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European Leveraged Finance Association

ELFA *Briefings*

ELFA Legal & Regulatory Update

22/06/2020 – 26/06/2020

Key Highlights:

- This Legal & Regulatory Update covers the week commencing 22/06/2020.
- PRA releases statement on implementation of EBA guidelines to address gaps in reporting data and public information in context of Covid-19.
- PRA releases statement on Covid-19 regulatory reporting and disclosure amendments.
- FCA seeks industry views on a new prudential regime for UK investment firms.
- FCA issues statement on planned amendments to Benchmarks Regulation.
- FCA intends to comply with EBA guidelines on ICT and security risk management.
- FCA advises firms on preparing for phased move to its new data collection platform RegData.
- FRC launches investigations into three audit firms over the audits of London Capital & Finance plc.
- FRC consults on draft amendments to FRS 102 – interest rate benchmark reform (Phase 2).
- UK Government releases series of announcements on regulatory framework & reforms post-Brexit, which we summarise below and analyse in more detail at the end of this update.
- UK Government elects not to implement CSDR-SD measures.
- EIOPA publishes its second discussion paper on methodological principles of insurance stress testing.
- ECB announces new Eurosystem repo facility to provide euro liquidity to non-euro area central banks.
- Haut Conseil de Stabilité Financière (HCSF) France publishes an analysis of French financial system's interconnections, simulating the propagation of shocks.
- FINMA explains how it addresses climate risks in the financial sector.
- ICMA welcomes decision of UK Government not to implement CSDR-SD measures.
- IOSCO consults on AI/ML guidance for market intermediaries and asset managers.
- The FICC Markets Standards Board (FMSB) publishes spotlight review on LIBOR transition, which includes case studies for navigating conduct risk.
- ISDA publishes factsheet on understanding IBOR benchmark fallbacks.
- 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.

The Bank of England (BoE)

24 June 2020: PRA releases statement on implementation of EBA Guidelines to address gaps in reporting data and public information in context of Covid-19

The Prudential Regulation Authority (PRA) released a statement providing guidance to PRA-regulated firms on implementation of the EBA's guidelines. On 2 June 2020, the European Banking Authority (EBA) published its 'Guidelines to address gaps in reporting data and public information in the context of Covid-19' ('the Guidelines on Covid-19 reporting and disclosure'). The PRA has considered how to approach these guidelines in light of the FCA and PRA approach to payment deferrals, and in light of the data the PRA is already collecting from UK credit institutions in relation to payment deferrals.

The PRA does not consider it necessary at this time to extend the supervisory reporting elements of the Guidelines on Covid-19 reporting and disclosure to UK credit institutions. Firms are therefore not expected to prepare or transmit to the PRA the reporting templates contained within the Guidelines on Covid-19 reporting and disclosure. The PRA is considering how the disclosure elements of the Guidelines on Covid-19 reporting and disclosure are to be applied in a manner reflecting both the proportionality measures in the Guidelines and also the letter from Sam Woods to UK deposit-takers on the IFRS 9 and capital requirements aspects of initial and further payment deferrals and FCA guidance. The PRA will provide further details in due course.

26 June 2020: PRA releases statement on Covid-19 regulatory reporting and disclosure amendments

The PRA released a statement outlining its revised approach to regulatory reporting and Pillar 3 disclosure for PRA-regulated banks in response to the Covid-19 outbreak. In the PRA's previous statement 'Covid-19 regulatory reporting and disclosure amendments' published on Thursday 2 April 2020, the PRA set out that it would accept delayed submission of certain regulatory returns with deadlines on or before Sunday 31 May 2020. That statement noted the PRA would consider in due course the treatment of those returns with a deadline of June onwards.

Having considered the fact that firms have now had time to adjust to new ways of working, and the prudential benefits to supervisors of timely submission of regulatory data, the PRA has concluded that it would not be appropriate to continue to apply the reporting measures set out in the previous statement to future submissions. Going forward, the PRA will therefore, in general, expect on time submission for future regulatory reporting. Firms experiencing difficulty with timely submission should contact their usual supervisor to discuss. While the PRA will continue to take a flexible approach, it expects that going forward the publication timeline for Pillar 3 disclosures should not be affected by Covid-19 in most cases.

22 – 26 June 2020: Speeches & Other Publications

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

- Bank of England Weekly Report 24 June 2020
- Capital Issuance - May 2020
- How will the Covid-19 shock affect the cash flows of UK companies?
- Economic uncertainty before and during the Covid-19 pandemic, Staff Working Paper
- 'Don't put all your eggs in one basket': protecting banks from the failure of individual counterparties
- Response to the remit for the Financial Policy Committee - June 2020
- Record of the Financial Policy Committee - June 2020
- Minutes of the Wholesale Distribution Steering Group - May 2020
- Robert Elsey: Bloomberg event: The Future of Finance
- Andy Haldane: TEDxGlasgow conversations worth having: "What is the Future of Society?"
- HM Treasury Women in Finance Charter - Annual Review Launch 2020

The Financial Conduct Authority (FCA)

22 June 2020: FCA advises firms on preparing for phased move to its new data collection platform RegData

The FCA announced it will gradually move firms across to its new data collection platform, which replaces Gabriel. The new name of the platform is RegData. Since April, firms have been registering for RegData through a one-off activity when accessing Gabriel. Firms' moving dates will be determined by the nature of their reporting obligations and reporting schedules. Firms will not be able to access RegData until they and their users' data have been moved from Gabriel. The FCA will email firms' principal user and associated users 3 weeks before their moving date, with reminders 5 days and 1 day to go. Compliance consultants will receive reminders for every firm their user account is currently associated with in Gabriel.

In advance of their moving date, the FCA is asking firms to check they have:

- up-to-date contact details in Gabriel,
- nominated the correct principal user and assigned administrator rights correctly in Gabriel; and
- accurate information in Gabriel about all other active users – with any non-active users disabled

Firms should continue to use Gabriel, using their existing Gabriel login details, until their firm has been moved to the new platform. Users that haven't registered yet will still be able to do so when they next log in to Gabriel.

23 June 2020: FCA issues statement on planned amendments to Benchmarks Regulation

The FCA announced that it welcomes the UK Government's announcement (discussed below) that it intends to bring forward legislation to amend the Benchmarks Regulation (BMR) to give the FCA enhanced powers. These could help manage and direct

an orderly wind-down of critical benchmarks such as LIBOR, and, in particular, help deal with the problem identified by the Sterling Risk Free Rate Working Group of 'tough legacy' contracts that cannot transition from LIBOR. The FCA will publish statements of policy on its approach to potential use of these powers following further engagement with stakeholders in the UK and internationally.

The new powers proposed will be available where the FCA has found that a critical benchmark is not representative of the market it seeks to measure and representativeness will not be restored. The FCA and other authorities have been clear that those who can amend their contracts so that they move away from LIBOR at or before this point, should do so. The legislation would empower the FCA to protect those who cannot amend their contracts in this way by directing the administrator of LIBOR to change the methodology used to compile the benchmark if doing so would protect consumers and market integrity. This is consistent with the recommendations put forward by the Sterling Risk Free Rate Working Group (RFRWG) in its Tough Legacy report in May. Although this would not make the benchmark representative again, it would allow the FCA to stabilise certain LIBOR rates during a wind-down period so that limited use in legacy contracts could continue, if suitable robust inputs to support such a methodology change are available.

23 June 2020: FCA seeks industry views on a new prudential regime for UK investment firms

The FCA published a discussion paper on a prudential regime for UK investment firms. This marks the first step in introducing a set of prudential rules for investment firms to better reflect their business models and the risk of harm they pose to consumers and markets. Currently most investment firms follow very similar prudential rules as deposit taking credit institutions agreed through the Basel framework. Last year the EU published its requirements for a regime specifically designed for investment firms, the Investment Firm Directive and Regulation, due to be implemented in the EU by the end of June 2021. Whilst the UK was a member of the EU, the relevant UK authorities were involved in the development of the EU's regime. As the regime will be introduced after the scheduled end of the UK's transition period to exit the EU, the UK will introduce its own prudential regime for investment firms, as announced in the Chancellor's statement in the Budget in March.

The information in the Discussion Paper will be of interest to all solo-regulated investment firms that are currently authorised under MiFID. It will also be of interest to Collective Portfolio Management Investment Firms and those investment firms authorised by the Prudential Regulation Authority. Investment firms and other interested stakeholders will have until 25 September to respond.

24 June 2020: FCA announces pensions value for money consultation

The FCA has brought forward proposals that are designed to promote value for money for the members of workplace personal pension schemes with the announcement of a new Consultation Paper. These proposals aim to make it easier for Independent Governance Committees (IGCs) and Governance Advisory Arrangements (GAAs) to compare the value for money of pension products and services, enabling them to be more effective in assessing value for pension scheme member.

The FCA also published a review examining how IGCs and GAAs – which act in the interests of members of workplace personal pension schemes – ensure those members receive value for money. The review found that a number of IGCs are working well to provide value for money for their members. However, a lack of consistency in the way IGCs and GAAs operate means that members of some workplace pension schemes may not be receiving value for money.

25 June 2020: FCA intends to comply with EBA guidelines on ICT and security risk management

On 28 November 2019, the European Banking Authority (EBA) published final Guidelines on ICT and security risk management for credit institutions, investment firms and payment service providers (PSPs) ('the Guidelines'). The FCA announced that it has notified the EBA that it intends to comply with these Guidelines. All credit institutions, investment firms and PSPs will be expected to make every effort to comply with the Guidelines from 30 June 2020 when they enter into force. Firms should also refer to the EBA's further guidance on the use of flexibility in relation to Covid-19 and the implementation of the Guidelines. Consistent with this further guidance, the FCA will apply reasonable supervisory flexibility when assessing the implementation of the Guidelines given the ongoing Covid-19 crisis.

It is worth noting to our ELFA readers that the FCA is currently consulting on new requirements for operational resilience and it expects to publish its final rules in Q1 2021, including providing further information on the links between the FCA's operational resilience policy and the EBA Guidelines. The FCA welcomes feedback from firms to its consultation and their experiences in embedding the requirements of the Guidelines.

26 June 2020: FCA imposes requirements on Wirecard's authorisation

The FCA imposed a number of requirements on Wirecard including, that the firm:

- must not dispose of any assets or funds,
- must not carry on any regulated activities, and
- must set out a statement on its website and communicate to customers that it is no longer permitted to conduct any regulated activities.

22 – 26 June 2020: Speeches, Letters & Other Publications

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

- Nikhil Rathi appointed as new Chief Executive of the FCA
- Business interruption insurance test case: Court order
- FCA reminds cryptoasset businesses to register before the end of June
- FCA publicly censures Redcentric PLC for market abuse
- Handbook Notice 78
- FCA Board Minutes: 13 May 2020
- Consolidated list of waivers, modifications and CRR permissions granted

Financial Reporting Council (FRC)

24 June 2020: FRC launches investigations into three audit firms over the audits of London Capital & Finance plc

The Financial Reporting Council (FRC) announced that it has commenced three investigations into the audits of London Capital & Finance plc for the one month period ended 30 April 2015 (carried out by Oliver Clive & Co.), the year ended 30 April 2016 (carried out by PwC) and the year ended 30 April 2017 (carried out by EY). The investigations will be conducted by the FRC's Enforcement Division under the Audit Enforcement Procedure.

25 June 2020: FRC consults on FRED 74 Draft amendments to FRS 102 – Interest rate benchmark reform (Phase 2)

The FRC issued FRED 74 Draft amendments to FRS 102 – Interest rate benchmark reform (Phase 2) to respond to a current financial reporting issue. This FRED proposes amendments to the accounting requirements in Section 11 Basic Financial Instruments, Section 12 Other Financial Instruments Issues and Section 20 Leases to provide relief to minimise discontinuities in the accounting for financial instruments and leases, minimise reporting costs, assist entities in providing useful information to users of financial statements and avoid unnecessary discontinuation of hedge accounting as agreements are modified in order to transition to alternative benchmark rates. Entities will account for modifications as if they result from periodic re-estimations of cash flows to reflect changes in market rates of interest.

FRED 74 is based on similar proposals issued by the IASB, and has a proposed effective date of 1 January 2021, with early application permitted. Comments should be provided by 30 September 2020.

25 June 2020: FRC welcomes IASB's amendments to IFRS 17 Insurance Contracts

The FRC announced that it welcomes the amendments to IFRS 17 made by the International Accounting Standards Board (IASB). The IASB issued amendments to IFRS 17 Insurance Contracts aimed at helping companies implement the Standard and making it easier for them to explain their financial performance. The fundamental principles introduced when the Board first issued IFRS 17 in May 2017 remain unaffected. The amendments, which respond to feedback from stakeholders, are designed to:

- reduce costs by simplifying some requirements in the Standard;
- make financial performance easier to explain; and
- ease transition by deferring the effective date of the Standard to 2023 and by providing additional relief to reduce the effort required when applying IFRS 17 for the first time.

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22 – 26 June 2020: Speeches, Letters & Other Publications

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

- Podcast in conversation with ... Phil Fitz-Gerald
In this episode Phil Fitz-Gerald, Director of the FRC Lab, discusses two new reports on investor disclosures during the Covid-19 crisis.
- Disciplinary Tribunal hearing concerning Autonomy Corporation plc

UK Government

23 June 2020: UK Government releases series of announcements on regulatory framework & reforms post-Brexit

The UK Government has set out how it intends to approach a range of important regulatory reforms in the process of being implemented at the international and European level post-Brexit. A series of written statements, a policy paper, and a consultation have been published, detailing these changes:

1. Written Ministerial Statement: Financial Services Update
2. Written Ministerial Statement: Financial Services Regulation
3. HM Treasury policy: Prudential standards in the Financial Services Bill: June update – Policy statement
4. HM Treasury: Transposition of the Bank Recovery and Resolution Directive II: consultation (BRRDII)
5. Financial Conduct Authority: Statement on a new UK prudential regime for MiFID investment firms (discussed above)
6. Financial Conduct Authority: Statement on proposed amendments to the Benchmarks Regulation (discussed above)

These announcements should provide clarity to all stakeholders about the UK's legislative plans for the near future in relation to these forthcoming reforms, in relation to updating prudential requirements; maintaining sound capital markets; and managing future risks.

Please read our more in-depth report (Report 1) at the end of this update for a comprehensive summary and analysis of the UK Government's announcements.

23 June 2020: UK Government elects not to implement CSDR-SD measures

In the Written Ministerial Statement: Financial Services Update (mentioned above), the UK Government stated that it will not implement the EU CSDR-SD regime from February 2021:

"The Government is committed to regulation that supports and enhances the functioning of UK capital markets. It will therefore consider the future approach to the UK's settlement discipline framework, given the importance of ensuring that regulation facilitates the settlement of market transactions in a timely manner while sustaining market liquidity and efficiency. As such, the UK will not be implementing the EU's new settlement discipline regime, set out in the Central Securities Depositories Regulation, which is due to apply in February 2021. UK firms should instead continue to apply the existing industry-led framework. Any future legislative changes will be developed through dialogue with the financial services industry, and sufficient time will be provided to prepare for the implementation of any new future regime."

It is important to note, however, that UK trading entities, along with all third country trading entities, are still expected to be brought into scope of the EU CSDR through contractual arrangements with respect to transactions intended to be settled on EU (I)CSDs.

The European Securities and Markets Authority (ESMA)

22 June 2020: ESMA publishes translations for Guidelines on reporting to competent authorities under Article 37 of MMF Regulation

The European Securities and Markets Authority (ESMA) has issued the official translations of its guidelines on standardised procedures and messaging protocols. National Competent Authorities (NCAs) to which these Guidelines apply must notify ESMA whether they comply or intend to comply with the Guidelines, within two months of the date of publication by ESMA of the Guidelines in all EU official languages.

The European Insurance and Occupational Pensions Authority (EIOPA)

24 June 2020: EIOPA publishes its second Discussion Paper on methodological principles of insurance stress testing

The European Insurance and Occupational Pensions Authority (EIOPA) announced that it has published its second Discussion Paper on Methodological Principles of Insurance Stress Testing. In 2019 EIOPA initiated a process of enhancing its methodology for bottom-up stress testing which resulted in the first Methodological Paper setting out the methodological principles of insurance stress testing.

Based on a constructive dialogue and feedback received from stakeholders in the preparation of the first Methodological Paper, EIOPA follows the same approach and is now engaging with stakeholders to further enrich the stress test toolbox with additional elements to be potentially applied in future exercises. The second Discussion Paper is structured in three sections addressing the following topics:

- stress test framework on climate change;
- approach to liquidity stress testing; and
- multi-period framework for the bottom-up insurance stress testing

EIOPA invites stakeholders to provide feedback to be considered in the final Paper. To this aim, it contains a series of questions to collect feedback particularly on technical topics linked to key elements of insurance stress testing. The Discussion Paper is part of a broader process to enhance EIOPA's stress testing framework. In this context, EIOPA will work on specific stress testing related topics such as the assessment of liquidity positions under adverse scenarios, assessment of the vulnerabilities towards climate-related risks and potential approaches to multi-period stress tests. The Discussion Paper is open for comments until Friday, 2 October 2020. Stakeholders are invited to submit their feedback via email by using the provided template. Contributions should be sent to the following email address: eiopa.stress.test@eiopa.europa.eu

European Banking Authority (EBA)

24 June 2020: EBA publishes final draft comprehensive ITS on institutions' Pillar 3 disclosures and revised final draft ITS on supervisory reporting (Framework 3.0)

The European Banking Authority (EBA) published new Implementing Technical Standards (ITS) on public disclosures by institutions and revised final draft ITS on supervisory reporting that implements changes introduced in the revised Capital Requirements Regulation (CRR2) and the Prudential Backstop Regulation. The publication of the two ITS is a major step forward towards promoting market discipline through enhanced and comparable public disclosures for stakeholders, and towards keeping the reporting requirements in line with the evolving needs for Supervisory Authorities' risk assessments.

The disclosure ITS optimise the Pillar 3 policy framework for credit institutions by providing a single overarching package that brings together all previous pieces of regulation and incorporates all prudential disclosures, thus facilitating implementation by institutions and improving clarity for users of such information. The reporting ITS reflect the changes brought in by the CRR2 and the Prudential Backstop Regulation and include new reporting requirements on counterparty credit risk and net stable funding ratio, non-performing exposures minimum coverage and changes to different areas of reporting, including own funds, credit risk, large exposures, leverage ratio, FINREP and G-SII indicators. The first disclosure and reporting reference dates will be 30 June 2021.

26 June 2020: EBA launches discussion on further enhancing supervisory powers of competent authorities

The EBA published a discussion paper exploring ways on how to enhance the Bank Recovery and Resolution Directive (BRRD) framework on early intervention measures. The objective is to further enhance crisis management tools available for competent authorities in addition to well-established and widely used supervisory powers laid down in the Capital Requirements Directive (CRD) and in the Single Supervisory Mechanism Regulation (SSMR). The BRRD introduced early intervention measures (EIMs) to expand the existing set

of powers available to supervisors towards institutions in difficulties. While monitoring the application of EIMs in 2015-2018, the EBA observed a limited use of EIMs across the European Union (EU) during that period. Instead of EIMs, the competent authorities often preferred to apply other pre-BRRD supervisory powers available to them. The EBA investigated the reasons for these supervisory practices. While recognising that EIMs could be successfully implemented under the existing regulatory framework, the EBA identified some challenges in their application, and is now putting for discussion potential solutions aimed at enhancing the framework.

In order to broaden the supervisory discussion on EIMs conducted among the EU competent authorities, the EBA also invites views from external stakeholders. In particular, the EBA welcomes input from legal professionals, academics and supervisors from outside of the EU. Please note that the deadline for the submission of comments is 25 September 2020.

European Systemic Risk Board (ESRB)

25 June 2020: ESRB publishes its opinion on ESMA's Consultation on post trade risk reduction services with regards to the clearing obligation

The European Systemic Risk Board (ESRB) published its opinion on ESMA's Consultation on post trade risk reduction services with regards to the clearing obligation. The ESRB opinion concludes that while the use of post trade reduction services (PTRRS) in non-centrally cleared over-the-counter markets can help to reduce aggregate risk exposures, exempting their use from the clearing obligation may introduce the risk of regulatory arbitrage and circumvention.

25 June 2020: ESRB publishes its opinion on ESMA's Consultation on central clearing solutions for pension scheme arrangements

The ESRB published its opinion on ESMA's Consultation on central clearing solutions for pension scheme arrangements (PSAs). The ESRB opinion concludes that the best way to remove obstacles for PSAs is to promote indirect clearing. The issues faced by PSAs, as detailed in the ESMA report, are in large part not specific to PSAs, being instead common to all less sophisticated or simply less active entities engaged in clearing, such as investment funds or insurance companies which do not, however, enjoy similarly preferential treatment under the EMIR framework. These entities overcome these problems by relying on the services provided by the clearing members, among other things. The ESRB believes that these services could be adapted to cater for the specificities of PSA needs. For this to happen, the regulatory requirement to centrally clear must finally come into force.

European Central Bank (ECB)

25 June 2020: ECB announces new Eurosystem repo facility to provide euro liquidity to non-euro area central banks

In response to the coronavirus (COVID-19) crisis, the Governing Council of the European Central Bank (ECB) decided to set up a new backstop facility, called the Eurosystem repo facility for central banks (EUREP), to provide precautionary euro repo lines to central banks outside the euro area. EUREP addresses possible euro liquidity needs in case of market dysfunction resulting from the COVID-19 shock that might adversely impact the smooth transmission of ECB monetary policy. Under EUREP, the Eurosystem will provide euro liquidity to a broad set of central banks outside the euro area against adequate collateral, consisting of euro-denominated marketable debt securities issued by euro area central governments and supranational institutions. EUREP complements the ECB's bilateral swap and repo lines and reflects the importance of the euro in global financial markets. EUREP will be available until the end of June 2021.

22 – 26 June 2020: Speeches, Letters & Other Publications

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

- ECB publishes Consolidated Banking Data for end-December 2019
- On the inflation risks embedded in sovereign bond yields, Working Paper Series
- The aggregate consequences of default risk: evidence from firm-level data, Working Paper Series
- Cross-border spillover effects of macroprudential policies: a conceptual framework, Occasional Paper Series

- Climate change and the macro economy, Occasional Paper Series
- Bank lending in the knowledge economy, Working Paper Series
- Macroeconomic stabilisation properties of a euro area unemployment insurance scheme, Working Paper Series
- Disciplining expectations and the forward guidance puzzle, Working Paper Series
- Mitigating the forward guidance puzzle: inattention, credibility, finite planning horizons and learning, Working Paper Series
- Monetary policy, markup dispersion, and aggregate TFP, Working Paper Series
- How much does aggregate demand travel across the Atlantic?, Working Paper Series
- Completing the banking and capital market union under new circumstances, Speech by Pentti Hakkarainen
- The ECB's monetary policy response to the pandemic: liquidity, stabilisation and supporting the recovery, Speech by Philip R. Lane
- The ECB's monetary policy during the coronavirus crisis – necessary, suitable and proportionate, Speech by Isabel Schnabel
- Understanding the pandemic emergency purchase programme, Presentation by Philip R. Lane
- Financial stability and the pandemic crisis, Speech by Luis de Guindos
- The World Economy Transformed, Remarks by Yves Mershc
- Letter from Andrea Enria, Chair of the Supervisory Board, to Mr Giegold, MEP, on banking supervision

Haut Conseil de Stabilité Financière (HCSF) France

25 June 2020: HCSF publishes an analysis of French financial system's interconnections, simulating the propagation of shocks

The High Council for Financial Stability (HCSF) of France published its study which sheds light on interconnections between the different components of the French financial sector, with an unprecedented degree of granularity. The HCSF'S report offers an analysis of the interconnections between banks, insurance and asset management. The study is based on individual data from 8,308 French financial institutions from the Banque de France, the Prudential Control and Resolution Authority and the Autorité des Marchés Financiers. For each institution, this data describes the exposures associated with its holding of bonds, shares and investment fund shares issued by other network institutions, as well as the holding of assets external to the network. On this basis, the study examines the propensity of the French financial system to propagate and to attenuate or amplify market shocks.

The Swiss Financial Market Supervisory Authority (FINMA)

26 June 2020: FINMA explains how it addresses climate risks in the financial sector

The Swiss Financial Market Supervisory Authority FINMA explained that it is addressing the subject of climate-related financial risks as part of its supervisory remit. It is also reviewing regulatory approaches for improved transparency regarding climate-related financial risks by major financial institutions. FINMA's work on climate-related financial risks includes the following:

- FINMA checks that the financial institutions are managing these risks appropriately. By law financial institutions are obliged to identify, assess and adequately deal with significant climate-related financial risks and, where necessary, to develop their instruments and processes to this end. Together with the SNB and academics, FINMA is currently analysing the transition risks for the two major banks as part of a pilot project;
- from a consumer protection perspective, FINMA is also addressing the risks of greenwashing in the provision of financial services and the distribution of financial products. Consumers may not be deceived by exaggerated or misleading claims about "green" properties, for example in the case of investment products; and
- at the regulatory level FINMA is reviewing approaches for improved disclosure of financial climate risks by major financial institutions, in order to improve transparency and market discipline.

Financial Stability Board (FSB)

25 June 2020: FSB gives statement on COVID-19 and G20 Financial Reform Agenda

Speaking on a Peterson Institute virtual panel, Dietrich Domanski, Secretary General, Financial Stability Board, set out the importance of internationally coordinated action to support a well-functioning, resilient financial system and open markets during the COVID-19 pandemic. He noted that the global financial system is more resilient and better placed to sustain financing to the real economy as a result of the G20 regulatory refoms in the aftermath of the 2008 global financial crisis.

The International Capital Markets Association (ICMA)

24 June 2020: ICMA welcomes decision of UK Government not to implement CSDR-SD measures

In response to the UK Government's decision not implement the EU CSDR-SD regime from February 2021 (discussed above), ICMA released a statement welcoming the decision and describing it as a "positive step". Whilst supporting settlement discipline overall, ICMA has long warned of the negative consequences of the mandatory buy-in element of the CSDR on the functioning of the debt capital markets. Consequently, ICMA believes that the announcement of HMT that they will not be implementing this aspect of the CSDR is a positive step, as is the comment that UK firms should continue to rely on the existing industry-led framework, and that any new regime in the UK will be developed through dialogue with industry, with sufficient time provided to prepare for implementation. ICMA notes, however, that UK trading entities, along with all third country trading entities, are still likely to be brought into scope of the EU CSDR as it applies at EU settlement level and requires trading parties to put enforceable contractual arrangements in place importing the mandatory buy-in regime.

ICMA explains that it supports integrated capital markets, and in the interests of avoiding fragmentation of regulatory requirements in Europe, as well as the functioning of markets in the EU27, will be responding to the current ESMA "Survey on Topics for the CSDR Review" recommending that the mandatory buy in regime is not implemented as planned, at least until its impact has been fully assessed and outstanding structural issues clarified. This is an evolving situation with which ICMA will continue to engage on behalf of its global membership.

22 – 26 June 2020: ICMA Podcasts and Other Publications

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

- ICMA responds to European Commission Consultation on a new digital finance strategy for Europe / FinTech Action Plan
  ICMA has responded to the European Commission's Consultation on a new digital finance strategy for Europe / FinTech Action Plan, notably to questions on the use of identifiers (LEI, UTI, UPI), access to publicly available data, areas for AI-applications in the financial sector, and standardising concept definitions and reporting obligations.
- COVID-19 ICMA Asset Management & Investors Council weekly market update, Podcast
  Robert Parker, Chair of ICMA's Asset Management and Investors Council, reviews the market events of the last two weeks in the context of the COVID-19 pandemic, with a specific focus on fixed income and equity markets, the shape and pace of the economic recovery, and geopolitical risks lying ahead
- COVID-19 crisis – the view from UBS, Podcast
  Beatriz Martin, Global Chief Operating Officer, UBS Investment Bank and UK Chief Executive shares how UBS IB has fared during the pandemic, emphasising that leadership and communication from the top have been key in enabling teams to perform while working remotely. Looking at the lasting legacy of COVID-19, she indicates the importance of adopting a culture of change, and of business and technology working ever more closely together

The International Organization of Securities Commissions (IOSCO)

25 June 2020: IOSCO consults on AI/ML guidance for market intermediaries and asset managers

The Board of the International Organization of Securities Commissions (IOSCO) is requesting feedback on proposed guidance to help its members regulate and supervise the use of Artificial Intelligence (AI) and Machine Learning (ML) by market intermediaries and asset managers. The consultation report on "The use of artificial intelligence and machine learning by market intermediaries and asset managers" proposes six measures to assist IOSCO members in creating appropriate regulatory frameworks to supervise market intermediaries and asset managers that use AI and ML. The proposed measures seek to ensure that market intermediaries and asset managers have the following features:

- appropriate governance, controls and oversight frameworks over the development, testing, use and performance monitoring of AI and ML;
- ensuring staff have adequate knowledge, skills and experience to implement, oversee, and challenge the outcomes of the AI and ML;
- robust, consistent and clearly defined development and testing processes to enable firms to identify potential issues prior to full deployment of AI and ML; and
- appropriate transparency and disclosures to investors, regulators and other relevant stakeholders.

The proposed guidance reflects the standards of conduct expected of market intermediaries and asset managers using AI and ML. Although the guidance is not binding, IOSCO members are encouraged to consider the proposed measures carefully in the context of their legal and regulatory frameworks. IOSCO welcomes comments on this consultation report on or before 26 October 2020.

25 June 2020: CPMI-IOSCO publish report on CCP auctions

The Committee on Payments and Market Infrastructures (CPMI) and IOSCO announced that they have published a report entitled "Central counterparty default management auctions – Issues for consideration". The report outlines certain issues that central counterparties (CCPs) should consider regarding default management auctions processes. It also identifies practices that CCPs could consider in the development and improvement of default management auctions to address those issues.

This report is accompanied by a cover note. CPMI and IOSCO will work with the industry to progress some issues related to CCP default management auctions over the next 24 months. At the end of this timeframe, CPMI and IOSCO intend to take stock of industry progress towards consensus on those issues as well as towards implementation of concrete measures (where relevant) and reconsider whether additional work, potentially including guidance, would be necessary.

26 June 2020: IOSCO publishes Good Practices on processes for deference

IOSCO published a series of eleven good practices on processes for deference to assist regulatory authorities in mitigating the risk of unintended, regulatory-driven market fragmentation and to strengthen international cooperation. Wholesale securities and derivatives markets are global in nature and many market participants operate on a cross-border basis. As a result, numerous authorities have implemented deference processes that allow them to rely on one another to regulate and supervise these market participants and help reduce potentially duplicative or conflicting regulations. The aim of the eleven Good Practices identified in the report is to help members in establishing and operating efficient deference processes. They are underpinned by the philosophy that deference processes should be outcomes-based, risk-sensitive, transparent, sufficiently flexible and supported by strong cooperation.

Other Updates

We would like to bring to our ELFA readers' attention the following regulatory updates from regulatory associations we are not currently monitoring.

02 June 2020: ISDA publishes Factsheet on understanding IBOR benchmark fallbacks

ISDA published a new factsheet and video interview explaining why changes to benchmark fallbacks are necessary. Benchmark fallbacks are replacement rates

that would apply to derivatives trades referencing a particular benchmark. These would take effect if the relevant benchmark becomes unavailable while market participants continue to have exposure to that rate. Specific fallback rates are set out in the 2006 ISDA Definitions. ISDA is working on new robust fallbacks that would apply in the event of a permanent cessation of a key interbank offered rate (IBOR). ISDA plans to publish a supplement to the 2006 ISDA Definitions in July to incorporate new fallbacks for derivatives that reference certain key interbank offered rates. Simultaneously, ISDA will publish a protocol that will allow market participants to choose to incorporate the revisions into their legacy derivatives trades.

11 June 2020: FMSB publishes Spotlight Review on LIBOR transition: Case studies for navigating conduct risk

The FICC Markets Standards Board (FMSB) published a Spotlight Review on LIBOR transition with practical case studies to support firms when considering the risks to fairness and effectiveness as the market moves to risk-free rates as more sustainable and representative benchmarks. The paper includes four practical case studies which cover cash and derivative products and performance benchmarks. The case studies are relevant across the sell-side, buy-side and corporates. The FMSB intends to add to this Spotlight Review during the transition process to include additional case studies focusing on areas of uncertainty that are of particular concern to market participants.

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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

- Investors rue lack of protections on €7.1bn Thyssenkrupp debt
  "Protections on the €7.1bn debt backing one of Europe's biggest leveraged buyouts are "the worst ever seen", according to analysts, who say that strong demand for high-yielding assets is leading issuers to test the market to its limit. Advent and Cinven, the private equity firms buying Thyssenkrupp's lifts business for €17.2bn, presented investors this week with proposed bond terms that include the ability to pile on extra borrowing, pay special dividends and move assets beyond lenders' reach"

- ESG strategies still buoyant despite Covid, say in-house lawyers
  "Sceptics have long argued that ESG targets would falter in the face of any global crisis. At a recent FT conference, Ryanair airline boss Michael O'Leary said bluntly:"I suspect an awful lot of the environmental agenda and targets will be put on the backburner for a number of years." People would still care about climate change, but they would care more about jobs and soaring government debt. It is still early days, but the coronavirus crisis has shown that the opposite may transpire. Some companies doubled down on ESG during the pandemic — even more so after a police officer killed a black man, George Floyd, in the US"

- Fund suspensions underline liquidity mismatches
  "Turmoil in financial markets triggered by coronavirus will drive a fundamental reappraisal of investment funds that promise investors easy access to their money after multiple suspensions of normal daily dealing activities"

- London Capital & Finance auditors face inquiry over mini-bond scandal
  "The UK accounting watchdog is set to announce an investigation into the three auditors of collapsed investment business London Capital & Finance, according to people familiar with the situation"

- City Bulletin: Tata Steel edges closer to agreeing government rescue
  "The first bespoke government bailout for a big UK company could soon be upon us. Tata Steel, Britain's largest steelmaker, is set to agree a rescue deal with the state within days. The bailout will involve a loan from the government worth hundreds of millions of pounds for Tata Steel's UK operations, including its sprawling complex at Port Talbot in South Wales, and will help to preserve around 8,000 jobs in an industry that was already in trouble"

- City Bulletin: Shopping centre owner Intu teeters on the brink
  "Shopping centre landlord Intu has warned that, with KPMG in place as it prepares for a possible administration, it may have to temporarily close some of its centres just as shops have reopened if a deal cannot be struck with creditors"

- EasyJet's cash call won't stop low-cost rivals soaring ahead
  "EasyJet's balance sheet is not in dire shape. It is no Lufthansa, which has lined up a €9bn government bailout. Nor Air France-KLM, which secured its own multibillion-euro parachute. Still, the airline is now starting to resemble one of the legacy flag carriers more than it does its low-cost rivals"

- Corporate rescues should come with strings attached
  "If 2008 was the year of the bank rescue, 2020 is the year of the corporate bailout. As the macroeconomic repercussions of the coronavirus crisis begin to trump the health emergency, much has been made of the spiralling cost of saving swaths of the corporate world — a bill that dwarfs the bank bailouts. What no one is really talking about yet is the quid pro quo"

- UK government almost ran out of funds, says BoE governor
  "Andrew Bailey said the government would have run out of money without the Bank of England's support in March, underlining the scale of the financial meltdown facing the UK at the start of the Covid-19 pandemic"

- BoE risks losing credibility, warns former deputy governor
  "Paul Tucker, a former deputy governor of the Bank of England, questioned whether the UK central bank's actions during the coronavirus crisis showed it had lost its independence in controlling inflation"

- Credit Suisse reviews funds that finance SoftBank technology bets
  "Credit Suisse has launched a review of a series of its funds that made big bets on the debt of struggling start-ups backed by SoftBank, after the Financial Times revealed that the Japanese technology conglomerate had also invested its own money in these investment vehicles"

- Inside billionaire CQS trader Michael Hintze's $1.4bn loss
  "Investors were looking for answers from Michael Hintze. The billionaire founder of CQS had a bad start to the pandemic: his flagship fund lost 33 per cent during March's market rout, wiping out about $1bn in value"

- Wirecard collapses into insolvency
  "Wirecard filed for insolvency after the once high-flying payments group revealed a multiyear fraud that led to the arrest of its former chief executive…The first failure of a member of Germany's prestigious Dax index is expected to inflict big losses on creditors and reputational damage on regulators led by BaFin and Wirecard's longstanding auditors EY"

- Brussels to call for probe into German regulator over Wirecard
  "Brussels will call for a probe into whether BaFin, Germany's banking regulator, failed in its supervision of Wirecard, warning that the payment company's collapse poses a threat to investor trust in the EU"

- SoftBank executives set to lose profits from Wirecard trade
  "The collapse in Wirecard's share price has wiped out hundreds of millions of dollars of paper profits for a group of SoftBank executives and an Abu Dhabi sovereign wealth fund, who earlier stood to gain handsomely from an intricate $1bn bet on the German payments company's stock"

- Brussels refers LSE-Refinitiv deal for full antitrust investigation
  "Brussels has sent the London Stock Exchange Group's planned $27bn takeover of Refinitiv for an in-depth antitrust investigation, with regulators concerned that a combined company could offer its customers preferential services for critical data used on global markets"

- NN Group vows to improve returns after Elliott intervention
  "Dutch insurer NN Group has pledged to invest in riskier assets and buy back shares more regularly to improve its returns, but stopped short of meeting all the demands made by activist investor Elliott"

- ECB seeks to defuse row with German court over bond-buying
  "The European Central Bank has sought to resolve its stand-off with Germany's highest court by publishing details of the debate its governing council held on whether its bond-buying excessively impinged on economic and financial policy"

- Europe's recovery will be 'restrained', Christine Lagarde warns
  "European Central Bank president Christine Lagarde has warned that the economic recovery from the hit caused by coronavirus will be "restrained" as households save instead of spending while some airlines and hotels suffer "irremediable" damage"

- Credit defaults are soon to sweep across Europe, like the US
  "An odd thing is happening in US corporate debt markets. Widely followed measures of default risk suggest increasing calm — just as bankruptcies are becoming more frequent and ruinous for creditors"

- Riskiest US companies are left behind in rush to buy debt
  "The lowest-rated companies in the US are struggling to raise much-needed cash despite a resurgent market for selling bonds, signalling that investors are staying away from borrowers that went into the Covid-19 crisis with the sickliest balance sheets"

- Wall Street turns positive as investors cheer banking rule changes
  "Financials led US markets to their third positive close in four days on Thursday as bank stocks were boosted by the easing of post-2008 crisis rules that will make it easier to invest in venture capital funds and free up capital set aside for derivatives"

- Fed balance sheet shrinks as use of emergency facilities levels out
  "Overall, the size of the Fed's balance sheet — which has expanded to an unprecedented level due to the central bank's purchases of trillions of dollars of Treasury bonds — fell for the second straight week, to $7.1tn. Analysts flagged the continued decline in demand for the Fed's dollar swap lines from foreign central banks as one of the primary reasons"

- Pension funds set to dump stocks after epic rally
  "Stock markets will be hit by a wave of selling from pension funds rebalancing their investments in coming weeks, analysts predict, following a fierce rally that has left these investors uncomfortably exposed to equities"

- Bullish investors pull $105bn from US money market funds in four weeks
  "Investors and companies have started to redeploy the record amounts of cash they stashed in ultra-safe money market funds at the height of the Covid-19 turmoil, eager not to miss out on a rapid recovery in riskier assets"

- US airlines raise $10bn in a week
  "US airlines increased the size of debt and equity fundraisings this week to nearly $10bn after receiving a warm reception from investors, continuing an industry-wide capital binge triggered by the pandemic"

- Former Tiger Global investor to raise $1.3bn
  "Lee Fixel, a former top investor at Tiger Global Management, is raising one of the largest new venture capital funds in history, bucking a difficult fundraising environment for emerging tech investors following the spread of Covid-19"

- Macy's to shed 3,900 jobs as part of restructuring
  "US department store chain Macy's will cut about 3,900 jobs as part of a restructuring to help it cope with the effect of store closures during the pandemic…Macy's last month pledged its real estate portfolio as collateral to raise cash through a $1.1bn bond sale. According to preliminary results this month, it swung to a net loss of $652m in the first quarter and sales fell 45 per cent"

- Gold nears eight-year high as investors seek havens
  "Gold climbed towards its highest level in almost eight years on Wednesday as investors looked for a safe place to park their cash at a time of rock-bottom bond yields and expectations for a rise in inflation"

- How to invest when 'safe' assets are no longer really safe
  "Before the coronavirus crisis, US government bonds were trusted by investors as one of the best instruments to hedge against market sell-offs. As virus-related panic sent riskier assets plunging in March, investors found out the hard way that this hedge could not always be relied upon"

- Quicken Loans/non-bank lenders: house party
  "Non-bank lenders have grown to become dominant players in the mortgage industry, accounting for more than half of all mortgages issued. Yet attempts to ensure they have the financial cushion to withstand a downturn have been beaten back by industry lobbies. It is harder to muster sympathy for the sector now that it can go cap in hand to both the government or investors. Mortgage lenders cannot have it both ways"

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Thomson Reuters

- UK financial compensation body has insurers in its sights
  "Britain's financial services compensation body is "keeping an eye" on insurers facing claims from companies whose business has been interrupted by the COVID-19 pandemic, its chief executive told Reuters"

- UK DMO sees no reason to expect failed bond auctions
  "Britain is unlikely to struggle to sell bonds at future government bond auctions, the chief executive of the UK Debt Management Office"

- Pandemic propels old-school bond traders towards an electronic future
  "The mammoth bond market has long been the old-school bastion of the financial world, but the COVID-19 pandemic has cast a light on its future - and it looks electronic"

- Slug and Lettuce owner plans debt issue as UK pubs set to reopen – sources
  "Slug & Lettuce owner Stonegate is set to raise money via a high-yield debt issue in the coming weeks to help to finance the purchase of larger rival Ei , two sources familiar with the situation told Reuters"

- 'The money's gone': Wirecard collapses owing $4 billion
  "Creditors have scant hope of getting back the 3.5 billion euros they are owed, sources familiar with the matter said. Of that total, Wirecard has borrowed 1.75 billion from 15 banks and issued 500 million in bonds"

- Philippines to investigate Wirecard's phantom billions
  "Wirecard's missing $2.1 billion is being investigated by the Philippines, which said that the German payments firm's former chief operating officer Jan Marsalek may be in the country"

- Central banks have thrown many tools at coronavirus. What do they have left?
  "To kick-start a world economy devastated by coronavirus, central banks have delved deep into their toolboxes and unleashed trillions of dollars in stimulus. So what instruments do they have left, should they need to do more"

- Central banks hint at pandemic stimulus exit. Markets aren't buying it
  "As strict coronavirus lockdowns end, some central bankers have started hinting at another kind of exit — from emergency stimulus they launched just three months ago. Markets so far appear to be calling their bluff"

- EU to propose single stock report to compete with London, document shows
  "The European Union will propose a single report on stock market transactions as part of efforts to build a "truly integrated" capital market after Brexit, an EU document showed"

- EU needs stronger markets watchdog for COVID recovery, Barclays says
  "The European Union needs centralised supervision of stocks and bonds if it wants a capital market that is on a par with those in the United States and Britain, the boss of Barclays Bank in Europe said"

- ECB's German board member pushes back on court challenge
  "The European Central Bank's government bond purchases are necessary and the benefits far outweigh the side effects, ECB board member Isabel Schnabel said on Saturday, pushing back on a court challenge from her native Germany"

- ECB can hold back on bond buys if markets calm, Mersch says
  "The European Central Bank doesn't need to use the whole 1.35 trillion euros ($1.51 trillion) it has earmarked for its pandemic-fighting bond purchases if financial markets calm down, ECB board member Yves Mersch said"

- ECB money-printing shouldn't become 'unbound', says Weidmann
"The European Central Bank's massive buying of government bonds shouldn't become a form of "unbound", permanent help to indebted governments, ECB policymaker Jens Weidmann said"

- Fed isn't fueling U.S. inequality, Daly says
"San Francisco Federal Reserve President Mary Daly on Tuesday defended the U.S. central bank from criticism that its easy monetary policy and emergency lending programs are doing more to help the rich than the poor"

- Carnival seeks first leveraged loan to shore up liquidity
"US cruise line operator Carnival is looking to raise its first leveraged loan as it seeks alternative forms of liquidity to shore up its business, which has been sunk by the coronavirus pandemic"

- New York court subpoenas Etihad, Fitch in $1.2 billion debt battle
"A New York court has sent subpoenas to Etihad and ratings agency Fitch this week seeking a document at the centre of a battle over $1.2 billion in debt issued by the Abu Dhabi carrier and airlines it partly owned, according to legal documents reviewed by Reuters"

- U.S. aviation unions ask Congress for another $32 billion bailout
"Six U.S. unions representing aviation workers told top lawmakers on Thursday that another $32 billion in payroll aid is needed to keep hundreds of thousands of workers employed through March 31, as a resurgence in coronavirus cases raises fears that air travel may not rebound this year"

- PIMCO CEO sees investment opportunities in distressed credit
"The damage done to the U.S. economy by the coronavirus pandemic will create opportunities for investors in distressed credit, PIMCO Chief Executive Emmanuel Roman said at the Bloomberg Invest Global conference"

- Fund giant BlackRock 'warming up' to European assets
"BlackRock's Investment Institute said on Tuesday it was "warming up" to European assets following what it called the eurozone's "impressive" efforts to tackle the coronavirus"

- DP World expected to sell about $1.5 bln in perpetual dollar sukuk -document
"Dubai-based port operator DP World is expected to sell about $1.5 billion in perpetual sukuk, or Islamic bonds, at 6.125%, a document showed"

- Dubai Islamic Bank starts marketing 2026 sukuk reopening – document
"Dubai Islamic Bank, the United Arab Emirates' largest Islamic lender, has begun marketing a tap issue of its existing sukuk maturing in 2026, a document showed"

Report 1. UK Government releases series of announcements on regulatory framework & reforms post-Brexit

On the 23rd of June, the UK Government released a series of announcements setting out how it intends to approach a range of important regulatory reforms in the process of being implemented at the international and European level post-Brexit. The government confirmed plans to ensure that the UK financial sector will continue to be underpinned by a commitment to the highest international standards. These include reforms to update UK prudential requirements, maintain the soundness of UK capital markets, and manage future risks. In particular, the government announced how it intends to legislate for updated prudential rules to reflect international Basel standards and a new regime for investment firms, publishing a consultation on the transposition of the Bank Recovery and Resolution Directive II (BRRDII), and announcing a review to improve the prudential rules for insurers. The details published will provide clarity to financial services firms and demonstrate the UK's continued commitment to the same high standards of regulation in the context of ongoing equivalence discussions with the EU.

A series of written statements, a policy paper, and a consultation have been published, detailing these changes:

1. Written Ministerial Statement: Financial Services Update
2. Written Ministerial Statement: Financial Services Regulation
3. HM Treasury policy: Prudential standards in the Financial Services Bill: June update – Policy statement
4. HM Treasury: Transposition of the Bank Recovery and Resolution Directive II: consultation (BRRDII)
5. Financial Conduct Authority: Statement on a new UK prudential regime for MiFID investment firms (discussed above)
6. Financial Conduct Authority: Statement on proposed amendments to the Benchmarks Regulation (discussed above)

These announcements should provide clarity to all stakeholders about the UK's legislative plans for the near future in relation to these forthcoming reforms. We now turn to discuss some of the key highlights in these announcements.

Written Ministerial Statement: Financial Services Update

The government is aware that there are now a range of important regulatory reforms in the process of being implemented at the international and European level that the UK needs to address before the end of the Transition Period on 31 December 2020. The purpose of this Written Ministerial Statement: Financial Services Update (WMS) is to set out how the UK intends to approach these, as well as a limited number of discrete areas for review to ensure relevant regulations remain appropriate for the UK financial sector.

The government assured parliament that the future success of the UK financial sector will be underpinned by a world-class environment for doing business. In turn, the government's future legislation will be guided by what is right for the UK, to support economic prosperity across the country, to ensure financial stability, market integrity and consumer protection, and to continue to ensure the UK remains a world leading financial centre. In general, consistent with the UK's position as a major international financial hub, the government intends to implement immediate reforms in line with existing expectations of the industry and the approach of the EU and other international partners where relevant. However, the government explained that there will be some defined areas where it is appropriate for the UK – as a large and complex financial services jurisdiction - to take an approach which better suits its market, while remaining consistent with international standards.

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Consequently, in this WMS, the government announced the following measures in relation to:

A) Updating Prudential Requirements

The government announced that it is using the Financial Services Bill to legislate to enable the implementation of a **new prudential regime** for investment firms and to update the regulation of credit institutions, including the implementation of the international Basel III standards. The government's intention is to introduce updated prudential standards in a flexible and proportionate manner by delegating responsibility for firm requirements to the Prudential Regulation Authority (PRA) or the Financial Conduct Authority (FCA) subject to an enhanced accountability framework to ensure that the regulators have regard to competitiveness and equivalence when making rules for these regimes. Both the PRA and the FCA will set out further details on the substance of the proposed regimes in due course.

Additionally, the government and the Regulators announced their proposal to introduce the new **Investment Firms Prudential Regime (IFPR)** and updated rules for credit institutions in line with the intended outcomes of the EU's Investment Firms Regulation and Directive, and the second Capital Requirements Regulation respectively. For the IFPR, the government and the PRA do not intend to require PRA-designated investment firms to re-authorise as credit institutions, unlike the EU regime. Furthermore, the government does not intend to require FCA-regulated investment firms to comply with the requirements of the Fifth Capital Requirements Directive (CRDV) in the period until the new IFPR applies. A consultation on the UK's transposition of CRDV will take place in July.

Furthermore, during the Transition Period, and under the terms of the Withdrawal Agreement, the government announced that it will continue to implement EU legislation that requires transposition before the end of 2020. This includes the transposition of the **Fifth Capital Requirements Directive (CRDV)**, and the **Bank Recovery and Resolution Directive II (BRRDII)** by 28 December 2020. However, HM Treasury announced that it is also considering how best to implement aspects of files that do not come into force until after the 31st December 2020. The government explained that while it is committing to transposing most aspects of BRRDII, HM Treasury has considered how to ensure that it suits the UK market and have published a consultation document setting out more detail on this. In this document, the government explained that it does not intend to transpose the requirements in the Directive that do not need to be complied with by firms until after the end of the EU Exit Transition Period, in particular Article 1(17), which revises the framework for MREL requirements across the EU.

The government also announced plans to bring forward a review of certain features of Solvency II to ensure that it is properly tailored to take account of the structural features of the UK insurance sector. The review will consider areas that have been the subject of long-standing discussion while the UK was a Member State, some of which may also form part of the EU's intended review. These will include, but are not limited to, the risk margin, the matching adjustment, the operation of internal models and reporting requirements for insurers. The government expects to publish a Call for Evidence in Autumn 2020.

B) Maintaining Sound Capital Markets

The government is aware that the EU is in the process of implementing a range of provisions on capital markets, with some aspects applying before and after the end of the Transition Period. In response, HM Treasury has considered how to take forward this legislation in the way that is to the benefit of the UK sector, while maintaining high regulatory standards. As result, the government has decided not to implement the **CSDR-SD measures** (discussed above). The decision was welcomed by ICMA (also discussed above).

Additionally, the UK will not be taking action to incorporate into UK law the reporting obligation of the **EU's Securities Financing Transactions Regulation for non-financial counterparties (NFCs)**, which is due to apply in the EU from January 2021. Given that systemically important NFC trading activity will be captured sufficiently through the other reporting obligations that are due to apply to financial counterparties, the government believes it is appropriate for the UK not to impose this further obligation on UK firms.

C) Other Measures

In addition to these measures set out above, HM Treasury plans to set out further details on upcoming legislation in due course, which will include:

- **amendments to the Benchmarks Regulation** to ensure continued market access to third country benchmarks until end-2025, to which the FCA released a statement on. HM Treasury will publish a policy statement in July 2020;
- **amendments to the Market Abuse Regulation** to confirm and clarify that both issuers and those acting on their behalf must maintain their own insider lists and to change the timeline issuers have to comply with when disclosing certain transaction undertaken by their senior managers ('Persons Discharging Managerial Responsibilities');
- legislation to improve the **functioning of the PRIIPs regime in the UK** and address potential risks of consumer harm in response to industry and regulator feedback. HMT will publish a policy statement July 2020; and
- legislation to complete the implementation of the **European Market Infrastructure Regulation (REFIT)** to improve trade repository data and ensure that smaller firms are able to access clearing on fair and reasonable terms.

Written Ministerial Statement: Financial Services Regulation

The government released this WMS: Financial Services Regulation relating to **LIBOR transition**. The statement sets out details on the government's approach to legislative steps that could help deal with 'tough legacy' contracts that cannot transition from LIBOR before end-2021. In particular, the government announced that it will use the Financial Services Bill to introduce amendments to the Benchmarks Regulation 2016/1011 as amended by the Benchmarks (Amendment) (EU Exit) Regulations 2018 (the 'UK BMR'), to ensure that FCA powers are sufficient to manage an orderly transition from LIBOR. In response to this, the FCA released a statement welcoming this decision, which we now turn to discuss.

Financial Conduct Authority: Statement on proposed amendments to the Benchmarks Regulation

The FCA announced that it welcomes the government's announcement that it intends to bring forward legislation to amend the **Benchmarks Regulation (BMR)** to give the FCA enhanced powers. The FCA believes that these powers could help manage and direct an orderly wind-down of critical benchmarks such as LIBOR, and, in particular, help deal with the problem identified by the Sterling Risk Free Rate Working Group of 'tough legacy' contracts that cannot transition from LIBOR. The new powers proposed will be available where the FCA has found that a critical benchmark is not representative of the market it seeks to measure and representativeness will not be restored. The legislation would empower the FCA to protect those who cannot amend their contracts in this way by directing the administrator of LIBOR to change the methodology used to compile the benchmark if doing so would protect consumers and market integrity. The FCA will publish statements of policy on its approach to potential use of these powers following further engagement with stakeholders in the UK and internationally.

HM Treasury policy: Prudential standards in the Financial Services Bill: June update – Policy statement

As part of the government's update on the UK's approach to preparing the financial sector and regulatory framework post-EU withdrawal, and in line with the Written Ministerial Statement: Financial Services Update published, the government published this policy statement providing details on HM Treasury's legislative approach for **prudential standards** in the Financial Services Bill. The statement also provides detail on how the government will tailor these prudential regimes to the specifics of the UK market.

At the 11 March Budget, the government published its intention to update the prudential regime for banks to enable the implementation of **Basel 3.1**, a UK version of the second **Capital Requirements Regulation (CRRII)** and to introduce the **IFPR**. This new statement builds on the announcement at Budget and explains HM Treasury's legislative approach to legislating prudential standards, including the introduction of a delegation and accountability framework for the UK regulators. In response to this announcement, the FCA released a technical Discussion Paper on a prudential regime for UK investment firms, which we now turn to discuss.

Financial Conduct Authority: Statement on a new UK prudential regime for MiFID investment firms

The FCA published a Discussion Paper on a **prudential regime for UK investment firms**. This discussion paper sets out technical details of the FCA's views. This marks the first step in introducing a set of prudential rules for investment firms to better reflect their business models and the risk of harm they pose to consumers and markets. The information in the Discussion Paper will be of interest to all solo-regulated investment firms that are currently authorised under MiFID. It will also be of interest to Collective Portfolio Management Investment Firms and those investment firms authorised by the Prudential Regulation Authority. Investment firms and other interested stakeholders will have until 25 September to respond.

HM Treasury: Transposition of the Bank Recovery and Resolution Directive II: consultation (BRRDII)

Finally, and the last item in these series of announcements, the government announced that is seeking views on the UK's approach to the transposition of the **Bank Recovery and Resolution Directive II (BRRD II)**, which entered into force on 27 June 2019. The Directive makes amendments to the original 2014 Bank Recovery and Resolution Directive (BRRD) provisions, in order to update the EU's resolution policy and Minimum Requirements for Own Funds and Eligible Liabilities (MREL) framework. The Directive must be transposed into national law by 28 December 2020.

As explained above in Written Ministerial Statement: Financial Services Update, the government will implement EU legislation that requires transposition before the end of 2020. This includes the transposition of BRRDII by 28 December 2020. However, the government explained that it does not intend to transpose the requirements in the Directive that do not need to be complied with by firms until after the end of the EU Exit Transition Period, in particular Article 1(17) which revises the framework for MREL requirements across the EU. BRRDII states that the deadline for institutions and entities to comply with endstate MREL requirements shall be 1 January 2024. Given this is after the end of the Transition Period, the government believes that it is right that the UK exercises its discretion about whether to transpose these requirements. Responses are requested by 11 August 2020.

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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

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