

Financial Services Alerter

APRIL 2020



Introduction

April 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 April 2020.

- UK developments
- EU developments
- International developments

FCA publishes new webpage on delayed activities in light of COVID-19

On 30 April, the Financial Conduct Authority (FCA) published a [webpage](#) on delayed activities and regulatory change, in response to COVID-19. The webpage contains information on:

- delays to consultation papers
- delays to publication and other activity
- delayed implementation of rules.

FCA publishes a statement on LIBOR transition plans

On 29 April 2020, the Financial Conduct Authority (FCA) published a [statement](#) on the impact of COVID-19 on firms' LIBOR transition plans, noting that firms cannot rely on LIBOR being published after the end of 2021. The FCA reports progress on SONIA in relation to syndicated lending and bilateral loans, while transition to SONIA in the bond market has been largely completed.

FCA publishes Dear CEO letter on fair treatment of corporate customers

On 28 April 2020, the Financial Conduct Authority (FCA) published a [Dear CEO letter](#) 'Ensuring fair treatment of corporate customers preparing to raise equity finance', noting its concern that, in light of COVID-19, banks have using their lending relationship to exert pressure on corporate clients to secure roles on equity mandates.

FCA expectations on PPI for financial advisers

On 22 April 2020, the Financial Conduct Authority (FCA) published a [webpage](#) on the impact of the crisis on financial adviser's professional indemnity insurance (PPI). After discussions with the International Underwriting Association, the FCA has clarified that PPI cover remains available in the market and insurers are not prevented by the crisis from undertaking the renewal process.

FCA extends deadlines for regulatory returns

On 22 April 2020, the Financial Conduct Authority (FCA) published a [webpage](#) on temporary measures to extend the submission deadlines for regulatory returns on or before 30 June 2020. The FCA has granted:

- a one-month extension for 17 returns due under SUP 16
- a two-month extension for the submission of annual report and accounts
- a two-month extension for financial reports.

For SMEs paying less than £10,000 in fees and levies, the FCA has waived the administrative fee for late returns until 30 June 2020.

FCA expectations on wet-ink signatures

On 20 April 2020, the Financial Conduct Authority (FCA) published a [webpage](#) setting out its expectations of firms faced with wet-ink signatures, in light of COVID-19. The webpage addresses the issues identified with two types of documents - agreements and forms.

FCA publishes statement on financial resilience expectations of solo-regulated firms.

On 17 April 2020, the Financial Conduct Authority (FCA) published a [statement](#) on its financial resilience expectations of FCA solo-regulated firms on:

- capital and liquidity buffers
- wind-down plans
- distributions
- expected credit loss estimates.

FCA published complaints data for second half of 2019

On 16 April 2020, the Financial Conduct Authority (FCA) published complaints data, showing an increase to 6.02 million complaints in the second half of 2019. The increase was driven by payment protection insurance related claims. The data can be found on three new FCA webpages:

- [complaints data](#)
- [aggregate complaints data](#)
- [firm specific complaints data](#)

FCA publishes Dear CEO Letter on Lending to SMEs

On 15 April 2020, the Financial Conduct Authority (FCA) published a Dear CEO [letter](#) to banks on lending to small and medium-sized enterprises (SMEs), in light of COVID-19. The FCA states that there should be at least one senior manager at the bank with clear responsibility for the activity of lending to SMEs.

FCA updates expectations for funds

On 15 April 2020, the Financial Conduct Authority (FCA) updated its [webpage](#) on its expectation for funds, with useful information for AIFs and funds-related frequently asked questions that the FCA has received in light of the COVID-19 pandemic. The following topics were added:

- 10% portfolio value reporting
- repo use for liquidity management
- client assets
- paper-based and manual processes

FCA publishes statement on recapitalisation issuances

On 8 April 2020, the Financial Conduct Authority (FCA) published a “[Statement of Policy: listed companies and recapitalisation issuances during COVID-19 crisis](#)”, on new measures to assist companies raise share capital while retaining an appropriate degree of investor protection.

FCA publishes business plan for 2020/21

On 7 April 2020, the Financial Conduct Authority (FCA) published its [Business Plan](#) for 2020/21 identifying five key priorities for the year ahead with the immediate focus being to address the challenges presented by COVID-19. Other key priorities identified for the forthcoming one to three year are to:

- transform how the FCA works and regulates
- enable effective consumer investment decisions
- ensure consumer credit markets work well
- make payments safe and accessible
- deliver fair value in a digital age

FCA publishes instrument that defers the commencement dates of new rules

On 7 April 2020, the Financial Conduct Authority (FCA) published a [notice](#) “COVID-19: Deferral of Commencement (Pension Transfers, Investment Pathways, Platform Switching, Access to Insurance) Instrument 2020 (FCA 2020/15)” postponing the commencement dates of the following instruments:

- On the Conduct of Business Sourcebook (Pension Transfers) (No 2) Instrument 2018 (FCA 2018/47), transfer specialist qualification rules are delayed until 1 October 2021.
- On the Conduct of Business Sourcebook (Investment Pathways) Instrument 2019 (FCA 2019/83) the implementation date is postponed to 1 February 2021.
- On the Conduct of Business Sourcebook (Platform Switching) Instrument 2019 (FCA 2019/103) the implementation date is postponed to 1 February 2021.
- On the Insurance: Conduct of Business Sourcebook (Access to Travel Insurance) Instrument 2020 (FCA 2020/3) the implementation date is postponed to 1 June 2020.

FCA publishes guidance to firms on dealing with customers

On 7 April 2020, the Financial Conduct Authority (FCA) published a new [webpage](#) with guidance to firms making personal recommendations to customers on implications of realising their investments or cancelling life assurances in light of the current market volatility. The webpage focuses on issues under the following headings:

- Customers contacting firms for advice
- As customers for background information
- Messages that are not personal recommendations
- Developing your own approach to helping your customers
- Avoiding providing regulated advice
- Signposting customers to advisers
- Complaints

FCA sets out its expectations for funds

On 6 April 2020, the Financial Conduct Authority (FCA) published a [webpage](#), setting out its expectations for funds in the light of the COVID-19 pandemic and addressing the following issues:

The following issues are addressed:

- [Delaying](#) annual and half – yearly fund reports
- Virtual general meetings
- Ensuring compliance with limits on value at risk (VaR)
- Electronic signatures

FCA extends deadlines for the publication of reports and accounts

On 6 April 2020, the Financial Conduct Authority (FCA) published a [webpage](#), setting out its policy for extending deadlines to publishing fund reports and accounts. The FCA provides a 2-month extension for annual reports and an extra month for half-yearly reports for AFMs of UK UCITS and non-UCITS retail Schemes (NURS). However, there is an obligation of AFMs to publish without comprising the quality of the report.

FCA published its position on queries relating to client's assets and coronavirus

On 6 April 2020, the Financial Conduct Authority (FCA) published a [webpage](#) dealing with some of the queries it has received relating to complying with the rules and guidance in the Client Assets Sourcebook (CASS). Information on the following issues can be found on the webpage:

- Handling cheques
- CASS audit reports
- Physical asset reconciliations
- Depositing client money

FCA statement for solo-regulated firms on impact on SM&CR

On 3 April 2020, the Financial Conduct Authority (FCA) published a [statement](#) on the Senior Managers and Certification Regime in light of the challenges posed by the COVID-19 pandemic. Firms are not required to have a Single Manager responsible for their COVID-19 approach, the FCA recognizes that firms should allocate these responsibilities in a way that enables them to best manage the risk.

FCA publishes Dear CEO letter

On 1 April 2020, the Financial Conduct Authority (FCA) published a Dear CEO [letter](#) to firms providing services to retail investors setting out the FCA's approach to client identity verification, supervisory flexibility over best execution, supervisory flexibility over 10 % depreciation notifications, financial resilience and the pause on implementation of investment pathways.

FOS publishes website on complaints concerning fraud and scams

On 16 April 2020, the Financial Ombudsman Service (FOS) published a new [webpage](#) on complaints concerning fraud and scams. The FOS provides advice to consumers on how to protect their personal information and reveals examples of recent scam attempts that have been observed.

HM Treasury publishes guidance for trade repositories

On 30 April 2020, the HM Treasury published [guidance](#) on its plans for trade repositories (TRs) registration arrangements under the UK EMIR. HM Treasury intends to introduce legislation to enable TRs to register with the Financial Conduct Authority or apply in advance to operate in the UK immediately following the end of the Brexit transition period.

FSB publishes report on financial stability

On 15 April 2020, the Financial Stability Board (FSB) published a [report](#) on financial stability implications of measures taken by governments and national authorities, in light of COVID-19. The FSB set out three principles to reduce the risk of market fragmentation and support international cooperation and coordination on the response to COVID-19, namely:

- flexibility build into existing financial standards
- opportunities to reduce temporary operational burdens on firms and authorities
- consistency with international standards.

FSB CP on stablecoin arrangements

On 14 April 2020, the Financial Stability Board (FSB) published a [Consultation Paper](#) (CP) on regulatory, supervisory and oversight challenges raised by global stablecoin arrangements. The CP analyses the characteristics of stablecoins, how they differ from other cryptoassets and potential risks. The FSB identified how stablecoins could be regulated under the existing regulatory framework and stresses the challenges arising in the cross-border context.

BoE publishes statement on regulators' temporary transitional power

On 30 April 2020, the Bank of England (BoE) published a [statement](#) on the proposed use of the UK financial services regulators' temporary power at the end of the Brexit transitional period. The temporary powers will be implemented after the transition period, by the BoE, the Prudential Regulatory Authority and the Financial Conduct Authority to grant general transitional relief on a broad basis.

PRA publishes statement on CBILS and CLBILS loan schemes

On 27 April 2020, the Prudential Regulatory Authority (PRA) published a [statement](#) on the regulatory treatment of the UK Coronavirus Business Interruption Loan Scheme (CBILS) and the UK Coronavirus Large Business Interruption Loan Scheme (CLBILS). The PRA encourages firms to review relevant articles of the Capital Requirements Regulation and PRA rules and guidance and where necessary to seek independent advice, to ensure that all applicable requirements and expectations are met.

PRA clarifies its expectation of insurers

On 23 April 2020, the Prudential Regulatory Authority (PRA) published a [statement](#) for insurance firms on its expectations of internal assessments of loan creditworthiness and treatment of unrated assets. The PRA clarifies how the Dear CEO [letter](#) to Banks should be interpreted by insurers.

PRA publishes Q&A on liquidity and capital buffers

On 20 April 2020, the Prudential Regulatory Authority (PRA) published a [document](#) containing liquidity and capital buffer related questions and answers, namely:

- What is a “liquidity buffer” and a “capital buffer”?
- What does it mean that liquidity buffers can be used as necessary to support the economy?
- What are the implications for a bank of using its liquidity and capital buffers?
- What is the expected period banks will have to restore their liquidity and capital buffers?

PRA modifies consent of leverage ratio calculation rules

On 9 April 2020, the Prudential Regulatory Authority (PRA) published a [Direction](#) that modifies rules concerning the calculation of total exposure measure of the leverage ratio. The following rules were modified:

- Leverage Ratio 1.2
- Public Disclosure 3.7
- Public Disclosure 3.8
- Reporting Leverage Ratio 3.1
- Reporting Leverage Ratio 4.2

PRA publishes statement on SRB rates

On 9 April 2020, the Prudential Regulatory Authority (PRA) published a [statement](#) on systemic risk buffer (SRB) rates that apply to ring-fenced bodies and some building societies. Irrespective to of the challenges posed by COVID-19, the PRA decided to maintain its approach by keeping firms’ SRB rates unchanged, at the rate set in December 2019.

ESMA publishes MoU with MAS on Benchmarks

On 17 April 2020, the European Securities Markets Authority (ESMA) published a [memorandum of understanding](#) to establish cooperation between ESMA and the Monetary Authority of Singapore on benchmark related issues, such as:

- the sharing of information
- mechanisms for prompt notifications.

ESMA publishes statement on BMR external audit requirements

On 9 April 2020, the European Securities Markets Authority (ESMA) published a [statement](#) on external audit requirements under the Benchmarks Regulation. ESMA recognises that, in light of COVID-19, it may not be possible to meet the deadline for the audit requirements in Annex 1, paras 4 and 12 of the Benchmark Regulation and urges coordinated action by National Competent Authorities.

ESMA publishes report on cost and performance of retail investments products

On 6 April 2020, the European Securities Markets Authority (ESMA) published its second annual statistical [report](#) on the impact of cost and performance of retail investment products in the EU. The report stresses the high impact of costs on the final returns that retail investors receive on their UCITS investments compared to the costs attributed to institutional investors.

ESMA publishes guidance on performance fees in UCITS and certain AIFS

On 3 April 2020, the European Securities Markets Authority (ESMA) published its "[Final Report](#): Guidance on performance fees in UCITS and certain types of AIFs" to ensure supervisory convergence regarding the performance of fee structures and the circumstances in which performance fees are paid.

ESMA publishes public consultation on clearing solutions for PSAs

On 2 April 2020, the European Securities Markets Authority (ESMA) published a [Public Consultation](#) on a range of issues regarding potential central clearing solutions for Pension Scheme Arrangement (PSAs) under the European Market Infrastructure Regulation (EMIR). The consultation is based on ESMA's [First Report](#) to the European Commission.

ESAs consult on draft RTS on ESG disclosures

On 23 April 2020, the Joint Committee of the European Supervisory Authorities published a [Consultation Paper](#) (CP) on draft regulatory technical standards on the content, methodologies and presentation of disclosures under the sustainability related disclosures mandated by the Disclosures Regulation.

ECB to assess cross-border effect of macroprudential policies

On 28 April, 2020 the European Central Bank (ECB) published a [report](#) on a framework to assess cross-border spill-over effects of macroprudential policies. The ECB recognises that policymakers must take into account other countries' macroprudential settings in examining the effectiveness and consistency of national authorities' macroprudential policies.

ECB publishes webpage on macro-prudential measures taken in response to COVID-19

On 15 April 2020, the European Central Bank (ECB) published a [webpage](#) on the macro-prudential measures taken by EU national authorities, in light of COVID-19. The ECB webpage summarizes measures relating to:

- the countercyclical capital buffer (CCyb)
- the systemic risk buffer (SyRB)
- other systemically important institution (O-SII) buffer
- adjustments to risk weights.

Council of EU publishes two final compromise texts

On 20 April 2020, the Council of EU published final compromise texts of Regulation and Directive on European crowdfunding service providers.

- A [final compromise text](#) (5971/20 ADD 1) for the Regulation on European crowdfunding service providers (ECSPs) for business (2018/0048(COD)).
- A [final compromise text](#) (5971/20 ADD 2) for the Directive making amendments to the MiFID II Directive (2014/65/EU) relating to crowdfunding (2018/0047(COD)).

Council of EU publishes statement on bank lending and insurance

On 17 April 2020, the Council of EU published a [statement](#) on bank lending to households and businesses and to support the insurance sector function properly, in light of COVID-19. Banks are advised to refrain from making distributions and to use freed capital to extend credit to their customers to help preserve economic activity.

Council of EU adopts Taxonomy Regulation

On 16 April 2020, the Council of the EU published the [first reading](#) of the proposed Taxonomy Regulation. The Regulation now needs to be adopted by the Parliament at second reading before it is published in the Official Journal.

EC adopts legislative proposal to CRR

On 28 April 2020, the European Commission (EC) adopted a [legislative proposal](#) for the Capital Requirements Regulation (CRR) in light of COVID-19. The EC proposes amendments intended to improve banks' capacity to lend and to absorb losses, namely:

- extending the transitional arrangements for expected credit loss accounting under IFRS9
- examining the treatment of publicly guaranteed loans under the prudential backstop for non-performing loans
- offsetting the impact of excluding certain exposures from the calculation of the leverage ratio
- deferring the application date for the leverage ratio buffer to 1 January 2023.

EC publishes communication to facilitate bank lending

On 28 April 2020, the European Commission (EC) published a [report](#) on "Interpretative Communication on the application of the accounting and prudential frameworks to facilitate EU bank lending", in light of COVID-19, to support businesses and households. The EC sets out its views on:

- flexibility available to banks in respect to the implementation of the International Financial reporting Standards
- flexibility in respect to the rules concerning the prudential classification of non-performing loans
- role and responsibility of the banking sector in limiting the economic impact and promoting a rapid recovery, in respect to the COVID-19 crisis.

EC publishes CP on renewed sustainable finance strategy

On 8 April 2020, the European Commission (EC) published a [Consultation Paper \(CP\)](#) "Renewed Sustainable Finance Strategy" in light of COVID-19. The CP focuses predominantly on the following three areas:

- Strengthening the foundations for sustainable investment by creating an enabling framework, with appropriate tools and structures.
- Increased opportunities to have a positive impact on sustainability for citizens, financial institutions and corporates.
- Climate and environmental risks will need to be fully managed and integrated into financial institutions and the financial system as a whole

EBA publishes report on revision prudential valuation under CRR

On 22 April 2020, the European Banking Authority (EBA) published a [Final Report](#) "On prudent valuation under Article 105(14) of the Capital Requirements Regulation" on draft amendments to draft regulatory technical standards on prudent evaluation. The FCA lays out requirements for the prudent valuation of fair-valued financial instruments under Article 105(14).

EBA publishes updated versions of supervisory data guides

On 20 April 2020, the European Banking Authority (EBA) published a [statement](#) announcing that the “[Methodological guide: risk indicators and detailed risk analysis tool](#)” and the “[Guidance note: compiling the IMF financial soundness indicators for ‘deposit-takers’ using the ITS on supervisory reporting](#)” have been updated.

EBA publishes guidelines on equivalence of confidentiality regimes

On 15 April 2020, the European Banking Authority (EBA) published a [Final Report](#) on guidelines on the equivalence of confidentiality regimes of non-EU authorities. National competent authorities must notify the EBA whether they intend to comply with the published guidelines two months of the publication of the translations.

EBA press release on impact of Basel III reforms

On 8 April 2020, the European Banking Authority (EBA) published two reports, [Basel III Monitoring](#) and [Liquidity Measures](#). The reports measure the impact of implementing the final Basel III reforms and monitor the current implementation of liquidity measures in the EU. The published reports are constituted from results based on data as of 30 June 2019.

ECB press release on temporary collateral easing measures

On 7 April 2020, the European Central Bank (ECB) published a [statement](#) announcing a package of temporary collateral easing measures in light of the economic downturn in the euro area.

SRB publishes letter on operational relief measures

On 1 April 2020, the Single Resolution Board (SRB) published a [letter](#) on operational relief measures related to COVID-19 focusing on SRB’s commitment to the 2020 resolution plans and issuance of the 2020 decisions on minimum requirements for own funds and eligible liabilities.

SRB publishes document on its expectations for banks

On 1 April 2020, the Single Resolution Board (SRB) published a [document](#), “Expectations for Banks” on the role of the SRB and banks relating to resolvability, the definition of resolvability and the application of proportionality.

EIOPA publishes an interview on COVID-19

On 27 April 2020, the European Insurance and Occupational Pension Authority (EIOPA) published an [interview](#) by EIOPA Chair (Gabriel Bernardino) on its response to COVID-19. EIOPA will:

- place measures to help insurers to focus on ensuring business continuity and to serve their customers
- limit consultation and requests for information from the industry
- focus only on essential elements needed to assess and monitor the impact in the market
- where necessary extend deadlines.

EIOPA published statement on insurers and intermediaries

On 1 April 2020, the European Insurance and Occupational Pension Authority (EIOPA) published a [statement](#) addressed to insurers and intermediaries urging them to taking action in order to mitigate the impact of COVID-19 on consumers.

ISDA publishes letter to ESMA on EMIR Refit

On 27 April 2020, the International Swaps and Derivatives Association (ISDA) published a [joint letter](#) where trade associations request from the European Securities and Markets Authority to consider a flexible and pragmatic approach to mandatory delegated reporting effective date under the EMIR Refit Regulation, in light of the difficulties posed by COVID-19.

ISDA publishes fallback rate adjustment rulebook

On 23 April 2020, the International Swaps and Derivatives Association (ISDA) published the “[IBOR Fallback Rate Adjustment Rule Book](#)” on key adjustments that will assist the transition away from LIBOR and other inter-bank offer rates to alternative risk-free rates.

ISDA publishes results on pre-cessation fallbacks

On 16 April 2020, the International Swaps and Derivatives Association (ISDA) published a statement on the preliminary [results](#) of its second consultation on pre-cessation fallbacks. The results indicate a preference for including both pre-cessation and permanent cessation fallbacks as standard language in the amended 2006 ISDA Definitions for LIBOR.

IOSCO report on sustainable finance

On 14 April 2020, the International Organisation of Securities Commission (IOSCO) published a [report](#) outlining the current regulatory and industry initiatives in relation to sustainable finance. IOSCO identifies the following areas for improvement:

- Diverse sustainability frameworks and standards
- Lack of common definitions of sustainable activities
- Greenwashing and other investor protection challenges.

IOSCO delays some of its work in 2020 in light of COVID 19

On 8 April 2020, the International Organisation of Securities Commission (IOSCO) published a [statement](#) “IOSCO reprioritizes its work program to address impact of COVID-19.” IOSCO agreed to redirect resources to focus on the various challenges that securities markets regulators are addressing as a result of COVID-19.

BCBS publishes report on climate-related financial risk initiatives

On 30 April 2020, the Basel Committee on Banking Supervision (BCBS) published a [report](#) on its members’ current regulatory and supervisory initiatives on climate-related financial risks. The report concludes the that:

- BCBS members recognize and consider it appropriate to address climate-related financial risks within their regulatory and supervisory frameworks
- BCBS members have conducted research on climate related risks, identifying operational challenges
- Some BCBS members are issuing principles-based guidance regarding climate-related financial risks.

BCBS publishes report on implementation of principles for risk data aggregation and risk reporting

On 29 April 2020, the Basel Committee on Banking Supervision (BCBS) published a [report](#) on bank's "Progress in adopting the Principles for effective risk data aggregation and risk reporting", explaining that no bank is fully compliant with the principles in terms of building up the necessary data architecture.

BCBS sets out additional measures to alleviate the impact of COVID-19

On 3 April 2020, the Basel Committee on Banking Supervision published a [press release](#) on additional measures aimed at assisting the global banking system alleviate the impact of COVID-19. The measures relate to the following:

- Expected credit loss accounting
- Treatment of extraordinary support measures related to COVID-19
- Margin Requirements for non-centrally cleared derivatives
- Global systemically important banks annual assessment.

FATF publishes statement on extension to mutual evaluations

On 28 April 2020, the Financial Action Task Force (FATF) published a [statement](#) announcing the extension of the assessment and follow-up deadlines, in light of COVID-19. It is impossible for FATF assessors to conduct on-site visits and in-person meetings and has impacted countries' ability to actively participate in FATF mutual evaluations and related follow-up processes.

FATF publishes measures to combat illicit financing

On 1 April 2020, the Financial Action Task Force (FATF) published a [statement](#) on COVID-19 related financial crime risks. The FATF urges regulators and law enforcement agencies to share information and prioritise money laundering risks associated with terrorist financing and fraud.

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