



October 2020

For more information, please contact:

Andrew Wingfield

Partner
t: +44.20.7280.2021
awingfield@proskauer.com

Richard Bull

Partner
t: +44.20.7280.2060
rbull@proskauer.com

Kirsten Lapham

Partner
t: +44.20.7280.2031
klapham@proskauer.com

John Verwey

Partner
t: +44.20.7280.2033
jverwey@proskauer.com

Jade-Alexandra Fearn

Special Antitrust Counsel
t: +44.20.7280.2215
jfearn@proskauer.com

Michael Singh

Associate
t: +44.20.7280.2269
msingh@proskauer.com

Amar Unadkat

Associate
t: +44.20.7280.2144
aunadkat@proskauer.com

This publication is a service to our clients and friends. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice, or render a legal opinion.

© 2020 PROSKAUER ROSE LLP
All Rights Reserved.

Welcome to the Regulation Round Up, a regular bulletin highlighting the latest developments in UK and EU financial services regulation.

Key developments in October 2020:

29 October

The Financial Conduct Authority (“**FCA**”) updated its [webpage](#) on its responsibilities to mutual societies and its [webpage](#) on mutual societies’ annual returns and accounts.

The FCA published a [press release](#) announcing that it will be participating in the cross-border testing initiative organised by the Global Financial Innovation Network.

The European Banking Authority (“**EBA**”) published for consultation a [revised version](#) of its guidelines on sound remuneration policies.

The FCA published a [Dear CEO letter](#) it has sent to mortgage intermediaries, setting out the FCA’s view of the key risks mortgage intermediaries pose to their consumers and/or the markets they operate in.

28 October

The Financial Ombudsman Service (“**FOS**”) published [issue 154](#) of ombudsman news.

The Prudential Regulation Authority (“**PRA**”) published:

- a [consultation paper](#) (CP19/20) on amendments to reporting and disclosure dates for resolution assessments;
- a [consultation paper](#) (CP20/20) on revising its operational continuity in resolution policy; and
- published a [consultation paper](#) on implementing the Bank Recovery and Resolution Directive II ((EU) 2019/879) (“**BRRD II Directive**”) (CP18/20).

The Financial Action Task Force (“**FATF**”) published an [updated version](#) of its anti-money laundering (“**AML**”) and counter-terrorist financing (“**CTF**”) standards.

The FCA published a [policy statement](#) (PS20/12) on extending the implementation deadlines for solo-regulated firms under the Senior Managers and Certification Regime (“**SM&CR**”) relating to the certification regime and conduct rules.

The FCA published a new [webpage](#) on market making exemptions and a new [webpage](#) on net short positions reporting.

UK Finance and the Lending Standards Board published a [report](#) setting out best practice guidance on the transition from LIBOR for small- and medium-sized enterprise customers.

27 October

The FCA updated its [webpage](#) on its directory of certified and assessed persons to confirm the publication dates for directory person data submitted by firms under the SM&CR.

European Securities and Markets Authority (“**ESMA**”) published:

- a [press release](#) announcing that it has updated the list of third-country venues, in the context of the opinions on post-trade transparency and position limits under the MiFID II Directive ((EU) 2014/65) (“**MiFID II**”) and the Markets in Financial Instruments Regulation ((EU) 600/2014) (“**MiFIR**”), to add UK venues; and
- an [update](#) to its statement on the endorsement of credit ratings from the UK (ESMA33-5-857).

The European Central Bank (“**ECB**”) published:

- a [consultation paper](#) on the draft Eurosystem oversight framework for electronic payment instruments, schemes and arrangements (“**PISA framework**”);
- a [consultation paper](#) on the draft Eurosystem assessment methodology for electronic payment instruments, schemes and arrangements, which complements the PISA framework; and
- a [consultation paper](#) on the draft exemption policy for the PISA framework.

26 October

The FCA published a [Dear CEO letter](#) that it has sent to claims management companies.

The Financial Markets Law Committee (“**FMLC**”) [responded](#) to the HM Treasury consultation on expanding the financial promotion regime to include cryptoasset promotions.

ESMA published:

- a [consultation paper](#) (ESMA70-151-3076) on guidelines for consistency of supervisory reviews and evaluation processes of central counterparties (“**CCPs**”) under Derivatives (EMIR) - Regulation (EU) 648/2012 (“**EMIR**”);
- a [press release](#) announcing that it has postponed the application date of the updated EMIR validation rules; and
- a [statement](#) (ESMA70-155-7782) about the impact of the end of the Brexit transition period on 31 December 2020 on the trading obligation for shares under Article 23 of MiFIR.

The FCA published a [webpage](#) about its review into change and innovation in the unsecured credit market, which will be chaired by Christopher Woolard.

23 October

The FCA has [published](#) Handbook Notice 81, which sets out changes to the FCA Handbook.

The FCA [responded](#) to House of Commons Treasury Committee questions on the UK approach to combatting financial crime following the U.S. Treasury’s Financial Crimes Enforcement Network (“**FinCen**”) papers leak.

The House of Commons Treasury Committee launched a new economic crime [inquiry](#).

The FCA published an updated [webpage](#) on reporting simple, transparent and standardised securitisations.

The FMLC published a [paper](#) discussing issues of legal uncertainty arising from LIBOR transition.

The European Payments Council (“EPC”) published a [document](#) setting out criteria for participation of non-EEA countries in SEPA Schemes.

The FATF published a [public statement](#) on counter-proliferation financing.

The European Commission adopted a [Delegated Regulation](#) (C(2020) 7186 final) amending Delegated Regulation (EU) 2018/1229 supplementing the Central Securities Depositories Regulation ((EU) 909/2014) (“CSDR”) with regard to regulatory technical standards (“RTS”) on settlement discipline.

The ECB [announced](#) a new launch date for the Eurosystem Collateral Management System.

22 October

HM Treasury published a [joint statement](#) by members of the US-UK Financial Regulatory Working Group following their third meeting, which was held on 20 October 2020.

The European Commission launched a [consultation](#) relating to its review of the Alternative Investment Fund Managers Directive ((EU) 2011/61) (“AIFMD”).

21 October

The Financial Services Bill 2019-21 (FS Bill) was introduced to Parliament. The [text](#) of the FS Bill has been published, together with [explanatory notes](#), and the FS Bill has had its first reading in the House of Commons.

The FCA published an [Insight article](#) on improving diversity objectively.

The FCA published the new and updated [webpages](#) relating to whistleblowing.

The EBA published an [opinion](#) (EBA/Op/2020/17) on the prudential treatment of so-called “legacy instruments”.

The FCA published an updated version of its money laundering regulations [webpage](#).

The PRA published the joint [Dear CEO letter](#) that it and the FCA have sent to insurance firms regarding final preparations for the end of the Brexit transition period.

The Council of EU published a [press release](#) announcing it has agreed to its negotiating mandate on the proposed Directive amending MiFID II.

The Council of the EU published an ["I" item note](#) (11861/20 ADD 1) (dated 16 October 2020) relating to the proposed Directive amending the MiFID II Directive.

ESMA published a [speech](#) (dated 15 October 2020) by Steven Maijoor, ESMA Chair, in which he explains why retail investors and asset management are the pillars of a successful capital markets union.

HM Treasury published a [policy statement](#) on making amendments to the Benchmarks Regulation ((EU) 2016/1011) to support LIBOR transition.

ESMA published a [consultation paper](#) (ESMA70-151-3023) on draft RTS relating to CCPs under EMIR 2.2 ((EU) 2019/2099) (“EMIR 2.2”).

The UK government published a new version of the [European Union Withdrawal \(Consequential Modifications\) \(EU Exit\) Regulations 2020](#). The previous version had been laid before Parliament on 8 October 2020 and has been withdrawn.

20 October

The FCA updated its [statement](#) on firms' handling of complaints during the COVID-19 pandemic.

The PRA published its second [consultation paper](#) (CP17/20) on implementing the CRD V Directive ((EU) 2019/878) (“**CRD V**”).

The FCA published its [occasional paper 58](#) on understanding consumer financial wellbeing through banking data.

The FCA updated its [webpage](#) on its business interruption insurance test case.

The [Regulation \(EU\) 2020/1503](#) and [Directive \(EU\) 2020/1504](#) on European crowdfunding service providers were published in the Official Journal of the EU.

19 October

The European Commission published a [communication](#) (COM(2020) 690 final) outlining its work programme for 2021.

HM Treasury published a [consultation paper](#) relating to Phase II of its Financial Services Future Regulatory Framework Review.

The European Systemic Risk Board (“**ESRB**”) published a [recommendation](#) (dated 24 September 2020) on identifying legal entities (ESRB/2020/12).

The Financial Stability Board (“**FSB**”) published its [final report](#) on a toolkit of effective practices for cyber incident response and recovery.

The European Commission launched a [consultation](#) relating to its review of the Regulation on European long-term investment funds (ELTIFs) ((EU) 2015/760) (“**ELTIF Regulation**”).

16 October

FCA proposed further [draft guidance](#) for insurance and premium finance firms on customers in financial difficulty.

The FSB published a [global transition roadmap](#) providing a timetable of actions to be taken by financial and non-financial sector firms with exposure to LIBOR benchmarks to ensure a smooth transition away from LIBOR by the end of 2021.

15 October

The FCA published its [Regulation round-up](#) for October 2020.

The EEA Joint Committee’s [Decision \(92/2018\)](#) incorporating amended Omnibus I Regulation into the EEA Agreement was published in the Official Journal of the European Union.

HM Treasury published an [update](#) on its work relating to statutory instruments laid, or to be laid, under the European Union (Withdrawal) Act 2018 (“**EUWA**”) relating to financial services.

The following three draft versions were published on [legislation.gov.uk](#):

- the [Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020](#), (together with a [draft explanatory memorandum](#));
- the [Securities Financing Transactions, Securitisation and Miscellaneous Amendments \(EU Exit\) Regulations 2020](#) (together with an [explanatory memorandum](#));
- [Financial Holding Companies \(Approval etc\) and Capital Requirements \(Capital Buffers and Macro-prudential Measures\) \(Amendment\) \(EU Exit\) Regulations 2020](#) (together with an [explanatory memorandum](#)).

HM Treasury published a [summary of responses](#), together with its responses, to its consultation paper on updating the UK’s prudential regime before the end of the Brexit transition period.

The House of Commons Treasury Committee published a [press release](#) announcing it has sent a [letter](#) to the FCA and a [letter](#) to the National Crime Agency (“NCA”) requesting a progress update on their engagement with the bank signature forgery campaign.

The UK Government laid the [European Union Withdrawal \(Consequential Modifications\) \(EU Exit\) Regulations 2020 \(Regulations\)](#) as well as the [European Union \(Withdrawal\) Act 2018 \(Relevant Court\) \(Retained EU Case Law\) Regulations 2020 \(Regulations\)](#) (together with a [draft explanatory memorandum](#)) before Parliament.

14 October

The FSB published a [report](#) to the G20 finance ministers and central bank governors to update them on its ongoing work on market fragmentation.

The House of Commons Treasury Committee published a [letter](#) (dated 9 October 2020) from Nikhil Rathi, FCA Chief Executive, to Mel Stride, Committee Chair, where the FCA responds to House of Commons Treasury Committee questions about closures of EU-resident customers' UK bank accounts post-Brexit and the UK approach to EU crowdfunding service provider proposals.

The EBA published a [final report](#) (EBA/RTS/2020/07) on draft RTS specifying the prudential treatment of software assets under Article 36 of the Capital Requirements Regulation ((EU) 575/2013) (“CRR”).

The EBA published a [consultation paper](#) (EBA/CP/2020/22) setting out proposals to revise the guidelines on major incident reporting under the revised Payment Services Directive ((EU) 2015/2366) (“PSD2”).

13 October

The FSB published the final version of a [report](#) setting out ten high-level recommendations for the co-ordinated and effective regulation, supervision and oversight of global stablecoin arrangements.

The FSB published a [stage 3 report](#) in which it presents a roadmap to enhance cross-border payments.

The FCA published a [speech](#) given by Nisha Arora, FCA Director of Consumer and Retail Policy, on regulating consumer credit, during the COVID-19 pandemic and beyond.

12 October

The BoE published the [opening remarks](#) given by Dave Ramsden, Deputy Governor for Markets and Banking, at the launch of the BoE and FCA's Artificial Intelligence Public-Private Forum (“AIPPF”).

The EBA published an [industry survey](#) to gather information about the use of digital platforms by financial institutions.

The FCA updated its [webpage](#) on its directory of certified and assessed persons to clarify the data submission arrangements for solo-regulated firms.

The FCA published a [speech](#) given by Julia Hoggett, FCA Market Oversight Director, on market abuse in the time of the COVID-19 pandemic.

The European Parliament published a [press release](#) announcing that it had voted in plenary to adopt a resolution on the capital markets union (2020/2036(INI)). It has also published a [provisional edition](#) (P9_TA-PROV(2020)0266) of the resolution.

9 October

A group of central banks and the Bank for International Settlements (“**BIS**”) published a [report](#) on the foundational principles and core features of central bank digital currencies.

The PRA published a [Dear CEO letter](#) sent jointly by it and the FCA to PRA-regulated firms on their final preparations for the end of the Brexit transition period.

The FSB published a [report](#) on the use of supervisory technology (“**SupTech**”) and regulatory technology (“**RegTech**”) by regulatory authorities and regulated institutions.

8 October

The BoE published the financial policy [summary and record](#) (“**FPSR**”) of the meeting of its Financial Policy Committee (“**FPC**”) on 30 September 2020.

The House of Lords EU Services Sub-Committee published a [letter](#) (dated 21 September 2020) from John Glen, Economic Secretary and City Minister, responding to its letter seeking clarity on the post-Brexit future relationship in financial services.

EIOPA published a [report](#) on its approach to the supervision of product oversight and governance requirements under the Insurance Distribution Directive ((EU) 2016/97) (“**IDD**”).

The FCA published a [speech](#) given by Jonathan Davidson, FCA Executive Director of Supervision - Retail and Authorisations, on mortgages and the coronavirus - enabling positive consumer outcomes.

The European Parliament published a [press release](#) announcing that it had voted in plenary to adopt a resolution on digital finance (2020/2034(INL)). It has also published a [provisional edition](#) (P9_TA-PROV(2020)0265) of the resolution.

The Director of the Serious Fraud Office, Lisa Osofsky, gave a [speech](#) at the Royal United Services Institute, on future challenges in economic crime.

7 October

FSB and IMF published its [2020 progress report](#) on phase 2 of G20 data gaps initiative.

The PRA published a [letter](#) to directors of credit unions on COVID-19 and [direction](#) modifying minimum provisioning requirements.

[Commission Implementing Regulation \(EU\) 2020/1406](#) laying down implementing technical standards (“**ITS**”) on forms and procedures for co-operation under Articles 24 and 25 of the Market Abuse Regulation ((EU) 596/2014) (“**MAR**”) was published in the Official Journal of the EU.

6 October

The BoE published a [speech](#) given by Nick Strange, BoE Senior Technical Adviser for Operational Risk and Resilience, on operational resilience in a time of uncertainty.

The PRA published a [consultation paper](#) (CP15/20) on market risk, the calculation of risks not in value at risk (“**RNIV**”), and stressed value at risk (“**sVaR**”).

The FCA updated its [webpage](#) on its business interruption insurance test case and published the [draft transcript](#) of the consequential hearing.

The FCA published a [policy statement](#) (PS20/10) prohibiting the sale to retail clients of derivatives and exchange traded notes referencing certain types of cryptoassets.

5 October

The FCA published a [press release](#) announcing that it has launched its digital sandbox pilot, in collaboration with the City of London Corporation, to support innovative firms tackling

challenges caused by the COVID-19 pandemic. The FCA has also updated its [webpage](#) on the digital sandbox pilot.

EIOPA published a [consultation paper](#) (EIOPA-BoS-20/561) on a draft opinion on supervising the use of climate change risk scenarios in own risk and solvency assessment.

ESMA updated [Q&As](#) on Securitisation Regulation.

The European Commission published the [text](#) as well as the [annexes](#) of an Implementing Regulation on ITS on forms and procedures for co-operation under MAR.

The European Parliament published a [press release](#) announcing that it has adopted the Regulation and Directive on European crowdfunding service providers.

2 October

Correspondence was published about climate-related disclosure requirements for asset managers and FCA-regulated pension schemes between Christopher Woolard, FCA Interim Chief Executive ([letter](#) dated 22 September 2020) and Guy Opperman, Minister for Pensions and Financial Inclusion ([response](#) dated 30 September 2020).

The FCA updated its policy development update [webpage](#), which sets out information on recent and future FCA publications.

The FCA published [finalised guidance](#) on cancellations and refunds aimed at credit and debit card firms and insurance providers.

The PRA published a Dear CFO [letter](#) (dated 30 September 2020) providing thematic feedback from its review of written auditor reports received in 2020 and subsequent discussions with firms.

ESMA published a [press release](#) announcing that it has published updated [reporting instructions](#) under the Regulation on money market funds ((EU) 2017/1131) (“**MMF Regulation**”).

ESMA published its [work programme](#) for 2021 (ESMA20-95-127).

The EBA published its [final guidelines](#) (dated 30 September 2020) (EBA/GL/2020/13) on the appropriate subsets of four sectoral exposures to which competent authorities may apply a systemic risk buffer under the CRD IV Directive ((EU)2013/36).

1 October

The PRA and the BoE published a [new webpage](#) providing firms and financial market infrastructures with information on the BoE's and PRA's approach to the temporary transitional power.

The FCA updated its Brexit [temporary transitional directions](#) and explained how it will use the temporary transitional power.

The FCA has published [Handbook Notice 80](#), which sets out changes to the FCA Handbook made by the FCA board on 17 and 30 September 2020.

EIOPA published a [press release](#) announcing that it has launched a study on diversification in internal models under the Solvency II Directive (2009/138/EC).

EIOPA published its [single programming document 2021-23](#) (EIOPA-20-590) (dated 29 September 2020), which includes its annual work programme 2021.

The FCA published a [statement](#) on trade reporting and position limit obligations under MiFIR.

ESMA published updated statements setting out its approach, in light of Brexit, to applying key provisions of the following regulations:

- [Statement](#) (ESMA80-187-610) on the consequences under the BMR; and

Regulation Round Up

- [Statement](#) (ESMA70-155-10962) on its approach under MiFID II/MiFIR and the CRR.

The European Commission published a [set of FAQs](#) on the setting-up and work of the platform on sustainable finance.

ESMA published its [final report](#) (ESMA35-43-2424) containing final draft technical standards on MiFID II third-country firm regime.