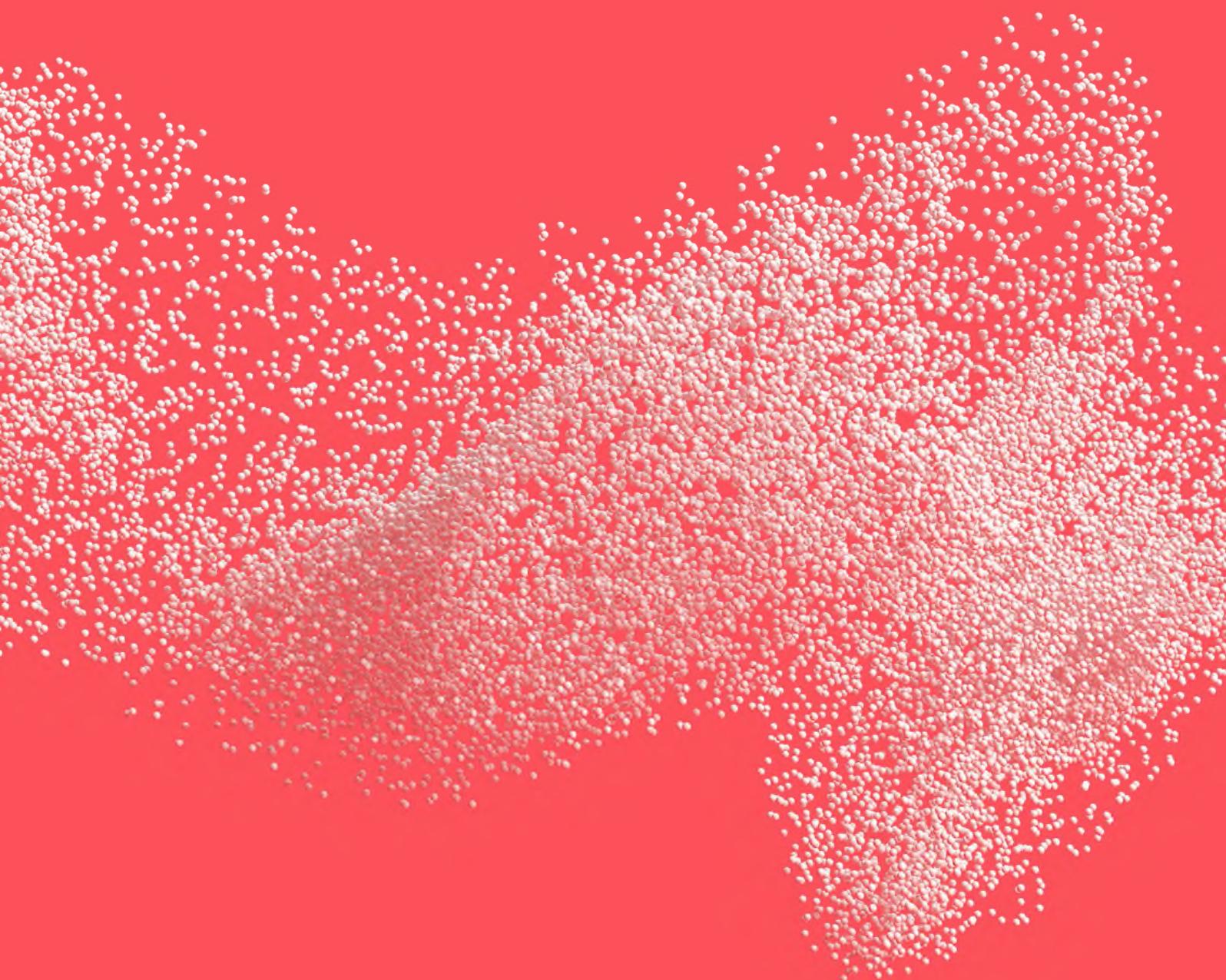


Financial Services Alerter

JUNE 2020



Introduction

June 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 June 2020.

- UK developments
- EU developments
- International developments

FCA publishes Handbook Notice 78

On 26 June 2020, the Financial Conduct Authority (FCA) published [Handbook Notice 78](#) setting out changes in the following areas of the FCA handbook:

- Conduct of Business Sourcebook (Pension Transfers)
- Individual accountability (FCA-Authorised Benchmark Firms) FCA publishes expectations about strong customer authentication under PSD2
- Handbook Administration
- Variation of Permission and Cancellation Form (Miscellaneous Amendments)
- Collective Investment Schemes Sourcebook (Miscellaneous Amendments).

FCA updates its webpage on Business Interruption Insurance Test Case 24

On 24 June 2020, the Financial Conduct Authority (FCA) updated its [webpage](#) on the High Court test case concerning business interruption insurance. The FCA published in its webpage:

- a summary of the court case
- a timetable for the case and;
- the individual defences of the defendants

FCA and PSR publish a statement on access to cash

On 16 June 2020, the Financial Conduct Authority (FCA) and the Payment Systems Regulator (PSR) published a [statement](#) updating their joint approach to access to cash. The FCA and PSR have taken a number of actions including:

- delivering a better understanding of cash access
- overseeing the communication with people and businesses and;
- focusing on the needs of the vulnerable.

FCA publishes a speech on having financial system to support recovery

On 16 June 2020, the Financial Conduct Authority (FCA) published a [speech](#) "A financial system to support the recovery", given by Charles Randell, Chair of the FCA and the PSR, including comments on:

- loans to small businesses
- consumer debt
- retail investments and;
- digitalisation

FCA publishes a statement on remedies under complaints scheme

On 16 June 2020, the Financial Conduct Authority (FCA) published a statement on its approach to remedies under the complaints scheme established under Part 6 of the Financial Services Act 2012. The statement covers the:

- remedies the FCA applies
- factors the FCA considers when determining the remedy
- matters that remedies will not address

FCA publishes statement on MiFIR open access regime

On 11 June 2020, the Financial Conduct Authority (FCA) published a [statement](#) on the open access regime for trading and clearing exchange traded derivatives (ETDs), under MiFIR. The FCA states that trading venues and central counterparties will be subject to the MiFIR open access regime where they offer trading and clearing of ETDs.

FCA finalises guidance framework for assessing adequate financial resources

On 11 June 2020, the Financial Conduct Authority (FCA) published [finalised guidance](#) on its framework to assess adequate financial resources. The guidance also clarifies the meaning of 'adequate financial resources' and is relevant to all FCA regulated firms subject to the Threshold Conditions (COND) or the Principles for Business (PRIN) in the FCA's Handbook.

FCA publishes statement on one-off increase to levies

On 9 June 2020, the Financial Conduct Authority (FCA) published a [statement](#) on a one-off increase to levies to part-fund government debt advice services. The statement comes in light of HM Treasury's [announcement](#) that an additional £37.8m will be made available to debt advice service providers in 2020-2021 to enable them to service people who are struggling financially.

FCA to survey firms on financial resilience

On 3 June 2020, the Financial Conduct Authority (FCA) published a [statement](#) announcing that it will be surveying firms' financial resilience, in light of COVID-19. The FCA will send out the survey between 4 and 8 June 2020 to around 13,000 firms.

FCA publishes a feedback statement and guidance for mortgage customers

On 2 June 2020, the Financial Conduct Authority (FCA) published a [feedback statement](#) with guidance on temporary financial relief for mortgage customers, in light of COVID-19. The FCA also published a complementary [final updated version](#) of its guidance relevant to mortgages addressing a number of issues including clarification:

- that firms should agree with customers forms of support other than a payment deferral
- that the lender should reduce the amount of the payment demanded from a customer where there is a disagreement between the parties and the customer cannot afford to repay
- for customers in payment shortfall within the scope of all aspects of the guidance
- of the information that firms should provide their customers to enable them to make informed decisions.

FCA publishes statement on business insurance interruption test case

On 1 June 2020, the Financial Conduct Authority (FCA) published a [statement](#) setting out its expectations of insurers and insurance intermediaries when handling claims and complaints for business interruption policies, in light of COVID-19. The guidance proposes the following steps:

- identify implications of the test case on their decisions to reject claims
- keep policy holders informed of the test case and its implication for policies, claims and settlement offers and;
- treat policy holders fairly when the test case is resolved.

FCA publishes supervisory notices to Cypriot investment firms

On 1 June 2020, the Financial Conduct Authority (FCA) published a [statement](#) barring four Cypriot firms from continuing to offer high risk contracts for difference (CFDs) to investors in the UK.

The firms were found to have acted in a manner clearly prejudicial to the interest of investors in the UK by marketing products in an unfair, unclear and misleading way.

BoE and PRA publish statement on ESRB recommendations

On 8 June 2020, the Bank of England (BoE) and the Prudential Regulatory Authority (PRA) published a [joint statement](#) on the restriction of distributions during COVID-19 on the recommendation of the European Systemic Risk Board (ESRB). ESRB's recommendation urges certain financial institutions to refrain from paying remuneration to material risk takers and from making dividend distributions.

PRA publishes statement regulatory reporting and disclosure requirements

On 26 June 2020, the Prudential Regulatory Authority (PRA) published a [statement](#) on regulatory reporting and disclosure amendments, in light of COVID-19. The PRA will accept delayed submissions of certain regulatory returns made on or before 31 May 2020, but expects firms to have adjusted to the new ways of working. Moving forward, the publication timeline for Pillar 3 disclosures should not be affected by COVI-19.

PRA publishes statement on reporting and disclosure of exposures

On 24 June 2020, the Prudential Regulatory Authority (PRA) published a [statement](#) on the application of the European Bank Authority (EBA) guidelines on reporting and disclosure of exposures. The EBA guidelines address data gaps associated with the measures taken in response to COVID-19, to ensure an appropriate understanding of institutions' risk profiles.

PRA publishes statement on use of electronic signatures

On 2 June 2020, the Prudential Regulatory Authority (PRA) published a [statement](#) on the use of electronic signatures by firms to evidence forms and other documents delivered to it. The PRA confirms that, in light of COVID-19, firms may use electronic signatures instead of "wet" signatures.

The OCC publishes a final report on FCA's fraud responsibilities

On 2 June 2020, the Office of the Complaints Commissioner (OCC) published a [final report](#) on discussing a complaint made against a decision taken by the Financial Conduct Authority (FCA). The FCA deemed the complaint to fall outside its remit and suggested that the Serious Fraud Office or the policy would be in a better position to deal with it.

FOS publishes strategy for 2020 to 2025

On 3 June 2020, the Financial Ombudsman Service (FOS) published a document setting out its strategy for 2020-2025, outlining three strategic priorities:

- Enhancing the service
- Preventing complaints and unfairness arising
- Building an organisation with the capabilities needed for the future.

The FOS acknowledges the challenges posed by COVID-19 and confirms that it will adapt its plans as necessary throughout the duration of the strategy.

UK Finance publishes technical briefing on impact of MiFIR third-country regime

On 17 June 2020, UK Finance published a technical briefing on the impact of the third-country equivalence regime under the Market in Financial Instruments Regulation (MiFIR) on the provision of the UK-EU cross-border financial services after Brexit. The briefing outlines the implications for UK firms if the European Commission makes an equivalence decision in respect of the UK and the implications for EU firms if the UK makes a corresponding equivalence decision.

FSB publishes report on too-big-to-fail reforms

On 29 June 2020, the Financial Stability Board (FSB) published a [report](#) setting out results from its evaluation of the too-big-to-fail reforms for systemically important banks. The FSB identified that the evaluation did not examine the implications of the recent economic and financial developments arising out of the COVID-19 pandemic as the report was completed before the outbreak. Despite the many areas where progress has been made, the FSB notes that gaps remain, which need to be addressed.

ESMA publishes revised work programme for 2020

On 15 June 2020, the European Securities and Markets Authority (ESMA) published updates to its [work programme](#) for 2020. ESMA prioritises maintaining markets by allowing prices to adjust and liquidity to be provided, in light of COVID-19. The activities in the work programme were evaluated and assessed in the context of urgency taking into account the impact on stakeholders.

ESMA publishes statement on MiFIR on exchange traded derivatives

On 11 June 2020, the European Securities and Markets Authority (ESMA) published a [statement](#) on open access provisions for exchange traded derivatives under MiFIR, in response to COVID-19. National Competent Authorities may grant temporary exemptions to trading venues and central counterparties.

ESMA publishes decision on reporting thresholds for holders of net short positions

On 10 June 2020, the European Securities and Markets Authority (ESMA) published a [decision](#) requiring holders of net short positions in shares traded on an EU regulated market to notify the relevant National Competent Authority if the position exceed 0.1% of the issued share capital. Article 28(10) of the Short Selling Regulation provides that ESMA is required to review the requirement at appropriate intervals and at least every three months.

ESMA publishes consultation paper on outsource to cloud service providers

On 3 June 2020, the European Securities and Markets Authority (ESMA) published a [Consultation Paper](#) (CP) setting out guidelines on outsource requirements applicable to firms that outsource to cloud service providers. The guidelines' aim is to assist firms identify, address and monitor the risks that arise from their cloud outsourcing arrangements.

ESMA updates opinions on TCTVs under MiFIR & MiFID II

On 3 June 2020, the European Securities and Markets Authority (ESMA) published:

- [opinion](#) determining transparency and position limits for third-country trading venues for the purpose of transparency under MiFIR and;
- [opinion](#) determining transparency and position limits for third-country trading venues for the purpose of position limits under MiFID II.

ESMA publishes final report on FRANDT commercial terms

On 2 June 2020, the European Securities and Markets Authority (ESMA) published a [final report](#) with technical advice to the European commission on the fair, reasonable, non-discriminatory and transparent (FRANDT) commercial terms for the provision of clearing services under article 4(3a) of EMIR.

EC publishes speech on digital finance

On 24 June 2020, the European Commission (EC) published a [speech](#) by Valdis Dombrovskis on digital finance. The commission intends to adopt a legislative proposal on:

- Crypto-assets: the EC will propose a pilot scheme to allow some regulatory flexibility for experimentation in the area of distributed ledger technology.
- Digital operational resilience: the EC intends to adopt a proposal in autumn 2020, requiring all financial institutions to comply with operational resilience standards.

EC consults on delegated legislation integrating sustainability into UCITSD, MiFID II, Solvency II and IDD

On 8 June 2020, the European Commission (EC) published the consultation draft texts of six Commission Delegated Regulations and Directives as part of the EU's action plan on sustainable finance. The legislation incorporates sustainability issues and considerations into frameworks for the UCITS Directive, the Alternative Investment Fund Managers Directive (AIFMD), the MiFID II Directive, and the Insurance Distribution Directive.

- MiFID II [Draft Act: Sustainable finance – obligation for investment firms to advise clients on social and environmental aspects of financial products](#)
- IDD [Draft Act: Sustainable finance – obligation for insurance firms & brokers to advise clients on social & environmental aspects](#)
- UCITSD [Draft Act: Sustainable finance – obligation for mutual funds to advise clients on social & environmental aspects](#)
- AIFMD [Draft act: Sustainable finance – obligation for alternative investment funds to advise clients on social & environmental aspects](#)
- MiFID II [Draft Act: Sustainable finance – obligation on investment funds to advise clients on social & environmental aspects](#)
- IDD [Draft Act: Sustainable finance – obligation for \(re\)insurance companies to advise clients on social & environmental aspects](#)

EBA publishes final report on draft regulatory technical standards on CRD IV

On 18 June, the European Banking Authority (EBA) published a [final report](#) on draft regulatory technical standards (RTS) on the criteria to identify all categories of staff whose professional activities have a material impact on the institutions risk profile. The EBA has revised the definition of managerial responsibility and has clarified how the criteria should be applied on a consolidated, sub-consolidated and individual basis.

EBA publishes statement on application date of guidelines on moratoria on loan repayments

On 18 June 2020, the European Banking Authority (EBA) published a [statement](#) announcing that it is extending the application date of its guidelines on legislative and non-legislative moratoria on loan repayments by 3 months. The extended dates are granted in light of the continued support measures taken by banks to extend loans, in response to the COVID-19 crisis.

EBA publishes discussion paper on early intervention measures

On 26 June 2020, the European Banking Authority (EBA) published a [discussion paper](#) on the Bank Recovery and Resolution Directive (BRRD) early intervention measures, identifying key challenges faced by supervisors in the application of the current regulatory framework. The EBA considers three main categories of issues:

- interaction between early intervention measures and other supervisory powers
- disclosure and reputation risks and;
- specification of early intervention triggers.

EBA publishes final report on supervisory reporting under CRR

On 25 June 2020, the European Banking Authority (EBA) published a [final report](#) on draft implementing technical standards (ITS) on supervisory reporting requirements under the Capital Requirements Regulation (CRR). The ITS portray the changes introduced by the CRR II and Backstop Regulation. The first reference date for the application of the ITS is expected to be 30 June 2021.

EBA publishes peer review of stress tests

On 17 June 2020, the European Banking Authority (EBA) published its [first peer review](#) of stress tests and the resilience of deposit guarantee schemes. The peer review identified good practices, areas for improvement and an early indication of how improve the framework by exploring how to incentivise DGS to “special” tests that allow them to assess scenarios resulting in severe business continuity problems.

EBA publishes letter on risk reduction measures

On 15 June 2020, the European Banking Authority (EBA) published a [letter](#) to the European Commission on the submission of technical standards under the risk reduction measures package. The letter clarifies the expected dates for the EBA to submit technical standards on:

- CRR II – various dates through 2020, 2021 and 2022.
- CRD V – March 2022.
- BRRD II – December 2020.

EBA publishes note on cost of reporting requirements under CRR

On 3 June 2020, the European Banking Authority (EBA) published a [note](#) on cost of compliance with supervisory reporting measures under the Capital Requirements Regulation (CRR). The EBA will assess whether the costs incurred by firms when complying with the supervisory reporting requirements are proportionate compared to the benefits delivered.

EBA publishes guidelines on exposures subject to measures applied in light to COVID-19

On 2 June 2020, the European Banking Authority (EBA) published a [final report](#) on reporting and disclosure of exposures subject to measures applied in light of COVID-19. The EBA has not consulted on the guidelines or carried out a cost-benefit analysis. The EBA’s [webpage](#) provides guidelines and instructions relating to the available reporting and disclosure templates.

EBA publishes roadmap on investment firms

On 2 June 2020, the European Banking Authority (EBA) published a [roadmap](#) on Investment firms Regulation (IFR) and Investment Firms Directive (IFD). IFR and IFD provide for the EBA to prepare draft versions or regulatory technical standards and implementing technical standards. In the roadmap, the EBA sets out the four stages upon which it aims to delivering on these mandates:

- Phase 1: delivery by December 2020
- Phase 2: delivery by June 2021
- Phase 3: delivery by December 2021
- Phase 4: delivery between December 2021 and June 2025.

ECB publishes recommendation for swaptions

On 16 June 2020, the European Central Bank (ECB) published a [recommendation](#) on swaption contracts affected by the discounting transition from euro overnight index average (EONIA) to the euro short-term rate (€STR). Recommended actions include:

- avoid extended periods of uncertainty
- minimise any valuation differences and;
- promote responsible risk management and market liquidity and resiliency.

ECON and ENVI recommendations for second reading of Taxonomy Regulation

On 2 June 2020, the European Parliament's Economic and Monetary Affairs Committee (ECON) and its Environment, Public Health and Food Safety Committee (ENVI) published a [recommendation for second reading](#) of the Taxonomy Regulation. ECON and ENVI adopted the recommendation for second reading on 28 May 2020. Once it has been adopted by the Parliament, the Taxonomy regulation will enter into force 20 days following its publication in the OJ.

ESRB publishes set of actions in response to COVID-19

On 8 June 2020, the European Systemic Risk Board (ESRB) published a [statement](#) containing a set of actions taken in response to COVID-19 and issued recommendations relating to:

- the introductions of minimum requirements for national monitoring and establishing a framework for reporting to the ESRB
- the introduction of restrictions on dividend payments, share buybacks and other pay-outs and;
- measures addressing liquidity risks arising from margin calls

Council of the EU publishes statement on CRR

On 24 June 2020, the Council of the EU published a [statement](#) announcing that, on 18 June 2020, it adopted the Capital Requirements Amending Regulation at first reading. The amendments act as necessary adjustments in response to COVID-19 and the Regulation will become applicable on the day following its publication in the Official Journal of the European Union and, at the latest, by the end of June 2020.

AFME publishes paper on senior manager responsibilities

On 25 June 2020, the Association for Financial Markets in Europe (AFME) published a [paper](#) outlining considerations for senior managers under the Senior Managers and Certification Regime (SM&CR), in light of COVID-19. The paper sets out a number of themes that senior managers should consider before taking on a role:

- responsibilities
- reporting lines
- dependencies
- risk and controls and;
- evidencing decisions.

ESAs publish responses to the European Commission's consultation on a new EU Digital Finance Strategy

On 29 June 2020, the European Supervisory Authorities (ESAs) published their respective responses to the European Commission's consultation on a new EU Digital Finance Strategy. The European Securities and Markets Authority (ESMA) published a [statement](#) outlining risks and benefits to the digitalisation of the financial sector. The European Insurance Organisational Pensions Authority (EIOPA) also published a [statement](#) setting out its view, that financial innovation should strike a balance between enhancing innovation and ensuring well-functioning consumer protection and financial stability frameworks. Finally, the European Banking Authority (EBA) published a [statement](#) emphasising the importance of monitoring the application of innovative technologies in the financial sector.

IOSCO publishes report on processes for deference

On 26 June 2020, the International Organization of Securities Commissions (IOSCO) published a [report](#) on good practices on processes for deference. The report sets out eleven good practices in Annex 1 relating to processes for deference. IOSCO aims to assist regulatory authorities in mitigating the risk of unintended, regulatory-driven market fragmentation and strengthen international co-operation.

IOSCO and CPMI publish joint report on CCP auctions

On 25 June 2020, the International Organization of Securities Commissions (IOSCO) and the Committee on Payments and Market Infrastructures (CPMI) published a joint [report](#) on issues relating to default management auction processes for central counterparties (CCPs). The report identifies practices the CCPs should consider in order to improve default management auction rules.

IOSCO publishes consultation on AIML guidance

On 25 June 2020, the International Organization of Securities Commissions (IOSCO) published a [consultation](#) on the use of artificial intelligence and machine learning (AIML) by market intermediaries and asset managers. IOSCO believes that the use of AIML may alter their business models and expose market intermediaries and asset managers to a number of risks in areas such as:

- governance and oversight
- algorithm development
- testing and ongoing monitoring
- data quality and bias
- transparency
- outsourcing and;
- ethical concerns.

ISDA, EBF, FIA published a joint letter to extend derogation from EMIR clearing requirements for intragroup transactions

On 9 June 2020, the International Swaps and Derivatives Association (ISDA), the European Banking Federation (EBF) and the Futures Industry Association (FIA) published a [joint letter](#) to the European Commission and ESMA, requesting that:

- the necessary equivalence decisions area adopted in all jurisdictions that have implemented clearing rules in line with the G20 commitments;
- the clearing RTS are amended to extend the current temporary derogation from clearing requirements for intragroup transactions with non-EU affiliates, until 21 December 2020 for all other Jurisdictions.

EIOPA publishes discussion paper on methodological principles of stress testing

On 24 June 2020, the European Insurance and Occupational Pensions Authority (EIOPA) published a [discussion paper](#) on methodological principles of insurance stress testing addressing the following topics:

- stress test framework on climate change
- approach to liquidity stress testing and;
- multi-period framework for the bottom-up insurance stress testing.

EIOPA requests comments on the discussion paper by 2 October 2020.

EIOPA publishes findings of its peer review

On 18 June 2020, the European Insurance and Occupational Pensions Authority (EIOPA) published the findings of its [peer review](#) of the regular supervisory report. The peer review examined how the proportionate approach set out under the Solvency II Delegated Regulation has been implemented among National Competent Authorities.

