European Leveraged Finance Association

BRIEFINGS

LEGAL & REGULATORY

10 May 2021

Legal and Regulatory Updates

03/05/2021 - 07/05/2021

Key Highlights

- This Legal & Regulatory Update covers the week commencing **03/05/2021**.
- FCA launches consultation on a new type of fund to support investment in long-term assets.
- UK Financial Regulators publish plan for upcoming work.
- European Commission responds to cross-association letter regarding the implementation of CSDR-SD.
- European Commission publishes Draft Delegated Act specifying the disclosure obligations under Article 8 of the Taxonomy Regulation and calls for feedback.
- ICMA announces that its supported standards for sustainable bonds now underpin an estimated 97% of issuance globally.
- BCBS, CPMI and IOSCO survey clients and non-bank intermediaries on margin calls.
- In this update, we also cover some of the most important news on leveraged finance published by the Financial Times during the week.

Bank of England (BoE)

03 – 07 May 2021: Speeches, Letters & Publications

During the week, the Bank of England (BoE) released the following speeches, announcements and other publications that might be of interest to our readers:

- Bank Rate maintained at 0.1% May 2021
- BoE publishes quarterly Monetary Policy Report May 2021 – the quarterly Monetary Policy Report sets out the economic analysis and inflation projections that the Monetary Policy Committee uses to make its interest rate decisions
- PRA Regulatory Digest April 2021 – the PRA Regulatory Digest is for people working in the UK financial services industry and highlights key regulatory news and publications delivered for the month

Financial Conduct Authority (FCA)

03 May 2021: FCA launches consultation on a new type of fund to support investment in long-term assets

The Financial Conduct Authority (FCA) launched a consultation on proposals for a new category of fund designed to invest efficiently in long-term, illiquid assets. Within the consultation, the proposal is that these funds would be open-ended and would be able to invest in assets such as venture capital, private equity, private debt, real estate and infrastructure, often referred to as productive finance. The aim of this new long-term asset fund (LTAF) would be to provide a fund structure through which investors can invest with appropriate confidence in less liquid assets because the fund structure is specifically designed to accommodate relatively illiquid assets. These illiquid assets can offer attractive expected returns to investors. If successful, the existence of funds investing in these assets can also help businesses and infrastructure projects have greater access to long-term capital to support investment and wider economic growth.

In his statement to Parliament on the Financial Services bill on 9 November 2020, the Chancellor committed to the first Long-Term Assets Fund being launched within a year. Investors can already invest in such assets through closed-ended structures, or a range of private structures. But some investors prefer investing in open-ended funds where there are opportunities to put money in or take it out at the net asset value of the assets. However as seen with property funds, open-ended structures investing in illiquid assets can face problems if they offer daily dealing to investors. The FCA is therefore proposing that LTAF rules embed longer redemption periods, high levels of disclosure, and specific liquidity management and governance features. These would take account of the types of risk to which LTAFs might be exposed and help give investors confidence that they are being managed appropriately and in their interests.

Establishing a new fund regime, and overcoming operational hurdles, are only 2 steps in creating an environment in which investment in longer-term, less liquid assets can flourish. To address these wider questions, together with Her Majesty's Treasury (HMT) and the Bank of England, the FCA has convened the Productive Finance Working Group. The Group is considering how to ensure that the wider ecosystem can operationally support the LTAF as a non-daily dealing fund. This could lay the ground for other similar funds in the future. This working group is expected to draw its conclusions in July 2021. In making final rules, the FCA will consider any recommendations of the Productive Finance Working Group.

The FCA is keen to hear views from stakeholders on its proposals and the consultation is open for feedback until 25 June 2021.

03 – 07 May 2021: Speeches, Letters & Publications

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

- Regulation for a different world – Speech by FCA's CEO, Nikhil Rathi, delivered at Association of Foreign Banks - CEO Programme 2021 - The UK Regulatory Landscape Post-Brexit and Beyond
- Outcomes-focussed regulation: a measure of success? – Speech by Charles Randell, Chair of the FCA and PSR, to the Building Societies Association

Financial Services Regulatory Initiatives Forum

07 May 2021: UK Financial regulators publish plan for upcoming work

The Financial Services Regulatory Initiatives Forum published the third edition of the Regulatory Initiatives Grid, which this year includes contributions from the Financial Reporting Council (FRC) for the first time. The Regulatory Initiatives Grid is published twice a year and includes upcoming regulatory activity that may have a significant operational impact on stakeholders within the financial services industry. The Forum is comprised of the FRC, Bank of England (including the Prudential Regulation Authority), Financial Conduct Authority, Payment Systems Regulator, Competition and Markets Authority, the Pensions Regulator, and the Information Commissioner's Office, with HM Treasury attending as an observer member.

Upcoming work in the latest version includes eight new environmental, social and governance (ESG) initiatives, the Bank of England and FCA's work to transform data collection, HM Treasury's Future Regulatory Framework Review and the Pensions Regulator's work to introduce a single code of practice to make their expectations simpler and easier to understand.

European Securities and Markets Authority (ESMA)

03 – 07 May 2021: Speeches, Letters & Other Publications

During the week, the European Securities and Markets Authority (ESMA) released the following speeches, announcements, and publications that might be of interest to our readers:

- ESMA updates its Q&As relating to the Prospectus Regulation – ESMA updated its Q&As on the Prospectus Regulation with three new Q&As. The Q&As provide clarifications on the following aspects: The application of Article 4(1) of the CRA Regulation to credit rating disclosure in prospectuses; and The publication of supplements to prospectuses when new audited annual financial information is published by a non-equity issuer

European Insurance and Occupational Pensions Authority (EIOPA)

06 May 2021: EIOPA publishes its Risk Dashboard based on the fourth quarter of 2020 Solvency II data

The European Insurance and Occupational Pensions Authority (EIOPA) published its Risk Dashboard based on the fourth quarter of 2020 Solvency II data. The results show that insurers' exposures to macro risks remain at high level while all other risk categories remain at medium level. The European supervisors expect an increase in credit risks over the next 12 months, reflecting concerns over corporate indebtedness. With regards to macro risk, Gross Domestic Product growth and inflation forecasts registered new upward revision. Financial markets remain broadly stable, amid an increase in bond volatility and concern over commercial real estate investments. Solvency positions for life business showed an improvement, while non-life business slightly deteriorated. Insurers' profitability, measured by the return on assets and the return on excess of assets over liabilities improved due to positive market performance. Despite this improvement the insurers' profitability remained lower compared to pre-COVID levels.

03 – 07 May 2021: Speeches, Letters & Other Publications

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

- EIOPA launches its 2021 insurance stress test – the EIOPA launched its 2021 insurance stress test for the European insurance market today. Insurance stress tests assess the resilience of the European insurance market in case of adverse financial and economic conditions and identify the market's vulnerabilities. The 2021 stress test focuses on a prolonged COVID-19 scenario - in a "lower for longer" interest rate environment. The scenario, developed in cooperation with the European Systemic Risk board (ESRB), will assess the impact of economic consequences of the COVID-19 pandemic, which affect confidence worldwide and prolong the economic contraction. The stress test will evaluate both the impact on the capital and the liquidity position of the undertakings in scope

European Banking Authority (EBA)

03 – 07 May 2021: Speeches, Letters & Other Publications

During the week, the European Banking Authority (EBA) released the following speeches, announcements, and publications that might be of interest to our readers:

- The EBA consults on its proposals for a central AML/CFT database – the EBA launched a public consultation on draft Regulatory Technical Standards (RTS) on a central database on anti-money laundering and countering the financing of terrorism (AML/CFT) in the EU. This database will be a key tool for the EBA's recently enhanced mandate to lead, coordinate and monitor AML/CFT efforts in the European Union. The consultation runs until 17 June 2021

European Central Bank (ECB)

03 – 07 May 2021: Speeches, Letters & Other Publications

During the week, the European Central Bank (ECB) released the following speeches, announcements, letters and publications that might be of interest to our readers:

- ECB updates treatment of leverage ratio in the Eurosystem monetary policy counterparty framework
- Towards a green capital markets union for Europe – Speech by Christine Lagarde, President of the ECB, at the European Commission's high-level conference on the proposal for a Corporate Sustainability Reporting Directive
- Market failures in market-based finance – Working Paper Series
- Financial reforms and innovation: a micro-macro perspective – Working Paper Series

European Commission

04 May 2021: European Commission responds to cross-association letter regarding the implementation of CSDR-SD

Mairead McGuiness, European Commissioner for Financial Stability, Financial Services and the Capital Markets Union, has responded to the joint association letter of March 11 which requested clarity on the CSDR Targeted Review and the implementation schedule of CSDR-SD. The response confirms that at this time no decision has been made on the changes that may be proposed as part of the Commission proposal to amend CSDR. Furthermore, the Commission will only be able to determine the concrete amendments to present for adoption by the co-legislators after a thorough impact assessment according to the Better Regulation Guidelines.

03 – 07 May 2021: Speeches, Letters & Other Publications

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

- Commission publishes Draft Delegated Act specifying the disclosure obligations under Article 8 of the Taxonomy Regulation and calls for feedback – the Act specifies the content, methodology, and presentation of the information to be disclosed by both non-financial and financial undertakings. The rules set out in the Delegated Act allows companies to translate the technical screening criteria of the Climate Delegated Act (and the future Environmental Delegated Act) into quantitative economic performance indicators - the KPIs - which will be publicly disclosed (e.g. the percentage of environmentally sustainable economic activities in a company's turnover or capital expenditure). The feedback period is open until 04 June 2021

Commission de Surveillance du Secteur Financie (CSSF)

03 – 07 May 2021: Speeches, Letters & Other Publications

During the week, the Commission de Surveillance du Secteur Financier (CSSF) released the following circulars, speeches, announcements and publications that might be of interest to our readers:

- The digital transformation of the CSSF and the financial sector, the importance of data and the impact of the COVID-19 crisis on the supervisory authority – Interview with Jean-Pierre Faber, Director of the CSSF

International Capital Market Association (ICMA)

03 – 07 May 2021: Speeches, Letters & Other Publications

During the week, the International Capital Market Association (ICMA) released the following speeches, announcements and publications that might be of interest to our readers:

- ICMA announces that its supported standards for sustainable bonds now underpin an estimated 97% of issuance globally – ICMA Announcement

International Organization of Securities Commissions (IOSCO)

05 May 2021: BCBS, CPMI and IOSCO survey clients and non-bank intermediaries on margin calls

International standard-setters for banks, market infrastructures and securities markets have issued a survey on the use of margin calls as part of an examination into liquidity shortfalls during the early stages of the Covid-19 pandemic (March and April 2020). The Basel Committee on Banking Supervision (BCBS), the Committee on Payments and Market Infrastructures (CPMI) and the International Organisation of Securities Commissions (IOSCO) (the Committees) are inviting clients (i.e., entities that participate in these markets through an intermediary) and non-bank intermediaries to complete a survey on a voluntary basis.

03 – 07 May 2021: Speeches, Letters & Other Publications

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

- IOSCO reviews implementation of Recommendations and Standards on BCPs for Trading Venues and Market Intermediaries – the Board of the International Organization of Securities Commissions published a Thematic Review on the extent to which participating IOSCO member jurisdictions have implemented regulatory measures consistent with the two Recommendations and the two Standards set out in the 2015 IOSCO reports on Business Continuity Plans (BCPs) for Trading Venues and Market Intermediaries. Authorities from 33 jurisdictions (16 developed jurisdictions and 17 emerging market jurisdictions) participated in the Review, which found that thirteen participating jurisdictions are Fully Consistent with the two Recommendations and the two Standards under review. The Review identified some gaps or shortcomings of different degrees of materiality in the other 20 participating jurisdictions for one or more of the Recommendations or Standards

Financial Stability Board (FSB)

03 – 07 May 2021: Speeches, Letters & Other Publications

During the week, the Financial Stability Board (FSB) released the following speeches, announcements and publications that might be of interest to our readers:

- FSB Americas group discusses global and regional vulnerabilities and COVID-19 support measures – the FSB Regional Consultative Group (RCG) for the Americas held a meeting to discuss global and regional macroeconomic and financial market vulnerabilities and their potential impact on the region. Members discussed possible financial stability implications from the COVID-19 pandemic, including the impact of a more asynchronous recovery across regions and capital flows on emerging market and developing economies (EMDEs). Members exchanged views on preliminary lessons learnt from COVID-19 and the effectiveness of policy support measures, in particular, potential spillover effects to EMDEs from policy measures taken by advanced economies. Members also discussed the implications of adjustments in, and the eventual withdrawal of, support measures once appropriate

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and their impact on cross-border banking, capital flows, and corporate sector debt. The group received an update on the FSB's work programme, including planned deliverables to the Italian G20 Presidency in 2021. Members also discussed areas of importance for RCG Americas member jurisdictions, including work underway in the FSB to strengthen the resilience of non-bank financial intermediation; the FSB Roadmap for enhancing cross-border payments; transitioning away from LIBOR; strengthening cyber and operational resilience; and analysing and addressing climate-related financial risks

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In the News

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

Financial Times

- Even non-ESG funds now have a greenish tinge
  "In 2020, $152bn of new money poured into ESG-labelled products and the total global assets in these products hit more than $1.6tn. The young are all over it. A new survey from Montfort Communications, a PR company, and Boring Money, a financial news website, makes the point. In a poll of retail investors, some 63 per cent of 18-34-year-olds say they would choose a new fund manager based on their approach to ESG"
- Most big investors sceptical over oil majors' green ambitions
  "Fewer than a fifth of big investors are confident that oil companies will successfully transition to become greener businesses, despite intense pressure from shareholders to cut carbon emissions and pledges from fossil fuel companies to overhaul their operations. Many oil companies, including Royal Dutch Shell and BP, have outlined climate transition strategies and ambitions to become net zero businesses over the past 18 months. However, a survey of 64 institutional investors, with almost $11tn in assets, found that only 17 per cent believe oil groups will transform their businesses to focus on green energy"
- Acciona calls on finance chief to make sustainability add up
  "Investors are pushing boards and senior management to be directly accountable for ESG issues"
- ESG outperformance narrative 'is flawed', new research shows
  "Fresh analysis by Scientific Beta, a smart beta index provider linked to the Edhec Research Institute, a French academic think-tank, disputes the claims that ESG funds have tended to outperform the wider market, or, in industry jargon, generate alpha"
- Letter: Investors should be wary of ESG virtue signalling
  "Maybe we shouldn't take the conclusions from Scientific Beta that environmental, social and governance stocks fail to outperform too seriously (ESG outperformance narrative 'is flawed', new research shows, Report, FT.com, May 3). First of all, it is far from clear that all corporations that make it into current ESG lists deserve to be there. The reported analysis could easily have been skewed by ESG assessments that merely represent a meaningless virtue-signalling veneer rather than the real thing"
- Norway's $1.3tn oil fund broadens ESG screening to smaller companies
  "Norway's $1.3tn oil fund will screen the hundreds of new companies it adds to its portfolio each year for environmental, social and governance risks as the world's largest sovereign wealth fund seeks to regain its place as one of the leading responsible investors across the globe. Nicolai Tangen, chief executive of the fund, told Norway's parliament on Monday that it had only screened the biggest new companies for such risks before adding them to its portfolio while the smallest companies were added automatically. Now the fund will screen all the 500 to 600 companies that are typically added to its reference index each year and decide whether to invest in them or not, or start active ownership measures such as monitoring"
- Calpers under fire over opposition to BP climate vote
  "Calpers and Climate Action 100+, the influential investor group, have come under fire over the US pension fund's decision to vote against a climate resolution at oil supermajor BP. The resolution, scheduled for a vote at BP's annual general meeting on Wednesday, calls for the oil company to rework its net-zero plan and make more drastic emissions cuts to align with the Paris climate accord"
- Australia's Macquarie announces plan to exit coal by 2024
  "Macquarie has signalled that it will stop financing coal projects by 2024 in a symbolic move that coincided with a bitter political debate in Australia over banks' withdrawal from the sector. The Sydney-based investment bank said on Friday that it expected its lending exposure to the commodity to run off within three years as it outlined a climate policy to align its financing activities with global commitments to achieve net-zero emissions by 2050. Macquarie will continue to fund oil and gas developments"
- Western companies in China succumb to Stockholm syndrome
  "The environmental, social and governance movement sweeping through many companies in the west makes their situations in China even harder. What exactly is the ESG policy of these companies when it comes to "enocide, as the US state department and the parliaments of Canada, the Netherlands and UK have formally described the situation in Xinjiang"

Regulators and Associations Monitored

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

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