

Financial Services Alerter

MARCH 2020



Introduction

March 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 September 2019.

- UK developments
- EU developments
- International developments

FCA publishes a statement for senior managers

On 27 March 2020, the Financial Conduct Authority (FCA) published a [statement](#) on senior manager responsibilities for work related travel, setting out how firms should prioritise who should need to travel to the office, and the responsibilities of senior managers in doing so, in the light of the COVID-19 pandemic.

FCA publishes a press release on solo-regulated firms

On 26 March 2020, the Financial Conduct Authority (FCA) published a [press release](#) on its expectations of FCA solo-regulated firms in the light of the COVID-19 pandemic. The FCA expects firms to use capital and liquidity buffers to support the continuation of their activities, to plan ahead and to ensure that their financial resources are soundly managed.

FCA publishes statement on delaying annual company accounts

On 25 March 2020, the Financial Conduct Authority (FCA) published a [statement](#) in response to the COVID-19 crisis, granting temporary relief for listed companies facing the challenges of corporate reporting during the crisis. The measure will allow listed companies which need extra time to complete their audited financial statements an additional two months in which publish them.

FCA publishes speech on “open-ended funds investing in less liquid assets”

On 19 March 2020, the Financial Conduct Authority (FCA) published a [speech](#) by Edwin Schooling Latter on the need to suspend open-ended funds from dealing in response to a high volume of redemption requests, in order to protect investors.

FCA sets out expectations for general insurance firms during the COVID-19 pandemic

On 19 March 2020, the Financial Conduct Authority (FCA) published a [press release](#) in which it set out its expectations for general insurance firms and provided information for consumers about what they should see from their insurance provider during the COVID-19 pandemic.

OPBAS publishes report on progress and themes from 2019

On 19 March 2020, the Financial Conduct Authority's (FCA) Officer for Professional Body Anti-Money Laundering Supervision published a [report](#) on progress made in tackling money laundering over the past year. The report noted that accountancy and legal professions have made strong improvements in their supervision of anti-money laundering work, although some professional body supervisors are still lagging behind their peers and must continue to raise their standards further.

Temporary prohibition of short selling

On 17 March 2020, the Financial Conduct Authority (FCA) published a [statement](#) in which it – announced the temporary prohibition of short selling in specified instruments, made - under Articles 23 (1) and 26 (4) of the Short Selling Regulation.

FCA issues research on mortgage switching

On 10 March 2020, the Financial Conduct Authority (FCA) released a Mortgage switching [research report](#), an [Occasional Paper \(OP54\)](#) on the characteristics of consumers who do not switch and an [Occasional Paper \(OP55\)](#) on brand loyalty in the mortgage market to encourage consumer seek out better deals.

FCA begins review on data in wholesale markets

On 9 March 2020, the Financial Conduct Authority (FCA) published a [Call for Input](#) to better understand how data and advanced analytics (in wholesale markets) are being accessed and used, the value offered to market participants and whether they are competitively sold and priced.

The FCA publishes speech by Therese Chambers on Unstable coins

On 6 March 2020, the Financial Conduct Authority (FCA) published a [speech](#) by Therese Chambers on unstable coins: crypto assets, financial regulation and preventing financial crime in the emerging market for digital assets. The speech addressed the issues of financial transfers without having a financial intermediary, money launder via crypto-assets, regulation without hampering innovation and outlined the FCA's Anti-Money Laundering regime for crypto-assets.

FCA publishes DP20/1: Transforming culture in financial services – driving purposeful cultures

On 5 March 2020, the Financial Conduct authority published a [Discussion Paper](#) (DP 20/1) “Transforming culture in financial services: Driving purposeful cultures”. DP 20/1, comprised of a set of essays which present a range of views from industry leaders, professional bodies and culture experts to help firms embed purposeful cultures.

HMT publishes statement on use of regulator’s temporary transitional power

On 25 March 2020, the HM Treasury published a [statement](#) by John Glen (Economic Secretary to the Treasury) on the powers of the regulators to smooth adjustments to the UK regulatory regime for financial services at the end of the Brexit transition period.

HMT, BoE and FCA publish letter to banks on impact on bank lending

On 25 March 2020, the HM Treasury, Bank of England (BoE) and Financial Conduct Authority (FCA) published a [letter](#) on the necessity for the government, the regulators and the industry continue working together to mitigate the longer lasting effects of COVID-19 on jobs, growth and the UK economy.

HMT publishes draft version of the Over the Counter Derivatives, Central Counterparties and Trade Repositories

On 24 March 2020, the HM Treasury published a [draft legislation](#) “The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020”, accompanied by an [explanatory memorandum](#), to address certain deficiencies in retained EU Law in EMIR and related UK legislation.

HMT publishes CP on taxation impacts arising from the withdrawal of LIBOR

On 19 March 2020, the HM Treasury published a [Consultation Paper](#), on “Taxation impacts arising from the withdrawal of LIBOR.” HMRC has identified several statutory references to LIBOR that need to be amended following LIBOR withdrawal and HM Revenue & Customs aims to also fully understand the significant tax impacts that could arise from the reform of LIBOR and other benchmark rates.

HMT publishes CP on overseas funds regime

On 11 March 2020, the HM Treasury published a [Consultation Paper](#) “Overseas funds regime”, to simplify the process for allowing investment funds set up overseas to be marketed in the UK. The CP sets out the government’s proposal for a new process allowing investment fund domiciled overseas to be sold to UK investors. Two new ‘overseas fund regimes’ are proposed based on the principle of equivalence for retail investment funds and for money market funds.

HMT publishes PS on prudential standards in the Financial Services Bill

On 11 March 2020, the HM Treasury published a [Policy Statement](#) “Prudential standards in the Financial Services Bill”, in which it outlines the Government’s intention to implement the internationally agreed Basel III banking standards in the UK.

HMT publishes CP on tax treatment of asset holding companies in alternative fund structures

On 11 March 2020, the HM Treasury published a [Consultation Paper](#) “Tax treatment of asset holding companies in alternative fund”, in which it explores whether changes to tax treatment of companies used by funds to hold assets could make the UK a more attractive location for these companies.

BoE published PC8/20 on Management Expenses

On 27 March 2020, the Bank of England (BoE) published a [Policy Statement](#) “Financial Services Compensation Scheme – Management Expenses Levy Limit 2020/21” providing feedback to responses to Consultation Paper 1/20 ‘Financial Services Compensation Scheme – Management Expenses Levy Limit 2020/21 and containing the final rules for the Financial Services Compensation Scheme Management Expenses Levy Limit for 2020/21 (Appendix).

BoE published summary of FPC meeting on October 2019.

On 24 March 2020, the Bank of England (BoE) published the [Financial Policy Summary and Record](#) of the meetings of its Financial Policy Committee (FPC) on 9 and 19 March 2020. The two main topics of attention were, the actions of the FPC to respond to the financial stability risks associated with the economic disruption resulting from COVID 19 and Brexit.

BoE publishes DP on Central Bank Digital Currency

On 12 March 2020, the Bank of England (BoE) published a [Discussion Paper](#) “Central Bank Digital Currency: opportunities, challenges and design”, on whether to introduce a Central Bank Digital Currency (CBDC) that could be used by households and businesses to make payments.

BoE publishes statement by the PRA accompanying measures announced by the FPC

On 11 March 2020, the Bank of England (BoE) published a [statement](#) by the Prudential Regulatory Authority (PRA) on the Financial Policy Committee’s (FPC) decision to set the UK’s countercyclical capital buffer (CCyB) rate at 0% with immediate effect.

BoE updates SP7/13

On 10 March 2020, the Bank of England (BoE) published an amended version of [Supervisory Statement 7/13 \(SP\)](#) which will come into effect on 1 April 2020. The SP explains how the Prudential Regulation Authority (PRA) expects firms to which the Capital Requirements Directive (CRD) IV applies to comply with the relevant provisions on the quality of capital in CRD IV.

FATF publishes work on stable coins and risk-based supervision

On 24 March 2020, the Financial Action Task Force (FATF) published the [March 2020 edition](#) of its private sector business bulletin. The FATF closely monitors the implementation and impact of its new anti-money laundering (AML) and counter-terrorist financing (CTF) standards on virtual assets, including the progress made towards fully implementing the "travel rule".

PRA publishes VAR back-testing exceptions

On 30 March 2020, the Prudential Regulatory Authority (PRA) published a [statement](#) on its approach to value-at-risk (VAR) back-testing exceptions to mitigate the possibility of excessively pro-cyclical market risk capital requirements. The PRA temporarily enables firms to offset increases due to the new exceptions through a commensurate reduction in risks-not-in-VAR capital requirements.

PRA publishes statement on exposure value for internal models method CCR

On 30 March 2020, the Prudential Regulatory Authority (PRA) published a [statement](#) on calculating exposure under the internal model method counter party credit risk (CCR). The PRA clarifies that the Capital Requirements Regulation (575/2013) does not preclude firms using the IMM to measure the exposure value including collateral which has not yet settled at the time of calculation.

PRA publishes Dear CEO letter

On 26 March 2020, the Prudential Regulatory Authority (PRA) published a [Dear CEO letter](#), setting out guidance on estimating expected credit loss (ECL) and the regulatory definition of default in light of the COVID-19 pandemic.

PRA publishes PS5/20

10 March 2020, the Prudential Regulatory Authority (PRA) published a [Policy Statement](#) (PS5/20) "Regulatory Capital Instrument: update to Pre-Issuance Notification (PIN) requirements", in which it highlights the following areas:

- amendments to the Definition of Capital Part of the PRA Rulebook (Appendix 1);
- an updated Supervisory Statement (SS) 7/13 'Definition of capital (CRR firms)' (Appendix 2);
- an updated PIN form (Appendix 3);
- an updated Common Equity Tier 1 (CET1) compliance template (Appendix 4); and
- a summary table showing the PRA's final clarification of 'sufficiently in advance' notification and 'substantially the same' terms (as defined in updated SS7/13) (Annex)

LSB publishes document on SLP for business customers

On 26 March 2020, the Lending Standards Board published an updated version of its Information for Practitioners [document](#) relating to Standards of Lending Practices for business customers on product sales. The document provides non-exhaustive examples of the approach registered firms may wish to take into consideration when seeking to adhere to the Standards on product sale.

ESMA confirms application date of equity transparency calculations

On 30 March 2020, the European Securities and Markets Authority (ESMA) published a [press release](#) that confirms that the date for the application of transparency calculations for equity instruments is 1 April 2020.

ESMA publishes a call for evidence

On 30 March 2020, the European Securities and Markets Authority (ESMA) published a [call for evidence](#) on the availability and use of credit rating information and data. The aim of the call for evidence is to gather information on the specific uses of credit ratings as well as how the users of credit ratings are currently accessing this information.

ESMA publishes final draft RTS for CCP colleges under EMIR 2.2

On 30 March 2020, the European Securities and Markets Authority (ESMA) published a [final report](#) containing draft regulatory technical standards (RTS) for central counterparty (CCP) colleges under EMIR 2.2.

The proposed amendments concern the practical arrangements for the functioning of colleges relating to:

- Voting procedures.
- The procedures for setting the agenda of college meetings.
- Review and evaluation of the arrangements, strategies, processes and mechanisms implemented by the CCP and the risks to which the CCP is exposed.
- The minimum timeframes for the assessment of the relevant documentation by the college members.
- The modalities of communication between college members.

ESMA publishes CP on PTRR services

On 27 March 2020, the European Securities and Markets Authority (ESMA) published a [Consultation Paper](#) “Report on post trade risk reduction (PTRR) services with regards to the clearing obligations (EMIR Article 85(3a))”. ESMA is looking into the different types of PTRR services being offered, their purpose and whether there is a need for the new trades that these may generate to be exempted from the clearing obligation, and if such an exemption could lead to the risk of some counterparties circumventing the clearing obligation

ESMA publishes guidance on financial reporting

On 27 March 2020, the European Securities and Markets Authority (ESMA) published a [Public Statement](#) on the implications of the COVID-19 pandemic on the deadlines for publishing financial reports which apply to listed issuers under the transparency directive.

ESMA publishes public statement on approach to SFTR Implementation

On 26 March 2020, the European Securities and Markets Authority (ESMA) published a [Public Statement](#) “Actions to mitigate the impact of COVID-19 on the EU financial markets – postponement of the reporting obligations related to securities financing transactions under the Securities Financing Transactions Regulation (SFTR) and under Markets in Financial Instruments Regulation”, to ensure coordinated supervisory actions on the application of the SFTR.

ESMA publishes CP on technical standards on RTs

On 26 March 2020, the European Securities and Markets Authority (ESMA) published a [Consultation Paper](#) “Technical standards on reporting, data quality, data access and registration of Trade Repositories under EMIR REFIT” on developing implementing technical standards on reporting of derivatives to the Trade Repositories (TRs), implementing and regulatory technical standards on registration of TRs, regulatory technical standards on the procedures to be applied by the TRs to reconcile and validate the data as well as regulatory technical standards on the publication and provision of data by the TRs to the relevant authorities.

ESMA statement on calculating expected credit losses in accordance with IFRS 9

On 25 March 2020, European Securities and Markets Authority (ESMA) published a [statement](#) on the implications of COVID-19 on calculating expected credit losses in accordance with International Financial Reporting Standard 9 (Financial Instruments).

ESMA publishes OPs on Short Selling ban

On 18 March 2020, the European Securities and Markets Authority (ESMA) published an [Opinion](#) “On a proposed emergency measure by the Autorité des marchés financiers (AMF) under Section 1 of Chapter V of Regulation (EU) No 236/2012”, agreeing to an emergency short selling prohibition, for a period of one month, by the AMF of France on all transactions which might constitute or increase net short positions on shares admitted to trading on French trading venues.

On 17 March 2020, the European Securities and Markets Authority (ESMA) published an [Opinion](#) “On a proposed emergency measure by the Commissione Nazionale per le Società e la Borsa (CONSOB) under Section 1 of Chapter V of Regulation (EU) No 236/2012”, agreeing to an emergency short selling prohibition, for a period of three months, by the CONSOB on all transactions which might constitute or increase net short positions on all shares traded on the Italian MTA regulated market

ESMA publishes decision on net short positions holders to report positions of 0.1% and above

On 16 March 2020, the European Securities and Markets Authority (ESMA) published a [Decision](#) to require natural or legal persons who have net short positions to temporarily lower the notification thresholds of net short positions in relation to the issued shares capital of companies whose shares are admitted to trading on a regulated market above a certain threshold to notify the competent authorities in accordance with point (a) of Article 28(1) of the Short Selling Regulation.

ESMA publishes CP on MIFIR transparency regime for non-equity instruments

On 10 March 2020, the European Securities and Markets Authority (ESMA) published a [Consultation Paper](#) “MiFID II/ MiFIR review report on the transparency regime for non-equity instruments and the trading obligation for derivatives”. The CP contains ESMA’s proposals for amendments to the transparency regime in order to simplify the current complex trade reporting regime and create a uniform set of rules in the European Union to improve the overall trade transparency available to market participants for non-equity instruments.

ESMA publishes CP on draft technical standards for benchmarks

On 9 March 2020, the European Securities and Markets Authority (ESMA) published a [Consultation Paper](#) on draft Regulatory Technical Standards under the Benchmarks Regulation covering governance, methodology, infringements reporting, critical benchmarks.

ESMA publishes 2020 Supervisory Work Programme

On 9 March 2020, the European Securities and Markets Authority (ESMA) published its [Supervisory Work Programme](#) “Annual Report 2019 and Work Programme 2020” detailing the areas of focus for its supervision of Credit Rating Agencies, Trade Repositories and the monitoring of third-country [Central](#) Clearing Counterparties and Central Securities Depositories.

ESMA publishes report on Energy Derivatives

On 2 March 2020, the European Securities and Markets Authority (ESMA) published a [report](#) “MIFID II: C6 energy derivative contracts and the EMIR requirements”, in which it assesses the adequacy of mandating C6 energy derivative contracts, which currently benefit from a special exemption regime, subject to the clearing obligation and margin requirements of EMIR.

EBA publishes final draft on key areas for implementing FRTB

On 27 March 2020, the European Banking Authority (EBA) published three reports:

- [Final draft RTS on liquidity horizons for IMA](#) on how institutions are to map the risk factors to the relevant category and sub-category.
- [Final draft RTS on back-testing and profit and loss attribution \(PLA\) requirements](#) on the elements to be included for the purpose of the back tests in the hypothetical, actual and risk- theoretical profit and loss.
- [Final draft RTS on criteria for assessing the modellability of risk factors under the IMA](#) on the criteria for identifying the risk factors that are modellable and that institutions are, therefore, allowed to include in their expected shortfall calculations.

EBA publishes statement on postponed activities

On 25 March 2020, the European Banking Authority (EBA) published a [statement](#) on the activities it is postponing in light of COVID-19. EBA explains that, as a follow up to the decision to support banks' focus on key operations and to limit any non-essential requests in the short term it has reviewed all ongoing activities requiring inputs from banks in the next months.

EBA publishes statement on consumer and payment issues in light of COVID19

On 25 March 2020, the European Banking Authority (EBA) published a [statement](#) on consumer and payment issues in the light of COVID-19. Governments and financial institutions are taking immediate measures to mitigate any adverse systemic impact. These measures include general debt moratoria, payment holidays stemming from public measures or industry-wide initiatives taken by credit institutions.

EBA publishes statement on application of prudential framework regarding default, forbearance and IFRS 9

On 25 March 2020, the European Banking Authority (EBA) published a [statement](#) on the application of the prudential framework regarding default, forbearance and International Financial Reporting Standard 9 (Financial Instruments) in the light of the measures taken to mitigate the impact of COVID-19 on the EU banking sector.

EBA publishes statement on COVID-19 on the EU banking sector

On 12 March 2020, the European Banking Authority (EBA) published a [statement](#) on actions to mitigate the impact of COVID-19 on the EU banking sector such as the postponement of the Stress test to 2021 to allow banks to prioritise to operational continuity.

EBA concludes that no specific regulatory LGD should be set for credit insurance claims

On 9 March 2020, the European Banking Authority (EBA) published an [Opinion](#) on the treatment of credit insurance in the prudential framework. The Opinion is the EBA's response to feedback received to the public consultation on its draft [Guidelines](#) on credit risk mitigation for institutions applying the Internal Ratings-Based Approach with own estimates of Loss Given Default.

ECB recommendation to delay dividend payments

On 27 March 2020, the European Central Bank (ECB) published a [recommendation](#) to credit institutions on dividend distributions. The ECB recommends that credit institutions should not pay dividends for the financial years 2019 and 2020 until at least 1 October 2020 and should refrain from share buy-backs aimed at remunerating shareholders.

ICMA and ISLA publishes Impact of COVID-19 on SFTR implementation programmes

On 16 March 2020, the International Capital Markets Association and the International Securities Lending Association published a [letter](#) to the European Securities and Markets Authority (ESMA) asking ESMA (a) to initiate, as a matter of urgency, the procedure for obtaining a formal delay of the Securities Financing Transaction Regulation (SFTR) reporting go-live date to an appropriate date that falls well outside the expected critical phase of the pandemic and (b) to consider equivalent measures that would provide forbearance and sufficient reassurance for firms that they are not expected by ESMA and their respective NCA to ensure strict compliance with SFTR reporting obligations for an appropriate period of time following the legal reporting start date.

ICMA publishes FAQs on CSDR Mandatory By-ins and non-cleared SFTs

On 5 March 2020, the International Capital Markets Association published [Frequently Asked Questions](#) (FAQs) on Central Securities Depositories Regulation Mandatory By-ins and non-cleared Securities Financing Transactions (SFTs), intended to outline considerations and, where possible, to provide clarity with respect to the application of CSDR buy-ins in the case of repos and other SFTs. The FAQs will be updated in light of new guidance from ESMA and agreed market best practice.

FIA urges CFTC to exclude proprietary positions from FCM risk margin calculations

On 3 March 2020, the Future Industry Association (FIA) submitted a [response](#) to a Commodity Future Trading Commission request for additional comment on its proposed capital requirements for swap dealers and major swap participants. FIA focused its response on the potential impact to futures commission merchants (FCMs), and in particular a provision in the proposal that would require FCMs to include proprietary positions in swaps and security-based swaps in their calculations of the eight-percent risk-margin capital requirement.

FIA, Greenwich Associates publishes new derivatives market research

On 11 March 2020, the Futures Industry Association published a [study](#) on trading and clearing trends in derivatives markets, assessing market sentiment towards several major market structure trends, including the impact of capital requirements, the adoption of central clearing, the transition away from LIBOR, and the implementation of margin requirements on uncleared derivatives.

ISDA publishes a summary of Equivalence Determinations for Non-Cleared Margin Requirements

On 2 March 2020, the International Swaps and Derivatives Association published a [summary](#) setting out its understanding of the current state of substituted compliance across the different margin jurisdictions with respect to one another.

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

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