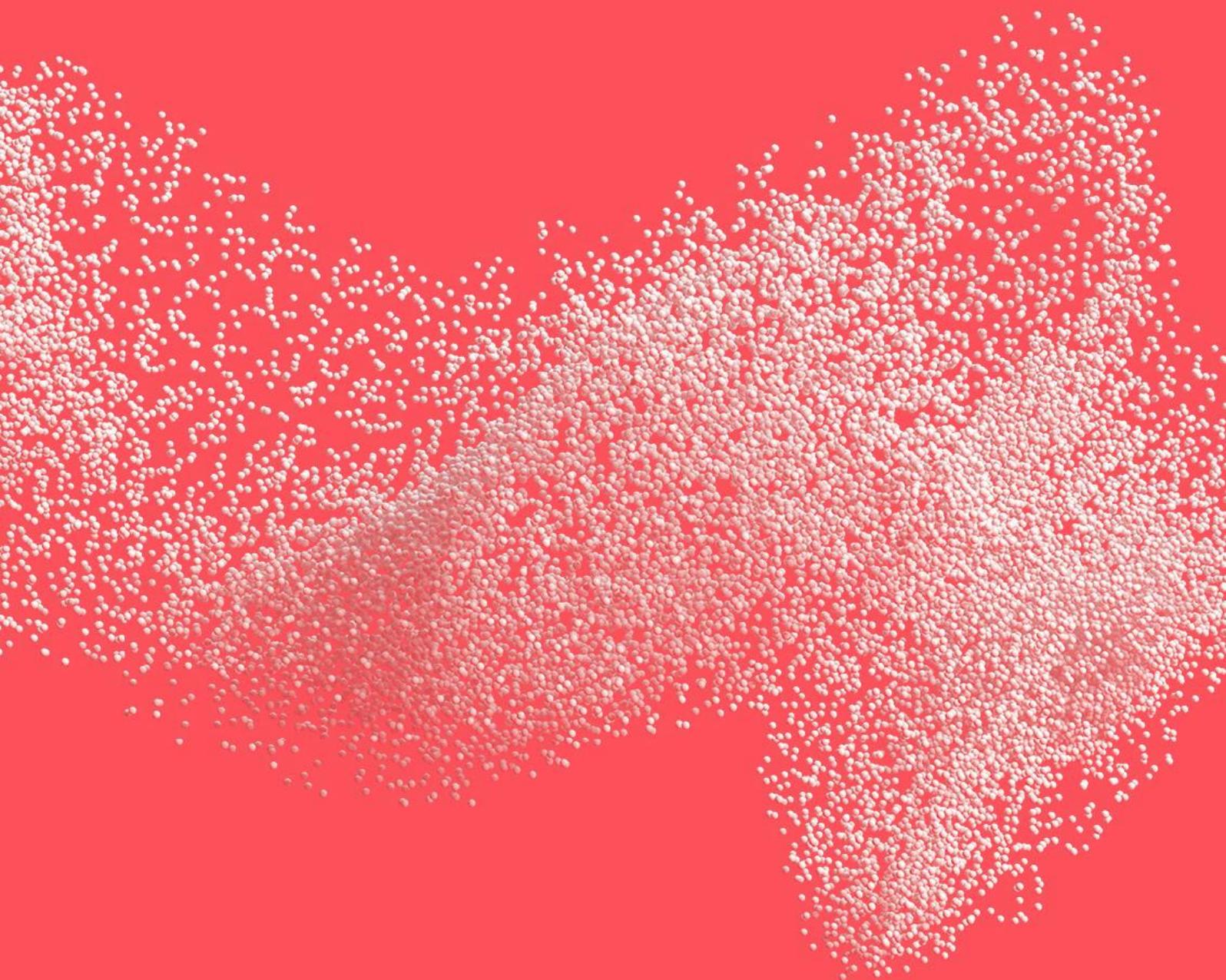


Financial Services Alerter

JULY 2020



Introduction

July 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 July 2020.

- UK developments
- EU developments
- International developments

FCA publishes statement on Employer Salary Advance Schemes

On 30 July 2020, the Financial Conduct Authority (FCA) published a [statement](#) on the risks and benefits of Employer Salary Advance Schemes (ESAS), and on issues that both employers and employees should consider when offering or using these schemes. The statement identifies the following risks:

- lack of transparency about cost
- lack credit regulation
- dependency and repeat use and;
- lack of visibility for credit reference agencies.

FCA publishes dear CEO letter

On 24 July 2020, the Financial Conduct Authority (FCA) published a [Dear CEO letter](#) to firms acting as brokers in wholesale financial markets who offer services involving holding clients' cash or securities as collateral. The FCA has identified examples of inappropriate use of title transfer collateral arrangements (TTCAs) by firms, that amount to failures of compliance with the CASS rules.

FCA publishes Handbook Notice 79

On 23 July 2020, the Financial Conduct Authority (FCA) published [Handbook Notice 79](#) which sets out changes to the FCA Handbook made by the following instruments:

- COVID-19 Credit Cards and Personal Loans (No 2) Instrument 2020
- COVID- 19 Motor Finance and High Cost Credit (No 2) Instrument 2020
- Glossary Amendment (Multilateral Development Banks) Instrument 2020
- Financial Services Compensation Scheme (determination of Default) Instrument 2020
- Enforcement (Fifth Money Laundering Directive) Instrument 2020
- Consumer Credit (Bounce Bank Loans) Instrument 2020

FCA publishes a statement on difficulties caused by firms using cheques

On 16 July 2020, the Financial Conduct Authority (FCA) published a [statement](#) highlighting the difficulties caused by firms making payments using cheques. The use of cheques has caused difficulties in situations where clients were transferring to new platforms or investment management service providers. The FCA encourages firms to use electronic alternatives where possible in order to reduce the need for staff to handle cheques onsite.

FCA publishes a webpage launching an enhanced financial services register

On 13 July 2020, the Financial Conduct Authority (FCA) published a [webpage](#) announcing that it will launch an enhanced financial register. The FCA will make changes to the register aimed at assisting users find and understand the information available. The existing register will cease to be available on 24 July 2020, with the new register going live on 27 July 2020.

FCA updated its webpage on firms preparing for Brexit

On 7 July 2020, the Financial Conduct Authority (FCA) published an [updated version](#) of its webpage for UK firms preparing for the end of the Brexit transition period. The FCA invited firms to consider how outsourcing and third-party relationships will be affected beyond 31 December 2020. The FCA also advised firms to examine the operational risk to their business as well as the potential harm to consumers that may result from any change to the outsourced services provided.

FCA publishes guidance to firms to support motor finance and high-cost credit customers

On 3 July 2020, the Financial Conduct Authority (FCA) published [guidance](#) setting out a number of measures to ensure that continued support is provided in respect of:

- motor finance agreements
- high-cost short term credit agreements
- rent-to-own agreements
- buy-not-pay later agreements and;
- pawnbroking agreements.

FCA updates webpage on business interruption insurance test case

On 3 July 2020, the Financial Conduct Authority (FCA) updated its [webpage](#) on the High Court test case on business interruption insurance claims by publishing its response to the insurer's defences. The FCA rejected most of the defences as depending on adopting unduly restrictive meanings of particular words and approaches to proof, as to the presence of COVID-19.

FCA publishes PS on regulated fees and levies

On 2 July 2020, the Financial Conduct Authority (FCA) published a [Policy Statement](#) (PS) setting out regulated fees and levies rates for 2020/21. The fees and levies apply to the FCA, Financial Ombudsman Service (FOS), the Money and Pensions Service (MaPS) and to HM Treasury's illegal money lending (IML) levy expenses.

PRA published a CP on SM&CR forms

On 13 July 2020, the Prudential Regulatory Authority (PRA) published a [Consultation Paper](#) (CP) on Senior Managers and Certification Regime (SM&CR) forms. The CP proposes amendments to the Notifications Instrument 2014 of the PRA Rulebook, specifically:

- CCR Firms
- Non-firms
- Solvency II Firms
- Non-Solvency II Firms and;
- Forms Amendment Instrument 2020.

The deadline for responses is 13 October 2020.

PRA publishes statement on reporting and disclosure exposures

On 10 July 2020, the Prudential Regulatory Authority (PRA) published a [statement](#) on the implementation of the European Banking Authority's (EBA) [guidelines](#) on reporting and disclosure of exposures. The PRA expects UK banks and building societies to make disclosures similar to those prescribed by the guidelines.

PRA publishes PS on regulatory fees and levies

On 7 July 2020, the Prudential Regulatory Authority (PRA) published a Policy Statement (PS) on regulatory fees and levies for 2020/2021. The PS sets out the fee rates and rules to recover the PRA's annual funding requirements, from 1 March 2020 to 28 February 2021. The PS also updated the PRA's [supervisory statement](#), which refers to the regulator's approach to fees.

PRA publishes PS on capital requirements and macroprudential buffers

On 6 July 2020, the Prudential Regulatory Authority (PRA) published a [Policy Statement](#) (PS) on capital requirements and macroprudential buffers under Pillar 2A (P2A). The PRA's aim is to reduce variable P2A capital requirements to take account of the additional resilience associated with higher macro-prudential buffers in a standard risk environment. The PRA will review in more detail the P2A methodologies by 2024.

BoE publishes review of CHAPS

On 6 July 2020, the Bank of England (BoE) published a [review](#) of the CHAPS enhanced ISO 2022 messages. The BoE provides a near-final draft of the enhanced messages for the migration of the CHAPS to the ISO 2022 messaging standard. The BoE is encouraging the industry to review and provide feedback before it publishes final enhanced schemas in September 2020.

HM Treasury publishes CP to expand the financial promotion regime

On 20 July 2020, HM Treasury published a [Consultation Paper](#) (CP) on crypto-asset promotions outlining the government's proposal to expand the perimeter of the financial promotion regime to crypto-assets and enhance consumer protection in the crypto-space. To avoid stifling innovation in the crypto-space, HM Government proposes to apply the financial promotion regime only to qualifying crypto-assets, namely, unregulated assets that are both fungible and transferable.

HM Treasury publishes a statement on the applicability of the CRR Amending Regulation

On 16 July 2020, HM Treasury published a [statement](#) on the applicability of COVID-19 related amendments to the Capital Requirements Regulation (CRR). HM Treasury confirms that applicable provisions in the 2020/873 Amending Regulation will automatically form part of retained EU law under the EU (Withdrawal) Act 2018. of express trusts

HM Treasury publishes AML and TF EU-exit regulations

On 15 July 2020, HM Treasury published a [draft version](#) of the Money Laundering and Terrorist Financing (Amendment)(EU Exit) Regulations 2020. The draft Regulations incorporate the amendments made by the Fifth Money Laundering Directive (AMLD5). The [draft explanatory memorandum](#) published alongside the Regulations, indicates that the UK has missed the transposition deadline for setting up an expanded register of express trusts

Complaints Commissioner publishes report on FCA authorisation applications

On 7 July 2020, the Officer of the Complaints Commissioner published a [final report](#), in light of a complaint made about the FCA by a small payment institution. The Commissioner recommended that the FCA ensures that:

- applicants are given clear information about the application process
- interviews are clearly focussed and used only when required and;
- problematic applications are reviewed at a senior level

These recommendations were accepted by the FCA.

BBRS publishes report on live pilot perspectives

On 8 July 2020, the Business Banking Resolution Service (BBRS) published a [report](#) “BBRS: Live Pilot Perspectives”. The report focuses on a summary of interviews, conducted with four individuals, regarding the development of the BBRS’ service. The pilot enables the BBRS to consider what it will need to have in place in order to support small and medium-sized enterprises, during the COVID-19 pandemic.

LSB publishes CP on contingent reimbursement model code for APP scams

On 15 July 2020, the Lending Standards Board (LSB) published a [Consultation Paper](#) (CP) on a post-implementation review for the contingent reimbursement model (CRM) code for authorised push payment (APP) scams. The LSB is examining the effectiveness of the CRM code as well as its impact on consumers and the industry. The CP focuses on four areas:

- implementation
- customer experience
- prevention measures and;
- resolving claims.

The deadline for responses is 30 September 2020.

ESMA publishes Decision for holders of net short positions

On 30 July 2020, the European Securities and Markets Authority (ESMA) published a [Decision](#) in the Official Journal of the EU. This extends by a further three months (to September 2020) ESMA's earlier decision under the Short Selling Regulation which required holders of net short positions in shares traded on an EU regulated market to notify the relevant national competent authority (NCA) if the position reaches or exceeds 0.1% of the issued share capital.

ESMA publishes opinion on pre-trade transparency waivers under MiFIR

On 17 July 2020, the European Securities and Markets Authority (ESMA) published an [opinion](#) on the assessment of pre-trade transparency waivers under the Markets in Financial Instruments Regulation (MiFIR). ESMA highlights the following issues:

- large-in-scale, order management facility and negotiated transaction waivers
- combinations of waivers and;
- pre-trade transparency waivers.

ESMA publishes final report on use of “no data options”

On 10 July 2020, the European Securities and Markets Authority (ESMA) published a [final report](#) on securitisation repository data completeness and consistency thresholds under the Securitisation Regulation. The report contains guidelines to assist participants and securitisation repositories understand ESMA's expected maximum use of no data options.

EC publishes roadmap on communication on CMU action plan

On 7 July 2020, the European Commission (EC) published a [roadmap](#) for consultation on an action plan for the Capital Markets Union (CMU). The roadmap highlights that although significant progress has been made, some work remains to be completed in relation to green and digital transformations, the COVID-19 pandemic and Brexit. The CMU proposed four objectives in the roadmap:

- improve the ecosystem for raising capital for businesses in the EU
- support the creation of a pan-European capital markets architecture
- promote retail investor participation and;
- promote cross border investment

The deadline for providing feedback is 4 August 2020.

ECB publishes guidelines on materiality threshold for credit obligations past due

On 7 July, the European Central Bank (ECB) published [guidelines](#) in relation to the threshold for assessing the materiality of credit obligations for less significant institutions (LSI). The guidelines propose a single materiality threshold for all LSIs within a single supervisory mechanism (SSM) and specify a maximum amount, for the sum of all amounts past due, owed by an obligor.

BCBS publishes report on adoption of Basel regulatory framework

On 6 July 2020, the Basel Committee on Banking Supervision (BCBS) published a [report](#) on the adoption of the Basel regulatory framework by the BCBS members. The BCBS assesses whether the Basel standards have been transposed into national law or regulation in accordance with the agreed international time frames. The report considers the implementation of the Basel III standards in the UK, the EU and the US.

BCBS publishes guidelines on money laundering and terrorism – financing risks

On 2 July 2020, the Basel Committee on Banking Supervision (BCBS) published [guidelines](#) on sound management of risks related to money laundering and terrorist financing setting out how banks should include such risks within their overall risk management framework.

EEA Joint Committee publishes amendments to the EEA Agreement

On 2 July 2020, the European Economic Area (EEA) Joint Committee published four decisions to amend Annex IX (Financial Services) to the EEA Agreement in the Official Journal of the EU. These were:

- a [Decision](#) to incorporate Delegated regulations and Implementing Regulations relating to the Capital Requirements Directive (CRD IV) and the Capital Requirements Regulation (CRR).
- a [Decision](#) to incorporate Delegated Regulations and Implementing Regulations relating to the CRD IV and CRR
- a [Decision](#) to incorporate Delegated Regulations and Implementing Regulations relating to the CRD IV and CRR
- a [Decision](#) to incorporate Delegated Regulations and Implementing Regulations relating to the CRD IV and CRR and EMIR

EBA publishes statement on 2021 EU-wide stress test

On 30 July 2020, the European Banking Authority (EBA) published a [statement](#) with an agreed timeline and sample of the 2021 EU-wide stress test. The exercise is expected to be launched at the end of January 2021 and the results will be published at the end of July 2021. The stress test will be carried out on a sample of 51 banks. UK banks are excluded from the sample but their EU27 subsidiaries are included.

EBA publishes CP on contractual recognition of bail-in under BRRD

On 24 July 2020, the European Banking Authority (EBA) published a [Consultation Paper](#) (CP) on draft regulatory technical standards (RTS) and draft implementing technical standards (ITS) on the impracticability of contractual recognition of write down- and conversion powers. The draft RTS and ITS were developed under Article 55(4) of the Bank Recovery and Resolution Directive (BRRD).

EBA publishes report on implementation of COVID-19 policies

On 7 July 2020, the European Banking Authority (EBA) published a [report](#) on implementation of selected COVID-19 policies in order to provide operational relief to institutions within the current prudential framework. Policies include publication of guidelines on:

- legislative moratoria and;
- non-legislative moratoria, relating to loan repayments.

FATF report on stablecoins

On 7 July 2020, the Financial Action Task Force (FATF) published a [report](#) on stablecoins for the G20 central bank governors and finance ministers. The report discusses anti-money laundering (AML) and anti-terrorist financing issues that could arise out of the use of stablecoins. The FATF recognises that stablecoins share many of the vulnerabilities that other crypto assets have in relation to money laundering and terrorist financing.

ESAs publish their responses to the EC consultation on a renewed sustainable finance strategy

On 16 July 2020, the European Supervisory Authorities (ESAs) published their responses to the European Commission's (EC) [consultation](#) on a renewed sustainable finance strategy. These consisted of:

- the European Banking Authority (EBA) [response](#)
- the European Insurance and Occupational Pensions Authority (EIOPA) [response](#)
- the European Securities and Markets Authority (ESMA) [response](#).

In addition to their responses, ESAs published a [joint letter](#) welcoming the consultation.

EEA Joint Committee publishes decisions amending Annex IX (Financial Services)

On 16 July 2020, the European Economic Area (EEA) Joint Committee published three decisions in the process of incorporating EU legislation into Annex IX (Financial Services) of the EEA Agreement as published in the Official Journal of the EU.

- [Decision 17/2019](#) relating to the Solvency II Directive.
- [Decision 19/2019](#) relating to the Bank Recovery and Resolution Directive (BRRD).
- [Decision 20/2019](#) relating to the Central Securities Depositories Regulation (CSDR).

EP publishes a resolution on EC's AML and CTF Action Plan

On 10 July 2020, the European Parliament (EP) published a [resolution](#) on a comprehensive Union policy on anti-money laundering (AML) and counter-terrorist financing (CTF) – the Commission's [Action Plan](#) and recent developments. The EP welcomes the action plan and highlights three areas that would improve the EU framework on AML and CTF, namely:

- better implementation and co-operation
- effective use of data and;
- harmonisation of dissuasive sanctions at EU level.

EIOPA publishes statement on product oversight on governance requirements

On 8 July 2020, the European Insurance and Occupational Pensions Authority (EIOPA) published a [statement](#) with its expectations on product oversight and governance (POG) requirements, in light of COVID-19. The statement aims to ensure consistent and fair consumer outcomes through an insurance product's lifecycle, by inviting insurance manufacturers to identify insurance products whose features, guarantees or risk coverage have been affected by COVID-19.

IOSCO publishes recommendation on Ethics Standard-Setting System

On 14 July 2020, the International Organization of Securities Commissions (IOSCO) published a [recommendation](#) on strengthening the International Audit and Ethics Standard Setting System. The recommendation promotes a number of objectives, including to:

- achieve an independent and inclusive multi-stakeholder standard-setting system
- foster the development of timely, high quality standards that respond to an accelerating pace of change and
- reinforce enhanced independent oversight and standard-setting guided by the Public Interest Framework.

FSB publishes statement on climate risks and financial stability

On 22 July 2020, the Financial Stability Board (FSB) published a [statement](#) on climate-related risks in financial stability monitoring. The statement notes that financial authorities vary in terms of whether - and to what degree - they consider climate-related risks as part of their financial stability monitoring.

FSB publishes statement on financial stability during COVID-19

On 15 July 2020, the Financial Stability Board (FSB) published a [statement](#) on the financial stability implications of and policy measures taken in response to the COVID-19 pandemic. The statement highlights several areas of focus, including:

- assessing vulnerabilities during the current crisis
- reinforcing resilient non-bank financial intermediation
- identifying and assessing policy responses
- monitoring consistency with standards and
- using flexibility in standards and buffer use.

ISDA publishes statement on IBOR Fallback Protocol

On 29 July 2020, the International Securities and Derivatives Association (ISDA) published a [statement](#) encouraging adherence to the forthcoming IBOR Fallback Protocol by market participants. ISDA will publish the IBOR fallback protocol to facilitate inclusion of new IBOR fallbacks in existing transactions between counterparties.

ISDA publishes Brexit FAQs

On 21 July 2020, the International Securities and Derivatives Association (ISDA) published [Brexit FAQs](#) on the possible UK position after the conclusion of the exit process under Article 50 of the Lisbon Treaty. The responses to the FAQs involve an assessment of the various outcomes of the current negotiations in respect of any future EU/UK trading relationship and the consequences of those outcomes.

ICMA publishes response to EC Consultation on the Renewed Sustainable Finance Strategy

On 15 July 2020, the International Capital Markets Association (ICMA) published a [response](#) to the European Council on Renewed Sustainable Finance Strategy [Consultation Paper](#) focussing on the questions that only seem directly relevant to ICMA's membership.

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

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