Proskauer

Regulation Round Up

January 2018

1 January

The Packaged Retail and Insurance-based Investment Products ("PRIIPs") Regulation (1286/2014) (the "PRIIPs Regulation") came into force on 1 January 2018. This includes an obligation on PRIIP manufacturers to prepare and publish a Key Information Document ("KID") in relation to each PRIIP that they produce.

Most of the provisions contained in Regulation (2016/1011) ("EU Benchmarks Regulation") came into force on 1 January 2018. This introduces a common framework and consistent approach to benchmark regulation across the EU.

2 January

The Bank of England published minutes of a meeting of its directors held on 7 November 2017 in which it noted, in relation to Brexit contingency planning, that the critical point for firm's location decisions would be early 2018, following the government's confirmation that it was seeking a transitional deal.

3 January

MiFID II was implemented in the UK on 3 January 2018. The FCA has, accordingly, updated a number of pages on its website in relation to the same. The FCA also published a document containing MiFID II general guidance on the authorisation process, forms and prudential categories. Section 1 of the document provides guidance on applications for:

- authorisation as a MiFID investment firm made by a first-time applicant;
- Variations of permission ("VoPs") by a non-MiFID firm seeking to become a MiFID investment firm; and
- VoPs by a firm that is already authorised as a MiFID investment firm.

Section 2 of the document contains flowcharts intended to assist MiFID investment firms to determine the prudential categorisations that will apply to them, depending on the regulated activities that they perform and the nature of their businesses.

The FCA also published a table in respect of technical standards under MiFID II and MiFIR.

The FCA published a statement on its website confirming that it had received two applications, from ICE Futures Europe and the London Metal Exchange, for transitional arrangements to apply in relation to exchange-traded derivatives. The FCA agreed to the transitional arrangements for those entities, meaning that certain open access requirements under MiFIR will not apply until 2020.

ESMA has launched a new webpage containing a list of all authorised or registered benchmark administrators located in the European Union.

4 January

The FCA published the Enforcement (Packaged Retail and Insurance-based Investment Products Regulations 2017) Instrument 2018 (FCA 2018/1), which is now in force.

The instrument contains amendments to the Enforcement Guide (EG) and the Decision Procedure and Penalties manual (DEPP) relating to the FCA's enforcement approach to breaches of the PRIIPs Regulation.

10 January

The government published an article issued jointly by Philip Hammond, Chancellor of the Exchequer, and David Davis, Secretary of State for Exiting the European Union, on a "deep and special" partnership between the UK and the EU. The article focussed on the need to ensure that there is still a model of co-operation between the UK and the EU following Brexit and the need to ensure that the implementation-period after the UK leaves the EU still provides for access to the single market.

13 January

The revised Payment Services Directive (2015/2366) ("PSD2") was implemented in the UK on 13 January 2018. The FCA has updated its webpage in relation to PSD2 accordingly. PSD2 has been transposed in the UK primarily by the Payment Services Regulations 2017, which repeal and replace the Payment Services Regulations 2009.

18 January

The UK Government published a House of Commons Library paper examining the status of EU decisions in the UK after Brexit. The European Union (Withdrawal) Bill will create a category of domestic law called "retained EU law" but most attention on it has focused on regulations and directives. The paper discusses how the roughly 7,500 EU decisions that exist (which include a large and diverse range of EU acts) might be dealt with post Brexit.

24 January

The FCA published a statement relating to concerns raised about performance scenarios in KIDs published by manufacturers of PRIIPs under the PRIIPs Regulation. The FCA stated that some firms are concerned that, for a minority of PRIIPs, the performance scenario information required in the KID may appear too optimistic and so has the potential to mislead consumers. Where a PRIIP manufacturer is concerned that this is the case, the FCA is comfortable with them providing explanatory materials to put the calculation in context and to set out their concerns for investors to consider.

Ethiopia has been added to the list of high-risk third countries with strategic deficiencies under the fourth money laundering directive ("MLD4"). This is pursuant to Commission Delegated Regulation (EU) 2018/105 which was published in the official journal of the European Union and will enter into force on 13 February 2018.

The FCA published a consultation paper relating to proposed changes to the FCA Handbook and approach to FCA fees in relation to the European Money Market Funds Regulation.

26 January

The FCA published a speech given by Robin Jones, FCA's Head of Technology, Resilience and Cyber, on building cyber resilience.

29 January

The European Commission issued a press release confirming it has the mandate to begin negotiations on possible transitional arrangements following the United Kingdom's withdrawal from the European Union. This included the initial view taken by the European Commission that the transitional period should not last beyond 31 December 2020. In due course, the European Commission will publish draft legal text of the withdrawal agreement of which the transitional arrangements will form part.

Related Professionals

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