Proskauer

Regulation Round Up

Regulatory & Compliance on **January 2021**

29 January

The Joint Committee of the European Supervisory Authorities ("**ESAs**") (that is, the EBA, EIOPA and ESMA) published two consultation papers on the mapping of external credit assessment institutions' ("**ECAIs**") credit assessments:

- A consultation paper (JC/2020/93) on draft implementing technical standards ("**ITS**") amending Implementing Regulation (EU) 2016/1799 on the mapping of ECAIs' credit assessments under Article 136(1) and (3) of the Capital Requirements Regulation (EU/575/2013) ("**CRR**").
- A consultation paper (JC/2020/94) on draft ITS amending Implementing Regulation (EU) 2016/1800 on the allocation of credit assessments of ECAIs to an objective scale of credit quality steps under the Solvency II Directive (2009/138/EC) ("**Solvency II**").

The Financial Conduct Authority ("**FCA**") has published Handbook Notice 84, which sets out changes to the FCA Handbook made by the FCA Board on 28 January 2021.

The House of Commons Treasury Committee published concerns about relating to FOS's operations and case handling.

The Financial Services Bill 2019-21 had its second reading in the House of Lords.

The European Banking Authority ("**EBA**") published an updated version of its report (EBA/REP/2021/02) on the implementation of selected COVID-19 policies.

European Securities and Markets Authority ("**ESMA**") published a consultation paper (ESMA35-36-2159) on draft guidelines on aspects of the appropriateness and execution-only requirements under the MiFID II Directive (EU/2014/65) ("**MiFID II**").

ESMA published a letter (ESMA30-379-423) it has sent to the European Commission sharing its views on the main challenges in the area of environmental, social and governance ("**ESG**") ratings and assessment tools.

ESMA published an updated version of its Q&As (ESMA70-1861941480-52) on the implementation of EMIR (the Regulation on OTC derivatives, central counterparties ("CCPs") and trade repositories) (648/2012).

28 January

HM Treasury published a press release announcing plans to move forward to the next stage of talks between the UK and Switzerland on an agreement on financial services.

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2021 (SI 2021/90) together with an explanatory memorandum.

The European Insurance and Occupational Pensions Authority ("**EIOPA**") published a discussion paper on open insurance, which focuses on access to and sharing of insurance-related data.

ESMA published the sixth version of its questions and answers on the Prospectus Regulation and Q&As (ESMA74-362-893) on complying with reporting requirements under the Regulation on reporting and transparency of securities financing transactions (EU/2015/2365) ("**SFTR**").

The European Commission published a press release announcing that it has adopted an Implementing Decision (EU) 2021/85 on the equivalence of the US regulatory framework for central counterparties ("**CCPs**") authorised and supervised by the Securities and Exchange Commission to the requirements of EMIR (the Regulation on OTC derivatives, CCPs and trade repositories) (648/2012), which was then published in the Official Journal of the EU.

The Lending Standards Board ("**LSB**") published a report following its review of the contingent reimbursement model code ("**CRM Code**") for authorised push payment ("**APP**") scams.

The FCA published a consultation paper (CP21/3) proposing changes to its technical standards on strong customer authentication and common and secure methods of communication ("SCA-RTS").

27 January

FCA and FRC published a joint statement on extended financial information timelines due to COVID-19.

The International Organization of Securities Commissions ("**IOSCO**") published a report (FR1/2021) setting out nine sound practices to assist its members in developing and improving their complaint handling procedures and mechanisms for retail investors.

FCA updated its webpage on its policy statement on signposting to travel insurance for consumers with pre-existing medical conditions ("**PEMS**") (PS20/3) to announce that the British Insurance Brokers' Association has launched a travel insurance directory for people with serious PEMCs.

Commission Delegated Regulation (EU) 2021/70 amending Delegated Regulation (EU) 2018/1229, which supplements the Central Securities Depositories Regulation (EU/909/2014) ("**CSDR**") with regard to regulatory technical standards on settlement discipline, was published in the Official Journal of the European Union.

The FCA published a statement that, among other things, announced it is to consult on increasing the spending limit for contactless card payments from £45 to £100.

The CMA has issued guidance outlining the current framework for the self-assessment of competition law risk and sets out the key points that businesses and trade associations should consider when making sustainability agreements.

26 January

The European Commission published the opening remarks of Mairead McGuinness, European Commissioner for Financial Services, at a meeting of the European Parliament's Economic and Monetary Affairs Committee ("**ECON**").

The Regulatory Law Committee of the City of London Law Society ("**CLLS**") published its response to the FCA's proposed guidance for insolvency practitioners on how to approach regulated firms.

HM Treasury published a call for input on its review of the UK funds regime.

The European Commission adopted a Delegated Regulation (C(2021) 331 final) supplementing EMIR (648/2012), as amended by EMIR 2.2 (EU/2019/2099), with regard to rules of procedure for penalties imposed on third-country central counterparties ("**CCPs**") or related third parties by ESMA; a Delegated Regulation (C(2021) 339 final) amending Delegated Regulation EU 667/2014 with regard to the content of the file to be submitted by the investigation officer to ESMA, the right to be heard in relation to interim decisions and the lodging of fines and periodic penalty payments.

FCA published a speech given by Edwin Schooling Latter, FCA Director of Markets and Wholesale Policy, on being ready for life without LIBOR from the end of 2021.

25 January

The European Parliament updated its procedure file on the proposed Directive amending MiFID II to help the EU's economic recovery from the COVID-19 pandemic.

The International Swaps and Derivatives Association, Inc. ("**ISDA**") has issued a press release confirming that new fallback rates for derivatives contracts linked to key interbank offered rates ("**IBORs**") have come into effect on 25 January 2021.

The European Central Bank ("**ECB**") published an opinion on the European Commission's proposal for a Regulation on cross-border payments in the EU (CON/2021/3).

21 January

The FCA published its Regulation round-up for January 2021.

The FCA published a consultation paper on restricting claims management company charges for financial products and services claims (CP21/1).

The EBA published the final reports on draft regulatory technical standards ("**RTS**") on risk takers and variable remuneration under the Investment Firms Directive (EU/2019/2034) ("**IFD**").

The European Commission published a consultation document seeking general and technical views on the way to establish a European single access point ("**ESAP**") for companies' financial and sustainable investment-related information that must be made public pursuant to EU legislation. The establishment of the ESAP is the first action in the Commission's new action plan on the capital markets union.

20 January

The Financial Stability Board ("**FSB**") published its 2021 work programme.

The Prudential Regulation Authority ("**PRA**") published a consultation paper on depositor protection identity verification (CP3/21).

The European Commission published for consultation the following draft Implementing Decisions made under Article 13(2) of EMIR (648/2012):

- Commission Implementing Decision (Ares(2021)445861) on the recognition of Brazilian institutions.
- Commission Implementing Decision (Ares(2021)445856) on the recognition of the legal, supervisory and enforcement arrangements of Australia.
- Commission Implementing Decision (Ares(2021)445869) on the recognition of the legal, supervisory and enforcement arrangements of Hong Kong.
- Commission Implementing Decision (Ares(2021)445873) on the recognition of the legal, supervisory and enforcement arrangements of Singapore.
- Commission Implementing Decision (Ares(2021)445866) on the recognition of the legal, supervisory and enforcement arrangements of Canada.
- Commission Implementing Decision (Ares(2021)445878) on the recognition of the legal, supervisory and enforcement arrangements of the United States of America.

The UK's National Security and Investment Bill had its first reading in the House of Lords. A revised version of the accompanying Explanatory Notes on the Bill has also been published.

19 January

The Financial Markets Law Committee (FMLC) published its response to the FCA's consultation on its approach to powers relating to LIBOR transition.

The European Commission published a Communication (COM(2021 32/3) on fostering openness, strength and resilience in the EU economic and financial system.

A group of 22 insurers and reinsurers convened by the United Nations Environment Programme Finance Initiative ("**UNEP FI**") under its Principles for Sustainable Insurance Initiative issued guidance for insurers on identifying, assessing and disclosing climate change impacts.

The European Parliament published a press release announcing that it has adopted its position at first reading on the proposed Regulation amending the Benchmarks Regulation (EU/2016/1011) ("**BMR**").

The UK's Competition and Markets Authority (CMA) has published new research on algorithms, showing how they can reduce competition in digital markets and harm consumers if they are misused.

18 January

The FCA published a statement reminding firms to regularly review their regulatory permissions under Part 4A of the Financial Services and Markets Act 2000 ("**FSMA**") to ensure that they are up-to-date and removed where they are not needed.

The FCA published a report on its consumer investments data review, covering the period between 1 January and 31 October 2020.

The Joint Committee of the ESAs published a final report (JC/2020/84) on draft ITS on the reporting of intragroup transactions and risk concentration under the Financial Conglomerates Directive (2002/87/EC) ("**FICOD**"). It has published separately the proposed annexes to the ITS (JC/2020/85).

The FCA published a Dear Board of Directors letter sent to debt purchasers, debt collectors and debt administrators (collectively debt firms).

15 January

The EBA published a consultation paper (EBA/CP/2021/01) on guidelines on the monitoring of the threshold and other procedural aspects for establishing an intermediate EU parent undertaking (IPU) under Article 21b of the CRD V Directive (EU/2019/878) ("**CRD V**").

The House of Lords EU Services Sub-Committee launched a new inquiry on the future of UK-EU relations on trade in services.

14 January

The Financial Services Bill 2019-21 had its first reading in the House of Lords.

ESMA published a letter (dated 7 January 2021) from the Joint Committee of the European Supervisory Authorities, to the European Commission, about the Sustainable Finance Disclosure Regulation (EU/2019/2088) ("**SFDR**" or "**Disclosure Regulation**").

The FCA updated its webpage on memorandums of understanding (MoUs) it has entered into with European authorities in the areas of securities, investment services and asset management, insurance and pensions, and banking. The updated webpage includes texts of the additional MoUs.

The Joint Money Laundering Steering Group ("**JMLSG**") published a press release highlighting areas within the JMLSG anti-money laundering ("**AML**") and counter-terrorist financing ("**CTF**") guidance that are impacted by the completion of the UK's exit from the EU on 31 December 2020.

the Financial Markets Law Committee published a letter (dated 13 January 2021), sent to HM Treasury, highlighting two areas of legal uncertainty arising from provisions in the Financial Services Bill 2019-21 .

13 January

The Markets in Financial Instruments (Switzerland Equivalence) Regulations 2021 (SI 2021/28) were published together with an explanatory memorandum.

ESMA published a statement (ESMA35-43-2509) reminding firms of the requirements under MiFID II concerning the provision of investments services to retail or professional clients by firms not established or situated in the EU, focusing on "reverse solicitation".

The FCA published draft updated tailored support guidance for mortgage firms and consumer credit firms setting out the FCA's proposed approach to repossessions from 31 January 2021.

12 January

HM Treasury published a letter (dated 11 January 2021) sent to the House of Lords European Union Committee clarifying certain aspects of EMIR 2.2 ((EU) 2019/2099).

11 January

The FCA published issue 66 of Market Watch, its newsletter on market conduct and transaction reporting issues.

The PRA published a consultation paper (CP2/21) on its proposed approach to supervising the UK activities of PRA-authorised banks and designated investment firms that are headquartered outside of the UK, or are part of a group based outside of the UK.

The FCA published a press release highlighting the need for firms to complete the transition from sterling LIBOR by the end of 2021. The Bank of England ("**BoE**") has published an identical press release.

9 January

HM Treasury published a response to its joint consultation paper with the Department for Digital, Culture, Media and Sport on expanding the dormant assets scheme established under the Dormant Bank and Building Society Accounts Act 2008.

8 January

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

The FCA updated its webpage setting out a statement on firms' financial crime systems and controls during the COVID-19 pandemic.

The FCA published an updated version of its webpage providing information for firms on COVID-19.

7 January

The FCA published a new webpage setting out the data it has obtained as a result of carrying out its COVID-19 financial resilience survey during 2020.

HM Treasury published a combined consultation paper and call for evidence on the regulatory approach to cryptoassets and stablecoins.

The FCA updated its webpage on amending a recognised fund.

ESMA published the enhanced memorandum of understanding it has entered into with the US Commodity Futures Trading Commission regarding co-operation and the exchange of information with respect to certain registered derivatives clearing organisations established in the US that are central counterparties recognised by ESMA under EMIR (648/2012).

6 January

The HM Treasury published the Short Selling (Notification Thresholds) Regulations 2021. The FCA has updated its webpage on the notification and disclosure of net short positions to include an update in respect of the same. For more guidance please refer to our article published here.

ESMA published a press release announcing it is launching a common supervisory action with national competent authorities on the supervision of costs and fees of UCITS.

Pay.UK published a report on how the COVID-19 pandemic has affected current account switching attitudes and behaviours in the UK.

5 January

The FCA published an amended version of the list of third countries it regards as equivalent in relation to certain provisions of DTR 4 (Periodic Financial Reporting), 5 (Vote Holder and Issuer Notification Rules) and 6 (Continuing obligations and access to information).

4 January

The FCA published the texts of the agreed co-operation and information-exchange MoU it has entered into with European authorities:

- A multilateral MoU concerning consultation, co-operation and the exchange of information between each EEA national competent authority and the FCA.
- A MoU concerning consultation, co-operation and the exchange of information between ESMA and the FCA.

The PRA published a new webpage on Gibraltar passporting arrangements.

The FCA published a press release about regulatory changes for firms as the Brexit transition period ends.

1 January

The FCA updated its webpage on adding a new sub-fund to an umbrella scheme that will be in the temporary marketing permissions regime ("**TMPR**").

The FCA published an indicative list of financial instruments subject to notification requirements under section 89F(1)(b)(iii) of FSMA and DTR 5.3.1R (Notification of voting rights arising from the holding of certain financial instruments).

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