

Financial Services Alerter

NOVEMBER 2020



Introduction

November 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 November 2020.

- UK developments
- EU developments
- International developments

FCA publishes webpage on Financial Services Register

On 23 November 2020, the Financial Conduct Authority (FCA) published a [webpage](#) on the Financial Services Register confirming that the directory containing persons' data submitted by dual-regulated firms under the Senior Managers and Certification Regime (SM&CR), is now live. The directory will operate alongside the Financial Services Register and will publicly display information on key individuals in SM&CR firms..

FCA publishes webpage on digital sandbox

On 23 November 2020, the Financial Conduct Authority (FCA) published a [webpage](#) on the digital sandbox pilot. The sandbox supports innovative firms and organisations looking to tackle challenges relating to the pandemic. The pilot focusses on three key areas:

- fraud and scams
- vulnerability and;
- SME lending.

The pilot will run until 5 February 2021.

FCA publishes Regulation round-up

On 19 November 2020, the Financial Conduct Authority (FCA) published a [Regulation round-up](#) for November 2020, focussing on the following items:

- the treatment of maturing format child trust fund accounts
- risk transfer agreements and;
- pension transfer definition.

FCA publishes a statement on senior manager accountability

On 9 November 2020, the Financial Conduct Authority (FCA) published a [statement](#) containing information about the COVID-19 pandemic explaining that firms should continue to follow government guidance to ensure they comply with any restrictions. The FCA states that the Chief Executive Officer Senior Management function (SMF1) is accountable for ensuring an adequate process for following and adhering to government guidance.

FCA publishes PS on open banking identification requirements

On 3 November 2020, the Financial Conduct Authority (FCA) published a [Policy Statement](#) (PS) containing amendments to the open banking identification requirements (EIDAS) certificate. UK-based third-party providers (TPPs) will be unable to provide open banking services to consumers post-Brexit according to the European Banking Authority's [announcement](#). Changes in PS20/13 will permit UK based TPPs to continue accessing customer data and initiating payments by using alternatives to eIDAS certificates.

FCA publishes statement on consumer credit borrowers

On 2 November 2020, the Financial Conduct Authority (FCA) published a [statement](#) announcing the update of its temporary guidance on personal loans, credit cards, motor finance, rent to own, buy-now pay later, pawnbroking and high-cost short term credit (HCSTC). The FCA is committed to supporting consumer credit customers financially affected by COVID-19 and announces that consumer credit customers who have not yet had a payment deferral under its July guidance can request one.

FCA publishes call for input on unsecured credit market regulation

On 2 November 2020, the Financial Conduct Authority (FCA) published a [call for input](#) on its review into change and innovation in the unsecured credit market. The FCA wishes to gather information on how the market is changing in light of the pandemic and wants to know how regulation can support a healthy unsecured lending market. The call for input focusses on the following themes:

- drivers and use of credit
- change and innovation in the supply of credit
- the role of regulation in unsecured credit markets and;
- the impact of COVID-19 and the FCA's response.

The deadline for comments is 1 December 2020.

PRA publishes PS on market risk, RNIV and sVAR

On 26 November 2020, the Prudential Regulatory Authority (PRA) published a [Policy Statement](#) (PS) on market risk, the calculation of Risks Not in Value at Risk (RNIV) and stressed Value At Risk (sVAR). The PS summarises the responses to the consultation and sets out the PRA's feedback and final policy decisions. The PRA:

- expects that RNIV own fund requirements should be calculated as the average across the preceding three-month period of an RNIV measure
- set a requirement for firms to consider whether more frequent calculation than monthly may be appropriate and;
- set an expectation that the relevant RNIV measure, for at least 90% of RNIV own funds requirements, should be calculated monthly.

PRA publishes letter on treatment of legacy instruments under CRR

On 16 November 2020, the Prudential Regulatory Authority (PRA) published a [letter](#) on the remediation of prudential treatment of legacy instruments before the end of the transposition period specified in the Capital Requirements Regulation (CRR). The PRA expects that firms effected by the expiring provisions of the CRR undertake a risk-based approach and assess remedial actions before the end of the CRR transition period and requests that firms share an action plan with their usual PRA supervisory contact by 31 March 2021.

HMT updates webpage on post-EU financial services regulatory framework

On 30 November 2020, the HM Treasury published a [webpage](#) on its [Consultation Paper](#) (CP) relating to Phase II of its financial Services Future Regulatory Framework Review.

HMT has extended the closing date of the consultation period by one month, to 19 February 2021.

HMT publishes statement on timings for implementing IFPR and CRR II

On 16 November 2020, the HM Treasury published a [statement](#) on the introduction of the Investment Firms Prudential Regime (IFPR) and the implementation of Basel Standards reflecting the Capital Requirements Regulation II (CRR II). The target implementation date for these reforms has been set for 1 January 2022 while the target implementation date for the final Basel III reforms will remain 1 January 2023. The legislative framework for these reforms will be introduced through the Financial Services Bill 2019-21.

BoE publishes information on 2021 CBES

On 13 November 2020, the Bank of England (BoE) published [information](#) on the Climate Biennial Exploratory Scenario (CBES), which it plans to launch in June 2021.

The BoE:

- lists the financial institutions invited to participate in the CBES
- sets out a timeline for the exercise
- sets out a planned engagement with participants ahead of the launch

These decisions reflect the feedback that the BoE received in its 2018 [Discussion Paper](#).

FMLC publishes statement on the UK's future international regulatory co-operation strategy

On 25 November 2020, the Financial Markets Law Committee (FMLC) published a [statement](#) responding to the call for evidence on the UK government's future international regulatory co-operation (IRC) strategy. FMLC stresses the following points:

- that divergent national approaches and differences present a challenge to effective cross-border regulation
- the UK will withdraw from a number of regional and international collaboration arrangements as a result of Brexit and;
- in the event of a "hard" Brexit, the UK Government should consult on a framework of standards to facilitate and regulate the means by which the UK financial regulators enter into bilateral and multilateral co-operation arrangements with other authorities.

FSB publishes report on implications of climate change for financial stability

On 23 November 2020, the Financial Stability Board (FSB) published a [report](#) on the implications of climate change for financial stability. The report examines climate-related risks to financial stability and potential mechanisms within the financial system that might amplify the effects of climate-related risk as well as the cross-border transmission of risks. The report is divided in the following sections:

- introduction
- climate-related risks to financial stability
- transmission and amplification mechanisms
- cross-border transmission of climate-related risks
- mitigating climate-related risks and;
- next steps.

FSB publishes report on market turmoil

On 17 November 2020, the Financial Stability Board (FSB) published a [report](#) setting out the findings of its holistic review of the March 2020 market turmoil. The report stresses the need to better understand interconnections and amplification channels in the financial system and to consider the nature of vulnerabilities in non-bank financial intermediation (NBFI). The FSB proposes a NBFI program focussing on three main areas:

- analytical and policy work on specific issues
- systemic risk assessments and;
- policies to address systemic risks in NBFI.

FSB publishes guidance on assessing adequacy of financial resource for CCP resolution

On 16 November 2020, the Financial Stability Board (FSB) published a [Final Report](#) containing guidance on financial resources to support central counterparty (CCP) resolution and on the treatment of CCP equity in resolution. The guidance is in two parts:

- Part I setting out five steps to guide authority in assessing the adequacy of a CCP's financial resources.
- Part II addressing the treatment of CCP equity in resolution.

The FSB will revisit the guidance in five years to assess whether any adjustments are required in light of market developments or from the authority's experience with using the guidance.

FSB publishes a DP on regulatory and supervisory issues relating to outsourcing

On 9 November 2020, the Financial Stability Board (FSB) published a [Discussion Paper](#) (DP) on regulatory and supervisory issues relating to outsourcing and third-party relationships. The FSB is concerned that some of the measures that financial institutions and supervisory authorities have introduced in response to the pandemic highlight the risks that outsourcing and third-party relationships can create for the financial sector. The deadline for comments to be made on the paper is 8 January 2021.

FOS publishes ombudsman news issue 155

- On 19 November 2020, the Financial Ombudsman Service (FOS) published [issue 155](#) of 'Ombudsman News', containing a number of items of interest:
- Quarterly complains data for Q3 2020
- An overview of the FOS' general approach to complaints about consumer credit
- FOS' [annual report and accounts 2019/20](#)
- COVID-19 operational information about the FOS and its approach to complains caused by the pandemic

ESMA publishes annual report on penalties and measures issued under UCITSD and AIFMD

On 12 November 2020, the European Securities and Markets Authority (ESMA) published an [annual report](#) on penalties and measures issued under the Undertakings for the Collective Investment in Transferable Securities (UCITS) Directive in 2019 and an [annual report](#) on penalties and measures issued under the Alternative Investment Funds Managers Directive (AIFMD) in 2018 and 2019. In both reports ESMA states that the sanctioning powers are not used equally by NCAs and the number and amount of sanctions issued at national level seems relatively low. ESMA is committed to promoting a greater degree of supervisory convergence in the application of UCITS Directive and the AIFMD.

ESMA publishes CP on MiFID II market data obligations

On 6 November 2020, the European Securities and Markets Authority (ESMA) published a [Consultation Paper](#) (CP) on draft guidelines on obligations relating to market data under the Markets in Financial Instruments Directive (MiFID II) Directive and the Markets in Financial Instruments Regulation (MiFIR). The guidelines aim to ensure the common and consistent application of the provisions found in Articles 13, 15(1) and 18(8) of MiFIR and Articles 64(1) and 65(1) and (2) of MiFID II. The consultation period ends on 11 January 2021.

ESMA publishes webpage on performance fees in UCITS and AIFs

On 5 November 2020, the European Securities and Markets Authority (ESMA) published a [webpage](#) containing its guidelines on performance fees in UCITS and certain types of alternative investment funds (AIFs). The guidelines apply to national competent authorities (NCAs) and fund managers and aim to promote convergence in the way that NCAs supervise performance fee structures. The guidelines will apply from 5 January 2021, two months after the date of their publication on ESMA's website.

EBA publishes report on SRT in securitisation transactions under CRR

On 23 November 2020, the European Banking Authority (EBA) published a [report](#) on significant risk transfer (SRT) in securitisation transactions under the Capital Requirements Regulation (CRR). The report contains recommendations to the European Commission (EC) on the harmonisation of practices and processes applicable to the SRT assessment. The recommendations address three areas where inconsistencies have been identified:

- structural features of securitisation transactions
- SRT assessment process and standard documents and;
- SRT quantitative tests.

EBA publishes report on LCR unwind mechanism

On 19 November 2020, the European Banking Authority (EBA) published a [report](#) on the unwind mechanism of the liquidity coverage ratio (LCR) under Commission Delegated Regulation (LCR DR). The LCR DR requires the EBA to report the European Commission on the technical suitability and possible unwarranted side effects of the unwind mechanism envisaged in the computation of the LCR by 19 November 2020.

EBA publishes methodological note for 2021 EU-wide banking sector stress test

On 13 November 2020, the European Banking Authority (EBA) published a [methodological note](#) for the 2021 EU-wide stress test. The stress test will provide supervisors, banks and other market participants with a common analytical framework to compare and assess in a consistent manner the resilience of EU banks. The stress test will be carried out on 70% of the banking sector in the euro area.

EBA publishes report on implementation of POG guidelines

On 3 November 2020, the European Banking Authority (EBA) published a [report](#) on the implementation of its guidelines on product oversight and governance (POG) arrangement for manufacturers and distributors of retail banking and payment products. The report focuses on how the banking industry has implemented its POG guidelines and the review was carried out with 78 credit, payment and e-money institutions across 12 member states.

EBA publishes DP on ESG risks into management and supervision for credit institutions and investment firms

On 3 November 2020, the European Banking Authority (EBA) published a [Discussion Paper](#) (DP) on incorporating environmental, social and governance (ESG) risks into the governance, risk management and supervision of credit institutions and investment firms. The purpose of the DP is to set out the EBA's understanding on the relevance of ESG risks for a sound functioning of the financial sector. Comments can be made until 3 February 2021 and the EBA intends to publish its final report in June 2021.

ECB publishes CP on oversight requirements for systemically important payment systems

On 27 November 2020, the European Central Bank (ECB) published a [Consultation Paper](#) (CP) containing amendments to the Regulation on oversight requirements for systemically important payment systems (the SIPS Regulation). The SIPS Regulation applies to payment systems operated both by central banks and private operators as sets out in the oversight requirements for both large-value and retail payment systems of systemic importance. Alongside the CP, the ECB published:

- [Draft ECB Decision amending Decision \(EU\) 2017/2098 on procedural aspects concerning the imposition of corrective measures for non-compliance with Regulation \(EU\) No 795/2014](#)
- [Draft ECB Decision amending Decision \(EU\) 2019/1349 on the procedure and conditions for exercise by a competent authority of certain powers in relation to oversight of systemically important payment systems](#)
- [Response template](#)

The consultation period closes on 8 January 2021.

BCBS publishes statement on mitigating COVID-19 impacts

On 30 November 2020, the Basel Committee on Banking Supervision (BCBS) published a [statement](#) announcing that the BCBS's oversight body is committed to a coordinated approach to mitigating COVID-19 risks to the global banking system. The approach comprises of the following elements:

- ongoing monitoring and assessment of vulnerabilities and risks to the global banking system
- encouraging the use of flexibility embedded in the Basel framework
- monitoring the implementation of temporary adjustments to mitigate current risks to the banking system and;
- adopting additional global measures in a coordinated manner.

BCBS publishes a progress report to G20 on implementation of Basel III standards

On 3 November 2020, the Basel Committee on Banking Supervision (BCBS) published a [report](#) on the implementation of the Basel III regulatory reforms and the Basel framework-related measures taken by BCBS members in response to COVID-19. The report reiterates BCBS's expectation of full, timely and consistent implementation of all Basel III standards based on the revised timeline endorsed by its oversight body.

ECON publishes a report on proposed Directive amending MiFID II

On 18 November 2020, the European Parliament's Committee on Economic and Monetary Affairs (ECON) published a [report](#) on the proposal for a Directive amending the Market in Financial Instruments Directive (MiFID II). The Directive proposes changes on information requirements, product governance and position limits to help the recovery from the pandemic. ECON adopted the report on 29 October 2020.

SRB publishes work programme for 2021

On 30 November 2020, the Single Resolution Board (SRB) published its [work programme](#) for 2021 and its [multi-annual programme](#) for the period 2021-23. The SRB's priorities for 2021 cover a number of strategic areas of operation, including:

- resolvability
- resolution framework
- crisis management and;
- single resolution fund.

BIS publishes statement on Governors and heads of Supervision

On 30 November 2020, the Banks for International Settlements (BIS) published a [statement](#) in which governors and heads of supervision commit to an ongoing coordinated approach to mitigate COVID-19 risks to the global banking system and endorse the future direction of Basel Committee's work. The coordinated approach consists of:

- encouraging the use of flexibility embedded in the Basel Framework
- ongoing monitoring and assessment of vulnerabilities and risks to the global banking system from COVID-19
- monitoring the implementation of temporary adjustments to mitigate current risks to the banking system and;
- adopting additional global measures in a coordinated manner.

ISDA publishes statement on IBA, UK FCA and Federal Reserve Board

On 30 November 2020, the International Securities and Derivatives Association (ISDA) published a [statement](#) in response to an announcement by ICE Benchmark Administration (IBA), the administrator of LIBOR, the UK Financial Conduct Authority (FCA) and the Federal Reserve Board (FRB). ISDA comments that none of the announcements constitute an index cessation event under the IBOR Fallbacks Supplement or the ISDA 2020 IBOR Fallback Protocol. These announcements will not trigger the fallbacks under the supplement or protocol or have any effect on the calculation of the spread.

ISDA publishes statement on Brexit End Game

On 17 November 2020, the International Securities and Derivatives Association (ISDA) published a [statement](#) outlining issues that will arise as a result of Brexit. Although a series of unilateral equivalence decisions have been announced which will allow some level of continuity in the trading between UK entities with EU firms after the end of the transposition period on December 31, Brexit will inevitably result in changes in how derivatives are traded on a cross-border basis between EU and UK entities.

IOSCO publishes statement on Brazil's implementation of PFMI

On 3 November 2020, the International Organisation of Securities Commissions (IOSCO) published a report containing the result of its assessment on whether Brazil has implemented [the Principles for Financial Market Infrastructures](#) (PFMI). IOSCO concludes that Brazil's framework for financial market infrastructures is consistent with the principles, but proposes recommendations where any minor gaps have been identified or where the framework could be further improved.

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

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