

# Financial Services Alerter

June 2018





## Financial Services Alerter

Introduction

June 2018

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 June 2018.

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

### Follow us on Twitter

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

### PSR publishes discussion paper on data in the payments industry

On 12 June 2018, the Payment Systems Regulator (PSR) published [discussion paper](#) DP18/1, “Data in the payments industry”. The discussion paper aims to gather industry and stakeholder views on how the PSR can ensure that new uses of data work effectively, either by removing barriers to setting up new services or mitigating risks associated with them. The consultation period closes on 03 September 2018.

### Bank of England/PRA publishes policy statement on MREL reporting

On 13 June 2018, the Bank of England/PRA published [policy statement](#) PS11/18, “Resolution planning: MREL reporting”. The policy statement provides feedback to consultation paper CP 1/18 and sets out the Bank of England/PRA’s final expectations for reporting on the minimum requirement for own funds and eligible liabilities (MREL).

### FCA publishes list of co-operation agreements with third-country regulators for outsourcing portfolio management services under MiFID2

On 14 June 2018, the FCA published a [list](#), “Outsourcing of Portfolio Management: List of Cooperation Agreements”. The list forms part of the FCA’s implementation of Article 32(3) of Commission Delegated Regulation (EU) 2017/565 on organisational requirements and operating conditions for investment firms and can be used by firms to assess their compliance with Article 32(1) of the Delegated Regulation.

### Bank of England/PRA publishes policy and supervisory statements on algorithmic trading

On 15 June 2018, the Bank of England/PRA published [policy statement](#) PS12/18 and [supervisory statement](#) SS 5/18, both entitled, “Algorithmic trading”. The policy statement provides feedback to CP5/18 ‘Algorithmic trading’. The supervisory statement sets out the Bank of England/PRA’s expectations of a firm’s risk management and governance of algorithmic trading.

### TheCityUK publishes paper on continuity of cross-border financial contracts post-Brexit

On 20 June 2018, TheCityUK published a [paper](#), “Continuity of cross-border financial contracts post-Brexit”, drawing attention to the potential issues facing UK and EEA financial institutions when the UK leaves the Single Market, when firms will no longer be able to rely on passports and the right of

establishment to service existing cross-border financial contracts throughout the European Economic Area (EEA).

### **FCA Handbook Notice 56**

On 29 June 2018, the FCA published [Handbook Notice 56](#), setting out the changes made to the FCA Handbook under instruments made by the FCA board on 24 May 2018 and on 28 June 2018.



## Financial Services Alerter

EU developments

### **Implementing Regulation extending transitional periods related to own fund requirements for CCP exposures published in OJ**

On 04 June 2018, [Commission Implementing Regulation \(EU\) 2017/2241](#) on the extension of the transitional periods related to own funds requirements for exposures to central counterparties (CCPs), set out in CRR and EMIR was published in the OJ. The Implementing Regulation entered into force on 07 June 2018.

### **EBA publishes Opinion and draft Guidelines on implementation of Delegated Regulation setting out RTS on SCA and CSC under PSD2**

On 13 June 2018, the European Banking Authority (EBA) published a [consultation paper](#), “Draft Guidelines on the conditions to be met to benefit from an exemption from contingency measures under Article 33(6) of Regulation (EU) 2018/389 (RTS on SCA & CSC)”. The consultation period closes on 13 August 2018.

### **MLD5 published in OJ**

On 19 June 2018, [Directive \(EU\) 2018/843](#) amending [MLD4] on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending [Solvency II] and [CRD IV] was published in the OJ. The Directive entered into force on 09 July 2018.

### **EBA publishes consultation on draft RTS on conditions to allow institutions to calculate KIRB in accordance with the purchased receivables approach**

On 19 June 2018, the European Banking Authority (EBA) published a [consultation paper](#), “Draft Regulatory Technical Standards on the conditions to allow institutions to calculate KIRB in accordance with the purchased receivables approach under Article 255 of Regulation (EU) 2017/2401 amending [CRR].” The consultation period closes on 19 September 2018.

### **EBA publishes consultation on Guidelines on outsourcing**

On 22 June 2018, the European Banking Authority (EBA) published a [consultation paper](#), “EBA Draft Guidelines on Outsourcing arrangements”. The proposed guidelines define which arrangements with third parties are considered as outsourcing and provide criteria for the identification of critical or important functions. If such critical or important functions are outsourced, stricter requirements apply as compared to other outsourcing arrangements. The consultation period closes on 24 September 2018.

### **ESMA publishes Opinion on CCPs' liquidity risk assessment under EMIR**

On 22 June 2018, the European Securities and Markets Authority (ESMA) published an [Opinion](#), "CCP Liquidity Risk Assessment under Article 44(1) of [EMIR]". The opinion aims to clarify:

- the assessment of the Liquidity Risk when a clearing member also acts as a liquidity provider
- the assessment of the Liquidity Risk when a liquidity provider is not a clearing member

### **EBA publishes Opinion on preparations for Brexit**

On 25 June 2018, the European Banking Authority (EBA) published an [Opinion](#), "Opinion of the European Banking Authority on preparations for the withdrawal of the UK from the EU". The Opinion aims to ensure that competent authorities:

- ensure that financial institutions are considering the risks caused by the possible departure of the UK from the EU without a ratified withdrawal agreement, and that they are formulating plans to mitigate any risks in an appropriate timeframe
- draw attention to the customer protection obligations of financial institutions

### **European Union (Withdrawal) Act 2018 receives Royal Assent**

On 26 June 2018, the [European Union \(Withdrawal\) Act 2018](#) (EUWA) received Royal Assent. The EUWA will repeal the European Communities Act 1972 (ECA) on the day the UK leaves the EU, i.e. 29 March 2019. The EUWA ends the supremacy of EU law in UK law, converts EU law as it stands at the moment of exit into domestic law, and preserves laws made in the UK to implement EU obligations.



## Financial Services Alerter

International developments

### **FIA publishes report on status of clearing members' Brexit contingency plans**

On 05 June 2018, the Futures Industry Association (FIA) published a [report](#), “Insight into the Current Status of Clearing Members’ Brexit Contingency Plans”. The report provides insight into institutions’ progress with their contingency plans, the issues they face when structuring and executing such plans, and the policy proposals that would assist with these issues.

### **BCBS publishes report on progress in adoption of principles for effective risk data aggregation and reporting**

On 21 June 2018, the Basel Committee on Banking Supervision (BCBS) published a [report](#), “Progress in adopting the Principles for effective risk data aggregation and risk reporting”. The BCBS first published the Principles in January 2013 with the aim of strengthening banks’ risk data aggregation capabilities and internal risk reporting practices.

### **IUA publishes Brexit contract continuity clause**

On 22 June 2018, the International Underwriting Association (IUA) published a Brexit [contract continuity clause](#) to provide insurance companies with a possible contractual option in the event of the UK leaving the EU without a deal or suitable transitional arrangements or being put in place.

## elexica and other client items

|              |  |
|--------------|--|
| 06 June 2018 | <a href="#"><u>Time for a UK corporate offence of failing to prevent human rights abuses?</u></a>  |
| 11 June 2018 | <a href="#"><u>Safe-keeping of assets under AIFMD and UCITS Directive: European Commission consults on rule changes</u></a>                  |
| 12 June 2018 | <a href="#"><u>The Money case: a judicial overview of the administration of a property company</u></a>                                       |
| 12 June 2018 | <a href="#"><u>Crypto-currency "Dear CEO" letter</u></a>   |
| 13 June 2018 | <a href="#"><u>Remote control: Public registers of beneficial ownership for offshore companies</u></a>                                       |
| 14 June 2018 | <a href="#"><u>EU blocking statute on Iran-related nuclear sanctions released</u></a>  |
| 14 June 2018 | <a href="#"><u>UK announcement on Brexit - Civil Judicial Co-operation</u></a>   |
| 15 June 2018 | <a href="#"><u>Supreme Court upholds application of SDLT GAAR</u></a>  |
| 20 June 2018 | <a href="#"><u>UK/EU agree further wording for Withdrawal Agreement on jurisdiction and the recognition and enforcement of judgments</u></a> |
| 21 June 2018 | <a href="#"><u>FinTech and digital currencies: the European perspective and the regulatory status in Italy</u></a>                           |
| 25 June 2018 | <a href="#"><u>Commercial and practical approach required to determining source of interest</u></a>  |
| 28 June 2018 | <a href="#"><u>Danish withholding tax on dividends to foreign funds contrary to EU law</u></a>   |
| 28 June 2018 | <a href="#"><u>Supreme Court declares No Oral Modification clauses to be valid and binding</u></a>   |

**elexica.com is the award winning online legal resource of Simmons & Simmons**

© Simmons & Simmons LLP 2018. All rights reserved, and all moral rights are asserted and reserved.

This document is for general guidance only. It does not contain definitive advice. SIMMONS & SIMMONS and S&S are registered trade marks of Simmons & Simmons LLP.

Simmons & Simmons is an international legal practice carried on by Simmons & Simmons LLP and its affiliated practices. Accordingly, references to Simmons & Simmons mean Simmons & Simmons LLP and the other partnerships and other entities or practices authorised to use the name "Simmons & Simmons" or one or more of those practices as the context requires. The word "partner" refers to a member of Simmons & Simmons LLP or an employee or consultant with equivalent standing and qualifications or to an individual with equivalent status in one of Simmons & Simmons LLP's affiliated practices. For further information on the international entities and practices, refer to [simmons-simmons.com/legalresp](http://simmons-simmons.com/legalresp)

Simmons & Simmons LLP is a limited liability partnership registered in England & Wales with number OC352713 and with its registered office at CityPoint, One Ropemaker Street, London EC2Y 9SS. It is authorised and regulated by the Solicitors Regulation Authority.

A list of members and other partners together with their professional qualifications is available for inspection at the above address.