Proskauer

Regulation Round Up

October 2018

1 October

The Competition and Markets Authority ("**CMA**") published a paper that was prepared jointly with the Financial Conduct Authority ("**FCA**") setting out the lessons that have been learned from the programme of work conducted by the UK Competition Network ("**UKCN**") to examine remedies in consumer markets.

The Prudential Regulation Authority ("**PRA**") published a consultation paper on regulatory transactions and changes to notification and application forms (CP21/18). This is relevant to all PRA-authorised firms, as well as firms that have a qualifying holding or intend to acquire a qualifying holding in a PRA-authorised firm.

The Joint Committee of the European Supervisory Authorities ("**ESAs**") published a letter to the European Commission about key information documents ("**KIDs**") with respect to packaged retail and insurance-based investment products ("**PRIIPs**").

The European Securities and Markets Authority ("**ESMA**") published a letter (dated September 2018) on issues relating to third-country firms concerning certain requirements under the second Markets in Financial Instruments Directive (2014/65/EU) ("**MiFID II**") and the Markets in Financial Instruments Regulation (600/2014) ("**MiFIR**") on investor protection and intermediaries.

2 October

The UK government published the Consumer Credit (Amendment) (EU Exit) Regulations 2018 and the Friendly Society (Amendment) (EU Exit) Regulations 2018.

The FCA published a speech by Charles Randell, FCA Chair, on the cycle of deregulation, crisis and regulation. The speech provides an overview of the FCA initiatives intended to avoid damages caused by this cycle.

The Lloyd's Markets Association ("**LMA**") published a bulletin with links to model clauses relating to Brexit and the placing of EEA and non-EEA risks after 1 January 2019.

ESMA published an opinion on ancillary activity calculations under MiFID II.

The European Parliament's Economic and Monetary Affairs Committee (ECON) published a draft report on the proposal for the Directive on the cross border distribution of collective investment funds (2018/0041 (COD)).

3 October

ESMA published a speech given by Stephen Majjoor, ESMA Chair, on the state of implementation of MiFID II and preparing for Brexit.

The FCA published a report on its thematic review on money laundering and terrorist financing risks in the e-money sector (TR18/3).

ESMA published an updated version of its Q&As on investor protection and intermediaries topics under MiFID II.

4 October

ESMA published a press release announcing an updated version of its Q&As on the application of the Alternative Investment Fund Managers Directive (2011/61/EU) ("**AIFMD**"). In particular, ESMA added a new Q&A clarifying the application of the AIFMD notification requirements in relation to alternative investment fund managers ("**AIFMs**") managing umbrella alternative investment funds ("**AIFs**") on a cross-border basis.

The FCA published a policy statement (PS18/20) on improving the quality of pension transfer advice.

5 October

The FCA published a Dear CEO letter setting out its expectations for debt packager firms that provide debt advice and debt counselling services, in light of concerns expressed by the FCA regarding poor standards it has seen in this industry.

The HM Treasury published a letter (dated 3 October) on the European Commission's legislative proposals for three regulations relating to sustainable finance.

HM Treasury published a draft version of the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018.

HM Treasury published a draft version of the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018.

The Financial Guidance and Claims Act 2018 (Commencement No. 4) Regulations (SI 2018/1045) were published. This is in relation to the transfer of regulation of claims management services to the FCA.

8 October

The FCA published a memorandum of understanding it has entered into with the Hong Kong Securities and Futures Commission (SFC) covering mutual recognition of funds between the UK and Hong Kong.

The FCA published a consultation paper on illiquid assets and open-ended funds (CP18/27).

HM Treasury published a draft version of the Alternative Investment Fund Managers (Amendment) (EU Exit) Regulations 2018 and an explanatory note.

HM Treasury published a draft version of the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018.

HM Treasury published a draft version of the Collective Investment Schemes (Amendment etc.) (EU Exit) Regulations 2018.

HM Treasury published a document setting out its proposal to provide the Bank of England, the FCA and the PRA with a temporary transitional power to phase in requirements for UK regulated firms that will change under onshoring legislation.

9 October

A draft version of the Deposit Guarantee Scheme and Miscellaneous Provisions (Amendment) (EU Exit Regulations) 2018 was published.

A draft version of the Short Selling (Amendment) (EU Exit) Regulations 2018 was published.

Draft versions of the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Powers) (EU Exit) Regulations 2018 and the Credit Transfers and Direct Debits in Euro (Amendment) (EU Exit) Regulations 2018 were published.

HM Treasury published a document setting out its approach to regulations relating to the ESAs and the European Systemic Risk Board (ESRB) following Brexit.

A draft of the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018 was published.

10 October

The FCA published a consultation paper (CP18/29) in relation to the proposed temporary permissions regime for inbound firms and funds, which will come into force when the UK leaves the EU if there is no transition period and the current passporting regime falls away.

The FCA published its first consultation paper on proposed changes to the FCA Handbook and to binding technical standards (BTS) resulting from Brexit (CP18/28).

11 October

HM Treasury published a draft version of the Solvency 2 and Insurance (Amendment etc.) (EU Exit) Regulations 2018

The FCA published a guidance consultation (GC18/4) that is intended to provide practical assistance and information for FCA solo-regulated firms on preparing the statement of responsibilities and responsibilities maps under the Senior Managers and Certification Regime ("**SMCR**").

12 October

The FCA published a consultation paper (CP18/30) setting out its proposals to amend the Decision Procedure and Penalties manual and Enforcement Guide to implement the Securitisation Regulation ((EU) 2017/2402), which comes into force on 1 January 2019.

The PRA published a consultation paper in relation to liquidity reporting (CP22/18).

15 October

The FCA published a Dear CEO letter in relation to the affordability of high-cost short-term credit loans.

The Foreign and Commonwealth Office published guidance on what will happen if the UK leaves the EU in March 2019 without a deal, explaining how it would affect businesses and people who are required to comply with sanctions or who are subject to sanctions.

The FCA published a discussion paper on climate change and green finance (DP18/8).

The PRA published a consultation paper (CP23/18) on a draft supervisory statement on enhancing banks and insurers' approaches to managing the financial risks from climate change.

16 October

The FCA published a consultation paper, jointly with the Financial Ombudsman Service ("**FOS**") on increasing the FOS award limit (CP18/31).

The FCA published a policy statement on small and medium-sized enterprise (SME) access to the FOS (PS18/21).

18 October

A draft version of the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 was published.

The PRA published a policy statement (PS26/18) on implementing the extension of the SMCR to insurers.

The FCA and Pensions Regulator published their joint regulatory strategy for the pensions and the retirement income sector.

19 October

The FCA has published a web page announcing the launch of a Green FinTech Challenge to support innovation and growth in the green finance sector.

22 October

The FCA updated its web page on registering as a trade repository to include:

- a draft application form for trade repositories to complete and submit to the FCA for registration under Regulation 5(2) of the draft Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (draft Trade Repositories Regulations);

- a draft conversion form for trade repositories to convert their current ESMA-registered status into FCA registration under regulation 17(2) of the draft Trade Repositories Regulations; and

- accompanying guidance notes.

The PRA published an occasional consultation paper (CP24/18) on various changes to its Rulebook, supervisory statements, statements of policy and forms.

The FCA published an evaluation paper (18/2) that considers the impact of bringing seven additional benchmarks into its regulatory and supervisory regime.

HM Treasury published a draft version of the Central Securities Depositaries (Amendment) (EU Exit) Regulations 2018.

Treasury published a draft version of the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc. and Transitional Provision) (EU Exit) Regulations 2018.

23 October

The European Central Bank published its work programme for 2019, setting out its strategic priorities for 2019.

A draft version of the Bank Recovery and Resolution and Miscellaneous Provisions (Amendment) (EU Exit) Regulations 2018.

25 October

The PRA published the following consultation papers:

- CP25/18, in relation to the PRA's approach to amending financial services legislation under the European Union (Withdrawal) Act 2018; and

- CP26/18, in relation to changes to PRA Rulebook and onshored Binding Technical Standards as a result of Brexit.

The Bank of England published a consultation paper on 2018/19 fees for non-UK central counterparties applying for UK recognition.

30 October

The government published a draft version of the Competition (Amendment etc.) (EU Exit) Regulations 2019.

Delegated Regulation 2018/1618 amending Delegated Regulation (EU) 2016/438 was published, in relation to the safekeeping duties of depositaries under the AIFMD. Section 3 of this Delegated Regulation further specifies depositaries' duties with regard to safekeeping of fund assets. Article 21(11)(d)(iii) of the AIFMD requires that where a depositary delegates safe keeping functions to third parties (custodians), the assets also need to be segregated at the level of the delegate.

The FCA published a Dear CEO Letter, drawing attention among other things, to SIPP operators' due diligence obligations when accepting customers' investments.

31 October

The FCA launches a general insurance market study into how general insurance firms charge their customers for home and motor insurance.

The FCA is seeking input on the issues discussed in the market study terms of reference by 3 December 2018. It aims to publish an interim market study report in summer 2019 setting out preliminary conclusions including, where practicable and appropriate, a discussion of potential remedies. The FCA aims to publish its final report and, where required, consultation on proposed remedies by the end of 2019.

Related Professionals

- **Andrew Wingfield**
  Partner
- **Richard Bull**
  Partner

- **John Verwey**
  Partner