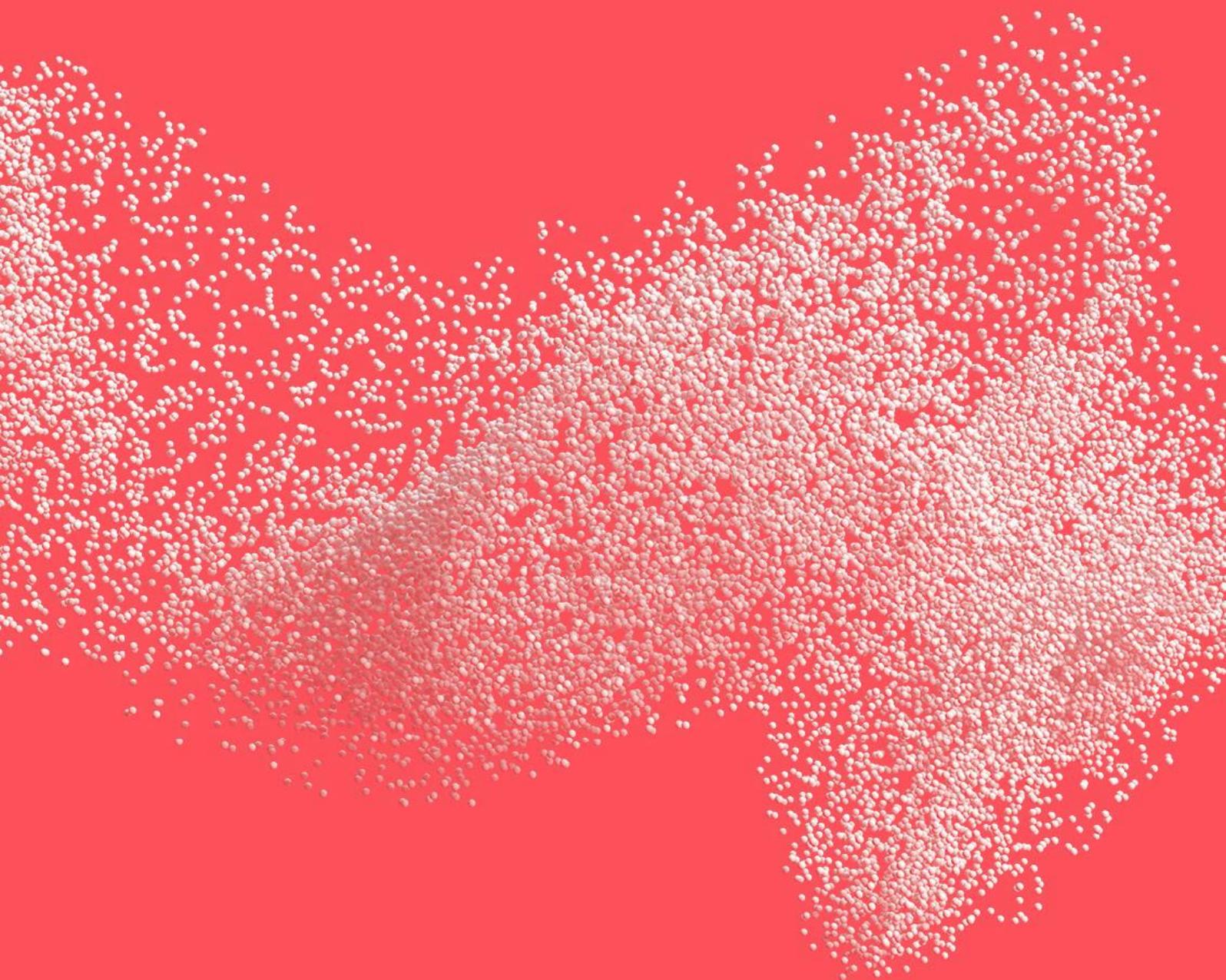


# Financial Services Alerter

FEBRUARY 2021



# Introduction

## February 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 February 2021.

- UK developments
- EU developments
- International developments

## FCA publishes Regulation round-up

On 18 February 2021, the Financial Conduct Authority (FCA) published its [Regulation Round up](#) for February 2021, which includes the following items::

- [registration](#) for RegData
- SIPP operator capital adequacy and;
- Digital Sandbox pilot.

## FCA publishes portfolio letter for retail banks

On 5 February 2021, the Financial Conduct Authority (FCA) published a [portfolio letter](#) addressed to retail banks, setting out its view of the key risks of harm that retail banks' activities are likely to pose over the next two years. The risks are summarised into four priority areas of focus:

- ensuring fair treatment of borrowers
- good governance and oversight of customer treatment and outcomes during business change over the next two years
- operational resilience over the next two years and beyond and;
- minimising fraud and other financial crime.

The FCA expects banks and their managers to be prepared to demonstrate how they are taking reasonable steps to address these risks.

## FCA publishes statement on international firms

On 3 February 2021, the Financial Conduct Authority (FCA) published an [approach document](#) setting out its approach to the authorisation and supervision of international firms which provide or seek to provide financial services requiring authorisation in the UK. The statement covers a number of sections, including:

- an overview of the FCA's approach
- the main considerations in the FCA approach and;
- mitigating identified risks

The FCA consulted on the approach document in September 2020 and published a [feedback statement](#) on responses to the consultation.

## BoE publishes 2021 stress test scenario

On 15 February 2021, the Bank of England (BoE) published the [solvency stress test 2021 scenario](#) for banks and building societies that are not part of concurrent stress testing. The stress test will assess the major UK banks and building societies against a UK and global scenario that reflects a severe path for the current macroeconomic outlook. Given the current economic climate, stress testing remains an important supervisory tool to inform the BoE's understanding of resilience of the banking sector.

## PRA publishes statement on EBA guidelines on credit risk

On 25 February 2021, the Prudential Regulatory Authority (PRA) published a [statement](#) clarifying its approach to the European Banking Authority's (EBA) guidelines and EU regulatory technical standards (RTS) relating to the standardised and internal ratings based (IRB) approaches to credit risk following the end of the Brexit transition period.

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## PRA publishes letter to iNED on issues and risks for boards

On 16 February 2021, the Prudential Regulatory Authority (PRA) published a [letter](#) it has sent to independent non-executive directors (iNEDs). The letter outlines a number of key issues:

- the effect of the economic downturn on business models
- operational resilience in the light of the new working environment
- challenges to governance and people management
- climate-related financial risk and;
- feedback on the regulatory landscape.

## PRA publishes statement on 2021 supervisory benchmarking exercise for capital internal models

On 9 February 2021, the Prudential Regulatory Authority (PRA) published a [statement](#) on the 2021 supervisory benchmarking exercise relating to banks' internal models. The supervisory benchmarking exercise applies to firms that are permitted to use internal approaches for the calculation of risk weighted exposure amounts or own funds requirements. The PRA encourages firms to use the draft EBA ITS in relation to market risk and credit risk data in preference to the outdated versions currently set out in the UK ITS.

The PRA intends to publish a Consultation Paper (CP) on its proposals for the 2022 benchmarking exercise in due course.

## PRA publishes statement on COVID-19

On 5 February 2021, the Prudential Regulatory Authority (PRA) published a [statement](#) on COVID-19 regulatory reporting amendments.

This contains guidance on submitting 2021 annual business submissions and other regulatory reporting. The PRA recognises that due to the pandemic it may prove challenging for auditors to complete the work necessary to finalise firms' annual reports and accounts and make timely submissions.

## HMT publishes CP on resolution regime for CCPs

On 24 February 2021, HM Treasury published a [Consultation Paper](#) (CP) to revise and expand the UK resolution regime for central counterparties (CCPs) to bring it in line with international standards. The proposals are not significantly different from the EU CCP Recovery and Resolution Regulation. The consultation period will close on the 28 May 2021 and HMT will legislate to extend the regime when parliamentary time allows.

## HMT publishes CP on wind-down of critical benchmarks

On 15 February 2021, HM Treasury published a [Consultation Paper](#) (CP) on supporting the wind-down of critical benchmarks. The aim of the CP is to assess the extent to which there is uncertainty over the continued application of critical benchmarks to contracts where the Financial Conduct Authority (FCA) has exercised its power to direct a change in how the benchmark is determined under the Benchmark Regulation (BMR).

The consultation period ends on 15 March 2021.

## HMT publishes statement on Sustainable Finance

On 3 February 2021, HM Treasury published a [statement](#) announcing that the UK has joined the International Platform on Sustainable Finance (IPSF). The IPSF is a forum for public authorities in charge of developing environmentally sustainable finance policies and initiatives. Its members include public authorities in China, Hong Kong, Japan, Singapore, Switzerland and the European Union.

## IA publishes Dear CEO and CFO letter

On 3 February 2021, the Investment Association (IA) published a [Dear CEO and CFO letter](#) addressed to companies issuing LIBOR-linked sterling bonds, encouraging them to actively transition from GBP LIBOR. The IA notes the potential impact of these bonds not being transitioned before the end 2021 deadline is severe. There is a risk of significant market disruption and harm to investors if bonds continue to reference a non-representative rate. The Financial Conduct Authority (FCA) also published a [statement](#) welcoming the IA initiative to help issuers of LIBOR securities.

## CMA publishes template of a borrowing statement on Payday Lending

On 11 February 2021, the Competition and Markets Authority (CMA) published a [template](#) of a summary borrowing statement to be used in order to comply with obligations in the [Payday Lending Market Investigation Order](#) (the Order). The Order prohibits lenders from supplying payday loans unless customers are provided with a summary of the cost of borrowing. The template sets out information that a payday lender must provide in the summary of borrowing statement and is designed to create a consistency across both the information and format of information that payday lending customers receive.

## FSB publishes letter on key areas of focus

On 24 February 2021, the Financial Stability Board (FSB) published a letter on its work programme that supports strong, sustainable and balanced growth in a post-COVID world. The FSB's key priorities include:

- addressing COVID-19 related vulnerabilities
- increasing the resilience of NBFIs
- improving efficiency and access in cross-border payments
- improving the understanding of climate-related risks and;
- addressing other financial stability topics of ongoing importance.

## ESMA publishes CP on the BMR

On 25 February 2021, the European Securities and Markets Authority (ESMA) published a [Consultation Paper](#) (CP) on draft guidelines under the Benchmark Regulation (BMR). The CP seeks stakeholder input on the clarification and specifications regarding the adjustment of benchmarks in exceptional circumstances in relation to three areas:

- transparency of methodology
- oversight function and;
- record keeping requirements.

The consultation period closes on 30 April 2021 and ESMA intends to publish the final guidelines in Q3 2021.

## ESMA publishes Q&As on crowdfunding

On 25 February 2021, the European Securities and Markets Authority (ESMA) published [Q&As](#) on the Regulation on European crowdfunding service providers for businesses (the Crowdfunding Regulation). The Q&As aim to promote a convergent application of the provisions in the Regulation and to provide responses to possible questions posed by stakeholders. ESMA is committed to developing its Q&As on crowdfunding by adding new questions and answers.

## ESMA publishes Final Report

On 24 February 2021, the European Securities and Markets Authority (ESMA) published a [Final Report](#) on guidelines to clarify common procedures and methodologies for the supervisory review and evaluation process (SREP) of central counterparties (CCPs) by their national competent authorities. The guidelines cover the review and evaluation of:

- capital and organisational requirements
- business continuity
- conduct of business
- prudential requirements and;
- interoperability arrangements.

The guidelines will apply from the date that they are published on ESMA's website and the NCA's will have two months to notify ESMA whether they comply or intend to comply with the guidelines.

## ESMA publishes Q&As on market structures and transparency

On 3 February 2021, the European Securities and Markets Authority (ESMA) published [Q&As](#) on market structures under Markets in Financial Instruments Directive (MiFID II) and the Markets in Financial Instruments Regulation (MiFIR). The Q&As provide clarification on the classification of DEA trades and algorithmic trading and multilateral and bilateral systems.

## ESMA publishes letter on ELTIF Regulation Review

On 3 February 2021, the European Securities and Markets Authority (ESMA) published a [letter](#) to the European Commission (EC) highlighting a number of areas it considers improvements could be made to the Regulation on European long-term investment funds (ELTIF) Regulation.

In Annex II to the letter, ESMA sets out its proposed changes to the regulation in order to address the following issues:

- eligible assets and investments
- the authorisation process
- portfolio composition and diversification and;
- specific requirements concerning retail investors.

## ESAs publish Final Report on disclosures under SFDR

On 2 February 2021, the European Supervisory Authorities (ESAs) published a [Final Report](#) containing revised draft Regulatory Technical Standards (RTS) on disclosures under the EU Regulation on sustainability-related disclosures in the financial services sector (SFDR). The proposed RTS aim to strengthen protection for end-investors by improving Environmental, Social and Governance (ESG) disclosures on the principal adverse impacts of investment decisions and on the sustainability features of a wide range of financial products. The Final Report takes into account feedback received on the [Consultation Paper](#) (CP) launched in April 2020. The European Commission (EC) is expected to endorse the RTS within three months of their publication.

## Council of the EU publishes statement on MiFID II

On 15 February 2021, the Council of the EU published a [statement](#) announcing that it has adopted the proposed [Directive](#) to amend the MiFID II Directive, to help the EU's economic recovery from the COVID-19 pandemic. The text will be signed on 16 February 2021 and is expected to be published in the Official Journal before the end of February. The amendments will enter into force the day following their publication and Member State are required to transpose them into national law within nine months of that date.

## EC publishes summary report on EU sustainable finance strategy

On 10 February 2021, the European Commission (EC) published a [summary report](#) of its [Consultation Paper](#) (CP) on a renewed EU sustainable finance strategy. The EC summarises feedback received but does not set out its response to the feedback. Key opportunities highlighted by stakeholders for mainstreaming sustainability into the financial sector included utilising the COVID-19 recovery phase for:

- redirection of capital
- intensifying international dialogue
- co-operation
- using innovations and new technologies and;
- including financial system digitalisation.

The EC intends to adopt the renewed sustainable finance strategy in Q1 2021.

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## EBA publishes CPs on IFD

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On 24 February 2021, the European Banking Authority (EBA) published a [Consultation Paper](#) (CP) on draft regulatory technical standards (RTS) and implementing technical standards (ITS) on information exchange between competent authorities of home and host member states and a [CP](#) on draft RTS on colleges of supervisors for investment firm groups. The deadline for responses to the consultations is 23 April 2021 and the EBA intends to publish a final report by the end of June 2021.

## EBA publishes opinion on PSD2

On 22 February 2021, the European Banking Authority (EBA) published an [opinion](#) on supervisory actions to ensure the removal of obstacles to account access under the revised Payment Services Directive (PSD2). EBA expects:

- national competent authorities (NCAs) to assess the progress made by their respective industries and
- if an NCA's assessment identifies account servicing payment service providers (ASPSPs) do not remove the obstacles by 30 April 2021, they should take more effective supervisory measures to ensure compliance.

The EBA will monitor NCAs' supervisory actions and it will take action to remedy any inconsistencies in the application of the PSD2 that it identifies.

## EBA publishes Final Report on G-SIIs' disclosure of indicators of global systemic importance

On 18 February 2021, the European Banking Authority (EBA) published a [Final Report](#) containing draft implementing technical standards (ITS) on the disclosure of indicators of global systemic importance by global systemically important institutions (G-SIIs).

The draft ITS specify the disclosure provisions contained in Article 441 of the Capital Requirements Regulation (CRR), as amended by the Capital Requirements Regulation II (CRR II). The EBA [consulted](#) on the proposed ITS in March 2020.

## EBA publishes CP on large exposure limits under CRR

On 17 February 2021, the European Banking Authority (EBA) published a [Consultation Paper](#) (CP) on draft guidelines specifying the criteria for assessing the exceptional cases when institutions exceed the large exposure limits in Article 395(1) of the Capital Requirements Regulation (CRR) and the time and measures required to return to compliance under Article 396(3) of that Regulation. The EBA advises competent authorities to consider the following three questions when assessing breaches:

- Was the breach a rare event?
- Could the institution foresee the event when it had applied a proper and effective risk management?
- Was it caused by reasons beyond the institution's control?

If the breach does not fulfil those criteria, the competent authority should not grant the institution more than three months to restore compliance with the large exposure limit.

## **EBA publishes CP on draft ITS on supervisory disclosure under IFD**

On 11 February 2021, the European Banking Authority (EBA) published a [Consultation Paper](#) (CP) on draft Implementing Technical Standards (ITS) with regard to the format, structure, contents list and annual publication date of the information to be disclosed by competent authorities in accordance with Art 57(4) of the Investment Firms Directive (IFD). The proposed regulatory requirements will ensure comparability of the published data and provide the market with transparent and comprehensive information.

The consultation period ends on 19 March 2021.

## **ECB publishes opinion on proposed Regulation on markets in cryptoassets**

On 22 February 2021, the European Central Bank (ECB) published an [Opinion](#) on the proposed Regulation on markets in crypto-assets setting out details of aspects of the proposal relating to the responsibilities of the Eurosystem, the European System of Central Banks (ESCB) and the ECB where it considers that adjustments are warranted.

The ESG suggests that the regulation should clarify that:

- it is not applicable to the issuance by central banks of central bank money based on distributed ledger technology and;
- the scope of its application, especially in relation to crypto-assets may be characterised as financial instruments under MiFID II.

The Opinion also includes a technical working document setting out the ECB's specific drafting proposals for amendments to the Regulation.

## IOSCO publishes statement on ESG

On 25 February 2021, the International Organization of Securities Commissions (IOSCO) published a [statement](#) reporting on progress by the Sustainable Finance Task Force (STF) in its work on securities issuers' sustainability disclosures, asset managers' disclosures, and the role of environmental, social and governance (ESG) data and rating providers. IOSCO notes that it has observed that investor demand for sustainability-related information is currently not being properly met.

## IRSG publishes response to EC's legislative proposal on operational resilience

On 18 February 2021, the International Regulatory Strategy Group (IRSG) published its [response](#) to the European Commission's (EC) proposal for a regulation on digital resilience for the financial sector. The IRSG comments that (among other things):

- some areas of the proposal relating to ICT risk management are overly prescriptive
- it should be clear when entities should make an incident report
- the mechanism for reporting should be practicable
- the requirements should not duplicate reporting obligations under other applicable legislation.

The IRSG would like to understand how the proposed new oversight framework will function, given the novelty of shared responsibilities between the European Supervisory Authorities and national competent authorities (NCAs)

## GLEIF publishes statement on issuance and infrastructure models

On 11 February 2021, the Global LEI Foundation (GLEIF) published a [statement](#) setting out the issuance and technical infrastructure models of its Verifiable Legal Entity Identifying (VLEI) system. VLEI will enable instant and automated identity verification between counterparties operating across all industry sectors, globally. GLEIF also updated its [webpage](#) on its digital strategy for the LEI and its [webpage](#) to introduce the VLEI.

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

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