Proskauer

Regulation Round Up

Regulatory & Compliance on **June 2020**

30 June

The Financial Conduct Authority ("**FCA**") announced that the deadline for solo-regulated firms to have undertaken the first assessment of the fitness and propriety of their Certified Persons will be delayed from 9 December 2020 until 31 March 2021.

The FCA published a statement setting out its expectations to help benchmark administrators and firms using Appointed Representative arrangements to apply the Approved Persons Regime during the Covid-19 pandemic.

29 June

The European Commission has published a report on the impact of the Interchange Fees Regulation for card-based payment transactions.

26 June

The Corporate Insolvency and Governance Act 2020 ("**CIGA 2020"**) has obtained Royal Assent.

The FCA published an updated version of its webpage on changes to regulatory reporting during the COVID-19 pandemic.

The FCA published Handbook Notice 78, which sets out changes to the FCA Handbook.

Regulation (EU/2020/873) amending the Capital Requirements Regulation (EU/575/2013) ("**CRR"**) and the CRR II (EU/2019/876) as regards certain adjustments in response to the COVID-19 pandemic was published in the Official Journal of the EU.

The Prudential Regulatory Authority ("**PRA**") published a statement on COVID-19 regulatory reporting and disclosure amendments.

The PRA published an updated statement on the regulatory treatment of the UK Coronavirus Business Interruption Loan Scheme ("**CBILS**") and the UK Coronavirus Large Business Interruption Loan Scheme ("**CLBILS**").

The FCA published an updated webpage on trade repositories.

IOSCO published a report (FR06/2020) on good practices on processes for deference.

25 June

The FCA updated its COVID-19 webpage to announce further delays to some of its planned work for 2020 in the light of the COVID-19 pandemic.

A draft version of the Equivalence Determinations for Financial Services (Amendment etc) (EU Exit) Regulations 2020 was published.

The Bank of England published a letter from Andrew Bailey, BoE Governor and Chairman of the Financial Policy Committee ("FPC"), responding to a letter from Rishi Sunak, Chancellor of the Exchequer, on the remit and recommendations for the FPC for 2020/21.

The International Organization of Securities Commissions ("**IOSCO"**) published a consultation document (CR02/2020) on the use of artificial intelligence and machine learning by market intermediaries and asset managers, which it has identified as a key priority.

Commission Delegated Regulation (EU/2020/866) was published in the Official Journal of the EU.

The European Banking Authority ("**EBA**") published two final reports on draft implementing technical standards ("**ITS**") on public disclosure requirements (EBA/ITS/2020/04) (dated 24 June 2020) and supervisory reporting requirements (EBA/ITS/2020/05) for institutions under the CRR.

Commission Delegated Regulation (EU/2020/855), which amends the list of high-risk third countries with strategic anti-money laundering ("**AML**") and counter-terrorist financing ("**CTF**") deficiencies produced under Article 9(2) of the Fourth Money Laundering Directive (EU/2015/849) ("**MLD4**"), was published in the Official Journal of the EU.

The European Systemic Risk Board ("**ESRB**") published an opinion (dated 12 June 2020) on European Securities and Markets Authority's ("**ESMA**") consultation on post-trade risk reduction services under the EMIR Refit Regulation (EU/2019/834).

24 June

The European Commission published a speech by Valdis Dombrovskis, European Commissioner for Financial Stability, Financial Services and Capital Markets Union, on digital finance.

The Council of the EU published a press release announcing that it has adopted the proposed Regulation containing amendments to the CRR as regards adjustments in response to the COVID-19 pandemic.

PRA published a statement on the application to UK credit institutions of the EBA guidelines on reporting and disclosure of exposures subject to measures applied in response to the COVID-19 pandemic.

The FCA updated its webpage on the High Court test case concerning business interruption insurance.

23 June

HM Treasury published a policy statement on prudential standards in the Financial Services Bill 2019-21. HM Treasury intends to introduce the IFPR and updated prudential standards for credit institutions based on CRR II by summer 2021.

The House of Commons published a written statement, made by Rishi Sunak, Chancellor of the Exchequer, on the UK's approach to implementing financial services regulatory reforms before the end of the Brexit transition period.

The Basel Committee on Banking Supervision published a consultation paper on the capital treatment of securitisations of non-performing loans.

The Bank of England has published a summary and response to market feedback on its February 2020 discussion paper on a Sterling Overnight Index Average compounded index.

The FCA published a discussion paper on a new UK prudential regime for MiFID investment firms (DP20/2). Please see our update in relation to this.

22 June

The FCA published a press release announcing that HM Treasury has appointed Nikhil Rathi as the new permanent Chief Executive of the FCA.

The FCA published a press release providing information on its new data collection platform for gathering regulatory data from firms, which will replace the current system ("**Gabriel"**). The FCA has also published a new webpage on the new platform, which is called "RegData".

Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment and amending Regulation (EU/2019/20880) ("**Taxonomy Regulation**") was published in the Official Journal of the EU.

The FCA published a press release informing businesses that carry on cryptoasset activity in the UK to register with it by 30 June 2020.

Council of the EU published the text of the proposed Regulation containing amendments to the CRR as regards adjustments in response to the COVID-19 pandemic.

19 June

The European Parliament published a press release announcing that it has adopted its position at first reading on the proposed Regulation containing amendments to the CRR as regards adjustments in response to the COVID-19 pandemic.

18 June

The BoE published its annual report and accounts for 2020. The BoE sets out the following strategic goals for 2020/21 (which were agreed before the COVID-19 pandemic):

- maintaining monetary and financial stability in the UK's new relationship with the EU;
- enhancing the strength, security and efficiency of the BoE's internal operations;
- facilitating a smooth climate transition through more prolific climate reporting, more robust risk assessments, and the optimisation of investors' returns;
- catalysing reforms in financial markets, embracing FinTech to deliver its mission and building greater operational resilience in the financial system;
- ending "too big to fail" by ensuring firms can fail in an orderly way; and

- ??delivering the next generation of its core payments system through its real time gross settlement renewal programme.

The EBA published final draft amending technical standards on passport notification.

The EBA published a final report on draft regulatory technical standards on the criteria to identify all categories of staff whose professional activities have a material impact on the institutions' risk profile (risk takers).

The PRA published a Dear CEO letter providing feedback for general and life insurers that participated in the 2019 insurance stress test ("**IST 2019**") exercise and the PRA's more recent COVID-19 stress test.

The European Parliament published a press release announcing that it has adopted the proposed Taxonomy Regulation (2018/0178(COD)) on the establishment of a framework to facilitate sustainable investment. The Regulation will enter into force 20 days following publication in the Official Journal of the EU.

The FCA published a consultation paper (CP20/8) on making its temporary rules on marketing certain high-risk investments (including speculative mini-bonds) permanent, and extending them to some similar securities. The consultation closes on 1 October 2020.

17 June

The House of Commons European Union Committee published a copy of a letter (dated 28 May 2020) from John Glen, Economic Secretary to the Treasury, to Sir William Cash, Committee Chair, on the proposed Taxonomy Regulation on the establishment of a framework to facilitate sustainable investment.

The FCA published final guidance on its expectations for insurers and insurance intermediaries when handling claims and complaints for business insurance policies during the test case.

The FCA updated its webpage on the High Court test case concerning business interruption insurance.

The European Commission has adopted a White Paper concerning possible distortive effects caused by foreign subsidies in the EU Single Market. The European Commission has now launched a public consultation for third party views and input from all stakeholders on the options set out in the White Paper. The public consultation, which will be open until 23 September 2020, will help the European Commission to prepare for appropriate legislative proposals in this area.

16 June

The FCA published a speech given by Charles Randell, FCA Chair, on having a financial system to support recovery in the light of the COVID-19 pandemic.

The FCA published a statement setting out its approach to remedies under the complaints scheme established under Part 6 of the Financial Services Act 2012.

The European Commission published for consultation a draft regulation to supplement the Prospectus Regulation as regards the minimum information content of the document to be published for a prospectus exemption in connection with a takeover by means of an exchange offer, a merger or a division. The consultation closes on 14 July 2020.

The FCA and the Payment Systems Regulator ("**PSR"**) published a statement providing an update on their joint approach on access to cash.

15 June

The EBA published a call for input to understand the scale and drivers of de-risking at EU level and its impact on customers as part of EBA's task to lead, co-ordinate and monitor the EU financial sector's AML and CTF efforts.

ESMA published a revised work programme for 2020. ESMA's key priorities for 2020 relate to implementing new mandates, supervisory convergence, risk assessment, developing the single rulebook and direct supervision.

Estate agent directors disqualified for roles in illegal cartel: The Competition and Markets Authority ("**CMA**") has secured the disqualification of two Berkshire estate agent directors after both took part in an illegal price fixing cartel.

12 June

The European Commission published a consultation, together with an impact assessment and request for feedback on its initiative for the establishment of an EU Green Bond Standard.

The FCA published an updated webpage on how to report suspected market abuse as a firm or trading venue.

11 June

The House of Lords EU Financial Affairs Sub-Committee published a letter (dated 27 May 2020) from John Glen, Economic Secretary to the Treasury, to Lord Sharkey, Chair of the House of Lords EU Financial Affairs Sub-Committee, relating to the committee's review of financial services after Brexit.

10 June

The European Commission published a report assessing the application and scope of the AIFMD (EU/2011/61). Key findings in the report include:

n the AIFMD has improved the monitoring of risks to the financial system and the cross-border raising of capital for investments in alternative assets;

n the AIFMD has played a role in creating an internal market for alternative investment funds ("**AIFs"**) and reinforcing the regulatory and supervisory framework for alternative investment fund managers ("**AIFMs"**) in the EU; and

n AIFMs are operating with more transparency for investors and supervisors.

The European Commission published a set of FAQs about its work and that of the EU technical expert group on sustainable finance ("**TEG**") on taxonomy and the EU green bond standard.

The FCA published an Insight article on COVID-19, conduct and culture.

The FCA published finalised guidance (FG20/1) setting out a framework explaining the purpose, and its approach to the assessment, of adequate financial resources, and providing further guidance on the meaning of "adequate financial resources" to all FCA solo-regulated firms subject to the Threshold Conditions or the Principles for Businesses (or both).

The European Parliament's Economic and Monetary Affairs Committee ("**ECON**") published a report on the proposed Regulation containing amendments to the CRR as regards adjustments in response to the COVID-19 pandemic (2020/0066(COD)).

The FCA updated its webpage on the High Court test case concerning business interruption insurance.

9 June

The FCA published a statement on the government's support package for debt advice services. The statement relates to an announcement by HM Treasury that an additional £37.8 million support package will be made available to debt advice providers during 2020/2021.

The EBA published a consultation paper on draft regulatory technical standards ("RTS") specifying the prudential treatment of software assets under Article 36(4) of the CRR. The EBA will hold a public hearing to discuss the draft RTS on 23 June 2020. Comments can be made on the draft RTS until 9 July 2020.

The Bank of England published a speech by Sir Jon Cunliffe, BoE Deputy Governor Financial Stability, member of the Monetary Policy Committee, member of the Financial Policy Committee and member of the Prudential Regulation Committee, on the COVID-19 pandemic and financial system resilience.

The FCA published Primary Market Bulletin No. 29. The bulletin includes the final version of a best practice note on identifying, controlling and disclosing inside information which is aimed at government departments, industry regulators and public bodies. It also includes a feedback statement following the consultation on the note. The draft version of the note was included in Primary Market Bulletin No. 25

8 June

The ESRB announced a set of actions taken in response to the COVID-19 emergency at its extraordinary meeting on 27 May 2020. The ESRB has also published a letter calling for the European Insurance and Occupational Pensions Authority ("**EIOPA**") to finalise and operationalise a liquidity monitoring framework for the insurance sector in response to the pandemic.

The BoE and the PRA published a joint statement on the recommendation from the ESRB on the restriction of distributions during the COVID-19 pandemic.

The European Commission published for 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:

- Undertakings for the Collective Investment in Transferable Securities Directive (EC/2009/65) ("**UCITS**") – Commission Delegated Directive ("CDD") - UCITS,
- Alternative Investment Fund Managers Directive (EU/2011/61) ("**AIFMD"**) – Commission Delegated Regulation ("CDR") - AIFMD,
- MIFID II Directive (EU/2014/65) ("**MiFID II**") – CCD – MiFID product governance / CDR - MiFID investment firms,
- Solvency II Directive (EC/2009/138) ("**Solvency II**") - CDR - Solvency II, and
- Insurance Distribution Directive (EU/2016/97) ("**IDD"**) - CDR - IDD.

5 June

ESMA published final guidelines on certain aspects of the compliance function requirements under Article 16(2) of the MIFID II (EU/2014/65) and Article 22 of Delegated Regulation (EU/2017/565 (the "**MiFID II Delegated Regulation**"). The guidelines are addressed to investment firms and credit institutions providing investment services and activities, investment firms and credit institutions selling or advising clients in relation to structured deposits, UCITS management companies and AIFMs.

The FCA published its 28th quarterly consultation paper (CP20/7). CP20/7 invites comments on proposed changes to the FCA Handbook, including to the Compensation sourcebook ("**COMP"**) and the Consumer Credit sourcebook ("**CONC"**). The deadline for comments on these proposals is 5 July 2020.

The Financial Ombudsman Service ("**FOS**") published issue 152 of ombudsman news. Items of interest include: The FOS' annual complaints data and commentary on trends in complaints, details on the FOS' future strategy and Resources on frauds and scams.

Europol launched its European Financial and Economic Crime Centre ("**EFECC"**) to provide operational support to EU member states and EU bodies in combatting financial and economic crime and to promote the systematic use of financial investigations.

The FCA published a press release on *FCA v Skinner and others*, where the High Court considered, in a case concerning (among other things) breach of the financial promotion restriction in section 21 of FSMA, the extent to which the facts on which the breach depends include the fact that the relevant communications were not approved by an authorised person.

4 June

The FCA published a speech by Megan Butler, FCA Executive Director of Supervision, Investment, Wholesale and Specialists, on the FCA's response to the COVID-19 pandemic and its expectations for 2020 for the wealth management and advice industry. Please see our update on this.

The EBA published a number of consultation papers on draft RTS and draft ITS relating to prudential requirements for investment firms under the Investment Firms Regulation (EU/2019/2033) ("**IFR"**) and the Investment Firms Directive (EU/2019/2034) ("**IFD"**). These are as follows:

- Consultation paper (EBA/CP/2020/06) on draft sets of RTS relating to the following issues:
- Reclassification of investment firms to credit institutions.
- Capital requirements for investment firms at a solo level.
- Capital requirements for investment firms on a consolidated basis.

In its roadmap on investment firms, published on 2 June 2020, the EBA stated that it intended to finalise these RTS by December 2020. The EBA intends for the RTS to apply from June 2021.

- Consultation with draft RTS on remuneration requirements on:
- Material risk takers (EBA/CP/2020/09).
- Pay-outs in instruments for variable remuneration (EBA/CP/2020/08).
- Consultation paper on ITS on reporting and disclosures requirements. The EBA will then deliver the final draft ITS and RTS to the European Commission in December

2020.

The EBA published a template and instructions for the 2020 EBA data collection exercise for investment firms.

ESMA published a supervisory briefing on the supervision by national competent authorities ("**NCAs"**) of costs applicable to UCITS and AIFs.

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"**).

ECON published a draft report setting out recommendations on Digital Finance: emerging risks in cryptoassets - regulatory and supervisory challenges in the area of financial services, institutions and markets.

The FCA published a statement outlining its expectations of firms regarding branch access for essential services during the COVID-19 pandemic.

The PRA published a Dear CEO letter, from Sam Woods, Bank of England Deputy Governor, Prudential Regulation, and PRA CEO, on International Financial Reporting Standard 9 and capital requirements in the context of the COVID-19 pandemic.

The Bank of England published a Dear CEO letter from Sir Jon Cunliffe, Bank of England Deputy Governor, Financial Stability on the distribution of profits given the demands arising from COVID-19.

The Bank of England published a speech by Andrew Hauser, Executive Director, Markets, on COVID-19, financial markets and the BoE's balance sheet operations.

The EBA published an opinion on obstacles to the provision of third party provider services ("**TPPs**") under Article 32(c) of the regulatory technical standards on strong customer authentication ("**SCA**") and common and secure communication ("**CSC**") supplementing the revised Payment Services Directive (EU/2015/2366) ("**PSD2"**).

Pharma company director disqualified for competition law breaches: The CMA has secured the disqualification of a pharmaceutical company director after he admitted his role in arrangements that broke UK competition law.

3 June

The FCA published a statement announcing that it will be carrying out a survey of firms' financial resilience.

The FOS published its annual complaints data for 2019/20, together with an article analysing the data, as well as a document outlining its future strategy, which will run to 2025.

The EBA published a draft cover note relating to a study into the cost of compliance with supervisory reporting measures under the CRR.

ESMA published a consultation paper on draft guidelines on outsourcing to cloud service providers. The purpose of the draft guidelines is to provide guidance on the outsourcing requirements applicable to firms where they outsource to cloud service providers.

The PSR published a speech, given by Genevieve Marjoribanks, PSR Head of Policy, on innovation and regulation of payment systems.

2 June

The PRA published a statement on the use of electronic signatures by firms. In April 2020, the FCA set out on a new webpage its expectations of firms when dealing with wet signatures (which it refers to as "wet ink" signatures) in the light of COVID-19.

The EBA published a roadmap on investment firms relating to mandates under the IFR (EU/2019/2033) and the IFD (EU/2019/2034).

The FCA published a policy statement on extending the senior managers regime (SMR) to benchmark administrators (PS20/5).

The Office of the Complaints Commissioner published a final report regarding a complaint about the FCA's deferral process (FCA00707). In its response accepting the recommendations, the FCA explains that it has made improvements to its deferral process and correspondence to avoid these issues arising in future.

ECON and its Environment, Public Health and Food Safety Committee published a recommendation for second reading of the proposed Regulation on the establishment of a framework to facilitate sustainable investment (2018/0178(COD)) (Taxonomy Regulation).

The ESMA published a final report (ESMA70-151-3012) setting out technical advice on the fair, reasonable, non-discriminatory and transparent ("**FRANDT**") commercial terms for the provision of clearing services under Article 4(3a) of European Market Infrastructure Regulation (EU/648/2012) ("**EMIR**").

The FCA published a feedback statement on guidance on temporary financial relief for mortgage (home finance) customers impacted by the COVID-19 pandemic (FS20/6).

1 June

The Joint Money Laundering Steering Group ("**JMLSG**") published the final amended versions of Part I, Part II and Part III of its AML and CTF guidance.

The FCA published a press release providing an update on its test case of the validity of business interruption claims in the light of the COVID-19 pandemic.

Related Professionals

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