

Financial Services Alerter

OCTOBER 2020



Introduction

October 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 October 2020.

- UK developments
- EU developments
- International developments

FCA publishes guidance on customers in financial difficulty

On 30 October 2020, the Financial Conduct Authority (FCA) published [guidance](#) outlining its expectations of how firms should continue to help customers who hold insurance and premium finance products and who are facing financial difficulty due to the pandemic. The guidance comes into force on 1 November 2020 and supplements guidance published in August 2020.

FCA publishes webpage on SM&CR

On 27 October 2020, the Financial Conduct Authority (FCA) published a [webpage](#) on its directory of certified and assessed persons confirming the dates for directory person data submissions by firms under the Senior Managers and Certification Regime (SM&CR). The FCA will begin to publish data on the financial services register from 23 November 2020 and to display data from solo-regulated firms starting from 14 December 2020.

FCA publishes a dear CEO letter to claims management companies

On 26 October 2020, the Financial Conduct Authority (FCA) published a Dear CEO [letter](#) to claims management companies (CMCs) identifying a number of issues relating to applications for reauthorisation. The FCA expects CMCs to have a good understanding of the requirements take a pro-active approach to regulatory compliance and deal with the FCA in an open and co-operative way.

FCA publishes guidance for insurance and premium finance firms

On 16 October 2020, the Financial Conduct Authority (FCA) published [draft guidance](#) outlining its expectation of how firms should seek to help customers who hold insurance and premium products and, due to the pandemic, are facing financial difficulty. The FCA recommends that firms communicate and encourage their customers to make contact if they are experiencing financial difficulties. The deadline for comments on the draft guidance was 20 October 2020.

FCA publishes PS on investment products referencing crypto assets

On 6 October 2020, the Financial Conduct Authority (FCA) published a [Policy Statement](#) (PS), "Prohibiting the sale to retail clients of investment products that reference cryptoassets". FCA expects firms to comply with the prohibition contained in its final rules and will only review its position if it sees robust evidence indicating that the crypto asset market has changed and that the identified drivers of harm no longer pose a threat to retail customers.

FCA publishes statement on digital sandbox pilot

On 5 October 2020, the Financial Conduct Authority (FCA) published a [statement](#) announcing that it had launched its digital sandbox pilot to support innovative firms tackling challenges caused by the COVID-19 pandemic. The pilot programme will contribute to the establishment of an ongoing digital sandbox focussing on:

- preventing fraud and scams
- supporting the financial resilience of vulnerable consumers and;
- improving access to finance for small and medium-sized enterprises.

PRA publishes CP on resolution policy

On 28 October 2020, the Prudential Regulatory Authority (PRA) published a [Consultation Paper](#) (CP) revisiting its operational continuity in resolution policy (OCIR). The purpose of the proposals is to improve firms' resolvability and support the Bank of England's (BoE) approach to assessing resolvability. The PRA proposes changes:

- in the operational arrangements supporting the viability of the firm
- changes to the policy regarding the way firms' financial arrangements facilitate operational continuity
- changes to provide clarity and amendments to facilitate continuity throughout post-resolution restructuring and;
- reduce the burden on firms of implementing OCIR policy without compromising a firm's safety and soundness.

The consultation period closes on 31 January 2020 and the PRA intends to publish its final policy in H1 2021.

PRA publishes CP on overseas IRB models for credit risk

On 12 October 2020, the Prudential Regulatory Authority (PRA) published a [Consultation Paper](#) (CP) outlining its approach to overseas internal ratings based (IRB) models for credit risk. The PRA proposes to allow UK headquartered groups to use non-UK IRB models developed to meet non-UK IRB requirements for group consolidated capital requirements. The consultation period closes on 12 January 2021 and the PRA's proposed implementation date is 1 July 2021.

PRA publishes letter to credit unions

On 7 October 2020, the Prudential Regulatory Authority (PRA) published a [letter](#) to directors of credit unions on COVID-19. The letter focuses on the following issues:

- PRA rule modification
- PRA's current supervisory focus and priorities and;
- regulatory reporting.

PRA publishes CP on market risk changes

On 6 October 2020, the Prudential Regulatory (PRA) published a [Consultation Paper](#) (CP) on market risk, the calculation of risks not in value at risk (RNIV), and stressed value at risk (sVaR). The changes proposed by the PRA affect all firms to which the Capital Requirements Directive (CRD) and the Capital Requirements Regulation (CRR) apply. The consultation period closes 6 November 2020 and the proposed changes will take effect from the publication of the PRA's final policy.

BoE publishes CP on assessing resolvability

On 28 October 2020, the Bank of England (BoE) published a [Consultation Paper](#) (CP) highlighting its approach on assessing resolvability. The CP proposes amendments to a number of BoE's policy statements in respect of:

- Approach to assessing resolvability
- Restructuring planning
- Management, governance and communication
- Valuation capabilities

The consultation period closes on 31 January 2020.

BOE published a webpage on ISO 20022 migration

On 13 October 2020, the Bank of England (BoE) updated its [webpage](#) on the revised approach to ISO 20022 migration. The webpage confirms that the following will be revised:

- Phase 2 (TS2)
- Phase 2.1 (TS2.1)
- Phase 3 (TS3)

The BoE will provide further guidance on these changes, together with technical information, during the week commencing 26 October 2020.

CMA publishes letter on 2002 SME undertakings

On 5 October 2020, the Competition and Markets Authority (CMA) published a [letter](#) relating to AIB Group's non-compliance under the Competitions Commission's 2022 report on the supply of banking services to SMEs - behavioural undertakings. CMA will take no further formal enforcement action given AIB's prompt action to fix the breach and the lack of harm caused to consumers.

FSB publishes report on RegTech and SupTech

On 9 October 2020, the Financial Stability Board (FSB) published a [report](#) on the use of regulatory technology (RegTech) and supervisory technology (SupTech) by regulatory authorities, recognising that such tools could offer important opportunities to benefit financial stability. The FSB concludes that regulatory authorities most commonly use SupTech tools in the form of artificial intelligence for regulatory reporting and data management.

FSB publishes Final Report on CIRR

On 19 October 2020, the Financial Stability Board (FSB) published a [Final Report](#) on a toolkit of effective practices for cyber incident response and recovery (CIRR). The FSB promotes the toolkit to national authorities as they examine and modify their approaches to regulation or supervision. The toolkit comprises of 49 effective practices and is structured across:

- governance
- planning and preparation
- analysis
- mitigation
- restoration and recovery
- co-ordination and communication and;
- improvement.

FSB publishes roadmap on LIBOR

On 16 October 2020, the Financial Stability Board (FSB) published a [roadmap](#) containing actions to be taken by financial and non-financial institutions with exposure to the London Interbank Offered Rate (LIBOR) benchmarks in order to ensure a smooth transition away from LIBOR by the end of 2021. A number of deadlines were highlighted:

- end of 2020 - firms should be able to offer non-LIBOR linked loans to their customers
- mid-2021 - firms should have established formalised plans to amend legacy contracts and;
- end of 2021 - firms should be prepared for LIBOR to cease.

FSB publishes report presenting roadmap on cross-border payments

On 13 October 2020, the Financial Stability Board (FSB) published a [report](#) presenting a roadmap to enhance cross-border payments. The roadmap addresses key challenges faced by cross-border payments, the frictions in existing processes and recommendations in five areas:

- enhance cross boarder payment in public and private sector
- co-ordinate regulatory, supervisory and oversight frameworks
- improve payment infrastructures
- enhance data and market practices and;
- explore new payment infrastructures and arrangements.

FSB publishes report on BigTech

On 12 October 2020, the Financial Stability Board (FSB) published a [report](#) on BigTech firms, noting that they have expanded with greater speed into emerging markets and developing economies than into advanced economies. The FSB will deliver the report to G20 finance ministers ahead of their meeting on 14 October 2020.

FOS publishes ombudsman news issue 154

On 28 October 2020, the Financial Ombudsman Service (FOS) published [issue 154](#) which includes the FOS's comments on:

- the impact of the pandemic on complains from small and medium enterprises
- changes to the FOS's independent assessor and board of directors
- half-yearly complains data
- a blog on how the FOS has helped small businesses with life-changing financial disputes.

FMLC publishes a letter responding to HMT consultation

On 26 October 2020, the Financial Markets Law Committee (FMLC) published a [letter](#) responding to HM Treasury's [Consultation Paper](#) (CP) on cryptoasset promotions. The FMLC highlighted that:

- the words "transferable" and fungible" in the definition of "qualifying cryptoasset" do not provide the certainty needed to determine which cryptoassets fall within the proposed financial promotion regime and;
- authorities should consider the uncertainty that might be caused by a proliferation of sometimes conflicting or overlapping definitions.

ESMA publishes Final Report on MAR

On 29 October 2020, the European Securities and Markets Authority (ESMA) published a [Final Report](#) containing amendments to the Market Abuse Regulation (MAR) to promote the use of SME growth markets. In the Final Report, ESMA proposes both draft regulatory technical standards (RTS) and draft implementing technical standards (ITS). ESMA notes that, although it submitted the proposed regulation to the Commission for endorsement, it is unlikely that the proposed instruments will be adopted by 1 January 2021.

ESMA publishes statement on credit ratings

On 27 October 2020, the European Securities and Markets Authority (ESMA) published a [statement](#) on the endorsement of credit ratings from the UK, clarifying that EU credit ratings agencies (CRAs) will be able to endorse credit ratings elaborated in the UK after the end of the transition period on 31 December 2020. Until the EU adopts an equivalence decision in respect of the UK legal and supervisory framework for CRAs, the credit ratings of UK-based CRAs must be endorsed to continue to be useable for regulatory purposes in the EU.

ESMA publishes statement on third country trading venues under MiFID II

On 27 October 2020, the European Securities and Markets Authority (ESMA) published a [statement](#) announcing that it has updated the list of third-country venues, in the context of opinions on post-trade transparency and position limits under the MiFID II and Markets in Financial Instruments, to add UK venues. ESMA published updates to its [guidance](#) on the Annex to ESMA's [opinion](#) determining third country-trading venues for the purpose of transparency under MiFIR.

ESMA publishes CP on draft RTS under EMIR 2.2

On 19 October 2020, the European Securities and Markets Authority (ESMA) published a [Consultation Paper](#) (CP) on draft regulatory technical standards (RTS) relating to central counterparties (CCPs) under EMIR 2.2. Under the draft RTS, ESMA proposes an approach that divides the conditions into criteria for an extension of authorisation and criteria for significant changes to the models and parameters. The consultation period closes on 15 November 2020. ESMA intends to publish a Final Report and submit the draft RTS to the European Commission for endorsement in Q1 2021.

ESMA publishes Q&A on Securitisation Regulation

On 5 October 2020, the European Securities and Markets Authority (ESMA) published an updated version of its [Q&A](#) on the Securitisation Regulation. The questions relate to:

- COVID-19 related debt moratoria and;
- Primary income in case of buy-to-let.

The Q&A were last updated in May 2020.

ESMA publishes final report on securitisation repositories

On 5 October 2020, the European Securities and Markets Authority (ESMA) published a [Final Report](#) on the portability of information between securitisation repositories under the Securitisation Regulation. ESMA expects securitisation repositories to carry out the transfer of securitisation information in accordance with a mutually agreed migration plan. The Final Report contains feedback received on the [consultation and policy decisions](#) taken by ESMA.

EIOPA publishes statement on the insurance sector

On 13 October 2020, the European Insurance and Occupational Pensions Authority (EIOPA) published a [statement](#) reminding the insurance sector to complete preparations for the end of the UK transition period on 31 December 2020. In the statement EIOPA:

- warns the insurance sector that the UK and Gibraltar insurance undertakings becoming third-country undertakings.
- Urges insurers to have in place measures to prevent insurance activity without authorisation
- Reminds insurance undertakings and intermediaries of their duty to inform customers about the possible impact of the withdrawal of the UK from the EU on insurance contracts.

EIOPA publishes report on supervision of IDD product oversight

On 8 October 2020, the European Insurance and Occupational Pensions Authority (EIOPA) published a [report](#) outlining its supervision approach on product oversight and governance (POG) requirements under the Insurance Distribution Directive (IDD). The report emphasises that the objective of POG is to ensure that manufacturers and distributors take a customer-centric approach to their product approval, distribution, monitoring and review processes.

EBA publishes monitoring report on TLAC-MREL instruments

On 29 October 2020, the European Banking Authority (EBA) published a [monitoring report](#) on total loss absorbing capacity (TLAC) and minimum requirement for own funds and eligible liabilities (MREL) instruments. The purpose of the report is to inform stakeholders about the implementation review performed by the EBA on TLAC and MREL instruments and to present recommendations on specific features commonly seen in the instruments. In total the report contains 15 recommendations in the following areas:

- subordination
- loss absorption
- maturity and;
- tax gross-up.

EIOPA publishes CP on climate change risk scenarios in ORSA

On 5 October 2020, the European Insurance and Occupational Pensions Authority (EIOPA) published a [Consultation Paper](#) (CP) on the draft Opinion on the supervision of the use of climate change risk scenarios in the Own Risk and Solvency Assessment (ORSA). Comments can be made on the CP until 5 January 2021 and the final opinion will be published in spring 2021 together with a feedback statement.

EP publishes statement on the adoption of its resolution on digital finance

On 8 October 2020, the European Parliament (EP) published a [statement](#) announcing that it had adopted a resolution on digital finance. The resolution contains recommendations to the European Commission (EC) addressing the supervisory and regulatory challenges associated with crypto assets. Regulatory gaps in EU legislation were identified by Members of the European Parliament, especially in relation to the existing provisions covering money laundering.

EC opens consultation on AIFMD review

On 23 October 2020, the European Commission (EC) published an [open consultation](#) on its review of the Alternative Investment Fund Managers Directive (AIFMD). The public consultation is the next stage of the Commission's formal review of AIFMD and follows the Commission's [report](#) to the European Parliament and Council. The Consultation also follows the recent intervention by ESMA with its [letter](#) to the Commission. The questionnaire focusses on the following topics:

- AIFM passport
- Investor protection
- International issues
- Financial stability
- Investment in private companies
- Sustainability
- UCITS

The consultation period will end on 29 January 2021.

EC opens consultation on ELTIF Regulation

On 19 October 2020, the European Commission (EC) published an [open consultation](#) on its review of the Regulation on European long-term investment funds (ELTIFs). The consultation focuses on the:

- scope of ELTIF authorisation
- investment universe, eligible assets and qualifying portfolio undertakings
- borrowing of cash and leverage and;
- rules on portfolio composition and diversification.

The consultation period closes on 19 January 2021.

EC publishes text of Implementing Regulation on ITS under MAR

On 5 October 2020, the European Commission (EC) published the [text](#) of an implementing Regulation containing implementing technical standards (ITS) on forms and procedures for co-operation under the Market Abuse Regulation (MAR). The EC also published [Annexes](#) to the implementing regulation. The Implementing Regulation is based on the draft ITS submitted by the European Securities and Markets Authority (ESMA) to the EC in February 2020..

ESRB recommendation on identifying legal entities

On 19 October 2020, the European Systemic Risk Board (ESRB) published [Recommendations](#) A and B on identifying legal entities. The ESRB has asked the European Commission (EC) to deliver a report on the implementation of Recommendation A by 30 June 2023 and has asked the addressees of Recommendation B to deliver a report on its implementation by 21 December 2021.

ECB publishes CP on Eurosystem oversight framework for electronic payments

On 27 October 2020, the European Central Bank (ECB) published a [Consultation Paper](#) (CP) on the draft Eurosystem oversight framework for electronic payment instruments, schemes and arrangements. The CP comes as a result of a comprehensive review considering regulatory and technological developments in recent years, as well as the experience of the Eurosystem in the oversight of payment schemes and instruments.

The consultation period closes on 31 December 2020.

ECB publishes statement announcing the new launch date for ECMS

On 23 October 2020, the European Central Bank (ECB) published a [statement](#) announcing the launch date for the Eurosystem Collateral Management System (ECMS). The ECMS will be delayed and launched in November 2023, rather than November 2022, to address a number of concerns raised by market participants. It is intended for the ECMS to be a unified system for managing assets and will replace the existing 19 individual systems of the euro area national central banks.

IAIS publishes a CP on supervision of climate-related risks

On 13 October 2020, the International Association of Insurance Supervisors (IAIS) published a [Consultation Paper](#) (CP) on the “Supervision of Climate-related Risks in the Insurance Sector” containing guidance on how the IAIS supervisory material can be used to manage the challenges and opportunities arising from climate-related risks. The consultation period closes on 12 January 2020 and the IAIS intends to hold a public background session to discuss the paper on 26 October 2020.

BIS publishes report on principles and features of central bank digital currencies

On 9 October 2020, the Bank for International Settlements (BIS) published a [report](#) on the foundational principles and core features of central bank digital currencies (CBDCs). The report sets out guidelines for central banks committed to issuing CBDC, such as:

- CBDCs should not compromise monetary or financial stability
- CBDCs need to co-exist with and complement existing forms of money and;
- CBDCs should promote innovation and efficiency.

ISDA publishes whitepaper on derivatives and SFT market

On 5 October 2020, the International Securities and Derivatives Association (ISDA) published a [whitepaper](#) exploring opportunities for collaboration between derivatives and securities financing transactions (SFT) markets. The whitepaper identifies efficiencies that could lead to reduced costs resulting from greater document standardisation and enhanced post-trade processing and automation.

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

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