Proskauer

Regulation Round Up

Regulatory & Compliance on **March 2021**

Welcome to the Regulation Round Up, a regular bulletin highlighting the latest developments in UK and EU financial services regulation.

31 March

The European Banking Authority ("**EBA**") published a *consultation paper* on draft regulatory technical standards (RTS) on the disclosure of the investment policy by investment firms under the Investment Firms Regulation ((EU) 2019/2033) ("**IFR**") (EBA/CP/2021/15).

The Financial Conduct Authority ("**FCA**") published a *policy statement* (PS21/4) on extending its annual financial crime reporting obligation.

The European Commission published a *public consultation* on instant payments.

30 March

The Financial Stability Board ("**FSB**") published a *speech* made by Randal Quarles, FSB Chair, that sets out details of the FSB's areas of focus for 2021.

European Securities and Markets Authority ("**ESMA**") published an updated version of its *Q&As* (ESMA34-32-352) on the application of the Alternative Investment Fund Managers Directive (EU/2011/61) ("**AIFMD**").

HM Treasury published a *statement* concerning the first meeting of the Joint Committee established under the UK-US bilateral agreement on insurance and reinsurance prudential measures.

ESMA published its *final report* (dated 23 March 2021) (ESMA74-362-1013) on reference data and transaction reporting obligations under the Markets in Financial Instruments Regulation (600/2014) ("**MiFIR**").

29 March

The FCA, Prudential Regulation Authority ("**PRA**") and the Bank of England ("**BoE**") *published* policy statements and supervisory materials setting out their final rules and guidance on operational resilience.

The PRA published a *policy statement* on outsourcing and third party risk management (PS7/21).

The FCA published *Primary Market Bulletin No 33* which covers DTR disclosures.

ESMA published a *final report* containing its technical advice to the European Commission on the application of administrative and criminal sanctions under the MiFID II Directive (EU/2014/65) ("**MiFID II**") and MiFIR (ESMA35-43-2430).

ESMA published an updated version of its *Q&As* on investor protection and intermediaries (ESMA35-43-349) under MiFID II and MiFIR.

The FCA and the BoE published a *joint statement* announcing that they encourage liquidity providers in the sterling non-linear derivatives market to adopt new quoting conventions for inter-dealer trading based on SONIA instead of LIBOR from 11 May 2021.

26 March

The FCA published a *feedback statement* on open finance (FS21/7).

The PRA published a *policy statement* on the 2021/22 management expenses levy limit for the Financial Services Compensation Scheme (PS5/21).

The BoE published the *financial policy summary and record* of the meeting of its Financial Policy Committee on 11 March 2021.

ESMA published a *consultation paper* on the legislative review of the Regulation on money market funds (EU/2017/1131) ("**MMF Regulation**") (ESMA34-49-309).

The BoE and FCA published a *report* on liquidity management in UK open-ended funds.

ESMA published a *final report* (ESMA43-370-281) on technical advice submitted to the European Commission on procedural rules for penalties imposed on benchmark administrators under the Benchmarks Regulation (EU/2016/1011) ("**BMR**").

The European Supervisory Authorities ("**ESAs**") (that is, the EBA, the European Insurance and Occupational Pensions Authority ("**EIOPA**") and ESMA) published an *opinion* to the European Commission on the jurisdictional scope of the Securitisation Regulation (*(EU) 2017/2402*).

Commission Delegated Regulation (EU) 2021/527 of 15 December 2020 amending Commission Delegated Regulation (EU) 2017/565 ("**MiFID II Delegated Regulation**") as regards the thresholds for weekly position reporting under MiFID II was published.

Commission Delegated Regulation (EU) 2021/529 of 18 December 2020 on liquidity thresholds and trade percentiles used to determine SSTI applicable to non-equity instruments under MiFIR was published.

HM Treasury published a *press release* announcing that technical discussions on the text of the memorandum of understanding on UK-EU regulatory co-operation in financial services have concluded.

The Joint Committee of the ESAs published a set of *Q&As* on the Securitisation Regulation, covering questions that fall outside the scope of any one of the three ESAs.

25 March

HM Treasury published a *press release* announcing the publication of HM Treasury's remits and recommendations for the FCA and the PRA for the current Parliament.

The *Money Laundering and Terrorist Financing (Amendment) (High-Risk Countries) Regulations 2021 (SI 2021/392)* were published, together with an *explanatory memorandum*.

HM Treasury published a *draft version* of the Capital Requirements Regulation (Amendment) (EU Exit) Regulations 2021, together with a *draft explanatory memorandum*.

The BoE published the *minutes* of the February 2021 meeting of the working group on sterling risk-free reference rates.

24 March

The FCA published a *press release* announcing the launch of a???campaign to encourage individuals to report wrongdoing.

The PRA published a *policy statement* (PS4/21) on depositor protection identity verification.

HM Treasury updated its *advisory notice on money laundering and terrorist financing controls in overseas jurisdictions*.

ESMA published a *statement* (ESMA34-43-880) reporting on the results of the 2020 common supervisory action on the supervision of UCITS managers' liquidity risk management.

The FICC Markets Standards Board published a draft *standard* on the use of Term SONIA reference rates.

ESMA published a *consultation paper* (ESMA74-362-1864) on simplification and harmonisation of trade repositories' fees.

The FCA published a *statement* on the use of its temporary transitional power to modify the UK's derivatives trading obligation.

ESMA published an *updated statement* (dated 9 March 2021) (ESMA80-187-881) on the application of key provisions in the BMR in the light of Brexit.

The European Commission published a *consultation paper* on instant payments, together with its *strategy* for the initiative on instant payments in the EU.

23 March

The House of Commons Treasury Committee published the BoE *written response* to the committee's inquiry into the future of financial services in the UK after Brexit.

The FCA published a *statement* proposing to extend the timetable for implementing changes relating to its consultation paper on Handbook changes following its general insurance market study (CP20/19).

22 March

The FCA has *published* Handbook Notice 86, which sets out changes to the FCA Handbook made by the FCA board on 25 March 2021.

The European Parliament's Economic and Monetary Affairs Committee ("**ECON**") published a *draft report* (dated 18 March 2021) (PE689.790v01-00) setting out amendments to the proposed Directive amending Directives 2006/43/EC, 2009/65/EC, 2009/138/EU, 2011/61/EU, 2013/36/EU, 2014/65/EU, (EU) 2015/2366 and (EU) 2016/2341 (2020/0268(COD)).

The Financial Markets Law Committee (FMLC) published its *response* to HM Treasury's consultation paper on the UK regulatory approach to stablecoins and a call for evidence on cryptoassets used for investment and the broader use of distributed ledger technology in financial markets.

The Single Resolution Board published a *communication* on its approach to liabilities governed by UK law without a contractual bail-in recognition clause in the light of Brexit.

The Financial Action Task Force (FATF) published, for consultation, *draft updated guidance* on the risk-based approach to virtual assets (also known as cryptoassets) and virtual asset service providers ("**VASPs**").

The Financial Markets Law Committee and the European Financial Markets Lawyers Group published a joint *letter* (dated 19 March 2021) to Katharine Braddick, HM Treasury Director of General Financial Services, on LIBOR transition.

The International Islamic Financial Market published a *white paper* on IBOR transition for industry awareness and development.

The Council of the EU published a *press release* announcing that it has adopted conclusions relating to the European Commission's Retail Payments Strategy.

19 March

The FCA published a *statement* announcing further extension to a temporary COVID-19 measure applying supervisory flexibility over 10% depreciation notifications and RTS 27 reports.

The European Commission published the EU platform on sustainable finance's *report on transition finance*.

The ESAs published a set of *joint Q&As* on bilateral margin requirements under EMIR (648/2012).

ECON published a *draft report* dated 17 March 2021 (PE689.801v01-00) setting out recommendations to the European Commission on the proposed Regulation on digital operational resilience for the financial sector (2020/0266 (COD)). The Regulation is sometimes referred to as the Digital Operational Resilience Act ("**DORA**").

The European Central Bank ("**ECB**") published a *paper* on best practices applied by financial market infrastructures in their business continuity plans during the COVID-19 pandemic.

ESMA published a *statement* (ESMA70-154-2365) relating to its supervisory approach to position limits for commodity derivatives under MiFID II.

18 March

The FCA published its *Regulation round-up* for March 2021.

The International Regulatory Strategy Group published a *report* on promoting regulatory coherence in financial services for pandemic recovery.

The FCA published a *speech* by Senior Adviser to the FCA on the Public Sector Equality Duty, considering diversity, inclusion and the FCA's Public Sector Equality Duty.

The ECB published a *blog post* by Luis de Guindos, ECB Vice-President, summarising the preliminary results of the ECB's first economy-wide climate stress test.

The Financial Action Task Force (FATF) published a *press release* announcing that, in February 2021, it launched a new project to study and mitigate the unintended consequences resulting from the incorrect implementation of its anti-money laundering and counter-terrorist financing standards.

The PRA published a *policy statement* (PS2/21) setting out its expectations and guidance relating to auditors' work on the matching adjustment under the UK Solvency II regime.

The Working Group on Sterling Risk-Free Reference Rates published a revised version of its best practice *guide* for GBP loans.

17 March

The FCA published a *speech* by the FCA Chief Executive, on why diversity and inclusion are regulatory issues.

The PRA published a *policy statement* and final rules on holding company regulatory transaction fees (PS3/21).

The European Banking Authority ("**EBA**") published a *consultation paper* (EBA/CP/2021/11) on proposed changes to the guidelines on the risk-based supervision of credit and financial institutions' compliance with anti-money laundering and counter-terrorist financing obligations, produced under Article 48(10) of the Fourth Money Laundering Directive (EU/2015/849) ("**MLD4**").

The ESAs published a *joint consultation paper* (JC 2021 22) on draft regulatory technical standards regarding the content and presentation of sustainability disclosures under Articles 8(4), 9(6) and 11(5) of the Sustainable Finance Disclosure Regulation (*(EU) 2019/2088*) **("SFDR" or "Disclosure Regulation")**.

16 March

The PRA published a *speech* by BoE Deputy Governor for Prudential Regulation and PRA CEO, in which he considers the ways in which regulation of the UK insurance sector is set to change and also comments on the UK government's Solvency II regime review.

The European Commission published a *speech* by Mairead McGuinness, European Commissioner for Financial Services, Financial Stability, and Capital Markets Union ("**CMU**"), in which she considers progress in relation to the CMU and the impact of Brexit on the EU, particularly in relation to clearing and derivatives.

The European Commission published for consultation a draft Delegated Regulation (Ares(2021)1890322) extending the transitional period under Article 89(1) of EMIR (*648/2012*). The draft Delegated Regulation is accessible via a dedicated *webpage*.

The FCA published a *speech* by Edwin Schooling Latter, Director of Markets and Wholesale Policy, about regulation of the UK's wholesale financial markets.

15 March

The FCA updated its dedicated *webpage* relating to its April 2019 feedback statement on a duty of care and potential alternative approaches (FS19/2) to indicate it is aiming to consult on options for change in May 2021.

ESMA published a *press release* announcing it has decided not to renew its decision to require holders of net short positions in shares traded on an EU regulated market to notify the relevant national competent authority (NCA) if the position reaches, exceeds or falls below 0.1% of the issued share capital.

12 March

The European Commission published a *consultation paper* on supervisory convergence and the single rulebook.

The EBA published two consultation papers on draft regulatory technical standards *on gross jump-to-default amounts* (EBA/CP/2021/09) and *on residual risk add-on under Fundamental Review of Trading Book (FRTB)* (EBA/CP/2021/10).

The European Commission published a *call for evidence* on the feasibility assessment for a potential EU bank referral scheme for small and medium-sized enterprises.

Decision (EU) 2021/432 of the ECB, amending Decision (EU) 2017/1198 on the reporting of funding plans of credit institutions by national competent authorities to the ECB, was published (ECB/2021/7).

The FCA published a *list* of business interruption insurance policies capable of responding to the COVID-19 pandemic following the test case.

The Council of the EU published an *"I/A" item note* (7014/21) from the Council's General Secretariat to its Permanent Representatives Committee relating to conclusions on a Retail Payments Strategy for the EU.

11 March

ECON published a *draft report* dated 9 March 2021 (PE689.571v01-00) setting out recommendations to the European Commission on the proposal for a Regulation on a pilot regime for market infrastructures based on distributed ledger technology ("**DLT**") (2020/0267(COD)).

The EBA published a *discussion paper* (EBA/DP/2021/01) on a feasibility study of an integrated reporting system under Article 430c of the Capital Requirements Regulation (EU/575/2013) ("**CRR**").

The EBA published a *consultation paper* (EBA/CP/2021/08) on draft revised guidelines on stress tests conducted by national deposit guarantee schemes under the Deposit Guarantee Schemes Directive (2014/49/EU) ("**DGSD**").

Commission Delegated Regulation (EU) 2021/424 amending the CRR with regard to the alternative standardised approach for market risk was published.

The European Commission published a consultation on Delegated Regulation supplementing EMIR on FRANDT commercial terms for clearing services for OTC derivatives. The draft Delegated Regulation and accompanying draft Annex are accessible via a dedicated *webpage*.

The European Commission published a *consultation* on a roadmap on an EU-wide instant payments scheme.

10 March

The Financial Services Bill 2019-21 *completed* its committee stage in the House of Lords, following the fourth sitting of the committee for the Bill.

The EBA published a *discussion paper* (EBA/DP/2021/01) on a feasibility study of an integrated reporting system under Article 430c of the CRR.

The EBA published a *consultation paper* (EBA/CP/2021/07) on draft guidelines on a common assessment methodology for granting authorisation as a credit institution under Article 8(5) of the CRD IV Directive (2013/36/EU).

9 March

ECON published a *draft report* dated 25 February 2021 (PE663.215v01-00) setting out recommendations to the European Commission on the proposed Regulation on markets in cryptoassets and amending Directive (EU) 2019/1937 ("**MiCA**") (2020/0265(COD)).

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

The FCA published a *press release* announcing that it has made available its annual transparency calculations for UK equity and equity-like financial instruments that will apply from 1 April 2021.

The PRA and FCA published a *joint consultation paper* on margin requirements for non-centrally cleared derivatives, amending the binding technical standards in the UK onshored version of Commission Delegated Regulation (EU) 2016/2251 (PRA CP6/21, FCA CP21/7).

8 March

The National Crime Agency published updated *guidance* to anti-money laundering supervisors, including those overseen by the Office for Professional Body Anti-Money Laundering Supervision, directed at improving the quality of suspicious activity reports.

The European Commission published an *impact inception assessment* (Ares(2021)1700448-08/03/2021) (referred to as a roadmap) on a review of the EU rules on central securities depositories under the Central Securities Depositories Regulation (909/2014) ("**CSDR**").

The FCA published a *speech* by FCA Executive Director of Enforcement and Market Oversight, on the FCA's recent work to tackle market abuse.

The FCA published a *consultation paper* on its proposals to regulate bidding for emissions allowances on the UK auction platform under the UK Emissions Trading Scheme (CP21/6). The UK ETS replaced the UK's participation in the EU ETS from 1 January 2021.

5 March

The FCA published its 31st *quarterly consultation paper* (CP21/5).

IOSCO published a press release announcing workstreams on liquidity risk management for collective investment schemes.

The FCA updated its website outlining its approach to reporting references to LIBOR in OTC derivatives contracts and securities financing transactions.

The FCA published a *statement* announcing the dates that panel bank submissions for all LIBOR settings will cease, after which representative LIBOR rates will no longer be available.

ISDA® published a *statement* responding to the FCA's announcement, of the same date, setting out the dates on which all LIBOR settings will either cease to be provided by any administrator or no longer be representative.

The ICE Benchmark Administration **("IBA**") issued a *press release* announcing the publication of a feedback statement on its consultation on IBA's intention to cease publication of all tenors of LIBOR settings.

The EBA published a *final report* on draft implementing technical standards ("**ITS**") on reporting and disclosure requirements for investment firms under the IFR (EU/2019/2033) (EBA/ITS/2021/02). The annexes to the ITS are available on the EBA *website*.

The FCA published for consultation a *revised version* of its tailored support guidance for mortgage firms.

4 March

The FCA published new webpages on the temporary permissions regime. For further guidance please read our note published *here*.

The European Commission published a *speech* by Mairead McGuinness, European Commissioner for Financial Services, Financial Stability, and Capital Markets Union in which she outlines her priorities, which includes work relating to the implementation of the final Basel III standards.

The Financial Action Task Force ("**FATF**") published *revised guidance* for applying a Risk-Based Approach to AML/CFT Supervision.

The FCA published an updated *statement of policy* on its power to suspend the use of pre-trade transparency waivers for a trading venue under the double volume cap mechanism

3 March

HM Treasury published a *letter* from Rishi Sunak, Chancellor of the Exchequer, to Andrew Bailey, BoE Governor, setting out the remit and recommendations for the Financial Policy Committee for 2021/22.

The FCA published a *policy statement* on amendments to the single and cumulative transaction thresholds for contactless payments (PS21/2).

The EBA published an *opinion* (EBA/Op/2021/04) on the risks of money laundering and terrorist financing that are affecting the EU's financial sector.

HM Treasury published the *report* of the UK Listing Review, chaired by Lord Hill.

2 March

The FCA published a *consultation paper* on its approach to regulating pre-paid funeral plans (CP21/4).

The House of Commons Treasury Committee published the FCA's *written response* to the committee's inquiry into the future of financial services in the UK after Brexit.

The ECB published a *guide* on the method for determining administrative pecuniary penalties for regulatory breaches under Article 18(1) and (7) of the Regulation establishing the Single Supervisory Mechanism ((EU) 1024/2013) ("**SSM Regulation**").

ESMA published a *press release* announcing that it has made available the results of the annual transparency calculations for equity and equity-like instruments.

1 March

IOSCO published its *work programme* for 2021-2022.

The EBA published its *final report* (EBA/Rep/2021/03) and a related *opinion* EBA/Op/2021/0326) (dated 26 February 2021) setting out advice to the European Commission under Article 8 of the Regulation on the establishment of a framework to facilitate sustainable investment (EU/2020/852) ("**Taxonomy Regulation**") specifying the information to be provided by credit institutions and investment firms to comply with their disclosure obligations under the Non-Financial Reporting Directive (2014/95/EU) ("**NFRD**").

The European Commission adopted a draft *Delegated Regulation* supplementing the CRR with regard to regulatory technical standards on the standardised approach for counterparty credit risk.

The Single Resolution Board published a *resolution dossier* that provides a brief overview of the resolution tools available in the Banking Union and their impact on the ability of a bank in resolution to maintain continuity of access to financial market infrastructure services.

The EBA published a *consultation paper* (EBA/CP/2021/06) and *factsheet* on draft implementing technical standards on prudential disclosures relating to environmental, social and governance risks under Article 449a of the CRR.

The FATF published for consultation *draft guidance* on assessing and mitigating proliferation financing risk.

The EBA published its *final report* (EBA/GL/2021/02) setting out revised AML and CTF risk factors guidelines under MLD4.

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