

Financial Services Alerter

DECEMBER 2019



Introduction

December 2019

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 December 2019.

- UK developments
- EU developments
- International developments

FCA publishes Quarterly Consultation Paper

On 6 December 2019, the FCA published [consultation paper](#) CP19/33, “Quarterly Consultation Paper No 26”, seeking feedback on a range of amendments to the FCA Handbook. The consultation period closes on 6 January 2020 for the following sections:

- Listing Rules references to the Prospectus Regulation (chapter 3);
- changes to reporting requirements in the Supervision manual (chapter 7); and
- further Brexit-related changes to the FCA Handbook and binding technical standards following the extension of Article 50 (chapter 8).

The consultation period closes on 6 February 2020 for the following sections:

- claims against appointed representatives and principles (chapter 2);
- amendments to the Listing Rules to include a requirement mandating the disclosure of rights attached to securities (chapter 4);
- amendments to the FCA Handbook to reflect changes made by the Financial Guidance and Claims Act (chapter 5); and
- payment services and electronic money: changes to PERG 15:3 (chapter 6).

FCA publishes Handbook Notice

On 13 December 2019, the FCA published [Handbook Notice 72](#), setting out changes made to the following sections of the FCA Handbook by the FCA Board on 21 November 2019 and 12 December 2019:

- Appendix 1, Appendix 2;
- APER 3.1;
- COBS 4.7, 4.14, 9A.2, 9.3 and COBS 6.1H (new section);
- COCON 3.1;
- DEPP 6.2;
- DTR 4.1, 7.1, 7.2;
- FEES 4;
- Glossary;
- LR 9.8, 15.6;
- SUP 15 Annex 6AR, 15 Annex 6CR, 15 Annex 6DR, 15 Annex 6ED, 15 Annex 6FG;
- TP 1; and
- TR 11, TR 13.

FCA publishes call for input on open finance

On 17 December 2019, the FCA published a [call for input](#) on open finance, seeking feedback on the following, among other topics:

- whether open banking is achieving its potential;
- the potential benefits of open finance; and
- what role the FCA could play in assisting open finance to develop in a constructive way.

The consultation period closes on 17 March 2020.

ESMA publishes guidance on registering securitisation repositories under Securitisation Regulation

On 2 December 2019, the European Securities and Management Authority (ESMA) published a [document](#), “Guidance on registering securitisation repositories”, providing information on ESMA’s registration process to companies that intend to apply to become a securitisation repository under the Securitisation Regulation.

ESMA publishes updated Q&As on the Benchmarks Regulation

On 3 December 2019, the European Securities and Management Authority (ESMA) published [updated Q&As](#) on the Benchmarks Regulation, amending the following topics:

- the annual review of IOSCO principles for Oil Pricing Reporting Agencies (PRAs); and
- the legal representative under Article 32(3) the Benchmarks Regulation.

ESMA publishes updated Q&As on application of AIFMD

On 4 December 2019, the European Securities and Markets Authority (ESMA) published updated [Q&As](#) on AIFMD, adding a new Q&A on reporting to National Competent Authorities in which ESMA clarifies reporting requirements on liquidity stress tests for closed-ended unleveraged AIFs.

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

On 4 December 2019, the European Securities and Management Authority (ESMA) published [updated Q&As](#) on investor protection and intermediaries topics under MiFID2, adding the following new Q&As:

- information on costs and charges; and
- which national product intervention measures a firm should apply in case of a cross-border provision of investment basis.

IFR and IFD published in OJ

On 5 December 2019, the following were published in the OJ:

- [Regulation \(EU\) 2019/2033](#) on the prudential requirements of investment firms and amending [the EBA Regulation], [CRR], [MiFIR] and [the SRM Regulation] (the Investment Firm Regulation or IFR); and
- [Directive \(EU\) 2019/2034](#) on the prudential supervision of investment firms and amending [the Financial Conglomerates Directive], [UCITS], [AIFMD], [CRD IV], [BRRD] and [MiFID2] (the Investment Firm Directive or IFD).

The IFR and IFD enter into force on 25 December 2019. IFR will apply from 26 June 2021, except for Articles 63(2) and (3) which apply from 26 March 2020, and Article 62(30) which applies from 25 December 2019. Member states must adopt the measures necessary to comply with the IFD by 26 June 2021 and apply them from that date.

Council of EU and European Commission publish joint statement on stablecoins

On 5 December 2019, the Council of the EU published a [press release](#), “Joint statement by the Council and the Commission on stablecoins”, stating that the emergence of stablecoins offers potential opportunities for more efficient cross-border payments. However, it cautions that stablecoins also present a range of complex regulatory risks and challenges. As a result, the Council of the EU and the Commission believe global stablecoin arrangements should not come into operation until these challenges have been identified and resolved in a globally coordinated manner.

ESMA publishes updated MiFID2 Q&As on market structures and transparency

On 5 December 2019, the European Securities and Management Authority (ESMA) published updated Q&As on [market structures topics](#) and [transparency topics](#) under MiFID2. The following market structures topics were updated:

- member preferencing and pre-arranged transactions under Articles 3 and 4 of MiFIR; and
- the scope of Commission Delegated Regulation 2017/584 (RTS 1).

The following transparency topics was updated:

- conversion of LIS/SSTI threshold in lots under Article 13 of Commission Delegated Regulation 2017/584 (RTS 2).

Joint Committee of ESAs publish final report on EMIR RTS on amendments to bilateral margin requirements

On 5 December 2019, the Joint Committee of the European Supervisory Authorities (ESAs) published a [final report](#), “EMIR RTS on various amendments to the bilateral margin requirements in view of the international framework”. The ESAs have submitted the final report to the European Commission.

EBA publishes Action Plan on Sustainable Finance

On 6 December 2019, the European Banking Authority (EBA) published a [report](#), “EBA Action Plan on Sustainable Finance”, outlining its plans for upcoming environmental, social and governance (ESG) work projects, as well as associated timelines and deadlines for completion.

ESMA publishes updated MiFIR data reporting Q&As

On 6 December 2019, the European Securities and Management Authority (ESMA) published [updated Q&As](#) on data reporting under MiFIR, adding a new Q&A on the reporting of reference rates not included in regulatory technical standards RTS 22 and 23.

Disclosures Regulation and Low Carbon Benchmarks Regulation published in OJ

On 9 December 2019, the following Regulations were published in the OJ:

- [Regulation \(EU\) 2019/2088](#) on sustainability-related disclosures in the financial services sector (the Disclosures Regulation); and
- [Regulation \(EU\) 2019/2089](#) amending [the Benchmarks Regulation] as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (the Low Carbon Benchmarks Regulation).

The Disclosures Regulation entered into force on 29 December 2019, with the majority of its provisions taking effect on 10 March 2021 and the Low Carbon Benchmarks Regulation entered into force on 10 December 2019 with its provisions taking immediate effect.

ESMA publishes updated Q&As on the Benchmarks Regulation

On 11 December 2019, the European Securities and Markets Authority (ESMA) published [updated Q&As](#) on the Benchmarks Regulation, amending a Q&A on transitional provisions applicable to third country benchmarks.

EMIR 2.2 published in OJ

On 12 December 2019, [Regulation \(EU\) 2019/2099](#) amending [EMIR] regarding the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs (EMIR 2.2) was published in the OJ. The Regulation entered into force on 1 January 2020 and applies from the same date.

ESMA publishes peer review report on use of STORs under MAR as source of information in market abuse investigations

On 12 December 2019, the European Securities and Markets Authority (ESMA) published a [peer review report](#) on the collection and use of suspicious transactions and order reports (STORs) as a source of information in market abuse investigations under the Market Abuse Regulation (MAR). STORs are used by national competent authorities (NCAs) to detect and investigate suspected market abuse.

EU co-legislators agree on compromise text for Framework Regulation

On 17 December 2019, the Council of the EU and the European Parliament reached political agreement on a final [Level 1 text](#) for the Framework (Taxonomy) Regulation following trilogue negotiations. The Council of the EU and the European Parliament will each now formally adopt the text before publication in the OJ.

ESMA publishes report on undue short-term pressure on corporations

On 18 December 2019, the European Securities and Markets Authority (ESMA) published a [report](#), "Undue short-term pressure on corporations", outlining its recommendations to the European Commission on institutional investor engagement and the disclosure of ESG factors within the context of short term pressures in securities markets. The European Commission will now decide whether to take legislative action based on ESMA's recommendations.

European Commission publishes consultation paper on regulatory framework for crypto-assets

On 19 December 2019, the European Commission published a [consultation paper](#) on an EU framework for markets in crypto-assets, seeking feedback on the following topics:

- the use of crypto-assets;
- whether and how to classify crypto-assets;
- crypto-assets that currently fall outside the scope of EU financial services legislation; and
- crypto-assets that currently fall within the scope of EU financial services legislation.

The consultation period closes on 12 March 2020.

TEG publishes handbook addressing FAQs on climate benchmarks and ESG disclosures

On 20 December 2019, the EU technical expert group on sustainable finance (TEG) published a [handbook](#) (the Handbook) on climate transition benchmarks, Paris-aligned benchmark and benchmarks' ESG disclosures.

The Handbook provides answers to frequently asked questions arising from the publication of a TEG final report published in September 2019 on the same subject.

FSB publishes report on BigTech in finance

On 9 December 2019, the Financial Stability Board (FSB) published a [report](#), “BigTech in finance: Market developments and potential financial stability implications”. The report analyses recent trends in the provision of financial services by BigTech firms (defined as large technology companies with established technology platforms), and the associated benefits and risks to financial stability.

BCBS publishes discussion paper on prudential regulatory treatment of crypto-assets

On 12 December 2019, the Basel Committee on Banking Supervision (BCBS) published a [discussion paper](#), “Designing a prudential treatment for crypto-assets”, seeking feedback on, among other topics:

- the chief characteristics and risks of crypto-assets that should inform the prudential treatment of banks' crypto-asset exposures; and
- general principles and considerations regarding the prudential treatment of banks' exposures to crypto-assets.

The consultation period closes on 13 March 2020.

IOSCO publishes final report on framework for assessing leverage in investment funds

On 13 December 2019, the International Organization of Securities Commissions (IOSCO) published a [final report](#), “Recommendations for a Framework Assessing Leverage in Investment Funds”, outlining a two stage framework encouraging more consistent oversight of leverage in funds across IOSCO member jurisdictions for the purposes of financial stability.

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