European Leveraged Finance Association

ELFA *Briefings*

ELFA Legal & Regulatory Update
08/06/2020 – 12/06/2020

Key Highlights:

- This Legal & Regulatory Update covers the week commencing 08/06/2020.
- BoE announces support of Risk-Free Rate transition through provision of compounded SONIA.
- FCA gives information on open access regime for trading and clearing of exchange-traded derivatives.
- FRC publishes updated Q&A Guidance on best practice for AGMs during Covid-19.
- ESMA renews its decision requiring net short position holders to report positions of 0.1% and above.
- EIOPA consults on (re)insurance value chain and new business models arising from digitalisation.
- EBA proposes enhanced standardisation of disclosure requirements laid down in Non-Financial Reporting Directive.
- European Supervisory Authorities (ESAs) announce public hearing on ESG disclosures.
- ECB publishes report on banks' credit underwriting standards.
- European Commission commences consultation on six delegated acts on integration of sustainability risk in financial services.
- Autorité des Marchés Financiers (AMF) of France publishes its proposals on improving MiFID II provisions related to market transparency, financial research and investor protection.
- ICMA publishes Sustainability-Linked Bond Principles and updates Social Bond Principles.
- In this update, we also cover some of the most important news on leveraged finance published by the Financial Times and Thomson Reuters during the week.

Bank of England (BoE)

08 June 2020: BoE & PRA issue joint statement on ESRB's recommendations for restriction of distributions during the Covid-19 pandemic

The Bank of England (Bank) and the Prudential Regulation Authority (PRA) note the Recommendation made on 8 June 2020 by the European Systemic Risk Board (ESRB) on the restriction of distributions during the Covid-19 pandemic. The PRA and BoE issued a joint statement to acknowledges the recommendations made by the ESRB.

11 June 2020: BoE announces support of Risk-Free Rate transition through provision of compounded SONIA

On the 26th of February 2020, the BoE released a discussion paper on accelerating the adoption of SONIA as a reference rate in sterling markets. The BoE was seeking view from sterling market participants on:

- the Bank's intention to publish a daily SONIA Compounded Index. This is intended to support the use of SONIA in a wide range of financial products by simplifying the calculation of compounded interest rates; and
- the usefulness of the Bank publishing a simple set of compounded SONIA Period Averages, which would give users easy access to SONIA interest rates compounded over a range of set time periods. As the set periods used to generate such averages cannot always align with those currently applied in products referencing SONIA, the Bank is seeking to establish whether there is market consensus on how to define the relevant time periods. The Bank is inviting comment on the options presented in this paper, after which it will decide whether it would be helpful to publish such averages.

Having reviewed feedback to the February discussion paper the Bank has set out its position:

- Given near universal support from respondents, the Bank has confirmed it will publish a daily SONIA Compounded Index. It anticipates that publication of the SONIA Compounded Index will commence in early August. The precise date will be confirmed in due course.
- Given a lack of consensus on both the usefulness of SONIA "period averages" and the conventions underpinning such rates, in line with the position set out in the February discussion paper, the Bank will not be producing them at this time.

08 – 12 June 2020: Speeches & Other Publications

During the week, the BoE released the following speeches & other publications that might be of interest to our readers:

- How does Covid-19 affect economic activity and inflation?
- What role did margin play during the Covid-19 shock?
- Exchange rate risk and business cycles – Staff Working Paper
- Jumpstarting an international currency – Staff Working Paper
- Bank of England Weekly Report 10 June 2020
- Financial System Resilience: Lessons from a real stress - speech by Jon Cunliffe
- Christina Segal-Knowles: CEPR/LSE webinar "Digital Currencies and Crisis Response"

Financial Conduct Authority (FCA)

11 June 2020: FCA gives information on open access regime for trading and clearing of exchange-traded derivatives

The FCA announced that from 4 July 2020 trading venues and central counterparties (CCPs) offering the trading and clearing of exchange-traded derivatives will be subject to the Markets in Financial Instruments Regulation (MiFIR) open access regime as set out in articles 35 and 36 of that Regulation. Under those provisions, trading venues and CCPs may only deny access where the operational risk and complexity arising from granting access would cause undue risk. The specific factors trading venues and CCPs should consider when evaluating access requests are set out in Commission Delegated Regulation 2017/587.

To meet their responsibilities, the FCA explains that trading venues and CCPs are expected to put in place processes to assess any open access requests against those factors. The operation of these processes will require senior management, legal, risk, compliance and IT resources. Responding to an open access request in current market conditions while relevant staff are working from home is likely to involve extra resources and operational complexity that would introduce additional elements of risk and may detract from the priority of maintaining resilient and orderly markets. When making or assessing open access requests, trading venues should continue to prioritise the maintenance of orderly markets and the continuity of their critical services to the market even if this may delay the assessment of an open access request. Where a recipient delays an assessment, it should communicate its position to the requester without delay.

11 June 2020: FCA publishes Guidance on assessing adequate financial resources

The FCA published FG20/1: Assessing adequate financial resources, which is the FCA's final guidance on a framework to help financial services firms ensure they have adequate financial resources and to take effective steps to minimise harm. In this document, the FCA sets out its expectations of how firms determine they have adequate financial resources. This framework document aims to provide more clarity on:

- the role of adequate financial resources in minimising harm;
- the practices firms can adopt when assessing adequate financial resources; and
- how the FCA assesses the adequacy of a firm's financial resources.

This guidance does not place specific additional requirements on firms because of Covid-19, but the crisis underlines the need for all firms to have adequate resources in place and to assess how those needs may change in the future.

08 – 12 June 2020: Speeches, Letters & Other Publications

During the week, the FCA released the following publications that might be of interest to our readers:

- Chris Woolard discusses emergency regulation and learning from the coronavirus crisis
  In his first Inside FCA podcast interview, Interim Chief Executive Chris Woolard discusses how the FCA has rapidly reprioritised work in light of the coronavirus (Covid-19) pandemic, and talks about future business planning
- Dear CEO Letter to firms providing services to retail investors about coronavirus (Covid-19)

Financial Reporting Council (FRC)

08 June 2020: FRC publishes updated Q&A Guidance on best practice for AGMs during Covid-19

The FRC published its updated Q&A Guidance on measures in respect of company filings, AGMs and other general meetings during Covid-19. The document provides guidance on the measures introduced by the Corporate Insolvency and Governance Bill 2020. The Bill contains a range of provisions to support companies and other entities in financial difficulties and, specifically through a number of temporary provisions, to assist them in managing the impacts of the coronavirus pandemic.

08 – 12 June 2020: Other Publications

During the week, the FRC released the following publications that might be of interest to our readers:

- FRC announces closure of Tesco investigation
- Changes to membership of UK GAAP TAG
- FRC announces sanctions against KPMG

Joint Forum on Actuarial Regulation (JFAR)

11 June 2020: JFAR publishes its 2019/20 updated Risk Perspective

The JFAR announced that it has issued its 2019/20 updated Risk Perspective which identifies 8 'hotspots' intended to raise awareness of the risks to high quality actuarial work in mitigating risks to the public interest. This year, a new "Systemic Risk" has been included within which the JFAR considers the potential impacts of the current pandemic on actuarial work. The report provides that Systemic Risk has both health and economic impacts, and poses a threat to actuarial quality as it affects the scenarios normally used in actuarial models. The JFAR will shortly consider what further work it might undertake to better understand and address the risk.

European Securities and Markets Authority (ESMA)

08 June 2020: ESMA issues latest Double Volume Cap data

ESMA announced that it has updated its public register with the latest set of double volume cap (DVC) data under the Markets in Financial Instruments Directive (MiFID II). Today's updates include DVC data and calculations for the period 1 May 2019 to 30 April 2020 as well as updates to already published DVC periods.

09 June 2020: ESMA extends deadline for responses to consultation on EMIR REFIT

ESMA has decided, in view of the effects of the ongoing COVID-19 pandemic on stakeholders and market participants, to extend the response date for the consultation on the technical standards on reporting, data quality, data access and registration of Trade Repositories under EMIR REFIT from 19 June to 3 July 2020. The decision has been taken in recognition of market participants' current focus on crisis work and their operational constraints, as well as taking into account the high number and the technical complexity of issues on which feedback is requested.

11 June 2020: ESMA publishes statement on MiFIR open access and COVID-19

ESMA issued a public statement to clarify the application of the MiFIR open access provisions (OAP) for trading venues (TVs) and central counterparties (CCPs) in light of the recent adverse developments related to COVID-19. The statement also aims to coordinate the supervisory actions of national competent authorities (NCAs) by setting out the issues they should consider when assessing OAP requests.

According to the statement, ESMA considers that the current market environment, with a high degree of uncertainty and volatility driven by the COVID-19 pandemic, may negatively impact CCPs and TVs operations and increase their operational risk. These increased risks, combined with limited capacity for assessing access requests and for managing the migration of transactions flows, may impact the orderly functioning of markets or financial stability. NCAs are expected to take into consideration, to the extent relevant, the relevant adverse developments when taking decisions on open access requests. ESMA expects CCPs and trading venues to have the necessary operational capacity to process access requests once the exceptional market circumstances have cleared up. The current exemptions under MiFIR, which allow NCAs to temporarily exempt TVs and CCPs from the OAP for exchange traded derivatives (ETDs), expire on 3 July and from 4 July the OAP for ETDs will apply.

11 June 2020: ESMA renews its decision requiring net short position holders to report positions of 0.1% and above

ESMA announced that it has renewed its decision to temporarily require the holders of net short positions in shares traded on a European Union regulated market to notify the relevant NCA if the position exceeds 0.1% of the issued share capital. ESMA considers that its renewed measure will maintain the ability of NCAs to deal with any threats to market integrity, orderly functioning of markets and financial stability at an early stage, allowing them and ESMA to timely address such threats in case of signs of market stress.

The measure applies from 17 June 2020 for a period of three months. The temporary transparency obligations apply to any natural or legal person, irrespective of their country of residence. They do not apply to shares admitted to trading on a regulated market where the principal venue for the trading of the shares is located in a third country, market making or stabilisation activities.

11 June 2020: ESMA responds to European Commission consultation on revision of NFRD

ESMA has submitted a response to the European Commission's (EC) consultation on a revision of the Non-Financial Reporting Directive (NFRD). The response recommends standardising disclosure requirements, widening the range of companies required to report and ensuring consistency between legislative initiatives on sustainable finance. ESMA considers that it is time to make these amendments to the NFRD to provide users of non-financial information with more relevant, reliable and comparable disclosure.

ESMA's December 2019 advice to the EC on undue short-term pressures on companies found that the non-financial information disclosed by issuers:

- does not always meet users' expectations of which information is relevant,
- is drawn up using very diverse methodologies, is self-reported and not quantifiable, leading to low reliability, and
- is based on such a wide array of reporting frameworks that comparability across issuers is very low.

For these reasons, ESMA suggests in its consultation response that a stronger standardisation of non-financial disclosure is needed. While in the medium term, ESMA is of the view that international alignment should be the objective, action is needed at European level in the short term to fill the gap between issuers' disclosure and users' expectations. ESMA considers that such a European standardisation should be prepared by an EU public body.

Furthermore, ESMA considers that a wider scope of companies should provide such disclosure and proposes that all small, medium-sized and large issuers admitted to trading on a regulated market as well as all large non-listed issuers and all large public-interest entities (PIEs) should be covered by the NFRD. For listed SMEs, however, ESMA takes a proportionate approach and suggests that these should be subject to lighter disclosure requirements in order to avoid unnecessary administrative burden. ESMA also highlights the importance of ensuring consistency between different legislative initiatives in the area of sustainable finance, notably the NFRD, the Regulation on sustainability-related disclosures in the financial services sector and the Taxonomy Regulation

The European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA) have also provided responses to the consultation (highlighted below). Along with their responses, the European Supervisory Authorities (ESAs), which is made up of the EBA, EIOPA and ESMA, have submitted a joint letter from their Chairs, highlighting key messages which are of particular importance for Europe's future non-financial reporting regime.

European Insurance and Occupational Pensions Authority (EIOPA)

09 June 2020: EIOPA supports ESRB's call on enhanced monitoring of liquidity risks in insurance sector

The European Insurance and Occupational Pensions Authority (EIOPA) announced that it supports the views expressed by the European Systemic Risk Board (ESRB) regarding the importance of improving the monitoring of liquidity risks in the insurance sector with the aim to enhance Europe's preparedness to potential future shocks. In this context, as a response to Covid-19, EIOPA already developed and put in place a proportionate framework to enhance the nature and the consistency of the information collected on liquidity risks. EIOPA provides that there is no evidence of the materialisation of liquidity risks in the insurance sector. Furthermore, as part of the Solvency II Review, EIOPA has consulted on concrete proposals to reinforce the macro-prudential dimension of the regime, including elements to strengthen the tools available to assess and monitor liquidity risks. These proposals will be assessed in the coming months in face of the Covid-19 evidence. EIOPA will continue to contribute to the ESRB work in order to support the stability of the insurance sector and its contribution to the overall stability of the financial system.

10 June 2020: EIOPA consults on (re)insurance value chain and new business models arising from digitalisation

EIOPA launched a public consultation on a 'Discussion paper on (re)insurance value chain and new business models arising from digitalisation'. As technology continues to evolve, changes in firms' reliance on outsourcing and third parties bring potential benefits and opportunities. However, it may also create new conduct and prudential risks and amplify or relocate significantly old risks (e.g. operational risk, Information and Communication Technology risks, security, governance, and reputational risks, consumer protection). It can also lead to legal and compliance issues (e.g. data protection and compliance with outsourcing rules and regulatory perimeter issues). The widespread use of third party providers can also lead to concentration risk if a large number of undertakings become dependent on a small number of dominant outsourced or third party service providers.

In this context, a possible fragmentation of the insurance value chain could occur, including, most pertinently, a potential for a reduced regulatory and supervisory 'grip' on the relevant activities in the value chain, or ways in which the 'lengthening' of the value chain 'stresses' existing regulatory and supervisory oversight. The goal of the public consultation is therefore to get a better picture on possible fragmentation of the European Union's insurance value chain and supervisory challenges related to that in order to plan for next steps. The deadline for submission of feedback in EU Survey Tool is 7 September 2020.

11 June 2020: EIOPA responds to European Commission's consultation on revision of Non-Financial Reporting Directive

EIOPA has responded to the European Commission's consultation on revision of the Non-Financial Reporting Directive (NFDR). EIOPA welcomes the initiative to revise the NFRD. Insurance undertakings and pension funds are at the forefront of pushing long-term, sustainable investments and the integration of environmental, social and governance (ESG) factors. To empower sustainable investment opportunities and to enable an effective integration of ESG factors, high quality non-financial reporting is needed. Corresponding non-financial reporting standards shall ensure consistency with the important Disclosure and Taxonomy Regulations and be based on the European Supervisory Authorities' experience to develop technical standards in that area.

08 – 12 June 2020: Other Publications

During the week, EIOPA released the following publication(s) that might be of interest to our readers:

- Update of the list of Internationally Active Insurance Groups in the EU

European Banking Authority (EBA)

08 June 2020: EBA releases bank-by-bank data at the start of the COVID-19 crisis

The EBA published the seventh EU-wide transparency exercise. This additional data disclosure comes as a response to the outbreak of COVID-19 and provides market participants with bank-level data as of 31 December 2019, prior to the start of the crisis. The data confirms the EU banking sector entered the crisis with solid capital positions and improved asset quality, but also shows the significant dispersion across banks.

09 June 2020: EBA launches consultation on technical standards specifying the prudential treatment of software assets

The EBA launched a consultation on draft Regulatory Technical Standards (RTS) specifying the prudential treatment of software assets. As the banking sector is moving towards a more digital environment, the aim of these draft RTS is to achieve an appropriate balance between the need to maintain a certain margin of conservatism in the prudential treatment of software assets and their relevance from a business and an economic perspective. The EBA will closely monitor the evolution of the investments in software assets going forward, including the link between the proposed prudential treatment and the need for EU institutions to make some necessary investments in IT developments in areas like cyber risk or digitalisation. The consultation runs until 09 July 2020.

11 June 2020: EBA proposes enhanced standardisation of disclosure requirements laid down in Non-Financial Reporting Directive

The EBA submitted its response to the European Commission's public consultation on the review of the Non-Financial Reporting Directive (NFRD). The EBA welcomes this consultation, and agrees with the need to revise the NFRD so as to meet the demand for relevant, reliable and comparable company disclosure on non-financial matters. The EBA also highlights the need to increase standardisation by setting out mandatory rather than voluntary requirements, so as to ensure comparable disclosures. Finally, the EBA supports this review as a good opportunity to expand the scope of companies covered by the NFRD, in a proportionate way.

08 – 12 June 2020: Other Publications

During the week, the EBA released the following publications that might be of interest to our readers:

- EBA issues revised list of validation rules
  The EBA issued a revised list of validation rules in its Implementing Technical Standards (ITS) on supervisory reporting, highlighting those which have been deactivated either for incorrectness or for triggering IT problems.
- EBA publishes its 2019 Annual Report
  The EBA published its 2019 Annual Report, which provides a detailed account of all the work the Authority achieved in the past year and anticipates the key areas of focus in the coming year.

European Supervisory Authorities (ESAs)

09 June 2020: ESAs announce public hearing on ESG disclosures

On the 23rd of April 2020, the three European Supervisory Authorities (EBA, EIOPA and ESMA - ESAs) issued a Consultation Paper seeking input on proposed environmental, social and governance (ESG) disclosure standards for financial market participants, advisers and products. The ESAs welcome comments on this consultation paper setting out the proposed Regulatory Technical Standards (RTS) on content, methodologies and presentation of disclosures under the Sustainable Finance Disclosure Regulation (SFDR).

These standards have been developed to:

- strengthen protection for end-investors;
- improve the disclosures to investors from a broad range of financial market participants and financial advisers; and
- improve the disclosures to investors regarding financial products.

The ESAs welcome feedback to this consultation by 1st of September 2020. Following the close of the consultation, the draft RTS will be finalised and submitted to the European Commission. Comments on this consultation paper should be sent using the response form, via the ESMA website under the heading 'Your input/Consultations'.

On the 02 July 2020 from 10:00 to 16:00 (Paris Time), the ESAs will hold a Public Hearing. The public hearing will be organised as a webinar due to the on-going public health concerns associated with the COVID-19 pandemic. The ESAs invite interested stakeholder to register using this link to take part in the hearing. The aim of the public hearing is to explain and discuss the content of this consultation paper on RTS under the Regulation on sustainability-related disclosures in the financial services sector through an interactive dialogue between the ESAs and external stakeholders. The agenda for the hearing will be released closer to the date of the hearing, and will follow the structure of the consultation paper, covering the topics raised in the RTS on entity-level principal adverse impact disclosures and product level ESG disclosures.

European Central Bank (ECB)

10 June 2020: ECB publishes report on banks' credit underwriting standards

The EBA published a report on banks' credit underwriting standards, which highlights some weaknesses in the way banks have granted and priced new loans in recent years. The report, which is based on data on new lending by banks from 2016 to 2018, contains a number of industry-wide findings, including:

- banks with high levels of non-performing loans (NPLs) tended to grant housing loans more conservatively than other banks;
- not all banks paid sufficient attention to risk-based pricing, particularly to ensure that loan pricing at least covered expected losses and costs;
- no evidence was found that banks using internal models to calculate capital requirements applied better risk-based pricing;
- on average, banks lowered their lending standards for loans to households over the period: they took more risks, while working with tighter margins resulting from narrower pricing spreads (interest rate charged minus funding costs); and
- new loans granted to non-financial corporations showed a mixed picture in terms of banks' risk-taking combined with mostly decreasing pricing spreads.

The analysis also produced bank-specific findings, which supervisors have discussed with the banks in question and have asked them to follow up. In focusing on loan origination practices, ECB Banking Supervision aims to strengthen banks' resilience, which is one of its supervisory priorities. The ECB considers proper credit underwriting essential to the stability of banks.

08 – 12 June 2020: Speeches & Other Publications

During the week, the EBA released the following speeches and publications that might be of interest to our readers:

- EU structural financial indicators: end of 2019The ECB has updated its dataset of structural financial indicators for the banking sector in the EU for the end of 2019.
- ECB reports on progress towards euro adoption for EU countries
  Mixed progress has been made by non-euro area EU countries on economic convergence with the euro area since 2018, with important steps taken to address fiscal imbalances, the June 2020 Convergence Report of the ECB concludes.
- ECB publishes indicative calendars for the Eurosystem's regular tender operations and reserve maintenance periods in 2021
  The indicative calendar for the Eurosystem's regular tender operations includes only main refinancing operations (MROs) and regular three-month longer-term refinancing operations (three-month LTROs). It does not include any supplementary or ad hoc operations which may be carried out in 2021. The calendar can be downloaded from the ECB's website.
- Letter from Andrea Enria, Chair of the Supervisory Board, to Mr Zanni, Ms Donato, Mr Grant and Mr Rinaldi, MEPs, on bank provisioning for non-performing loans
- Trends and risks in credit underwriting standards of significant institutions in the Single Supervisory Mechanism
- Letter from Andrea Enria, Chair of the Supervisory Board, to Dr Hollnagel, Member of the German Bundestag, on business model supervision
- Letter from Andrea Enria, Chair of the Supervisory Board, to Mr Urtasun, MEP, on national measures for the banking sector in the COVID-19 crisis
- The ECB's policy in the COVID-19 crisis – a medium-term perspective, speech by Isabel Schnabel
- Euro area: economic outlook and financial stability during the pandemic crisis, speech by Luis de Guindos

European Commission (EC)

08 June 2020: EC commences consultation on six delegated acts on integration of sustainability risk in financial services

The EC has issued a four week consultation on six delegated acts on the integration of sustainability risks into UCITS, AIFs, investment firms, insurance firms and brokers, reinsurance firms, and product governance obligations. The EU's action plan on sustainable finance seeks to clarify the duties of financial institutions to provide their clients with clear advice on the social and environmental risks and opportunities attached to their investments. The aim is to shift capital flows away from activities that have negative social and environmental consequences direct finance towards economic activities that have genuine long-term benefits for society. The consultation is open until 6th of July 2020.

10 June 2020: EC publishes report on application of AIFMD

The EC issued a report on the application of AIFMD. The report examines the passports for depositary, the marketing passport, reporting and data regarding financial stability and the impact of the AIFMD on private equity.

10 June 2020: High-Level Forum (HLF) on capital markets union (CMU) publishes its final report on the EU's capital markets union

The High-Level Forum (HLF) on capital markets union (CMU) published its final report on the EU's capital markets union. It sets out a series of clear recommendations aimed at moving the EU's capital markets forward. According to the report, completing the CMU has now become particularly urgent in order to speed up the EU's recovery from the coronavirus pandemic. A fully-fledged CMU would help rebuild the EU's economy, by providing new funding sources for businesses and investment opportunities for Europeans. It will be vital for mobilising much-needed long-term investments in new technologies and infrastructure, to tackle climate change and to deliver Europe's New Green Deal and Digital Agenda. In its final report, the HLF proposes 17 inter-connected 'game changers' – measures the EU needs to urgently implement in order to remove the biggest barriers in its capital markets.

Central Bank of Ireland (CBI)

05 June 2020: CBI announces new protections for consumers of licensed moneylending services

The CBI announced new regulations to strengthen protections for consumers of licensed moneylending services and to enhance professional standards in the sector. According to the new regulations, moneylenders will be required to include prominent, high cost warnings in all advertisements for moneylending loans with an Annual Percentage Rate (APR) over 23 per cent. The warning must also prompt consumers to consider alternatives. The new rules will limit the moneylenders' contact with consumers and limit the offer and promotion of loans to consumers, giving greater control to consumers to decide when to be contacted by a moneylender. Moneylenders will also not be permitted to make an unsolicited offer to apply for credit to consumers who have recently made, or are nearing, full repayment of a moneylending loan. Furthermore, moneylenders will also be required to ensure that their marketing strategy is fair and reasonable. There will also be a number of new requirements for people working in the sector, designed to enhance their professional standards.

08 – 12 June 2020: CBI Blogs & Other Publications

During the week, the CBI published the following speeches & publications that might be of interest to our readers:

- The Economic Outlook - Governor Gabriel Makhlouf
- Economic Letter: "Measuring Economic Activity in Real Time during COVID-19"

Autorité des Marchés Financiers (AMF) of France

08 June 2020: AMF publishes a study of rules implemented by banks for matching client profiles with products as part of an investment advisory service

The AMF published a study that looks at the processes implemented by banks to ensure that their investment advisory services are suited to their clients' profiles. The objective is to understand how institutions have implemented these rules and gauge the impact these rules have had on the range of financial investments offered to clients and the role played by advisors.

11 June 2020: AMF publishes a study of opportunities and risks of financial index market

The AMF published the results of its study of the opportunities and risks of the financial index market, which analysis the functioning of an industry that continues to grow with close to 3 million indices in the world. In this study, the AMF assesses two main types of risk:

1. risks concerning the functioning of markets and potentially for financial stability, and
2. risks relating to the lack of competition and its impacts on the protection of investors.

Regarding the risks impacting the functioning of markets, the study shows that the development of funds benchmarked to listed funds and index futures contracts is transforming the ecosystem and structure of the markets, beginning by the equities and listed derivatives markets. Price formation and market liquidity processes are being changed profoundly. More particularly, the study highlights the growing effect of rebalancing (changing the composition of the indices), operational risks such as cybercrime, and the risks of shocks being amplified on futures markets.

The study emphasises in particular the following issues regarding lack of transparency:

- As a result of the lack of competition, the offer is often bundled with data supply services which limits the ability to make fee comparisons.
- The boundary between index and asset management are diminishing as the indices in question incorporate more and more asset management rules and discretion margins. This also increases risks regarding conflicts of interest.
- In an environment of accelerated innovation, it is becoming difficult for investors to assess what the indices represent and to understand their methodologies. This is particularly true of strategy, smart beta, ESG and bond indices, which may cumulate several asset management strategies.

11 June 2020: AMF publishes its proposals on improving MiFID II provisions related to market transparency, financial research and investor protection

The AMF has responded to the European Commission's public consultation on the review of MiFID2. In its feedback, the AMF supports targeted changes of certain aspects of MiFID2 based on five pillars. In light of its supervisory experience since the implementation of this new legislation in January 2018, the AMF believes that targeted changes to MiFID 2 are needed to fully achieve its original objectives and to contribute to deepening the EU Capital Markets Union.

The AMF proposals are based on five pillars:

1. provide market participants with a more comprehensive view of financial markets transactions by enhancing transparency requirements on equities, better calibrating and harmonising post-trade transparency requirements for bonds and create a Consolidated Tape to enhance access to post-trade data;
2. adjust the scope of the share and derivative trading obligations and adopt a territorial approach in order to ensure competitiveness of European firms;
3. promote the development of the commodities derivatives markets in the EU;
4. tackle the challenge of supporting financial research by introducing a degree of proportionality to the applicable legal framework clarifying rules relating to issuer-sponsored research, and ensuring a fair pricing of research;
5. make investor protection rules more relevant and proportionate.

12 June 2020: AMF responds to European public consultation on the review of the Non-Financial Reporting Directive

The Non-financial Reporting Directive (2014/95/EU) requires companies with more than 500 employees to disclose the non-financial risks and opportunities that they consider material for their business model. Within the context of the European Green Deal aiming to make the European economy competitive and more sustainable, the European Commission has announced a review of this directive. In response to the European Commission's consultation, the AMF published its proposals it intends to share at the European level.

The AMF sees five key challenges to the NFRD:

1. clarifying the concept of materiality,
2. completing the themes on which companies are invited to disclose,
3. extending the scope of companies subject to non-financial reporting,
4. improving the reliability of non-financial information, and
5. defining the good governance rules for the future non-financial reporting standard.4

08 – 12 June 2020: AMF Blogs & Other Publications During the week, the AMF published the following publication that might be of interest to our readers:

- The ACPR and AMF Joint Unit for Insurance, Banking and Retail Investment publishes its annual report 2019

International Capital Markets Association (ICMA)

08 June 2020: ICMA publishes Sustainability-Linked Bond Principles and updates Social Bond Principles and other key guidance

ICMA published its Sustainability-Linked Bond Principles (SLBP). These are voluntary guidelines for sustainability-linked bonds (SLBs) defined as forward-looking performance-based bond instruments where the issuer is committing to future improvements in sustainability outcomes within a predefined timeline. The financial and/or structural characteristics of SLBs can vary depending on whether the issuer achieves those predefined Sustainability Performance Targets. Within these parameters, the use of funds for SLBs are intended for general purposes rather than for underlying sustainable projects as in the case of existing green, social and sustainability bonds.

ICMA further released a 2020 update of the Social Bond Principles providing expanded social project categories and additional target populations, and also incorporating recent guidance for social bonds addressing the COVID-19 crisis. Separately, a collection of Social and Sustainability Bond Case Studies has been published. The Green Bond Principles and Sustainability Bond Guidelines remain otherwise unchanged (2018 versions remain applicable).

10 June 2020: ICMA publishes slides on CSDR Mandatory Buy-in framework

ICMA has published a set of slides that provide an overview of the CSDR Mandatory Buy-in framework, related implementation challenges; ICMA's extensive work to support implementation in the non-cleared bond and repo markets; and the expected impacts for the European bond and repo markets

11 June 2020: ICMA responds to EC consultation on review of Non-Financial Reporting Directive (NFRD)

CMA submitted its response to the NFRD review consultation. Both ICMA's Corporate Issuer Forum and the Asset Management and Investors Council support the review, which provides the opportunity to achieve a greater level of standardisation of ESG disclosures, a perequisite to deliver on the EU sustainable finance action plan.

12 June 2020: ICMA publishes its preliminary thoughts on Final Report of High-Level Forum on Capital Markets Union

ICMA has published its preliminary thoughts on the Report of the High Level Forum (HLF) on the Capital Markets Union (discussed above). ICMA said that it welcomes the final report, which sets out a clear vision of a true single European capital market for everyone and a comprehensive suite of detailed recommendations in order to achieve this. ICMA looks forward to engaging on the wide range of detailed suggestions set out in the HLF report and sets out some preliminary, high-level reactions on some of the key recommendations. ICMA also notes that the further development of the CMU is an opportunity to re-consider any remaining examples of national rules within the EU which hinder the efficiency of cross-border capital markets.

08 – 12 June 2020: ICMA Podcasts

During the week, ICMA released the following podcasts that might be of interest to our readers:

- Perspectives from a global ICSD on COVID-19 and changing markets
  As Clearstream celebrates 50 years in the market, Arnaud Delestienne, Head of Eurobonds Business, speaks to ICMA about its role in the value chain as a major global ICSD. He discusses how Clearstream as a systemic infrastructure has navigated through the COVID-19 crisis, reviewing the main trends and operational challenges from an ICSD angle and highlights the pipeline of regulations that will affect (I)CSDs and their participants in the months to come while assessing the challenges for market preparedness. Looking to the future, he also talks about the emerging opportunities including ESG/sustainability, automation and new technologies

- COVID-19: ICMA Asset Management & Investors Council weekly market update
  Robert Parker, Chair of ICMA's Asset Management and Investors Council, reviews the market events of the last week in the context of the COVID-19 pandemic, with a specific focus on the ECB announcements on 4 June, fiscal stimulus in Europe, and investors' positioning.

In the News

During the week, the Financial Times & Thomson Reuters published the following news that might be of interest to our readers.

Financial Times

- The takeaways from Grubhub deal
  "Just Eat Takeaway's overnight acquisition of Grubhub in a $7.3bn all-stock deal is about the food fight to carve up the global online delivery market rather than much-needed consolidation in the US"

- Ocado is raising money just because it can, can, can
  "With a £15bn-or-so market cap and a 50 per cent share rise since January, lossmaking Ocado can do as it pleases and intoxicated investors will throw more money at it"

- We must resurrect EU Capital Markets Union
  "The need to rebuild European economies after Covid-19 has only increased the urgency of harnessing a well-functioning capital market"

- Turkey joins settlement house Euroclear after 8-year talks
  "Turkey is poised to join one of Europe's largest securities depositories, allowing investors to settle trades in its government bonds, as it bids to attract more international capital at a time when foreign investment has hit a record low"

- Fed's corporate bond facility faces teething problems
  "The launch of the Federal Reserve's programme for buying corporate bonds is running behind schedule, prompting fears in the market that the US central bank is risking a loss of credibility that could hamper its ability to tackle future crises"

- Investors expect credit to outperform despite Covid downturn
  "Survey of asset managers running a combined $20tn finds them optimistic about corporate bonds"

- Investors enjoy equity-like returns from a roaring bond market
  "Bonds sold since March by blue-chip US companies including Northrop Grumman, Intel and Coca-Cola have surged in value, as investors scrambled to get hold of the unusually high coupons offered during the most intense phase of the pandemic"

- US foundations issue first social bonds to fund $1.7bn coronavirus fightback
  "Some of America's largest philanthropic foundations are issuing "social bonds" for the first time as they look to fund a joint $1.7bn response to the coronavirus crisis without depleting their endowments"

- Jay Powell delivers dovish message to financial markets
  " As long as there is a perception that the Fed has the bond market's back and as long as there is a perception that the economy is going to improve in the future, I think stocks will continue to rally"

Thomson Reuters

- Exclusive: Britain asks private bankers to discuss potential wealth taxes – source
  "Britain's finance ministry is canvassing private bankers over how the country's richest citizens might help pay for the soaring cost of coronavirus relief packages, with potential tax hikes likely to sit high on the agenda"

- Bank of England's Bailey says we must be ready for further stimulus
  "The BoE is expected to announce a fresh increase of at least 100 billion pounds ($126 billion) in its bond-buying firepower"

- UK gets near-record 70 bln pound demand for new 30-year bond
  "Britain received more than 70 billion pounds ($88 billion) in demand when it sold 9 billion pounds of a new 30-year government bond on Tuesday, not far off the record 84 billion pounds in orders last month for a 10-year gilt"

- Investors rush into bonds, equities: BofA
  "Investors rushed back into investing in bond and equity funds, BofA's weekly fund flow statistics showed on Friday, as unprecedented stimulus measures led to global markets recouping most of COVID-19 related losses"

- Mitchells & Butlers secures debt waivers to ride out pandemic
  "Pub owner Mitchells & Butlers Plc said on Friday it had obtained debt waivers from its creditors in exchange for an agreement to not return money to shareholders or repay bond debt until at least September 2021"

- Banks prep launch of €10bn debt backing Thyssenkrupp unit buy
  "Banks are preparing to launch a highly-anticipated €10bn dual-currency loan and bond financing to back a buyout of Thyssenkrupp's elevators division, pre-sounding investor appetite to optimise the structure and play the markets off each other to achieve best execution"

- Exclusive: ECB prepares 'bad bank' plan for wave of coronavirus toxic debt
  "European Central Bank officials are drawing up a scheme to cope with potentially hundreds of billions of euros of unpaid loans in the wake of the coronavirus outbreak, two people familiar with the matter told Reuters"

- ECB not finished with new policy easing, economists say: Reuters poll
  "The European Central Bank, which just last week said it was ramping up its already-whirring money-printing presses, will announce yet more stimulus measures in response to the pandemic-driven recession, a Reuters poll of economists predicted"

- Euro zone bond yields broadly flat; issuance continues
  "Demand for Euro zone government debt was little changed on Wednesday, after several governments launched syndicated bond sales on Tuesday and were met with strong demand"

- ECB to focus emergency bond purchases where needed: Schnabel
  "The European Central Bank will continue focussing its bond purchases on the countries and markets where they are most needed throughout the life of its Pandemic Emergency Purchase Programme, ECB board member Isabel Schnabel said"

- ECB's Lagarde defends bond buys against northern challenge
  "European Central Bank President Christine Lagarde on Monday defended the aggressive stimulus measures taken by the ECB in response to the coronavirus pandemic, saying they are proportionate to the risk faced by the euro zone"

- [Pandemic and Brexit make deeper EU capital market urgent, report says]
  "Deepening the European Union's capital market has become a priority to help the economy recover from COVID-19 and reduce reliance on the City of London, a report for the EU said"

- [U.S. Fed buys $28.1 billion of mortgage bonds, sells $5.6 billion]
  "In a move to help the housing market begun in October 2011, the U.S. central bank has been using funds from principal payments on the agency debt and agency mortgage-backed securities, or MBS, it holds to reinvest in agency MBS"

- [Fixed-rate CLO tranches seek to attract investors as market reopens]
  "US Collateralized Loan Obligation (CLO) managers are adding fixed-rate tranches to attract investors after issuance fell more than 50% amid the coronavirus pandemic. According to LPC Collateral data, three of the six US CLOs issued last week, including funds from Sound Point Capital Management and Onex Credit, feature a fixed-rate tranche"

- [Banks balance appetite for high-quality loans while managing risk]
  "As immediate requests for liquidity due to the Covid-19 crisis start to flatten, banks, lending to highly rated companies, are looking ahead at how they can keep up business momentum and simultaneously protect themselves from potentially higher costs of funding and deteriorating credit risk"

- [Once bitten, not shy: Investors again seek margin loans as stocks rally]
  "Global banks are seeing renewed appetite from wealth management clients to borrow money to buy stocks as markets rebound, bankers said, which comes just months after the strategy burned some investors"

- [Macy's raises $4.5 billion to shore up funds as stores reopen, shares surge]
  "Macy's Inc (M.N) said on Monday it raised a total of $4.5 billion, including $3.15 billion in new borrowings against its real estate assets, as the department store chain tries to navigate through the fallout from the COVID-19 pandemic"

- [Factbox: Why Tiffany's debt obligations matter for its sale to LVMH]
  "U.S. jewelry chain Tiffany & Co (TIF.N) said on Tuesday that it amended some of the terms of its debt to give it financial breathing space, as it seeks to ensure that its $16.2 billion sale to French luxury goods giant LVMH is completed"

Regulators & Associations Monitored

1. FCA
2. BoE
3. The Pensions Regulator
4. FRC
5. ESMA
6. EBA
7. EIOPA
8. ECB
9. European Commission
10. Autorité des Marchés Financiers (AMF) of France
11. CSSF
12. FINMA
13. CBI
14. ICMA
15. IOSCO
16. FSB

Important Information: