Proskauer

Regulation Round Up

Regulatory & Compliance on **September 2020**

29 September

The Financial Conduct Authority ("**FCA**") published its perimeter report 2019/20, which provides an update on the issues raised in its 2018/19 report.

A European Commission notice (2020/C 321/01) relating to the interpretation of certain legal provisions of the Bank Recovery and Resolution Directive II Directive ((EU) 2019/879) ("**BRRD II**") in reply to questions raised by member states' authorities was published in the Official Journal of the EU.

The Banking Business Resolution Service published reports on Findings from Banking Business Resolution Service consultation and live pilot customer focus group.

The FCA published a press release confirming that it has filed a "leapfrog" application to appeal any aspects of the High Court's judgment in the business interruption insurance test case to the Supreme Court.

European Securities and Markets Authority ("**ESMA**") published a final report (ESMA80-187-608) on draft regulatory technical standards ("**RTS**") supplementing the Benchmarks Regulation ((EU) 2016/1011) ("**BMR**") reflecting mandates introduced by amendments to the BMR made by the European System of Financial Supervision ("**ESFS**") Omnibus Regulation ((EU) 2019/2175).

ESMA published its final report (ESMA70-156-3329) on the review of the Markets in Financial Instruments Regulation (EU/600/2014) ("**MiFIR**") transparency regime for non-equity instruments.

ESMA published guidance (ESMA70-155-10587) on the Annex to its opinion determining transparency for third-country trading venues under MiFIR.

28 September

ESMA published its final report (ESMA35-43-2424) containing draft regulatory and implementing technical standards relating to the provision of investment services and activities in the EU by third-country firms under the MiFID II Directive (2014/65/EU) ("**MiFID**") and MiFIR.

ESMA published a press release announcing that three central counterparties ("**CCPs**") established in the UK will be recognised as third-country CCPs eligible to provide their services in the EU, after the end of the transition period following the withdrawal of the UK from the EU on 31 December 2020.

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

The European Parliament updated a procedure file to consider proposals on EU crowdfunding service providers at 5 to 8 October 2020 plenary session.

A draft version of the Bearer Certificates (Collective Investment Schemes) Regulations 2020 were published on legislation.gov.uk, together with an explanatory memorandum.

The FCA published a press release announcing that it has lost its first prosecution relating to the destruction of documents.

25 September

The Chancery Lane Project published its third edition of the Climate Contract Playbook and updated the glossary of key climate terms.

ESMA published a consultation paper (ESMA80-187-623) on fees for benchmarks administrators under the BMR.

The Basel Committee on Banking Supervision ("**BCBS**") approved its annual G-SIBs assessment and updated work plan to evaluate post-crisis reforms, which was announced in a press release.

24 September

The FCA and the Prudential Regulation Authority ("**PRA**") published updated information about the COVID-19 pandemic, key workers, and working from home.

The European Commission adopted legislative proposals for:

- the Central Securities Depositories Regulation (909/2014) ("**CSDR**") on digital operational resilience for the financial sector;
- a Regulation on markets in cryptoassets (COM(2020) 593 final);
- a Regulation on a pilot regime for market infrastructures based on distributed ledger technology (COM(2020) 594 final); and
- a Directive supporting EU Digital Finance Strategy by clarifying and amending existing EU financial services legislation (COM(2020) 596 final).

The European Commission published a communication on a Digital Finance Strategy for the EU (COM(2020) 591 final) and its second action plan on the Capital Markets Union (COM(2020) 590).

23 September

European Parliament's Economic and Monetary Affairs Committee ("**ECON**") published a report on Digital Finance (PE650.539v02-00).

The FCA published a press release announcing that the first firms will be moved from Gabriel to RegData, the FCA's new data collection platform for gathering regulatory data from firms, in October 2020.

The FCA published a consultation paper on its approach to international firms (CP20/20).

House of Commons Treasury Committee raised questions in a press release on UK's approach to combatting economic crime following release of FinCEN papers to media

22 September

The PRA and the Bank of England ("**BoE**") published a joint consultation paper (CP13/20) on changes to their rules and to binding technical standards, as well as the use of temporary transitional powers required before the end of the Brexit transition period.

The FCA published the final report of its market study on general insurance pricing practices (MS18/1.3).

21 September

The Law Commission announced two new projects on smart contracts and digital assets.

The FCA published a speech by Christopher Woolard, FCA Interim Chief Executive, on the evolution of a new model for financial regulation in the UK.

The European Supervisory Authorities ("**ESAs**") published a survey on presentational aspects of product templates under Article 8(3), Article 9(5) and Article 11(4) of the Sustainable Finance Disclosure Regulation ((EU) 2019/2088) ("**SFDR**" or "**Disclosure Regulation**").

The PRA published a report on the outcome of its proprietary trading review.

The FCA published a speech by Marc Teasdale, Director of Wholesale Supervision, on the drivers of culture and the role of purpose and governance in the asset management sector.

19 September

The FCA published a statement on the listing of cannabis-related businesses, pending a guidance consultation.

18 September

The Financial Services Regulatory Initiatives Forum published the Regulatory Initiatives Grid for September 2020.

The European Banking Authority ("**EBA**") published an opinion on elements of the definition of credit institution under Article 4(1)(1)(a) of the Capital Requirements Regulation (EU/575/2013) ("**CRR**") and on aspects of the scope of the authorisation (EBA/OP/2020/15).

The ECB published the final version of the ECB guide on the assessment methodology for counterparty credit risk internal models.

17 September

The FCA published its Regulation round-up for September 2020.

The EBA published an online survey on credit institutions' disclosure of information related to environmental, social and governance ("**ESG**") risks under the CRR.

The draft Sanctions (EU Exit) (Consequential Provisions) (Amendment) Regulations 2020 were laid before Parliament.

The FCA published a new webpage for firms on getting ready for London Inter-bank Offered Rate ("**LIBOR**") transition.

16 September

European Commission published a report (COM(2020) 560 final) considering obligations regarding trusts and similar legal arrangements under the Fourth Money Laundering Directive ((EU) 2015/849) ("**4MLD**").

The European Commission published a webpage on its inception impact assessment (Ares(2020)4850563) concerning its review of the Regulation on European long-term investment funds ("**ELTIFs**") ((EU) 2015/760) ("**ELTIF Regulation**").

UK Finance published a guide to LIBOR discontinuation for business customers.

The FCA published a press release announcing that Christopher Woolard will chair its review of the future regulation of the unsecured credit market.

15 September

The Office of the Complaints Commissioner published the final report (FCA00763) (dated 28 August 2020) of the Financial Regulators Complaints Commissioner in relation to a complaint made about the FCA's approach to payments for distress and inconvenience.

The Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020 (SI 2020/991) as well as a draft version of the Consumer Protection (Enforcement) (Amendment etc) (EU Exit) Regulations 2020 were published on legislation.gov.uk.

The ECB highlighted the release of documentation and guidance for new the Cyber Information and Intelligence Sharing Initiative framework in a press release.

The FCA published a press release in relation to a judgment made by the High Court in the FCA's business interruption insurance test case (FCA v Arch Insurance (UK) Ltd and others [2020] EWHC 2448 (Comm) (Flaux LJ and Butcher J)) brought by the FCA seeking legal clarity on the meaning and effect of certain business interruption insurance policy wordings.

The Payment Systems Regulator ("**PSR**") published its interim report on its market review into the supply of card-acquiring services (MR18/1.7).

14 September

The FCA published finalised guidance on branch and ATM closures or conversions (FG20/3).

The Financial Action Task Force ("**FATF**") published a report on virtual assets: red flag indicators of money laundering and terrorist financing.

11 September

The FCA updated its policy development update webpage, which sets out information on recent and future FCA publications.

ECON published a press release announcing that it has adopted its draft report on Digital Finance.

The UK and Japan agreed in principle a free trade agreement to replace the EU-Japan Economic Partnership Agreement at the end of the UK-EU transition period. In this context, "agreed in principle" means that agreement has been reached on all substantive issues, but that the legal text still needs to be finalised and translated before signature.

ECON published a press release announcing that it has adopted its draft report on the Capital Markets Union.

The House of Commons Treasury Select Committee published a letter it has sent to the FCA regarding the joint FCA, BoE and PRA consultation paper on complaints against the regulators (FCA CP20/11 / PRA CP8/20).

10 September

The Network for Greening the Financial System ("**NGFS**") published an overview of environmental risk analysis by financial institutions.

The FCA published a statement announcing that it will be carrying out a further survey of firms to understand the change in their financial resilience as a result of the COVID-19 pandemic.

EBA responded to European Commission call for advice on a future EU anti-money laundering and counter-terrorist financing framework. The EBA's response comprised an opinion (EBA/OP/2020/14) and a report (EBA/REP/2020/25), which is annexed to the opinion.

The Working Group on Sterling Risk-Free Reference Rates announced in a press release that it published a number of support documents to aid the transition of existing sterling LIBOR-linked contracts.

The revised draft Debt Respite Scheme Regulations were laid before Parliament.

9 September

The FCA announced in a press release that the FCA, PRA and BoE have appointed Amerdeep Somal as Complaints Commissioner from 1 November 2020.

The PRA updated its webpage on credit unions to publish letters sent to directors of category 5 credit unions, setting out the findings of its 2020 assessment of these firms.

The FCA updated its webpage on phased ending of FCA temporary relief extending deadlines for publishing fund reports and accounts.

8 September

The FCA published a new webpage setting out the fourth set of data in its general insurance value measures pilot, covering data for the year ending 31 August 2019.

7 September

The Financial Stability Board published a press release announcing that it extends implementation timelines for minimum haircut standards for non-centrally cleared securities financing transactions.

The FCA published issue 65 of Market Watch, its newsletter on market conduct and transaction reporting issues.

The International Association of Insurance Supervisors published a public survey on the existing prudential treatments for investments in infrastructure and strategic equity.

4 September

The FCA published a Dear CEO letter on its supervision strategy for personal and commercial lines insurance intermediaries for the period until September 2021.

The FCA published its 29th quarterly consultation paper (CP20/18).

The PRA published a policy statement (PS20/20) setting out its response to feedback received on some of the proposals in its March 2020 occasional paper (CP3/20).

ESMA announced that elements of the new regime under the Securitisation Regulation will come into force on 23 September 2020.

3 September

NGFS published its new charter (dated July 2020).

The FCA published its "five conduct questions" report in which it sets out wholesale banking industry feedback for 2019/20.

The Council of the EU published a cover note (10341/20) (dated 3 September 2020) on the proposed Regulation on the recovery and resolution of central counterparties ("**CCPs**") (2016/0365(COD)).

The BoE published a speech by Andrew Bailey, BoE Governor, on innovations in payments, in particular stablecoins and digital currencies.

2 September

The Department for Business, Energy & Industrial Strategy opened a call for evidence on the UK government's future international regulatory co-operation strategy.

The FCA published a new webpage providing an update on its pilot of a digital sandbox to support innovative firms tackling challenges caused by the COVID-19 pandemic.

The Bank of England and Financial Services Act 2016 (Commencement No 6 and Transitional Provisions) (Amendment) Regulations 2020 (SI 2020/929) were published on legislation.gov.uk

These amendments include delaying the commencement date of the senior managers and certification regime ("**SM&CR**") in relation to solo-regulated firms other than benchmark firms from 9 December 2020 to 31 March 2021.

1 September

The PRA published a new webpage on the temporary permissions regime, summarizing its approach and highlighting the key requirements for UK branches of firms.

The PRA published a Dear CEO letter, from Sam Woods, PRA Deputy Governor and CEO, reminding firms to be operationally ready for the temporary permissions regime.

The Office of the Complaints Commissioner published the following reports of the Financial Regulators Complaints Commissioner in relation to complaints made about the FCA:

- final report (FCA00733) (dated 10 August 2020) about disabilities and its anticipatory duty under Equality Act 2010; and
- final report (FCA00720) (dated 6 August 2020) about the FCA's Financial Services Register and cloned firms.

The EBA published its 2019 annual report on resolution colleges (EBA/REP/2020/24).

The BoE published a new webpage setting out its new agenda for research, which identifies the key areas for new research over the coming years and a set of priority topics for 2021.

The Working Group on Sterling Risk-Free Reference Rates published a statement of recommendations on standard market conventions for sterling loans based on compounded in arrears Sterling Overnight Index Average ("**SONIA**") to support the transition away from the use of LIBOR.

ESMA published a press release announcing a call for evidence in the context of its review of transparency requirements for equity and non-equity instruments under MiFIR.

The European Commission adopted a Delegated Regulation (C(2020) 5888 final) containing draft RTS for CCP colleges under EMIR 2.2 ((EU) 2019/2099).

Related Professionals

Andrew Wingfield
Partner

Richard Bull
Partner

John Verwey
Partner

???Michael Singh
Associate