

# Financial Services Alerter

DECEMBER 2020



# Introduction

## December 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 December 2020.

- UK developments
- EU developments
- International developments

## FCA publishes a statement on the use of TTP to modify the UK's derivatives trading obligation

On 31 December, the Financial Conduct Authority (FCA) published a [statement](#) on the use of its Temporary Transition Power (TTP) to modify the UK's derivatives trading obligation (DTO). Without mutual equivalence, the branches of EU firms in London will be caught by a conflict of laws between the EU and UK DTOs. The FCA intends to keep the use of TTP under review and to consider by 31 March 2021 whether market or regulatory developments warrant a review of its approach.

## FCA publishes webpage on complaints data for first half of 2020

On 15 December 2020, the Financial Conduct Authority (FCA) published a [webpage](#) on complaints data for the first half of 2020. The data, comprised of 2.96 million complaints, is firm specific for individual firms and aggregates figures for the industry. Travel insurance showed an increase in complaints received. FCA suggests this is attributable to the COVID-19 pandemic.

## FCA publishes CP on the implementation of the Investment Firms Prudential Regime

On 14 December 2020, the Financial Conduct Authority (FCA) published a [Consultation Paper](#) (CP) on the implementation of the Investment Firms Prudential Regime (IFPR) setting out proposals relating to:

- the categorisation of investment firms
- prudential consolidation
- own funds and own funds requirements and;
- reporting requirements.

The consultation period closes on 5 February 2021 and the FCA intends to publish two additional consultations in 2021 covering liquidity, risk management, governance and remuneration requirements.

## FCA publishes GC on approach of insolvency practitioners to regulated firms

On 7 December 2020, the Financial Conduct Authority (FCA) published a [Guidance Consultation](#) (GC) containing proposed guidance for insolvency practitioners on how to approach regulated firms. The GC sets out the FCA's view on how an insolvency practitioner should ensure regulated firms meet their ongoing financial services regulatory obligations. The consultation covers:

- the FCA's expectations of insolvency practitioners
- considerations for insolvency practitioners before a regulated firm's entry into an insolvency procedure and
- the FCA's expectations when a regulated firm enters into a company voluntary arrangement, scheme of arrangement or restructuring plan.

The consultation period ends on 18 January 2021.

## FCA publishes report on RDF and FAMR impact

On 3 December 2020, the Financial Conduct Authority (FCA) published a [report](#) of its evaluation of the impact of the Retail Distribution Review (RDR) and the Financial Advice Market Review (FAMR). The FCA found from its research in 2019 and 2020 that the customers are still holding money in cash instead of investing it for potentially higher returns. This is the case despite the fact that financial market advice has improved.

## FCA updates webpage on SRs

On 2 December 2020, the Financial Conduct Authority (FCA) updated its [webpage](#) on securitisation repositories (SRs) under the Securitisation Regulation adding a link to the [application form](#) for registration as a UK SR. The FCA aims to ensure a smooth transition in the reporting of public securitisations before the end of the Brexit transition period.

## PRA publishes PS on transposing BRRD II Directive

On 21 December 2020, the Prudential Regulatory Authority (PRA) published a [Policy Statement](#) (PS) on transposing the Bank Recovery and Resolution Directive II. The UK is required to transpose the BRRD II Directive by 28 December 2020. In the PS the PRA sets out its final rules concerning the impact of BRRD II on the Contractual Recognition of Bail-in and Stay in Resolution Parts of the PRA Rulebook.

## PRA publishes Dear CEO letter on 2021 priorities for supervising UK deposit takers

On 15 December 2020, the Prudential Regulatory Authority (PRA) published a [Dear CEO letter](#), setting out its 2021 supervisory priorities in relation to UK deposit-takers. PRA's priorities include:

- financial resilience
- credit risk
- operational risk and resilience
- transition from LIBOR to alternative risk-free rate
- competition and future regulatory frameworks and;
- financial risks arising from climate change.

## PRA publishes PS on implementation of CRD V

On 9 December 2020, the Prudential Regulatory Authority (PRA) published a [Policy Statement](#) (PS) on the implementation of the Capital Requirements Directive V (CRD V) setting out:

- rules and other materials on the implementation of CRD V requirements relating to Pillar 2
- remuneration
- the application of prudential requirements to approved holding companies and;
- capital buffers.

The PRA will publish the final rulebook instruments and supervisory material on 28 December 2020.

## PRA publishes CP on UK consolidation groups

On 9 December 2020, the Prudential Regulatory Authority (PRA) published a [Consultation Paper](#) (CP) on its approach to designating entities within certain UK consolidation groups as responsible for ensuring that consolidated prudential requirements are met during a transitional period. The CP targets banks and PRA-designated investment firms that are part of a UK consolidation group controlled by a mixed or parent holding company.

The consultation period closes on 16 December 2020.

## PRA publishes statement on operational resilience supervisory co-operation

On 3 December 2020, the Prudential Regulatory Authority (PRA) published a [statement](#) on supervisory co-operation, recognising that banks have made progress in enhancing operational reliance in recent years as seen through their response to the challenges posed by the pandemic. The PRA is committed to working closely with the European Central Bank (ECB) and the US Federal Reserve to ensure that supervisory approaches on operational reliance are coordinated properly.

## PRA publishes PS on Solvency II after Brexit transition period

On 2 December 2020, the Prudential Regulatory Authority (PRA) published a [Policy Statement](#) (PS) on its approach to publishing Solvency II technical information after the Brexit transition period ends. The PRA has made changes to the draft policy in order to address a number of operational concerns that were raised by respondents to its June 2020 [Consultation Paper](#) (CP) and clarifies that the changes do not result in any additional requirements on firms.

The PS will come into effect at the end of the transition period, which is expected to be 11pm on Thursday 31 December 2020.

## House of Commons publishes briefing paper on LC&F

On 24 December 2020, the House of Commons published a [briefing paper](#) on London Capital & Finance (LC&F), focusing on mini-bonds and the failure of LC&F to advertise to its customers in a way that is clear, not misleading and fair.

The paper discusses a number of topics including:

- mini-bonds and failure
- scope of investigations
- findings from the FCA investigations
- compensation for bondholders and;
- parliamentary activity.

## EBA publishes report on implementation of COVID-19 policies

On 21 December 2020, the European Banking Authority (EBA) published a [report](#) on the implementation of COVID-19 policies. The report follows -up on the implementation issues around credit risk policy measures and contains FAQs on the implementation of the requirements set out in the EBA guidelines on moratoria, COVID-19 reporting and disclosure. The EBA intends to update the report if further issues arise in the context of its monitoring of COVID-19 related policies.

## EBA publishes opinion on EC amendments to draft RTS under the CRR

On 14 December 2020, the European Banking Authority (EBA) published an [opinion](#) on the European Commission's (EC) proposal to amend draft regulatory technical standards (RTS) on the specification of the assessment methodology for competent authorities on compliance of an institution with the requirements to use the internal ratings based (IRB) approach in accordance with the Capital Requirements Regulation (CRR). The Opinion highlights a number of concerns about some changes introduced by the EC to provide clarity to the RTS and rejects a number of amendments.

## EBA publishes opinion on AML, TF and deposit protection

On 14 December 2020, the European Banking Authority (EBA) published an [Opinion](#) on the interplay between the Fourth Money Laundering Directive (MLD4) and the Deposit Guarantee Schemes Directive (DGSD). The Opinion covers the responsibilities of different regulatory authorities in respect of:

- mitigating money laundering and terrorist financing risks
- co-operation between authorities
- information gathering and exchange and;
- depositor eligibility notifications and provision of information.

## EBA publishes Basel III capital monitoring report

On 10 December 2020, the European Banking Authority (EBA) published a [report](#) on the impact of implementing the final Basel III reforms on EU Bank's capital. The report:

- attributes the credit risk impact to the standardised approach and internal ratings-based approach
- quantifies the impact of the new version of the stands for market risk fundamental review of the trading book
- assess the changes in credit valuation adjustment (CVA) and;
- sets out the European bank's progress in converging towards the new capital requirements.

## ESMA publishes CP on fines and penalties for benchmark administrators

On 23 December 2020, the European Securities and Markets Authority (ESMA) published a [Consultation Paper](#) (CP) on specific aspects of the procedural rules for imposing fines and penalties on Benchmark Administrators under ESMA's direct supervision. The CP sets out ESMA's proposals for a delegated act to be adopted by the Commission concerning relevant aspects of fines and penalties for Data Reporting Service Providers (DRSPs). The consultation period closes on 23 January 2021 and ESMA intends to publish technical advice to the Commission by the end of Q1 2021.

## ESMA publishes guidance on waivers from pre-trade transparency

On 23 December 2020, the European Securities and Markets Authority (ESMA) published [guidance](#) on pre-trade transparency waivers for equity and non-equity instruments. The guidance covers:

- requests for quote systems
- how venues should apply for a waiver to their national competent authority and;
- updates on frequently encountered issues when assessing waiver notifications.

ESMA intends to continue to update its guidance should it encounter further frequent issues in the context of assessing waiver notifications.

## ESMA publishes report market share calculation for CRAs

On 14 December 2020, the European Securities and Markets Authority (ESMA) published a [report](#) on its annual market share calculation for EU credit rating agencies (CRAs). The report provides guidance on issuers or related third parties that are required to consider the appointment of a CRA with no more than 10% total market share and specifies:

- the types of credit ratings offered by EU CRAs
- the calculation of market share of EU CRAs and;
- the proportion of EU debt issuances by asset class rated by CRAs.

## ESMA publishes statement on MMF Regulation

On 4 December 2020, the European Securities and Markets Authority (ESMA) published a [statement](#) containing [reporting instructions](#) reporting instructions under the Money Market Funds (MMF) Regulation. The instructions have been amended to reflect feedback from market participants and provide clarity to existing validation rules.

## Council of the EU publishes note on CMU Action Plan

On 2 December 2020, the Council of the EU published a [note](#) with conclusions on the European Commission's Capital Markets Union (CMU) Action Plan. The conclusions were adopted at a meeting of the European Economic and Financial Affairs Council (ECOFIN). The Council acknowledges the progress achieved so far but recognises that further steps are needed. Specifically, the Council:

- highlights the need to build a polycentric CMU to avoid excessive dependency on one financial marketplace. how venues should apply for a waiver to their national competent authority and;
- stresses that the development of the CMU should be taken into account as much as possible in parallel to the work on the Commission's Digital Finance Strategy and its Action Plan on Sustainable Finance
- notes the importance of the CMU for the Banking Union and advises that progress towards a genuine CMU has become more urgent in light of COVID 19 and the UK's withdrawal from the EU.

## ECB publishes speech on bank boards and supervisory expectations

On 3 December 2020, the European Central Bank (ECB) published a [speech](#) on bank boards and supervisory expectations. A number of points were stressed: :

- there is scope for improving governance in euro area banks
- the ECB will implement a stricter and more intrusive approach to fit and proper assessments
- the fit and proper criteria need to be fully harmonised to ensure a level playing field and;
- in 2021, the ECB will publish a revised guide of fit and proper assessments clarifying its expectations on the suitability of bank directors.

## ESMA publishes recommendation on restrictions of distributions during the pandemic

On 18 December 2020, the European Systemic Risk Board (ESRB) published a [statement](#) on the impact of the COVID-19 pandemic on the EU economy and financial system. Banks need to be proactive by identifying and provisioning for non-performing loans (NPLs). The General Board approved the adverse scenario for the EBA's 2021 EU-wide stress test, which will be published at the end of January 2021.

## IOSCO publishes consultation report on market data for equity securities

On 3 December 2020, the International Organisation of Securities Commissions (IOSCO) published a [consultation report](#) on market data in the secondary equity markets. IOSCO notes that market data is an essential element of efficient price discovery and helps to support fair and efficient markets. The consultation seeks industry views on a number of issues:

- fair, equitable and timely access to market data
- the need and extent of data consolidation and;
- what data is necessary to facilitate trading in today's markets

The consultation period ends on 26 February 2021.

## UNEP FI publishes CP on Principles for Responsible Banking

On 2 December 2020, the United Nations (UN) Environmental Programme Finance Initiative (UNEP FI) published a [Consultation Paper](#) (CP) containing guidance designed to support signatories of the Principles for Responsible Banking. The guidance is divided into three sections:

- Q&As relating to the reporting requirements
- guidance on integrating reporting on the principles with other frameworks and;
- guidance on how to complete the reporting and self-assessment template.

UNEP FI banking members are able to provide feedback by 29 January 2021.

## IAIS publishes a report on challenges to cyber risk underwriting

On 21 December 2020, the International Association of Insurance Supervisors (IAIS) published a [report](#) on the identified challenges and supervisory consideration for sustainable cyber risk underwriting. The report outlines a number of recommendations for a strategic approach to how supervisory practices can foster sustainable cyber-risk underwriting.

## IAIS publishes statement on overarching priorities for future activities

On 8 December 2020, the International Association of Insurance Supervisors (IAIS) published a [statement](#) on the impact of COVID-19 on the insurance sector and setting the direction for the IAIS 2021 activities. The overarching priorities for the IAIS future work over the coming years will be codified in the IAIS Roadmap 2021-2022, which will be published in early 2021.

## GLEIF publishes verifiable LEI for use across all industry sectors

On 10 December 2020, the Global LEI Foundation (GLEIF) published a [statement](#) outlining its plans to launch a cryptographically verifiable Legal Entity Identifier (LEI) development programme for a number of sectors including:

- pharmaceutical
- healthcare
- telecommunications; and
- automotive

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

© Simmons & Simmons LLP and its licensors. All rights asserted and reserved. This document is for general guidance only. It does not contain definitive advice.

Simmons & Simmons LLP is a limited liability partnership registered in England & Wales with number OC352713 and with its registered office at CityPoint, One Ropemaker Street, London EC2Y 9SS, United Kingdom. It is authorised and regulated by the Solicitors Regulation Authority and its SRA ID number is 533587. The word "partner" refers to a member of Simmons & Simmons LLP or one of its affiliates, or an employee or consultant with equivalent standing and qualifications. A list of members and other partners together with their professional qualifications is available for inspection at the above address.