

Financial Services Alerter

October 2018





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Introduction

October 2018

Welcome to Simmons & Simmons' Financial Services Alerter, our monthly bulletin containing brief details of significant legal and regulatory developments of relevance to the fund management and investment banking communities.

Although the primary focus of Financial Services Alerter is the UK, we also cover EU and other international developments of relevance to the UK.

The information contained in Financial Services Alerter is based exclusively on publicly available sources and relates to developments taking place in October 2018.

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

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For further information, please contact [Darren Fox](#), [Charlotte Stalin](#), [Jonathan Melrose](#), [Penny Miller](#), or your usual contact at Simmons & Simmons.



Financial Services Alerter

UK developments

Consumer Credit (Amendment) (EU Exit) Regulations 2018 made

On 02 October 2018, HM Government published the [Consumer Credit \(Amendment\) \(EU Exit\) Regulations 2018 \(SI 2018/1038\)](#) and associated [explanatory memorandum](#). The Regulations were laid before Parliament on 28 September 2018 and come into force on exit day (29 March 2019).

HM Treasury publishes draft Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018

On 05 October 2018, HM Treasury published a [draft version](#) of the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 with an [explanatory memorandum](#). The Regulations will come into force on exit day (29 March 2019), except for certain provisions specified in regulation 1(2).

HM Treasury publishes Draft Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018

On 05 October 2018, HM Treasury published a [draft version](#) of the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 with an [explanatory note](#). The Regulations enter into force on the day after the day on which they are made, except for amendments to EMIR, which come into force on exit day (29 March 2019).

HM Treasury publishes draft Statutory Instruments in preparation for Brexit

On 08 October 2018, HM Treasury published the following draft statutory instruments (SI):

- [draft version](#) of the Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018 with an [explanatory note](#).
- [draft version](#) of the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018 with an [explanatory note](#).
- [draft version](#) of the Collective Investment Schemes (Amendment etc) (EU Exit) Regulations 2018 with an [explanatory note](#).

In each case the SI comes into force on exit day (29 March 2019).

FCA and Hong Kong SFC agree MoU on mutual recognition of funds

On 08 October 2018, the FCA published a [memorandum of understanding](#) (MoU) signed with the Hong Kong Securities and Futures Commission (SFC) on mutual recognition of funds between the UK and Hong Kong. Its purpose is to enhance cooperation in relation to (i) collective investment schemes

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domiciled in either Hong Kong or the UK and offered to the public in the UK and/or Hong Kong on a cross-border basis, and (ii) management companies of collective investment schemes, based in either Hong Kong or the UK.

FCA publishes consultation on illiquid assets and open-ended funds

On 08 October 2018, the FCA published [consultation paper](#) CP18/27, “Consultation on illiquid assets and open-ended funds and feedback to Discussion Paper DP17/1”, setting out proposals aiming to reduce the risk of poor outcomes to retail investors in open-ended funds, specifically non-UCITS retail schemes (NURs), that invest in illiquid assets. The consultation period closes on 25 January 2019.

HM Treasury publishes draft Statutory Instruments in preparation for Brexit

On 09 October 2018, HM Treasury published the following draft statutory instruments (SI):

- [updated draft](#) of the Deposit Guarantee Scheme and Miscellaneous Provisions (Amendment) (EU Exit Regulations) 2018, with an [explanatory memorandum](#). Parts 1 and 2 of the Regulations will come into force on the day after the day on which the Regulations are made. Parts 3 and 4 will come into force on exit day (29 March 2019).
- [updated draft](#) of the Short Selling (Amendment) (EU Exit) Regulations 2018 with an [explanatory memorandum](#). The SI comes into force on exit day (29 March 2019).
- [updated draft](#) of the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Powers) (EU Exit) Regulations 2018 with an [explanatory memorandum](#). The SI comes into force on exit day (29 March 2019).
- [updated draft](#) of the Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018 with an [explanatory memorandum](#). The SI comes into force on exit day (29 March 2019).

BEIS publishes Draft Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2018

On 10 October 2018, the Department for Business, Energy and Industrial Strategy (BEIS), published a [draft version](#) of the Consumer Protection (Enforcement) (Amendment etc.) (EU Exit) Regulations 2018 with an [explanatory memorandum](#). The draft Regulations come into force on exit day (29 March 2019).

FCA publishes consultation on temporary permissions regime for inbound firms and funds

On 10 October 2018, the FCA published [consultation paper](#) CP18/29 on the temporary permissions regime for inbound firms and funds. The temporary permissions regime will come into force after Brexit if there is no transition period and the current passporting regime under the Financial Services and Markets Act 2000 (FSMA) ceases to apply. The consultation period closes on 07 December 2018. The FCA plans to publish a policy statement with final rules in Q1 2019.

FCA publishes consultation paper on proposed Brexit changes to Handbook and binding technical standards

On 10 October 2018, the FCA published [consultation paper](#) CP18/28, “Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation” outlining proposed amendments to the FCA Handbook and to Binding Technical Standards under the statutory instrument on Financial Regulators' Powers (published in July 2018). The consultation period closes on 07 December 2018.

HM Treasury publishes draft Solvency II and Insurance (Amendment etc) (EU Exit) Regulations 2018

On 11 October 2018, HM Treasury published a [draft version](#) of the Solvency 2 and Insurance (Amendment etc) (EU Exit) Regulations 2018. The Regulations enter into force on exit day (29 March 2019).

FCA publishes guidance consultation on SMCR statements of responsibilities and responsibilities maps for solo-regulated firms

On 11 October 2018, the FCA published [guidance consultation](#) GC18/4, “Senior Managers and Certification Regime: Proposed guidance on statements of responsibilities and responsibilities maps for FCA firms”. GC18/4 provides solo-regulated firms with assistance on preparing the Statement of Responsibilities (SoR) and Responsibilities Maps under SMCR. The consultation period closes on 10 December 2018.

FCA publishes consultation on DEPP and EG changes to reflect EC Securitisation Regulation implementation

On 12 October 2018, the FCA published [consultation paper](#) CP18/30, “EU Securitisation Regulation Implementation (DEPP and EG)”, setting out proposals to amend the Decision Procedure and Penalties Manual (DEPP) and Enforcement Guide (EG) sections of the FCA Handbook due to the changes introduced by the statutory instrument on the Securitisation Regulation published by HM Treasury. The consultation period closes on 02 November 2018.

HM Treasury publishes draft SIs in preparation for Brexit

On 22 October 2018, HM Treasury published draft versions of the following statutory instruments (SI):

- [Central Securities Depositories \(Amendment\) \(EU Exit\) Regulations 2018](#) with an [explanatory note](#). Regulation 1 and Part 5 of the Regulations (Notification requirements) will enter into force on the day after the day on which they are made, with the remainder coming into force on exit day (29 March 2019).
- [Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc. and Transitional Provision\) \(EU Exit\) Regulations 2018](#), with an [explanatory note](#). The Regulations come into force on exit day (29 March 2019).

Bank of England/PRA publishes Brexit consultation papers

On 25 October 2018, the Bank of England/PRA published the following consultation papers relating to Brexit:

- [PRA 25/18](#) setting out the Bank’s general approach to making changes to rules and binding technical standards, including the proposed use of transitional powers. It also contains a draft Supervisory Statement (SS) indicating expectations of firms and FMIs in relation to EU Guidelines and Recommendations.
- [CP26/18](#) setting out the key changes to PRA rules and relevant binding technical standards. The consultation covers changes related to EU legislation where HM Treasury has either published its policy intention, published the related legislation in draft, or has laid it before Parliament.
- [Financial Market Infrastructure \(FMI\) consultation paper](#) setting out the key changes to FMI-related binding technical standards and rules. The consultation also contains a draft SS on expectations of FMIs in relation to existing non-binding domestic material.

- [Resolution consultation paper](#) setting out changes to binding technical standards in relation to resolution. It also proposes how firms should interpret existing Bank of England Statements of Policy on resolution in light of any deficiencies arising from the UK's withdrawal from the EU.

The consultation period for each of the papers closes on 02 January 2018.

Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018 made

On 26 October 2018 SI No. [2018/1115](#), "Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018" was published with an [explanatory memorandum](#). The regulations came into force on the 26 October 2018.

FCA publishes Handbook Notice 59

On 26 October 2018, the FCA published [Handbook Notice 59](#), setting out changes made to the FCA Handbook made by the FCA board on 27 September 2018.



Financial Services Alerter

EU developments

ESMA binary options product intervention decision published in the OJ

On 01 October 2018, European Securities and Markets Authority (ESMA) Decision ([EU](#) 2018/1466) renewing and amending the temporary prohibition in Decision (EU) 2018/795 on the marketing, distribution or sale of binary options to retail clients was published in the OJ. It applies from 02 October 2018 until 01 January 2019.

ESMA publishes updated MAR Q&As

On 01 October 2018, the European Securities and Markets Authority (ESMA) published an updated [webpage](#), “Questions and Answers on the Market Abuse Regulation (MAR)”, adding three new Q&As on the delay of disclosure of inside information by a credit or financial institution to preserve financial stability under Article 17(5).

ESMA publishes updated MiFID2 and MiFIR commodity derivatives Q&As

On 02 October 2018, the European Securities and Markets Authority (ESMA) updated its [webpage](#), “Questions and Answers on MiFID2 and MiFIR commodity derivatives topics”, adding new Q&As on position limits and position reporting, and amending and deleting answers relating to ancillary activity.

ESMA publishes updated MiFID2 Q&As on investor protection and intermediaries topics

On 03 October 2018, the European Securities and Markets Authority (ESMA) published an updated [webpage](#), “Questions and Answers on MiFID2 and MiFIR investor protection and intermediaries topics”, amending Q&As on the following topics:

- best execution
- investment advice on an independent basis.

ESMA publishes updated Q&As on application of AIFMD

On 04 October 2018, the European Securities and Markets Authority (ESMA) updated its [webpage](#), “Questions and Answers: Application of the AIFMD”. ESMA added a new Q&A on the application of the AIFMD notification requirements to AIFMs managing umbrella AIFs on a cross-border basis.

OJ publishes Implementing Regulation on closely correlated currencies under CRR

On 22 October 2018, [Commission Implementing Regulation \(EU\) 2018/1580](#), amending Implementing Regulation (EU) 2015/2197 laying down implementing technical standards (ITS) on closely correlated currencies in accordance with the Capital Requirements Regulation (CRR) was published in the OJ.



Financial Services Alerter

International developments

ISDA publishes report on impact of cliff-edge Brexit on derivatives market

On 09 October 2018, the International Swaps and Derivatives Association (ISDA) and others published a [report](#), “The impact of Brexit on OTC derivatives: Other 'cliff edge' effects under EU law in a 'no deal' scenario”. The report discusses how a Brexit 'no deal' scenario has the potential to create a disruptive 'cliff edge' change in the EU regulatory requirements that apply to OTC derivatives business.

FSB publishes report on potential implications of cryptoassets for future financial stability

On 10 October 2018, the Financial Stability Board (FSB) published a [report](#), “Crypto-asset markets: Potential channels for future financial stability implications”. It concludes that crypto-assets do not currently pose a material risk to global financial stability, but do warrant vigilant monitoring due to the speed of market developments. It also outlines the FSB's framework for monitoring potential financial stability risks from crypto-assets.

elexica and other client items

- 01 October 2018 [ISDA publishes Benchmarks Supplement](#)
- 03 October 2018 [ESMA updates its MAR Q&As to clarify when disclosure of inside information can be delayed](#)
- 03 October 2018 [Regulatory Update: Central Bank of Ireland fund application deadlines for Christmas and New Year](#)
- 03 October 2018 ["No Deal" Brexit: Impact on the TMT sector](#)
- 03 October 2018 [ESMA extends and amends product intervention measures](#)
- 04 October 2018 [ESMA extends and amends product intervention measures](#)
- 04 October 2018 [France is on the brink of crypto-industry revolution thanks to the Loi Pacte](#)
- 09 October 2018 [UK and Hong Kong financial regulators agree on the mutual recognition of retail funds](#)
- 12 October 2018 [GC18/4: the FCA consults on Senior Managers and Certification Regime: Proposed guidance on statements of responsibilities and responsibilities maps for FCA firms](#)
- 15 October 2018 [Irish regulator streamlines procedures for certain UCITS and RIAIF authorisation and post-authorisation amendment submissions](#)
- 16 October 2018 [Update on £775m Royal Bank of Scotland State Aid Alternative Remedies Package](#)
- 18 October 2018 [BaFin changes its administrative practice on performance fee structures for UCITS](#)
- 19 October 2018 [Climate change litigators achieve major breakthrough in court: now not only energy giants are feeling the heat](#)
- 23 October 2018 [Current Hedge Funds trends: The evolving state of Ireland](#)
- 25 October 2018 [ISDA publishes 2018 Credit Support documentation for Initial Margin](#)
- 30 October 2018 [EU publishes amended rules on safe-keeping duties for depositaries of AIFs and UCITS](#)
- 30 October 2018 [UK's Cryptoassets Task Force publishes long awaited report](#)

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