulty continue to need support.

FCA publishes CP on liquidity mismatch in authorised open-ended property funds

On 3 August 2020, the Financial Conduct Authority (FCA) published a [Consultation Paper](#) (CP) on liquidity mismatch in authorised open-ended funds to reduce the potential for investor harm. The liquidity mismatch created by the redemption terms of a fund and the liquidity of the underlying property investments within a fund pose the highest risk to investors. Responses to the consultation period closes on 3 November 2020 and the FCA aims to publish a Policy Statement in early 2021.

FCA publishes CP on CRD V remuneration requirements

On 3 August 2020, the Financial Conduct Authority (FCA) published a [Consultation Paper](#) (CP) updating the Remuneration Code to reflect the Capital Requirements Directive V (CRD V). The Remuneration Code is set out in the Senior Management Arrangements, System and Controls sourcebook and applies to banks, building societies and investment firms. The consultation period closes on 30 September 2020 and the FCA intends to publish a Policy Statement before 28 December 2020.

PRA publishes statement on VAR back-testing exceptions

On 27 August 2020, the Prudential Regulatory Authority (PRA) published a [statement](#) announcing that it intends to terminate the temporary approach to value-at-risk (VAR) back-testing exceptions on 30 September 2020. Under the temporary measures, firms could offset increases due to new VAR back-testing exceptions through a commensurate reduction in risks-not-in-VAR (RNIV) capital requirements.

PRA publishes statement on mortgage payment deferrals

On 26 August 2020, the Prudential Regulatory Authority (PRA) published a [statement](#) on the application of the International Financial Reporting Standard 9 (IFRS 9) and regulatory capital requirements, as mortgage payment deferrals come to an end. The PRA specifies that it is the responsibility of firms to satisfy that they have prepared their interim and annual financial reports in accordance with the applicable reporting requirements and that they comply with the requirements of the Capital Requirements Regulation (CRR).

PRA publishes webpage on the CFRF

On 14 August 2020, the Prudential Regulatory Authority (PRA) published a [webpage](#) on the discussions that took place at the July 2020 meeting of the Climate Financial Risk Forum (CFRF). The CFRF was established jointly by the PRA and the Financial Conduct Authority (FCA) in 2019 in order to promote and share best practices across financial regulators and industry leaders on financial risks arising from climate change.

FSB publishes key attributes assessment methodology

On 25 August 2020, the Financial Stability Board (FSB) published a [key attributes assessment methodology](#) setting out essential criteria to guide the assessment of a jurisdiction's insurance resolution framework. The key attributes assessment constitutes a standard for resolution regimes applicable to all types of financial institutions.

FOS publishes news issue 153

On 26 August 2020, the Financial Ombudsman Service (FOS) published [Ombudsman News issue 153](#) focussing on complaints resulting from COVID-19. The key themes for COVID-19 related complaints are:

- business interruption insurance
- debt and financial difficulty
- travel and event cancellations and;
- lockdown causing business disruption.

CMA revokes directions given to HSBC

On 6 August 2020, the Competition and Markets Authority (CMA) published a [statement](#) revoking the directions that it gave to HSBC in April 2019 to ensure compliance with certain provisions of the Retail Banking Market Investigation Order 2017. The Order required the largest retail banks in the UK to develop and adopt an open Application Programme Interface (API) banking standard.

JMLSG publishes statement on AML, CTF, cryptoasset businesses and pooled client accounts

On 19 August 2020, the Joint Money Laundering Steering Group (JMLSG) published a [statement](#) announcing that it had received ministerial approval on the final anti-money laundering (AML) and counter-terrorist financing (CTF) guidance [Part I](#), [Part II](#) and [Part III](#) and, final AML and CTF guidance on cryptoasset businesses and pooled client accounts guidance, [Part I](#) and [Part II](#).

ESMA publishes final report on CSDR settlement discipline

On 28 August 2020, the European Securities and Markets Authority (ESMA) published a [final report](#) on draft regulatory technical standards (RTS) postponing the date of entry of the settlement discipline regime under the Central Securities Depositories Regulation (CSDR) until 1 February 2020. The RTS cover a number of measures, including:

- rules for trade allocation
- rules for confirmation processes
- cash penalties on failed transactions
- mandatory buy-ins and;
- monitoring and reporting of settlement fails.

ESMA publishes statement on stress test scenarios under MMF Regulation

On 27 August 2020, the European Securities and Markets Authority (ESMA) published a [statement](#) announcing that it will update its 2019 guidelines on stress test scenarios under the Money Market Funds (MMF) Regulation. ESMA intends to collaborate with the European Systemic Risk Board (ESRB) and the European Central Bank (ECB) to modify the risk parameters to reflect COVID-19 related market developments, by Q4 2020.

ESMA publishes letter to EC on AIFMD review

On 19 August 2020, the European Securities and Markets Authority (ESMA) published a [letter](#) sent to the European Commission (EC) setting out 19 areas where it considers improvements could be made to the Alternative Investment Fund Managers Directive (AIFMD). Annex I to the letter sets out key areas in the legislative framework where ESMA proposes amendments to be made and Annex II proposes changes to the AIFMD reporting regime and data use.

EC publishes statement on draft Regulation amending BMR

On 11 August 2020, the European Commission (EC) published a [statement](#) on a **draft** Regulation amending the Benchmark Regulation (BMR) on the exemption of third-country foreign exchange benchmarks and the designation of replacement benchmarks in cessation. The draft Regulation was adopted on 24 July 2020 by the EC and the deadline for comments is 6 October 2020.

ECB publishes report on ICAAP practices

On 11 August 2020, the European Central Bank (ECB) published a [report](#) on banks' Internal Capital Adequacy assessment Process (ICAAP) practices. ICAAP is a risk management instrument that enables banks to assess the risks that they are exposed to, in a structured manner.

EBA publishes response to EC's AML and CTF action plan

On 19 August 2020, the European Banking Authority (EBA) published a [response](#) to the European Commission's (EC) action plan on anti-money laundering (AML) and counter-terrorist financing (CTF). The EBA recommends that the EC:

- harmonises the EU's legal framework, to reduce divergent approaches to incorporating EU ALM / CTF law into national law
- increase cooperation between national supervisors with the EU-level AML / CTF supervisor, to create an effective EU-level oversight and;
- leverage the EU's existing AML / CTF infrastructure.

EBA publishes CP on risk-measurement model under CRR

On 12 August 2020, the European Banking Authority (EBA) published a [Consultation Paper](#) (CP) on criteria for the use of date inputs in the risk-measurement model established by the Article 325bc and 325bh(3) of the Capital Requirements Regulation (CRR). The consultation period closes on 12 November 2020.

EBA publishes final draft ITS and guidelines relating to CRR Amending Regulation

On 10 August 2020, the European Banking Authority (EBA) published three documents relating to amendments to the Capital Requirements Regulation, in light of COVID-19.

- [Final report on draft implementing technical standards \(ITS\) on supervisory reporting](#)
- [Guidelines on supervisory reporting and disclosure requirements](#)
- [Amended guidelines on uniform disclosure of IFRS 9 transitional arrangements under CRR](#)

The EBA has not consulted on these ITS and guidelines because of the urgency of the situation. publishes statement on draft Regulation amending BMR

FMLC publishes letter on EC's AML and CTF action plan

On 27 August 2020, the Financial Markets Law Committee (FMLC) published a [letter](#) addressed to the European Commission (EC) responding to the action plan on preventing money laundering and terrorist financing. FMLC is concerned about the definition of "virtual currencies" in the Fifth Money Laundering Directive (MLD5) as central bank digital currencies, stable coins and any currencies amounting to money at law are currently excluded from the definition.

BIS publishes speech on RegTech and FinTech

On 21 August 2020, the Bank for International Settlements (BIS) published a [speech](#) stating that RegTech and Fintech are high on its agenda and discussing the potential benefits and challenges they pose for regulatory authorities. BIS identified that the lack of transparency around innovative solutions make it difficult for supervisors to understand how undesired events occurred and what steps they need to take in order to prevent reoccurrences.

ISDA publishes letter to FSB

On 13 August 2020, the International Swaps and Derivatives Association (ISDA) published a [letter](#) to the Financial Stability Board's (FSB) Working Group on UTI and UPI Governance (GUUG) requesting more active, improved coordination of global UTI implementation timelines and alignment to the CPMI-IOSCO Harmonisation Group recommendations.

IAIS extends deadline for consultation on impact of COVID-19

On 12 August 2020, the International Association of Insurance Supervisors (IAIS) published a [statement](#) announcing an extension to the deadline of its consultation on the impact of COVID-19. The consultation deadline was originally 28 August 2020 - this has now been extended to 4 September 2020.

IOSCO publishes final report on liquidity provisions

On 11 August 2020, the International Organisation of Securities Commissions (IOSCO) published a [final report](#) on liquidity provisions in the secondary markets for equity securities outlining how liquidity provisions have evolved in equity securities markets, the past few years. The report highlights key elements of market making programmes and liquidity provision incentive arrangements.

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

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