Proskauer

Regulation Round Up

Regulatory & Compliance on **February 2021**

26 February

HM Treasury published a report setting out the findings of the Kalifa Review of UK FinTech.

The Financial Conduct Authority ("**FCA**") published Handbook Notice 85, which sets out changes to the FCA Handbook made by the FCA Board on 25 February 2021.

The Financial Action Task Force ("**FATF**") published a document setting out the outcomes from its plenary meeting on 22, 24 and 25 February 2021.

The FCA published a report on its review of product governance in a sample of asset management firms.

The European Securities and Markets Authority ("**ESMA**") issued a press release announcing the publication of revised version of its Q&As on the EU Securitisation Regulation.

ESMA published a consultation paper on draft technical standards under the Regulation on European crowdfunding service providers for business ((EU) 2020/1503) ("**ECSPR**" or "**Crowdfunding Regulation**") (ESMA/35-36-2201).

The Working Group on Sterling Risk-Free Reference Rates published a best practice guide for GBP loans.

The Directive amending the MiFID II Directive (EU/2014/65) ("**MiFID II**") to help the EU's economic recovery from the COVID-19 pandemic was published in the Official Journal of the EU

25 February

The International Organization of Securities Commissions ("**IOSCO**") published a press release reporting on progress made by the Sustainable Finance Task Force ("**STF**") in its work on securities issuers' sustainability disclosures, asset managers' disclosures, and the role of environmental, social and governance ("**ESG**") data and ratings providers.

The Prudential Regulation Authority (“**PRA**”) published a statement clarifying its approach to European Banking Authority (“**EBA**”) guidelines and EU regulatory technical standards relating to the standardised and internal ratings based (IRB) approaches to credit risk following the end of the Brexit transition period.

The PRA published a statement on the definition of "higher paid material risk taker".

The European Supervisory Authorities (that is, the EBA, EIOPA and ESMA) each published a supervisory statement (JC 2021 06) made by the Joint Committee of the ESAs on the application of the Sustainable Finance Disclosure Regulation ((EU) 2019/2088) (“**SFDR**” or “**Disclosure Regulation**”).

ESMA published a consultation paper (ESMA80-187-807) on draft guidelines under the Benchmarks Regulation (EU/2016/1011) (“**BMR**”).

The UK’s Foreign Secretary announced increased sanctions against 6 Burmese officials under the Burma (Sanctions) (EU Exit) Regulations 2019. They are all members of the State Administration Council (SAC) that was established after the military coup on 1 February 2021 to exercise the functions of the state.

24 February

The Financial Stability Board (FSB) published a letter sent by Randal Quarles, FSB Chair, to the G20 finance ministers and central bank governors ahead of their meeting on 26 February 2021.

HM Treasury published a consultation paper on an expanded resolution regime for central counterparties (CCPs).

The EBA published the following consultation papers on technical standards supplementing the Investment Firms Directive (EU/2019/2034) (“**IFD”**):

- Consultation paper on information exchange between competent authorities of home and host member states (EBA/CP/2021/04).
- Consultation paper on colleges of supervisors for investment firm groups (EBA/CP/2021/05).

ESMA published its final report (ESMA70-151-3370) on guidelines to clarify common procedures and methodologies for the supervisory review and evaluation process ("**SREP**") of central counterparties by their national competent authorities.

The European Commission published a speech by Mairead McGuinness, European Commissioner for Financial Services, Financial Stability, and Capital Markets Union.

ESMA published its annual report (ESMA70-156-3926) (dated 23 February 2021) on the application of waivers and deferrals for non-equity instruments under the Markets in Financial Instruments Regulation (EU/600/2014) ("**MiFIR**").

23 February

The Bank of England ("**BoE**") published a webpage setting out a plan for transforming data collection from the UK financial sector (the transformation plan).

The FCA published the memorandum of understanding that it has entered into with the Equality and Human Rights Commission ("**EHRC**").

The FCA published finalised guidance for firms on the fair treatment of vulnerable consumers (FG21/1).

ESMA published an introductory statement made by Steven Maijoor, ESMA Chair, to the European Parliament's Economic and Monetary Affairs Committee ("**ECON**") relating to GameStop share trading and related phenomena (ESMA22-105-1307).

The European Payments Council ("**EPC**") published version 7 of its guidelines (EPC392-08) (dated 11 February 2021) on the appearance of mandates for the Single Euro Payments Area ("**SEPA**") Direct Debit Core Scheme and the SDD Business-to-Business Scheme.

22 February

The European Central Bank ("**ECB**") published an opinion (CON/2021/4) on the proposed Regulation on markets in cryptoassets (2020/0265(COD)).

The EBA published an opinion (EBA/Op/2021/02) on supervisory actions to ensure the removal of obstacles to account access under the revised Payment Services Directive ((EU) 2015/2366) ("**PSD2**").

19 February

The ECB published the memorandum of understanding it has entered into with the BoE and the FCA on post-Brexit supervisory co-operation.

18 February

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

The CMA reached an infringement decision after investigating suspected breaches of the Chapter I prohibition and Article 101 TFEU in the use of certain retail most favoured nation clauses by a price comparison website in relation to home insurance products.

17 February

The Business Banking Resolution Service ("**BBRS**") published a press release announcing the launch of its independent service to help SMEs resolve disputes with their banks.

The United Nations Environment Programme Finance Initiative ("**UNEP FI**") issued the following three reports on climate risk management tools for financial institutions:

- Pathways to Paris: A practical guide to climate transition scenarios for financial professionals.
- Decarbonisation and Disruption: Understanding the financial risks of a disorderly transition using climate scenarios.
- The Climate Risk Landscape: A comprehensive overview of climate risk assessment methodologies.

ESMA published a decision (dated 27 January 2021) on delegating to the ESMA chair the task of issuing opinions relating to the submissions to ESMA by national competent authorities of the position limits they intend to set under Article 57 of MiFID.

The following Delegated Regulations made under EMIR (648/2012) were published in the Official Journal of the European Union:

- Commission Delegated Regulation (EU) 2021/236 as regards to the timing of when certain risk management procedures will start to apply for the purpose of the exchange of collateral.

- ??? Commission Delegated Regulation (EU) 2021/237 as regards the date at which the clearing obligation takes effect for certain types of contracts.

16 February

The European Systemic Risk Board ("**ESRB**") published a report on the financial stability implications of support measures to protect the real economy from the effects of the COVID-19 pandemic.

The Information Commissioner's Office has released a letter it wrote to the US Securities and Exchange Commission ("**SEC**"), setting out its views on how the restrictions on international transfers of data under Chapter V of the EU General Data Protection Regulation (*(EU) 2016/679*) ("**GDPR**"), apply to UK based financial services organisations that are subject to regulation by the SEC.

The PRA published a Dear CFO letter (dated 15 February 2021) on market disclosure about International Financial Reporting Standard 9 expected credit loss accounting.

The PRA published a letter it has sent to independent non-executive directors ("**iNEDs**").

The Working Group on Sterling Risk-Free Reference Rates published a paper aimed at helping market participants transition non-linear derivatives, structured products and cash market instruments that reference the GBP LIBOR ISR ("**ICE Swap Rate**").

15 February

The government announced its new UK Centre for Greening Finance and Investment ("**CGFI**"). The CGFI will begin work in April 2021 and will have physical research hubs in Leeds and London.

The BoE updated its stress testing webpage and published the *solvency stress test 2021 scenario* for banks and building societies that are not part of concurrent stress testing.

The Council of the EU published a press release announcing it has adopted the proposed Directive amending MiFID II to help the EU's economic recovery from the COVID-19 pandemic.

HM Treasury published a consultation paper on supporting the wind-down of critical benchmarks.

12 February

The FCA published a guidance consultation on cancellations and refunds aimed at credit and debit card firms and insurance providers.

The PRA published a consultation paper (CP5/21) on the implementation of the Basel standards.

UK Finance published a guide to LIBOR for banks and lenders.

The European Commission published a consultation paper on a targeted review of the Settlement Finality Directive (*98/26/EC*) ("**SFD**").

A draft version of the Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021 was published, together with a draft explanatory memorandum.

Regulation (EU) 2021/168 amending BMR as regards the exemption of certain third-country foreign exchange benchmarks and the designation of replacement benchmarks for certain benchmarks in cessation was published in the Official Journal of the European Union.

11 February

The Global LEI Foundation published a press release in which it sets out the issuance and technical infrastructure models for its verifiable Legal Entity Identifier system.

The FCA published a report setting out the key findings from its Financial Lives 2020 survey (FLS) and its October 2020 COVID-19 panel survey. It has also updated its dedicated FLS webpage.

The EBA published a consultation paper (EBA/CP/2021/02) on draft implementing technical standards with regard to the format, structure, contents list and annual publication date of the information to be disclosed by competent authorities in accordance with Article 57(4) of the IFD.

The European Parliament published a press release announcing it has adopted the proposed Directive amending MiFID II to help the EU's economic recovery from the COVID-19 pandemic.

The Payment Systems Regulator ("**PSR**") published two calls for views on increasing protection for customers using payment systems: Call for views CP21/3 focuses on authorised push payment (APP) scams and Call for views CP21/4 focuses on consumer protection in interbank payments.

The Competition and Markets Authority (CMA) published a template of a summary of borrowing statement to be used to comply with obligations in the Payday *Lending Market Investigation Order 2015* (the Order).

10 February

The BoE published a speech, given by Andrew Bailey, BoE Governor, on an open financial system.

The European Commission published a summary report of its consultation on a renewed EU sustainable finance strategy.

The Council of the EU published a note (6047/21) from the General Secretariat to the Delegations with a three-column table to commence trialogues on the proposed Directive on credit servicers and credit purchasers (2018/0063A(COD)).

9 February

ESMA published a letter sent jointly by it, EIOPA and the EBA to the EU co-legislators on proposed regulation on digital operational resilience.

The Working Group on Sterling Risk-Free Reference Rates published a consultation on the successor rate to GBP LIBOR in legacy bonds referencing GBP LIBOR.

The European Commission published for consultation a draft Delegated Regulation (Ares(2021)1122309) (accessible via a webpage) amending Delegated Regulations (EU) 1003/2013 and (EU) 2019/360 as regards the annual supervisory fees charged by ESMA to trade repositories for 2021.

5 February

The FCA published the findings from its multi-firms review of how firms implement technology change, the impact of change failures and the practices used to help reduce the impact of incidents resulting from change management.

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

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

The PRA published a statement on COVID-19 regulatory reporting amendments.

The PSR published a consultation paper on the delivery and regulation of the New Payments Architecture (CP21/2).

The BoE published the minutes of the first meeting of the steering committee of the Productive Finance Working Group held on 26 January 2021.

The FCA published a portfolio letter sent to retail banks.

4 February

HM Treasury published a consultation paper on issues arising from the implementation of the Investment Firms Prudential Regime ("**IFPR**") and the final Basel III standards.

The PRA published a Dear CEO letter from Sam Woods that provides feedback on an information request regarding firms' operational readiness for a zero or negative BoE Bank Rate.

The European Supervisory Authorities ("**ESAs**") (that is, the EBA, EIOPA and ESMA) each published an identical press release announcing that the Joint Committee of ESAs has submitted to the European Commission the final report (JC 2021 03) on draft regulatory technical standards on the content, methodologies and presentation of disclosures under the SFDR.

You can find out more on SFDR in our recent summary as well as in our ESG podcasts from August 2020 and January 2021.

3 February

The European Supervisory Authorities have published identical press releases confirming that they have submitted a draft final report which the European Insurance and Occupational Pensions Authority ("**EIOPA**") has now adopted on regulatory technical standards amending Commission Delegated Regulation 2017/653 on key information documents ("**KID**") for packaged retail and insurance-based investment products ("**PRIIPs**") ("**PRIIPs KID Delegated Regulation**").

HM Treasury published a press release announcing that the UK has joined the International Platform on Sustainable Finance ("**IPSF**").

The FCA published its approach document on its approach to international firms.

ESMA published a letter (ESMA34-46-99) it has sent to the European Commission, highlighting the areas where it considers improvements could be made to the Regulation on European long-term investment funds ((EU) 2015/760) ("**ELTIF Regulation**").

ESMA published an updated version of its Q&As on market structures topics (ESMA70-872942901-38) under MiFID II and MiFIR.

The Investment Association published a Dear CEO and CFO letter addressed to companies issuing LIBOR-linked sterling bonds, encouraging them to actively transition from GBP LIBOR.

HM Treasury published a press release announcing that reciprocal arrangements between the UK and Switzerland concerning the share trading obligation have entered into force, following the removal of restrictions on UK trading venues by the Swiss authorities.

2 February

The Council of the EU published a press release announcing that it has adopted the proposed Regulation amending BMR to address benchmark cessation risks and exempt certain third-country FX benchmarks.

The European Commission published a call for advice to the European Supervisory Authorities (that is, the EBA, ESMA and EIOPA) for technical advice on digital finance and related issues.

The European Money Markets Institute ("**EMMI**") published a press release confirming that it has conducted its first annual review of the hybrid methodology for EURIBOR.

ESMA published its annual report (ESMA70-156-2401) (dated 29 January 2021) on the application of waivers and deferrals for equity and equity-like instruments under MiFIR.

The FCA published an updated webpage on its supervisory statement on the operation of the transparency regime under the retained EU law version of the Markets in Financial Instruments Regulation (*600/2014*) ("**UK MiFIR**").

HM Treasury published a press release announcing that interest free buy-now-pay-later products are to be regulated by the FCA.

1 February

The UK government submitted a formal request to the Minister of Trade in New Zealand to start negotiations on the UK's accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

ESMA published a final report (ESMA34-39-961) (dated 29 January 2021) on draft implementing technical standards produced under Articles 5(3), 10(3) and 13(3) the Regulation on the cross-border distribution of collective investment undertakings (EU/2019/1156) ("**Cross-Border Regulation**").

ESMA published a press release announcing the launch of a common supervisory action with national competent authorities on the application of product governance rules under MiFID II.

ESMA published a final report (ESMA81-393-83) on technical advice to the European Commission on supervisory fees for benchmark administrators the BMR.

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