Proskauer

# Regulation Round Up

**Regulatory & Compliance** on **September 2023**

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

Key developments in September 2023:

## 29 September

**Consumer Duty:** The Financial Conduct Authority ("**FCA**") published a portfolio letter that it sent to all platform service providers setting out an update of its view of the key harms in that sector, its expectations of firms and a summary of its key priorities for the sector and supervisory work programme for the next two years.

**FCA Handbook:** The FCA published Handbook Notice 112, which sets out changes to the FCA Handbook.

**Cryptoassets:** The European Banking Authority ("**EBA**") published technical advice for the European Commission relating to delegated acts to be adopted under the Regulation on markets in cryptoassets ((EU) 2023/1114) ("**MiCA**").

## 28 September

**ESMA Work Programme:** The European Securities and Markets Authority ("**ESMA**") published its work programme for 2024 (ESMA22-50751485-1368), which sets out ESMA's objectives and outputs for each of its strategic priorities.

**ESG**: The Joint Committee of the European Supervisory Authorities ("**ESAs**") published its second annual report (JC 2023 42) on the extent of voluntary disclosure of principal adverse impact ("**PAI**") under Article 18 of the Sustainable Finance Disclosure Regulation ((EU) 2019/2088) ("**SFDR**"). Please refer to our dedicated article on this topic here.

**FCA Regulation Round-up**: The FCA published its regulation round-up newsletter for September 2023.

**Ring-fencing Regime**: HM Treasury and the Prudential Regulation Authority ("**PRA**") published consultation papers (here and here) on near-term reforms relating to the bank ring-fencing regime.

**Appointed Representatives**: The FCA published a webpage setting out how it is improving the appointed representatives ("**AR**") regime through greater use of data.

**Ring-fencing Regime**: HM Treasury published a summary of responses to its call for evidence on aligning the bank ring-fencing and resolution regimes.

**Corporate Finance**: The FCA published a portfolio letter setting out its supervisory strategy for corporate finance firms.

### 27 September

**ESG**: The European Systemic Risk Board ("**ESRB**") published its advice on the prudential treatment of environmental and social risks.

**Consumer Duty**: The FCA published a new webpage setting out the findings of its multi-firm review of how firms offering "restricted mass market investments" have complied with new rules on the customer journey.

**Basel 3.1**: The PRA published a news release for firms in relation to its intended timetable to complete its work and implement the Basel 3.1 standards in the UK.

**AIFMD II**: The European Parliament updated its procedure file on the proposed Directive amending the Alternative Investment Fund Managers Directive (2011/61/EU) ("**AIFMD II**") and the UCITS Directive (2009/65/EC). The European Parliament has indicated it will consider AIFMD II during its plenary session to be held from 5 to 8 February 2024.

**FX Risk**: The PRA published a consultation paper (CP17/23) proposing clarifications and amendments when capitalising foreign exchange ("**FX**") exposures under the market risk capital framework. It also sets out the process for seeking permission to exclude structural FX positions from this capital calculation.

### 26 September

**CRR:** The European Commission adopted an Implementing Regulation on amendments to Implementing Regulation (EU) 945/2014, which contains implementing technical standards ("**ITS**") on the list of diversified indices required under the Capital Requirements Regulation ("**CRR**") (575/2013).

**Diversity & Inclusion:** The FCA and the PRA published consultation papers (CP23/20 / CP18/23) (here and here) on diversity and inclusion in the financial sector. Please refer to our dedicated article on this topic here.

### 22 September

**ESG**: The United Nations Environment Programme Finance Initiative published its second biennial report on progress made by the signatories to the Principles for Responsible Banking in their implementation of the Principles, together with a factsheet summarising the report.

### 21 September

**Cryptoassets**: The FCA published a letter it has sent to cryptoasset firms marketing to UK consumers, setting out a "final warning" to these firms, and those supporting them, to get ready for the cryptoassets financial promotion regime.

### 20 September

**ESG**: The draft Greenhouse Gas Emissions Trading Scheme (Amendment) (No 2) Order 2023 was laid in UK Parliament.

**Cryptoassets**: The Joint Money Laundering Steering Group ("**JMLSG**") published a press release announcing it has received HM Treasury ministerial approval for revisions to chapter 22 of Part II of its anti-money laundering ("**AML**") and counter-terrorist financing guidance for the financial services sector relating to cryptoasset transfers.

**ESG**: The Glasgow Financial Alliance for Net Zero ("**GFANZ**") published a consultation on defining transition finance and considerations for decarbonisation contribution methodologies.

### 19 September

**ESG**: The Taskforce on Nature-related Financial Disclosures ("**TNFD**") released the final version of its recommendations for a disclosure framework. Please refer to our dedicated article on this topic here.

**CCPs**: The FSB published a consultation report on proposed financial resources and tools for the resolution of CCPs.

### 14 September

**ESG**: The European Commission published a targeted consultation and a public consultation to seek feedback on the SFDR. Please refer to our dedicated article on this topic here.

**Future of Regulation**: The FCA published a speech by Ashley Alder, FCA Chair, on international collaboration and the modernisation of UK financial services regulation.

### 13 September

**SME Test**: The European Commission published for consultation a proposal amending Directive (EU) 2013/34 as regards adjustments of the size criteria for micro, small, medium-sized and large companies ("**SMEs**").

**Financial Promotions**: The FCA published a new webpage on applying to approve financial promotions for unauthorised persons.

### 12 September

**Financial Promotions**: The FCA published a policy statement (PS23/13) on introducing a gateway for firms that approve financial promotions.

### 8 September

**Wholesale Banks**: The FCA published a portfolio letter sent to all wholesale banks active in the UK, setting out key priorities for the sector and the supervisory work programme for the next two years.

**ESG**: The Green Technical Advisory Group ("**GTAG**") published two reports (here and here) containing technical advice for HM Treasury on the data and financial products under the UK green taxonomy.

## 7 September

**Decentralised Finance**: The International Organization of Securities Commissions ("**IOSCO**") published a consultation report (CR/04/2023) on policy recommendations for decentralised finance.

**Artificial Intelligence**: The FCA published the minutes of the FCA board meeting held on 27 July 2023, at which (among other things) it discussed the FCA's emerging approach to artificial intelligence.

**ESG**: The FCA published its response to the consultation on agenda priorities published by the International Sustainability Standards Board in May 2023.

**Cryptoassets**: The FSB published a joint paper it has developed with the International Monetary Fund ("**IMF**") that outlines the risks and policy findings relating to cryptoassets arising from the FSB's work on financial stability risks and the IMF's work on macroeconomic and monetary issues.

**Cryptoassets**: The FCA published a letter it has sent to firms that intend to communicate or approve cryptoasset financial promotions ahead of the cryptoassets financial promotions regime coming into force on 8 October 2023. It outlines good and poor practice and actions the FCA is taking to support firms which includes a modification by consent. Please refer to our dedicated article on this topic here.

**ESG**: The Network for Greening the Financial System ("**NGFS**") published the beta version of a conceptual framework for nature-related financial risks to guide actions by central banks and supervisors.

**LIBOR**: The BoE published remarks by Arif Merali, Senior Advisor in the BoE's Markets directorate, at a LIBOR transition panel discussion.

## 6 September

**FSMA**: The Financial Services and Markets Act 2000 (Exemptions from Financial Promotion General Requirement) Regulations 2023 (SI 2023/966) have been published on legislation.gov.uk.

**Financial Stability**: The FSB published a report on the financial stability implications of leverage in non-bank financial intermediation ("**NBFI**") and a progress report to the G20 on enhancing the resilience of NBFI.

**Effective Controls**: The FCA published a speech given by Sarah Pritchard, FCA Executive Director of Markets and International, on calibrating controls to build confident markets.

**Shadow Banking**: The European Commission adopted a Delegated Regulation (C(2023) 5912 final) containing regulatory technical standards specifying the criteria for the identification of shadow banking entities referred to in Article 394(2) of the CRR.

**Sanctions**: The FCA published a new webpage on firms' response to increased sanctions due to the conflict in Ukraine.

### 5 September

**PEPs**: The FCA published a press release announcing the launch of a review of the treatment of domestic politically exposed persons ("**PEPs**") by firms, together with the terms of reference for the review.

### 4 September

**ESG**: The ECB published a speech given by Frank Elderson, ECB Supervisory Board Vice-Chair and Executive Board Member, on addressing the risks of climate and environment-related litigation in the banking sector.

**ESG**: The NGFS published two complementary reports on climate-related litigation risks ( here and here).

**ESG**: GTAG published two reports (here and here) containing technical advice for HM Treasury on scope and reporting under the UK green taxonomy.

**EU Regulatory Framework**: The European Systemic Risk Board (ESRB) published an issues note explaining how the EU regulatory framework for investment funds could enhance the prevention and mitigation of systemic risks.

### 1 September

**Quarterly Consultation Paper**: The FCA published its 41st quarterly consultation paper (CP23/18).

**Merger Simplification (Antitrust):** The European Commission's 2023 Merger Simplification Package came into force. This involves (i) a revised Implementing Regulation with updated EU merger notification forms, (ii) a revised Notice on Simplified Procedure, which expands the circumstances in which transactions can qualify for a short form merger notification and simplified review, and (iii) a Communication on the transmission of documents to the European Commission, which provides for all submissions to be made digitally, including electronic signatures.

## Related Professionals

- **John Verwey**
  Partner
- **Andrew Wingfield**
  Partner
- **Richard Bull**
  Partner
- **Oliver R. Howley**
  Partner
- **Mary Wilks**
  Partner
- **Rachel E. Lowe**
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- **Michael Singh**
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- **Sulaiman I. Malik**
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