Proskauer

Regulation Round Up

Regulatory & Compliance on **July 2020**

30 July

The Financial Conduct Authority ("**FCA**") updated its webpage on the High Court business interruption insurance test case.

The Prudential Regulation Authority ("**PRA**") published a consultation paper (CP11/20) setting out its expectations and guidance relating to auditors' work on the matching adjustment.

The FCA published a statement explaining its view of the risks and benefits of Employer Salary Advance Schemes, and setting out issues that both employers and employees should consider when offering or using these schemes.

29 July

The FCA published a guidance consultation on draft guidance on the fair treatment of vulnerable consumers (GC20/3).

The European Banking Authority ("**EBA**") published a press release on financial institutions' preparations for the end of the Brexit transition period.

28 July

The European Central Bank ("**ECB**") published a recommendation (ECB/2020/35) on dividend distributions during the COVID-19 pandemic.

The ECB published a letter to banks about remuneration policies in the context of the COVID-19 pandemic.

The PRA published a statement on dividend payments and share buybacks.

The PRA published an updated statement on the implementation of EBA guidelines addressing gaps in reporting data and public information in the context of the COVID-19 pandemic.

The FCA published a policy statement (PS20/8) on motor finance discretionary commission models and consumer credit commission disclosure.

The FCA published a consultation paper (CP20/13) setting out proposals designed to support certain consumers within the mortgage market.

27 July

The FCA published a press release announcing the launch of its enhanced Financial Services Register.

The EBA published a consultation paper (EBA/CP/2020/18) on technical standards on indirect subscription of minimum requirement for own funds and eligible liabilities instruments within groups under Bank Recovery and Resolution Directive (EU/2014/59) ("**BRRD**").

The PRA published a policy statement (PS18/20) and updated supervisory statements on asset encumbrance. The following updated supervisory statements have been published alongside PS18/20:

- SS24/15 on the PRA's approach to supervising illiquidity and funding risks
- SS9/17 on recovery planning
- SS20/15 on supervising building societies' treasury and lending functions

The European Insurance and Occupational Pensions Authority ("**EIOPA**") published a statement on Solvency II Directive (2009/138/EC) ("**Solvency II**") supervisory reporting in the context of the COVID-19 pandemic.

The FCA published the COVID-19: Deferral of Commencement (Access to Insurance) Instrument 2020 (FCA 2020/33).

24 July

The FCA proposed extending guidance for insurance and premium finance firms on customers in temporary financial difficulty.

The Treasury Committee relaunches inquiry into decarbonisation of UK economy and green finance to reflect pandemic.

The FCA published a Dear CEO letter to firms acting as brokers in wholesale financial markets on inappropriate use of title transfer collateral arrangements.

The FCA has published Handbook Notice 79, which sets out changes to the FCA Handbook made by the FCA board on 30 June, 13 July and 23 July 2020.

The FCA published a new webpage explaining how it communicates with the firms it regulates.

The EBA published three consultation papers on draft regulatory technical standards ("**RTS"**) and draft implementing technical standards ("**ITS**") for the BRRD**:**

- on the impracticability of contractual recognition of bail (EBA/CP/2020/15);
- on estimating Pillar 2 and combined buffer requirements for setting minimum requirement for own funds and eligible liabilities requirement (EBA/CP/2020/16); and
- specifying uniform reporting templates, instructions and methodology for the identification and transmission, by resolution authorities to the EBA, of information on minimum requirements for own funds and eligible liabilities (EBA/CP/2020/17).

The European Commission adopted legislative proposals on amendments to Capital Requirements Regulation (EU/575/2013) ("CRR") and MiFID II Directive (EU/2014/65) ("**MiFID II**").

The European Commission published a proposal (COM(2020) 337 final) (2020/0154 (COD)) to amend Benchmarks Regulation (EU/2016/1011) ("**BMR**") to address London Inter-bank Offered Rate ("**LIBOR**") cessation risks.

The ECB announced in a press release a consultation on the publication by the ECB of compounded term rates using the euro short-term rate.

The European Commission announced in a press release a Capital Markets Recovery Package.

The European Commission adopts proposal to amend Prospectus Regulation (EU/2017/1129).

23 July

The FCA published a press release providing details of the 22 firms that were successful in applying to begin testing in the sixth cohort of the regulatory sandbox.

The EBA published a consultation paper (EBA/CP/2020/14) on draft RTS for determination of indirect exposures to underlying clients of derivatives and credit default derivatives under CRR.

The PRA published a consultation paper (CP10/20) on simplified obligations for recovery planning.

The UK government has published its year two update of its progress on the UK Anti-corruption Strategy 2017-2022. The report covers the progress made in 2019.

The Bank of England ("**BoE**") published the first annual report of BoE's Enforcement Decision Making Committee.

European Securities and Markets Authority ("**ESMA**") published its final report (ESMA70-156-2682) on Markets in Financial Instruments Regulation (EU/600/2014) ("**MiFIR**") transparency requirements for non-equity instruments.

The FCA published a portfolio letter it has sent to firms carrying out regulated activities relating to debt advice.

The ECB announced in a press release that it had published:

- The results of its industry-wide assessment of the preparedness of banks supervised under the Single Supervisory Mechanism ("**SSM**") in relation to interest rate reform, including a list of risks and challenges for banks.
- Good practices for banks in relation to interest rate transition.

22 July

The FCA published a feedback statement on intergenerational differences (FS20/12).

The FCA issues statement on Fake Financial Services Register website.

The FCA published a letter on findings from 2019/20 review of firms' remuneration policies and practices.

The Financial Stability Board ("**FSB**") published a stocktake on including climate risks as part of financial stability monitoring.

EBA published a consultation paper (EBA/CP/2020/12) on draft RTS on estimating default probabilities and losses give defaults for internal default risk model under CRR.

EBA published a consultation paper (EBA/CP/2020/13) on draft guidelines on application of alternative treatment of institutions' exposures related to tri-party repurchase agreements under CRR.

EBA published a questionnaire for all EU credit institutions on the cost of compliance with reporting requirements, together with an introduction to the questionnaire.

EBA published a report on benchmarking remuneration practices in EU banks for the financial years 2017 and 2018, together with high earners data for 2018 (EBA/REP/2020/20).

The PRA published a consultation paper (CP9/20) setting out its proposed approach to supervising new and growing non-systemic UK banks.

The PRA published a policy statement (PS17/20) setting out its response to feedback received on some of the proposals in its March 2020 occasional paper (CP3/20).

The European Commission published the adopted text of the following Delegated Regulations supplementing the BMR on sustainable finance issues:

- Delegated Regulation supplementing the BMR as regards minimum standards for EU climate transition benchmarks and EU Paris-aligned benchmarks (C(2020) 4757 final).
- Delegated Regulation supplementing the BMR as regards the minimum content of the explanation on how environmental, social and governance (ESG) factors are reflected in the benchmark methodology (C(2020) 4748 final) and Annex.
- Delegated Regulation supplementing the BMR as regards the explanation in the benchmark statement of how environmental, social and governance factors are reflected in each benchmark provided and published (C(2020) 4744 final) and Annexes 1 and 2.

The Commission adopted the Delegated Regulations on 17 July 2020.

HM Treasury published a policy statement on extending transitional period for third-country benchmarks.

The FCA published consultation paper CP 20/12 which sets out proposed amendments to transitional provisions relating to DTR 4.1.14R and the retained EU law version of Commission Delegated Regulation (EU/2019/815) to postpone by one year the mandatory European Single Electronic Format requirements for annual financial reporting under the Transparency Directive.

21 July

The Joint Committee of the European Supervisory Authorities ("**ESAs**") (that is, the EBA, EIOPA and ESMA) published a letter (dated 20 July 2020) to the European Commission of ESAs review of PRIIPs Delegated Regulation.

HM Treasury announced the opening of a consultation on the introduction of an economic crime levy.

UK Parliament passed an amendment to the UK merger control regime establishing new lower thresholds to enable the UK government to intervene in transactions in the artificial intelligence, cryptographic authentication, and advanced materials sectors.

20 July

HM Treasury published a consultation paper on proposed reforms to the regulatory framework for the approval of financial promotions under the Financial Services and Markets Act 2000 (FSMA), as well as consultation paper on cryptoasset promotions.

HM Treasury launches independent FinTech Strategic Review.

HM Treasury published a policy statement about changes it intends to make to the FCA's process for cancelling firms' authorisations.

HM Treasury published a joint communiqué following the fifth UK-Singapore financial dialogue.

The House of Lords EU Services Sub-Committee published a letter sent to HM Treasury for clarity on post-Brexit future relationship in financial services.

The BoE, FCA and PRA published a joint consultation paper on complaints against the regulators (FCA CP20/11 / PRA CP8/20).

The Council of the EU published a press release in which it announced that it has adopted at first reading the proposed Regulation on European crowdfunding service providers (ECSPs) for business (2018/0048(COD)) and the proposed Directive making amendments to the MiFID II relating to crowdfunding (2018/0047(COD)).

17 July

The FCA published a new webpage on changes relating to the Electronic Commerce Directive (2000/31/EC) (ECD) at the end of the Brexit transition period.

The FCA published a consultation paper on extending the implementation deadlines for the certification regime and conduct rules for FCA solo-regulated firms (CP20/10). In June 2020, HM Treasury agreed to delay until 31 March 2021 the deadline for solo-regulated firms to undertake the first assessment of the fitness and propriety of their certified persons under the Senior Managers and Certification Regime (SM&CR) in the light of the COVID-19 pandemic.

ESMA published an opinion on the assessment of pre-trade transparency waivers under MiFIR.

The European Commission updated its website on adopting the Delegated Regulations supplementing BMR on sustainable finance issues.

The FCA published a press release on the status of the memorandums of understanding (MoUs) on co-operation and exchange of information agreed between it and ESMA and EU securities regulators. ESMA has also published a press release on this issue.

The European Commission adopted a legislative proposal (COM(2020) 323) for a new Regulation on cross-border payments in the Union. It has published the Annexes to the proposed Regulation separately.

16 July

The Office of the Complaints Commissioner published its annual report for 2019/20 and the FCA responded to it.

The ESAs published their responses to the European Commission's consultation on a renewed sustainable finance strategy:

- ???EBA response (dated 16 July 2020).

- EIOPA response (EIOPA 20/399) (dated 15 July 2020).
- ESMA response (ESMA30-22-82) (dated 15 July 2020).

The ESAs also published a joint letter in this regard.

The following three Decisions of the EEA Joint Committee that amend Annex IX (Financial Services) to the EEA Agreement were published in the Official Journal of the EU:

- Decision 17/2019 of 8 February 2019 amending Annex IX (Financial Services) to the EEA Agreement [2020/936], which incorporates Implementing Regulations relating to Solvency II.
- Decision 19/2019 of 8 February 2019 amending Annex IX (Financial Services) to the EEA Agreement [2020/937], which incorporates a Delegated Regulation and an Implementing Regulation relating to BRRD.
- Decision 20/2019 of 8 February 2019 amending Annex IX (Financial services) to the EEA Agreement [2020/938], which incorporates Delegated Regulations and Implementing Regulations relating to the Central Securities Depositories Regulation (EU/909/2014) ("**CSDR**").

The FCA published its regulation round-up for July 2020, which includes a section highlighting difficulties caused by firms making payments using cheques.

The FCA published a press release announcing a collaboration with the City of London Corporation on the pilot of a "digital sandbox" to support innovative firms tackling challenges caused by the COVID-19 pandemic.

HM Treasury published a statement on the applicability of COVID-19 related amendments to CRR made by CRR II Regulation (EU/2019/876) ("**CRR II**").

HM Treasury published a consultation paper on updating the UK's prudential regime before the end of the Brexit transition period, focusing on the UK implementation of the CRD V Directive (EU/2019/878) ("**CRD V**").

ESMA published a press release announcing to review reports on key aspects of MiFIR and MiFID II transparency regime.

The Court of Justice of the EU has ruled that Ireland and Romania have to pay penalties to European Commission for failing to transpose the Fourth Money Laundering Directive (EU/ 2015/849).

15 July

ESMA published its final report on the guidelines on disclosure requirements under the new Prospectus Regulation.

The FSB published the report it has delivered to the G20 on the financial stability implications of, and policy measures taken in response to COVID-19. It also published a letter (dated 14 July 2020) from Randal Quarles, FSB Chair, to G20 Finance Ministers and Central Bank Governors.

HMRC and HM Treasury (HMT) published their response to the technical consultation on the changes to be made to HMRC's Trust Registration Service to implement the Fifth Money Laundering Directive (EU/2018/843) ("**MLD5**"), alongside draft regulations (proposed 2020 Regulations) to amend the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692).

HM Treasury published a draft version of the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020, with a draft explanatory memorandum.

The City of London Corporation published a report on UK cross-border trade in services with Australia.

14 July

The European Commission published a document listing a set of best practices to facilitate the convergence and implementation of COVID-19 relief measures by financial institutions for the benefit of consumers.

The European Commission published an updated version (REV1) of its notice to stakeholders: withdrawal of the UK and EU rules in the field of post-trade financial services.

The FCA published a revised version of its European Market Infrastructure Regulation (EU/648/2012) ("**EMIR**") breach notification form.

The European Payments Council published a press release clarifying the measures that should be taken by payment services providers to ensure a continued smooth processing of cross-border payments involving UK-based payment scheme participants at the end of the Brexit transition period on 31 December 2020.

The BoE published its annual report for real-time gross settlement and CHAPS, which includes the BoE strategy for 2020/21.

13 July

European Commission updated its webpage on getting ready for the end of the Brexit transition period to announce the publication of the following updated notices for readiness:

- Notice to stakeholders: withdrawal of the UK and EU rules in the field of insurance/reinsurance (REV2, dated 13 July 2020).
- Notice to stakeholders: withdrawal of the UK and EU rules in the field of markets in financial instruments (REV2, dated 13 July 2020).

The FCA published a webpage announcing that it will launch an enhanced Financial Services Register on 27 July 2020.

The PRA published a consultation paper (CP7/20) on updates to forms relating to the Senior Managers and Certification Regime ("**SM&CR**").

The BoE published a speech by Andrew Bailey, BoE Governor, on entering the LIBOR endgame.

ESMA published its second report on sanctions and measures imposed under the MiFID II (ESMA35-43-2427).

The Committee on Payments and Market Infrastructures published the stage 2 report for the G20: Enhancing cross-border payments: building blocks of a global roadmap.

10 July

The European Commission published remarks made by Valdis Dombrovskis, European Commissioner for Financial Stability, Financial Services and Capital Markets Union ("**CMU**"), at a press conference. Among other things, Mr Dombrovskis explains that the COVID-19 pandemic has injected real urgency into the CMU because the strength of economic recovery will depend on well-functioning capital markets and access to market financing.

The PRA published an updated statement on implementation of the EBA guidelines addressing gaps in reporting data and public information in the context of the COVID-19 pandemic.

ESMA published an updated opinion (ESMA70-156-478) on ancillary activity calculations under MiFID II.

ESMA published a final report (ESMA 33-128-1217) containing guidelines on securitisation repository data completeness and consistency thresholds under the Securitisation Regulation (EU/2017/2402).

The ECB published press releases concerning the accession of Bulgaria and Croatia to the SSM.

European Parliament adopts resolution (P9_TA-PROV(2020)0204) on European Commission's anti-money laundering ("**AML**") and counter-terrorist financing ("**CTF**") action plan.

9 July

The ECB published a blog post, by Yves Mersch, ECB Executive Board Member and Supervisory Board Vice-Chair, on banks preparing for the end of the Brexit transition period.

The EBA published a statement on resolution planning in the light of the COVID-19 pandemic.

The PRA published a consultation paper on the Financial Services Compensation Scheme ("**FSCS**"): temporary high balances coverage extension (CP6/20).

The European Commission updated its webpage on its AML and CTF Action Plan to state that it has extended the deadline for feedback on the Action Plan to 26 August 2020. (The original deadline was 29 July 2020.)

ESMA published a statement on external support under Article 35 of the Regulation on money market funds (EU/2017/1131) ("**MMF Regulation**") in the light of actions by financial markets authorities to mitigate the impact of the COVID-19 pandemic on financial markets.

The FCA published a direction relating to a modification by consent of rule 10A.5.6R of the Supervision manual ("**SUP**") (known as the "12-week rule") available to benchmark administrators and firms using appointed representative arrangements.

The FSB and the Basel Committee on Banking Supervision ("**BCBS**") jointly published a report on supervisory issues associated with benchmark transition.

The FCA published temporary finalised guidance for payment and e-money firms on safeguarding customer funds, alongside the guidance the FCA published a Dear CEO portfolio strategy letter.

The FCA published a press release inviting expressions of interest for inclusion on mortgage intermediaries list for use by mortgage prisoners.

8 July

HM Treasury published an update on consultation on future regulatory framework and progress of UK-EU equivalence assessments, which was given as oral evidence on 2 July 2020 by John Glen, Economic Secretary and City Minister, HM Treasury.

Islamic Finance Services Board published two statements (statement 1, statement 2) addressing the implications of the COVID-19 pandemic on aspects of Islamic banking and Islamic capital markets and a related press release.

The BCBS published an updated standard (BCBS507) for the regulatory capital treatment of credit valuation adjustment risk for derivatives and securities financing transactions.

The FCA published a speech by Christopher Woolard, FCA Interim Chief Executive, on the role of investment managers in the post-COVID-19 recovery.

ESMA published an updated version of its Q&As on data reporting under MiFIR (ESMA70-1861941480-56).

7 July

The European Commission updated its webpage on getting ready for the end of the Brexit transition period. The webpage states that the Commission is reviewing, and where necessary updating, more than 100 sector-specific stakeholder preparedness notices that it published during the Article 50 negotiations with the UK, including in the area of financial services. The following updated notices for readiness are relevant to the financial services sector:

- Notice to stakeholders: withdrawal of the UK and EU rules in the field of asset management (REV2, dated 7 July 2020). This updated notice replaces the original notice (REV1, dated 8 February 2018).
- Notice to stakeholders: withdrawal of the UK and EU rules in the field of banking and payment services (REV2, dated 7 July 2020). This updated notice replaces the original notice (REV1, dated 8 February 2018).
- Notice to stakeholders: withdrawal of the UK and EU rules on consumer protection and passenger rights (REV2, dated 17 March 2020). This updated notice replaces the original notice (REV1, dated 27 February 2018).
- Notice to stakeholders: withdrawal of the UK and EU rules in the field of credit rating agencies (REV2, dated 7 July 2020). This updated notice replaces the original notice (REV1, dated 8 February 2018).
- Notice to stakeholders: withdrawal of the UK and EU emissions trading system (EU ETS) (REV2, dated 7 July 2020). This updated notice replaces the original notice (REV1, dated 19 December 2018).

The FCA published a response to the Complaints Commissioner's recommendations of its final report (FCA00584) on how the FCA handles whistleblowing cases.

The FCA published a response to the Complaints Commissioner's recommendations of its final report (FCA00522) on the FCA's complaints handling process and training for FCA Complaints Team.

The FCA has accepted the Complaints Commissioner's recommendations of its final report (FCA00566) on the FCA's way of dealing with authorisation applications.

The FCA has accepted the Complaints Commissioner's recommendations of its final report (FCA00676) on the FCA's way of dealing with applications to undertake controlled functions.

The FCA published an updated version of its webpage on UK firms considering how the end of the Brexit transition period may impact on their business and customers.

The European Commission published, for consultation, a roadmap (Ares(2020)3568180) on a communication on an action plan for the capital markets union ("CMU").

The PRA published a policy statement (PS16/20) on regulatory fees and levies for 2020/21, following its April 2020 consultation paper (CP4/20).

The ECB published Guideline (EU) 2020/978 and a related press release on materiality threshold for credit obligations past due for less significant institutions published in the Official Journal of the EU.

The ECB published a blog post, by Kerstin af Jochnick, ECB Supervisory Board Member, on maintaining supervisory engagement and designing the "new normal" for EU banking business.

The European Commission launched a public consultation on a revision of Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the EU ("**NIS Directive**").

The PRA published a statement outlining the PRA's view on the implications of LIBOR transition for contracts in scope of the Contractual Recognition of Bail-In ("**CROB**") and Stay in Resolution ("**Stays**") Parts of the PRA Rulebook.

6 July

The PRA published a policy statement on reconciling capital requirements and macroprudential buffers under Pillar 2A (P2A) (PS15/20).

3 July

A corrigendum to CRD V was published in the Official Journal of the EU.

The FCA issues a market abuse related decision notice for false or misleading impression.

2 July

The FCA published a policy statement setting out its regulated fees and levies rates for 2020/21 (PS20/07).

The BCBS published a revised version of its guidelines on sound management of risks related to money laundering and financing of terrorism (BCBS505).

The European Commission published its webpage on key infringement decisions taken in July 2020 in relation to member states for failing to comply with their obligations under EU law.

A notice of information on the postponement of entry into application of the open access provisions with regard to exchange-traded derivatives in the MiFIR has been published in the Official Journal of the EU (2020/C 219 I/).

The Ministry of Justice issued a consultation on the departure from retained EU case law by UK courts and tribunals.

The following four Decisions of the EEA Joint Committee that amend Annex IX (Financial Services) to the EEA Agreement were published in the Official Journal of the EU:

- Decision 80/2019 of 29 March 2019 amending Annex IX (Financial Services) to the EEA Agreement [2020/830], which incorporates Delegated Regulations and Implementing Regulations relating to CRD IV and CRR.
- Decision 81/2019 of 29 March 2019 amending Annex IX (Financial Services) to the EEA Agreement [2020/831], which incorporates Delegated Regulations and Implementing Regulations relating to CRD IV and CRR.
- Decision 82/2019 of 29 March 2019 amending Annex IX (Financial Services) to the EEA Agreement [2020/832], which incorporates a Regulation, Delegated Regulations and Implementing Regulations relating to CRD IV and CRR.
- Decision 83/2019 of 29 March 2019 amending Annex IX (Financial Services) to the EEA Agreement [2020/833], which incorporates Delegated Regulations and Implementing Regulations relating to CRD IV, CRR and EMIR.

1 July

The FCA updated its webpage on the temporary permissions regime for inbound passporting EEA firms and funds.

The FCA published a speech by Nausicaa Delfas, FCA Executive Director of International, stating that over 1,000 firms and over 600 fund managers have already made notifications under the TPR. She also states that the FCA plans to consult later in 2020 on the approach it will take when assessing applications from overseas firms.

The PRA published a Dear CEO letter in which it builds on the expectations set out in its supervisory statement (SS3/19) on enhancing banks' and insurers' approaches to managing the financial risks from climate change.

The Chancery Lane Project published the second edition of its Climate Contract Playbook and a Glossary of key climate terms. The second edition of the Playbook contains 13 new precedents that can be added to a variety of commercial, finance, corporate, employment and property documents to take account of climate risks.

The EBA published a final report (EBA/GL/2020/09) on guidelines on the treatment of structural foreign exchange under Article 352(2) of the CRR.

The ECB published for consultation a draft version of a guide on its supervisory approach to consolidation for banks in the SSM. It has also published a press release, a blog and a webpage on the consultation.

UK Finance published a whitepaper on cyber incident management.

The European Commission launched a consultation relating to the 2020 review of the Solvency II. The consultation questionnaire is accessible via a Commission webpage.

The FSB published a statement on the impact of the COVID-19 pandemic on global benchmark reform.

The FCA published updated guidance on credit cards, overdraft and personal loans to further support consumer credit customers in the light of the COVID-19 pandemic.

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.

The FCA published a statement providing an update on banks' overdraft pricing decisions and plans to support consumers.

Related Professionals

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??Richard Bull
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