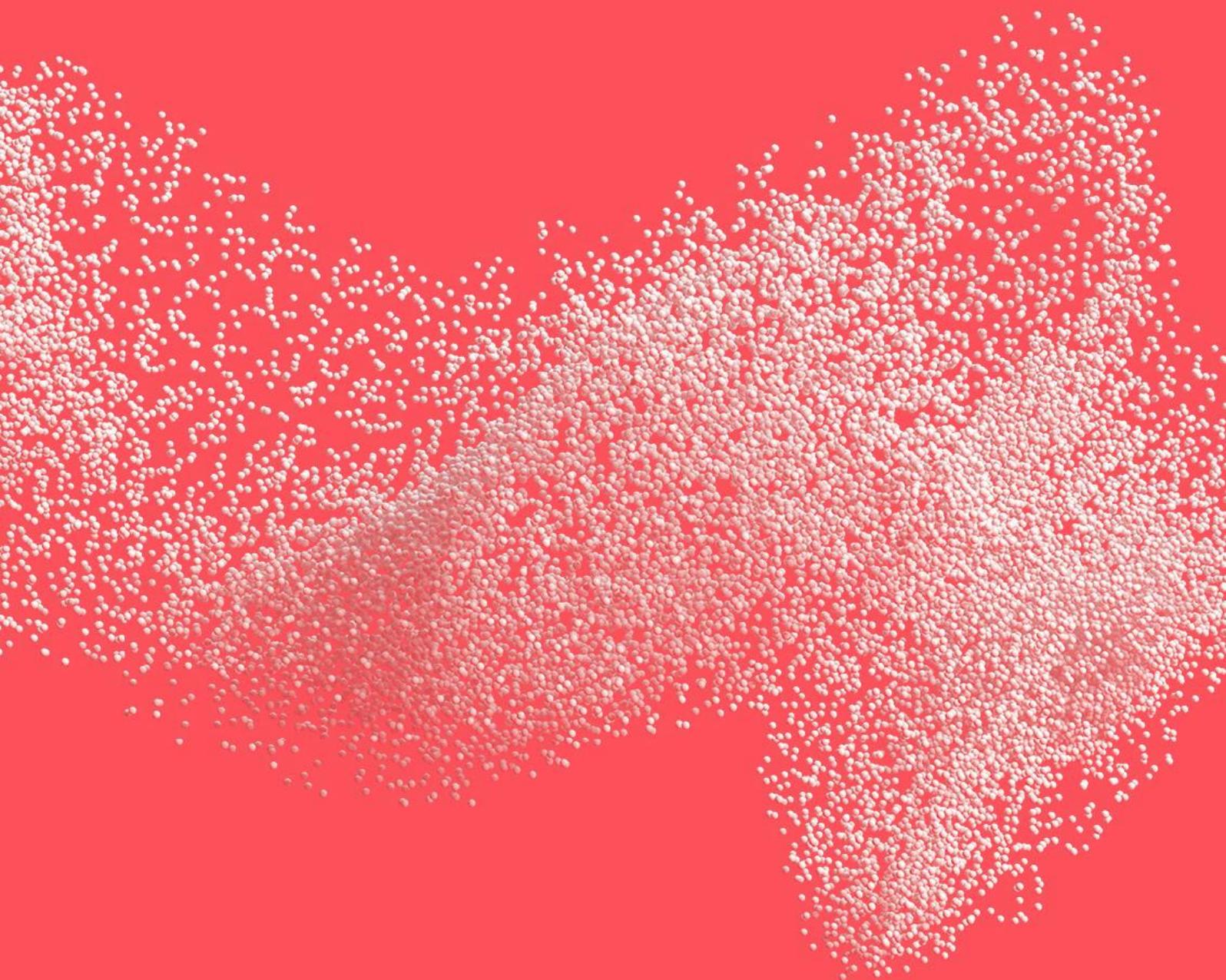


Financial Services Alerter

JANUARY 2021



Introduction

January 2021

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 January 2021.

- UK developments
- EU developments
- International developments

FCA publishes statement on bank branch closures

On 28 January 2021, the Financial Conduct Authority (FCA) published a [statement](#) urging banks to reconsider branch closures during the COVID-19 lockdown. The FCA is concerned that the closures of branches could have significant consequences for customers. It may be harder than usual to reach all customers under the current restrictions and engage effectively with them on closure proposals. The FCA expects banks to:

- communicate with customers in a way that is clear, fair and not misleading when informing them of the closure proposals
- give customers clear information about how the firm can help them access alternatives during the period of national restrictions and;
- engage with customers to understand their needs and properly consider how they will be affected by the closure proposals.

FCA publishes CP restricting CMC charges for financial products and services claims

On 21 January 2021, the Financial Conduct Authority (FCA) published a [Consultation Paper](#) (CP) restricting claims management company (CMC) charges for financial products and services claims. The FCA proposes to:

- address consumer harm by restricting the fees that can be charged to a consumer for a claim management activity
- enhance requirements for all CMCs to disclose information to help consumers make an informed choice about using claims management services in cases where there is an option to claim under a statutory scheme and;
- make minor changes to clarify and improve aspects of our existing rules for CMCs.

The consultation period closes on 21 April 2021.

FCA publishes statement on review of regulatory permissions

On 18 January 2021, the Financial Conduct Authority (FCA) published a [statement](#) notifying regulated firms to regularly review their regulatory permission under Part 4A of the Financial Services and Markets Act 2000 (FSMA) to ensure that they stay up-to-date with any changes made. The FCA will however notify firms of any material changes, in relation to those that would come into effect with the Financial Services Bill 2019-21.

FCA publishes a report on consumer investments data

On 18 January 2021, the Financial Conduct Authority (FCA) published a [report](#) on its consumer investments data review setting out the work that it has undertaken between 1 January and 31 October 2020. The FCA's work relates to the three strategic outcomes of its consumer investments strategy:

- stopping and disrupting firms and individuals causing harm
- supporting and guiding consumers to investments that meet their needs and;
- incentivise firms to address problems by dealing fairly with customer complaints and paying redress.

FCA publishes webpage on MoUs following the end of the Brexit transition period

On 14 January 2021, the Financial Conduct Authority (FCA) published a [webpage](#) on the memorandums of understanding (MoUs) it has entered into with the European authorities in a number of areas including:

- securities
- investment services and asset management
- insurance and pensions and;
- banking.

The webpage also provides a link to the PRA [website](#), where MoUs with EU and EEA NCAs covering supervisory co-operation and information sharing arrangements in the field of banking, can be found.

FCA publishes Market Watch issue 66

On 11 January 2021, the Financial Conduct Authority (FCA) published [issue 66](#) of Market Watch on market conduct and transaction reporting issues, which contained the following key points:

- firms should continue to comply with the recording obligations in its Senior Management arrangements, Systems and Controls sourcebook
- firms should take reasonable steps to record telephone conversations and keep a copy of electronic communications of activities
- firms must have effective and up-to-date recording policies and;
- firms should provide enhanced or refreshed training to staff on the use of new technologies.

FCA publishes financial resilience survey

On 7 January 2021, the Financial Conduct Authority (FCA) published a new [webpage](#) setting out the data it has obtained by having carried out its COVID-19 financial resilience survey during 2020. The key findings are as follows:

- firms have experienced a significant change in their liquidity
- 59% of respondents expected COVID-19 to negatively impact their net income

- payments and e-money where the least profitable firms, followed by wholesale financial markets, investment management, insurance intermediaries and brokers, retail lending and retail investments and;
- retail lending has made most use of the available government support.

The FCA intends to repeat the survey in the future in order to understand how COVID-19 is impacting financial services over time.

PRA publishes CP on depositor protection identity verification

On 20 January 2021, the Prudential Regulatory Authority (PRA) published a [Consultation Paper](#) (CP) setting out proposed rules regarding the identity verification required for eligibility of depositor protection under the Financial Services Compensation Scheme (FSCS). It also proposed amendments to [Supervisory Statement \(SS\) 18/15](#), including a new expectation that Insolvency Practitioners should carry out identity verification in the event that a firm had failed to do so by the compensation date.

The PRA proposes that changes resulting from the CP should be implemented from 24 March 2021.

PRA publishes CP on branch and subsidiary supervision

On 11 January 2021, the Prudential Regulatory Authority (PRA) published a [Consultation Paper](#) (CP) on its proposed approach to supervising the UK activities of PRA-authorized banks and designated investment firms that are headquartered outside of the UK. The proposals in the CP are intended to clarify for international banks the implications that may arise when structuring their operations. The consultation period closes on 11 April 2021 and the proposed implementation date for the final policy is Q2 2021.

PRA publishes CP on GBP transition to SONIA under Solvency II regime

On 7 January 2021, the Prudential Regulatory Authority (PRA) published a [Consultation Paper](#) (CP) on deep, liquid and transparent (DLT) assessments and GBP transition to the Sterling Overnight Index Average (SONIA), under the Solvency II regime. The CP set out PRA's approach to DLT assessments and the transition to Solvency II technical information (TI) from the London Interbank Offered Rate (LIBOR) to SONIA in 2021.

The consultation period closes on 31 March 2021.

HMT publishes statement on the UK and Switzerland co-operation of financial services

On 28 January 2021, HM Treasury published a [statement](#) on its plans move to the next stage of talks between the UK and Switzerland on an agreement on financial services. The UK and Swiss governments announced their intention to develop a mutual recognition agreement on financial services in June 2020 through a [joint statement](#).

HMT publishes letter on EMIR 2.2

On 12 January 2021, HM Treasury (HMT) published a [letter](#) clarifying certain aspects of EMIR 2.2. The letter is in response to the questions raised by the European Union Committee and focusses on the:

- changes to delegated acts on central counterparty (CCP) recognition
- impact of comparable compliance and;
- supervisory co-operation between Bank of England (BoE) and the European Securities and Markets Authority (ESMA).

HMT publishes response to consultation on expanding dormant assets scheme

On 9 January 2021, HM Treasury (HMT) and the Department for Digital, Culture, Media and Sport published a [response](#) to HM Government's [Consultation Paper](#) (CP) on expanding the dormant asset scheme established under the Dormant Bank and Building Society Account Act 2008. Assets within the scope of expansion include:

- proceeds of dormant life insurance and retirement income policies
- proceeds of dormant shares or units in collective investments
- dormant investment asset distributions and proceeds
- proceeds of dormant shares and;
- unclaimed proceeds from corporate actions.

HMT publishes CP on regulatory approach to cryptoassets and stablecoins

On 7 January 2021, HM Treasury (HMT) published a [Consultation Paper](#) (CP) on the regulatory approach to cryptoassets and stablecoins. HMT wants to ensure that the UK regulatory framework is equipped to harness the benefits of new technologies, supporting innovation and competition, while mitigating risks to consumers and financial stability. The CP proposes a sound regulatory environment for stablecoins, especially in relation to stable tokens used as a means of payment.

The consultation period closes on 21 March 2021.

FSB publishes 2021 work programme

On 20 January 2021, the Financial Stability Board (FSB) published its [2021 work programme](#) which reflects a strategic shift in priorities due to COVID-19.

Important FSB work programme items include:

- international cooperation and coordination related to COVID-19
- non-bank financial intermediation (NBFIs)
- central counterparty resilience, recovery and resolvability

- cross-border payments
- climate change and sustainable finance
- interest rate benchmarks and;
- cyber and operational resilience.

HoC publishes report on Financial Services Bill 2019-21

On 13 January 2021, the House of Commons (HoC) published a [report](#) and [third reading](#) of the Financial Services Bill 2019-21. The Bill will now pass back to the House of Lords for consideration and amendments. The Bill completed its committee stage in the House of Commons on 4 December 2020.

FMLC publishes response to FCA CP on LIBOR

On 19 January 2021, the Financial Markets Law Committee (FMLC) published its [response](#) to the Financial Conduct Authority's (FCA) [Consultation Paper](#) on powers relating to LIBOR transition. The FMLC highlights two areas of legal uncertainty that it considers should form a key component in the FCA's analysis as to whether and when it may exercise its new powers under the FS Bill:

- practicalities of intervention and scale of the "tough legacy" contracts and;
- issues concerning the use of LIBOR in foreign jurisdictions.

EP publishes report on proposed Directive on credit servicers

On 14 January 2021, the European Parliament (EP) published a [statement](#) announcing that the Economic and Monetary Affairs Committee (ECON) had adopted a [report](#) on the proposal for a Directive on credit servicers, credit purchasers and the recovery of collateral. MEPs agreed to start negotiations with the Council of the EU and the European Commission and the EP will consider the report in plenary.

EC publishes statement on UK – EU relationship and on taxonomy delegated act

On 26 January 2021, the European Commission (EC) published a [statement](#) focusing on the future of the UK-EU relationship and on the Taxonomy Regulation.

The EC envisages a future framework for financial services similar to that between the EU and the US, involving a voluntary structure to compare regulatory initiatives, exchange views on international developments and discuss equivalence-related issues.

In relation to the Taxonomy Regulation, the EC intends to delay the publication of the delegated act after receiving 46,000 replies to its [Consultation Paper](#) (CP) on climate change mitigation and adaptation.

ESMA publishes CP on aspects of appropriateness and execution-only under MiFID II

On 29 January 2021, the European Securities and Markets Authority (ESMA) published a [Consultation Paper](#) (CP) containing guidelines on aspects of the appropriateness and execution-only requirements under the MiFID II Directive. ESMA launched a common supervisory action (CSA) on the application of the MiFID II requirements on the assessment of appropriateness in 2019. The deadline for comments on the CP is 29 April 2021. ESMA intends to publish the Final Report and Guidelines in Q3 2021.

ESMA publishes Q&A on data reporting under SFTR

On 28 January 2021, the European Securities and Markets Authority (ESMA) published its [Q&As](#) on the reporting requirements under the Regulation on reporting and transparency of securities financing transactions (SFTR). The Q&As include clarifications on how reporting of certain business events should be performed, such as reporting of:

- fields related to time and applicable calendars
- settlement legs
- SFTs collateralised initially at transaction and then at net exposure level
- SFTs concluded off venue and cleared on the same day and;
- zero collateral for margin loans.

ESMA publishes Final Report on written agreements between members of CCP colleges under EMIR

On 21 January 2021, the European Securities and Markets Authority (ESMA) published a [Final Report](#) on its revised guidelines on written agreements between members of central counterparty (CCP) colleges. The guidelines promote the consistent application of the Regulatory Technical Standards (RTS) on CCP colleges and Articles 18 and 19 of EMIR and establish a standard written agreement to support the smooth functioning of a CCP college. Once the translations have been published on the ESMA website in all official languages of the EU, a two-month period will be triggered during which NCAs must notify ESMA whether they already comply or intend to comply with the Guidelines.

ESMA publishes a statement on MiFID II reverse solicitations rules

On 13 January 2021, the European Securities and Markets Authority (ESMA) published a [statement](#) on the requirements under the MiFID II Directive concerning the provision of investments services to retail or professional clients by firms not established or situated in the EU. ESMA highlights that:

- service providers should be careful when providing investment services in the EU without proper authorisation and;
- investors should be wary of using services of investment providers which are not properly authorised in accordance with the EU because they may lose protections granted to them under EU relevant rules.

ESMA publishes statement on supervisory action with NCAs on supervision costs and fees of UCITS

On 6 January 2021, the European Securities and Markets Authority (ESMA) published a [statement](#) announcing the launch of a common supervisory action (CSA) with national competent authorities (NCAs) on the supervision of costs and fees of UCITS. The aim of the CSA is to assess the compliance of supervised entities with the relevant cost-related provisions in the UCITS framework.

ECB publishes a guide on SSM Banks

On 12 January 2021, the European Central Bank (ECB) published a [guide](#) on its supervisory approach to consolidation for banks in the single supervisory mechanism (SSM). The guide provides clarity on the following aspects:

- the ECB will not penalise credible integration plans by setting higher Pillar 2 capital requirements
- the ECB will communicate to banks and indication of the capital levels that will need to be maintained
- the supervisors expect banks not to pay out dividend profits stemming from bad will until the sustainability of the business model has been firmly established and;
- the ECB will accept the temporary use of internal models, subject to a strong roll-out plan.

EBA publishes statement on 2021 EU-wide stress test

On 29 January 2021, the European Banking Authority (EBA) published a [statement](#) announcing the launch of the 2021 EU-wide stress test. The stress test:

- will reflect the ongoing concerns about the possible evolution of the COVID-19 pandemic coupled with a potential strong drop in confidence
- is designed to ensure an adequate level of severity across all EU countries and;
- will be conducted on a sample of 50 EU banks covering 70% of total banking assets in the EU.

EBA expects to publish results of the exercise by 31 July 2021.

EIOPA publishes report on the use of CAOs under Solvency II

On 28 January 2021, the European Insurance and Occupational Pensions Authority (EIOPA) published a [report](#) on the use of capital add-ons (CAOs) under the Solvency II Directive. The CAO ensure that regulatory capital requirements reflect the risk profile of the undertaking. EIOPA urges National Competent Authorities (NCAs) to use it and try as far as possible to ensure a high degree of supervisory convergence.

IOSCO publishes report on complaint handling

On 27 January 2021, the International Organisation of Securities Commissions (IOSCO) published a [report](#) setting out nine sound practices to assist its members in developing and improving their complaint handling procedures and mechanisms for retail investors. Sound practices cover a number of themes including:

- taking steps to raise investor awareness of various available complaint handling systems
- making available channels for retail investors to submit complaints
- establishing a system for handling retail investor complaints
- encouraging financial service providers to offer a wide range of resolutions to retail investor complaints
- using complaint data for regulatory and supervisory purposes and;
- making alternative dispute resolution facilities operated by or affiliated with a regulator more accessible for retail investors.

IAIS publishes CP on the supervision of control functions

On 25 January 2021, the International Association of Insurance Supervisors (IAIS) published a [Consultation Paper](#) (CP) describing the practices aimed at helping supervisors address issues related to the supervision of control functions. The CP covers a number of aspects, including:

- role of control functions
- independence of control functions
- stature of control functions
- internal audit function
- combination of control function
- outsourcing of control functions and;
- group-wide control functions.

The consultation period ends on 26 March 2021.

ISDA publishes a statement on fallback for derivatives

On 25 January 2021, the International Swaps and Derivatives Association (ISDA) published a [statement](#) on new fallback rates for derivatives contracts linked to key interbank offered rates (IBORs). The fallbacks will be included in all new derivatives contracts that reference the 2006 ISDA Definitions and where parties agree to include them or have adhered to the IBOR Fallbacks Protocol, the fallbacks will be included into all the legacy non-cleared derivatives.

ISDA publishes report on CPP risk management framework and COVID-19

On 7 January 2021, the International Swaps and Derivatives Association (ISDA) published a [report](#) on how central counterparty (CCP) risk management frameworks reacted to the COVID-19 pandemic. The report contains results based on feedback from CPP, from which two major issues were identified:

- procyclical initial margin (IM) requirements exacerbated market stress and;
- clearing members lacked timely information about back-testing breaches and procyclicality in margin models.

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

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