14 September 2021

Legal and Regulatory Updates

06/09/2021 – 10/09/2021

Key Highlights

- This Legal & Regulatory Update covers the week commencing **06/09/2021**.
- FRC lists successful signatories to the UK Stewardship Code.
- FRC publishes review findings on Streamlined Energy and Carbon Reporting.
- ESA highlight risks in phasing out of crisis measures and call on financial institutions to adapt to increasing cyber risks.
- ECB publishes its monetary policy decisions: September 2021.
- ICMA AIMC responds to UK FCA CP21/17: Enhancing climate-related disclosures by asset managers, life insurers and FCA-regulated pension providers.
- ICMA responds to UK FCA CP21/18: Enhancing climate-related disclosures by standard listed companies and seeking views on ESG topics in capital markets.
- ICMA submits its feedback on the draft Report of the EU Platform on Sustainable Finance on a Social Taxonomy.
- 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)

06 – 10 September 2021: Speeches, Letters & Other Publications

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

- PRA publishes CP18/21: Remuneration: Identification of material risk takers – the Consultation Paper (CP) sets out the Prudential Regulation Authority's (PRA) proposed changes in respect of the applicable requirements on the identification of material risk takers (MRTs) for the purposes of the PRA's remuneration regime. It is relevant to banks, building societies, and PRA-designated investment firms, including third country branches
- Letter from David Bailey and Rebecca Jackson 'Thematic findings on the reliability of regulatory reporting'
- Treasury Select Committee on the July Financial Stability Report and the August Monetary Policy Report
- Preferred habitat investors in the UK government bond market – Staff Working Paper No. 939

Financial Reporting Council (FRC)

06 September 2021: FRC lists successful signatories to the UK Stewardship Code

The Financial Reporting Council (FRC) published a list of successful signatories to the UK Stewardship Code (the Code) which sets high standards of stewardship for those investing money on behalf of UK savers and pensioners. The successful applicants demonstrated their commitment to stewardship - which is very important as companies emerge from the pandemic and address significant environmental and social challenges by investing for a sustainable future. Following a rigorous review process which considered organisations' investment styles, sizes and types, two-thirds of all applications (125) made the list. This represents £20 trillion of assets under management. The FRC received 189 applications from 147 asset managers, 28 asset owners, including pension funds and insurers, and 14 service providers, including data and information providers and investment consultants.

The FRC was pleased to see investors better integrating stewardship, and environmental, social and governance (ESG) factors into their investment decision-making, reporting on asset classes other than listed equity and identifying the outcomes of their efforts. There was also some strong reporting on underpinning governance activities. The organisations that did not make the list commonly did not address all the Principles or sufficiently evidence their approach, instead relying too heavily on policy statements. Other areas of weakness included reporting on the approaches to review and assurance, and monitoring service providers. To remain signatories, organisations will need to continue to improve their reporting as market practice and expectations evolve. Information on the selection process can be found in this podcast.

08 September 2021: FRC publishes review findings on Streamlined Energy and Carbon Reporting

The FRC published its review on streamlined energy and carbon reporting and related matters under the new Streamlined Energy and Carbon Reporting (SECR) rules which came into effect from 1 April 2019. The FRC's review considered how a sample of companies and Limited Liability Partnerships (LLPs) had complied with the new SECR requirements, identified examples of emerging good practice, and outlined its expectations for future reporting. While the sample of reports were largely complied with the minimum statutory disclosure requirements for emissions and energy consumption, more needs to be done to make these disclosures understandable and relevant for users. In particular, entities need to explain more clearly how information is calculated, which operations and emissions are included in their reported numbers and the level of third-party assurance obtained over the information. They also need to consider how to integrate these disclosures with other narrative reporting on climate change, especially any emission-reduction targets.

06 – 10 September 2021: Speeches, Letters & Other Publications

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

- Webinar: What's next for the FRC, governance and reporting – the Department for Business, Energy & Industrial Strategy (BEIS) published its consultation into Restoring trust in audit and corporate governance. Black Sun in partnership with FRC is hosting a webinar on September 17th, 2021 at 09:30am to explore what the consultation means for the FRC as it transitions into the Audit, Reporting and Governance Authority (ARGA). Attendees will also hear about the next steps in corporate reform to protect and promote the interests of investors, other users of corporate reporting, and the wider public interest.
- UK electronic reporting: survey results and resources for companies – in May 2021, the Financial Reporting Lab (the Lab) released a survey that asked companies and service providers to comment on their preparations for the introduction of structured electronic reporting for annual financial reports (DTR 4.1.14) as part of the UK implementation of a wider cross-EU initiative (ESEF). It has published its survey results along with its list of resources to help companies implement the requirements.

European Insurance and Occupational Pensions Authority (EIOPA)

06 – 10 September 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:

- Climate change: A challenge for our time – Interview with Petra Hielkema for Eurofi
- Digital operational resilience: Addressing risks of the digital transformation – Speech by Ana Teresa Moutinho to the Eurofi Magazine on EIOPA

European Supervisory Authority (ESA)

08 September 2021: ESAs highlight risks in phasing out of crisis measures and call on financial institutions to adapt to increasing cyber risks

The European Supervisory Authorities (EBA, EIOPA and ESMA - ESAs) issued their second joint risk assessment report for 2021. The report highlights the increasing vulnerabilities across the financial sector, the rise seen in terms of cyber risk and the materialisation of event-driven risks. As the recovery begins, the appropriate phasing out of exceptional crisis measures plays a key role. Despite the positive outlook, the expectations for economic recovery remain uncertain and uneven across member states. Vulnerabilities in the financial sector are increasing, not least because of side effects of the crisis measures, such as increasing debt levels and upward pressure on asset prices. According to the report, expectations of inflation- and yield growth, as well as increased investor risk-taking and financial interconnectedness issues, might put additional pressure on the financial system.

The financial sector is also increasingly exposed to cyber risk. The financial sector has been hit by cyber-attacks more often than other sectors, while across the digital economy, cyber-criminals are developing new techniques to exploit vulnerabilities. Financial institutions will have to rapidly adapt their technical infrastructure in response to the pandemic, and the crisis has acted as a catalyst for digital transformation more generally. Finally, the materialisation of event-driven risks (such as GameStop, Archegos, Greensill), as well as rising prices and volumes traded on crypto-assets, raise questions about increased risk-taking behaviour and possible market exuberance.

Concerns about the sustainability of current market valuations remain, and current trends need to show resilience over an extended period of time for a more positive risk assessment. In light of the above-mentioned risks and uncertainties, the ESAs advise national competent authorities, financial institutions, and market participants to take the following policy actions:

- financial institutions and supervisors should continue to be prepared for a possible deterioration of asset quality in the financial sector, notwithstanding the improved economic outlook;
- as the economic environment gradually improves, the focus should shift to allow a proper assessment of the consequences of the pandemic on banks' lending books, and banks should adequately manage the transition towards the recovery phase;
- disorderly increases in yields and sudden reversals of risk premia should be closely monitored in terms of their impacts for financial institutions as well as for investors;
- financial institutions and supervisors should continue to carefully manage their ICT and cyber risks.

The ESAs also consider that policymakers, regulators, financial institutions, and supervisors can start reflecting on lessons learnt from the COVID-19 crisis.

European Central Bank (ECB)

06 – 10 September 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:

- Euro area securities issues statistics: July 2021
- ECB staff macroeconomic projections for the euro area: September 2021
- ECB publishes its monetary policy decisions: September 2021
- Christine Lagarde, Luis de Guindos: Monetary policy statement – transcript of press conference
- The final leap: implementing the Basel III reforms in Europe – Speech by Elizabeth McCaul, Member of the Supervisory Board of the ECB, at the Working Group Financial Services hosted by Kangaroo Group on "Finalization of the Basel III Framework - a view from the BCBS"
- European banks – how have they coped with the crisis and what lies ahead? – Speech by Kerstin af Jochnick, Member of the Supervisory Board of the ECB, at the Handelsblatt Banking Summit 2021
- Asymmetric monetary policy rules for the euro area and the US – Working paper series

European Systemic Risk Board (ESRB)

06 – 10 September 2021: Speeches, Letters & Other Publications

During the week, the European Systemic Risk Board (ESRB) released the following speeches, announcements and publications that might be of interest to our readers:

- Note on monitoring the financial stability implications of COVID-19 support measures – In 2020, the ESRB established a working group to analyse the effects of the crisis-related fiscal measures on the financial system. The report had three key findings. First, fiscal measures have protected the real economy and therefore the financial sector from the impact of the pandemic. These measures have ensured the continued provision of financial services: up to 35% of new bank lending to non-financial corporations (NFCs) during the pandemic has been associated with those measures. Second, differences in fiscal measures are closely correlated to the exposures of countries to the pandemic. For example, countries hit harder by the pandemic tend to have larger programmes with greater uptake. Third, the report stresses the importance of continued monitoring of the effects of the pandemic on solvency in the corporate and banking sectors. This note summarises the analyses conducted after the publication of the final report. It also contains insights from the analyses of the ESRB Drafting Team on corporate insolvencies.

European Commission

06 – 10 September 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:

- NextGenerationEU: Press Release – the European Commission has today adopted and independently evaluated Green Bond framework, thus taking a step forward towards the issuance of up to €250 billion green bonds, or 30% of NextGenerationEU's total issuance. The framework provides investors in these bonds with confidence that the funds mobilised will be allocated to green projects and that the Commission will report on its environmental impact.
- Monitoring CO2 emissions of heavy-duty vehicles: Delegated regulation – European commission publishes a delegated regulation for monitoring CO2 emissions of heavy-duty vehicles – new requirement to report number of powered axles. EU countries must submit information on CO2 emissions and fuel consumption of heavy-duty vehicles (HDV) to the Commission so that it can monitor progress towards EU CO2 reduction targets. This initiative amends the EU monitoring & reporting rules on HDV CO2 emissions, requesting that EU countries also provide information on the number of powered axles. This will help match the information reported by EU countries with that reported by manufacturers, thereby reducing the administrative burden.

Basel Committee on Banking Supervision (BCBS)

06 – 10 September 2021: Speeches, Letters & Other Publications

During the week, the Basel Committee on banking Supervision (BCBS) released the following circulars, speeches, announcements, and publications that might be of interest to our readers:

- Basel III implementation in the European Union – speech by Pablo Hernández de Cos, Chair of the Basel Committee on Banking Supervision and Governor of the Bank of Spain, Eurofi panel on Basel III implementation in the EU, Ljubljana, 10 September 2021
- Basel III and global cooperation: where do we go from here? – keynote speech by Carolyn Rogers, Secretary General of the Basel Committee on Banking Supervision, at the The Kangaroo Group virtual debate, 8 September 2021
- Press release – Bank for International Settlements to open its doors to visitors for a special exhibition in the autumn for its 90th anniversary

International Capital Market Association (ICMA)

10 September 2021: ICMA AIMC responds to UK FCA CP21/17: Enhancing climate-related disclosures by asset managers, life insurers and FCA-regulated pension providers

ICMA's Asset Management and Investors Council (AMIC) has submitted its response to the UK Financial Conduct Authorities (FCA) Consultation Paper on enhancing climate-related disclosures by asset managers, life insurers and FCA regulated pension providers. AMIC welcomed the FCA's proposals and noted that that the sequencing of the disclosure requirements should be first on the issuer side at international level (upcoming IFRS standard), followed by the buyside, and that in the meantime the proposed approach is applied on a "as far as they are able" approach, with accepted use of proxies and estimated data.

10 September 2021: ICMA responds to UK FCA CP21/18: Enhancing climate-related disclosures by standard listed companies and seeking views on ESG topics in capital markets

ICMA submitted its response to the UK (FCA) consultation paper on enhancing climate-related disclosures by standard listed companies and seeking views on ESG topics in capital markets. It focuses on the parts that are relevant to the international bond market and reflects the views of ICMA and its constituencies, primarily feedback from the Executive Committee of the Principles (Green & Social Bond Principles, Sustainability Bond Guidelines and Sustainability-Linked Bond Principles); the ICMA Legal and Documentation Committee (LDC); the ICMA Asset Management and Investors Council (AMIC) and the ICMA Corporate Issuer Forum (CIF).

06 September 2021: ICMA submits its feedback on the draft Report of the EU Platform on Sustainable Finance on a Social Taxonomy

The International Capital Markets Association (ICMA) submitted its feedback on the draft Report of the EU Platform on Sustainable Finance on a Social Taxonomy. The responses focus on the points in the consultation that are most relevant to ICMA members and to participants in the sustainable bond market. It concentrates especially on assessing the potential of the proposed Social Taxonomy as a resource for participants in the sustainable bond market rather than its potential broader use as a classification tool for investment portfolios for all types of securities.

06 – 10 September 2021: Speeches, Letters & Other Publications

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

- Podcast: Addressing workplace inequality – Rebekah Bray of ICMA Women's Network Nordic region speaks with Alexis Cousins of SEB's Debt Capital Markets team to discuss workplace inequality. As a PhD candidate at the Stockholm School of Economics, Alexis' research focuses on workplace inequality and the struggles of under-represented populations. She discusses general initiatives in the financial sector to address this issue, alongside a new programme at SEB to facilitate diversity and opportunities for under-represented talent.
- Pricing references for new sterling Eurobonds - ICMA released a notice that it will shortly be amending the ICMA Primary Market Handbook's item 7.3A. ICMA Recommendation R7.3 on pricing references for new sterling Eurobonds was introduced into the ICMA Primary Market Handbook in February 2015 and last updated July 2016. The purpose of the Recommendation is to clarify the appropriate gilt to use when pricing new sterling Eurobond issues. It seems likely that primary market practitioners will choose to apply this pending Handbook change from Monday 13 September 2021.

14 September 2021

In the News

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

- Real yields on European junk bonds go negative for first time
  "Investors in European junk bonds have begun accepting interest payments that are lower than eurozone inflation levels for the first time ever, in the latest sign that central banks' crisis-era debt purchases have shifted the balance between risk and reward. The yield on ICE BofA index of European high-yield bonds was pushed down to 2.34 per cent this week, marking the first-time buyers of so-called high-yield European currency bonds have accepted payments below consumer price inflation in the eurozone, which hit a decade high of 3 per cent in August."

- Companies rush to exploit fizzing bond markets
  "Tomas Lundquist, Citi's European head of debt capital markets for companies, says "remarkable" market conditions have helped to get some striking deals over the line. They include the lowest yield ever on a hybrid bond for yoghurt maker Danone and a rare 40-year maturity on a big corporate deal in euros — for US pharmaceuticals company Eli Lilly. Tesco was the last borrower to stretch the maturity out that long, in 2007."

- Junk yields are junky
  "And expectations for inflation in the eurozone over the next five years are lower than 2.34 per cent. As of Thursday, according to the five-year five-year euro inflation swap, inflation is expected to run at 1.75 per cent over that period. The junk yield has surged back to 2.4 per cent, leaving a princely real junk yield (the nominal yield minus expected inflation) of 65 basis points."

- Green bonds: record sales push sustainable investment forward
  "The rise of ESG investment means the bonds are suddenly in heavy demand. Poland, France, Germany, and the Netherlands have all sold sovereign green bonds. On Tuesday, Spain issued its own debut offering, borrowing €5bn over 20 years. The UK will belatedly launch a green gilt later this month. The torrent of climate-conscious capital seems unstoppable."

- Brussels to issue 'Covid green bonds' as part of pandemic recovery effort
  "The European Commission on Tuesday said it would tap debt markets for a sale of green bonds in October, raising funds for environmentally friendly reforms and investment in EU member states as part of the union's pandemic recovery effort."

- Walmart busts green bond record
  "While sustainable bonds — which include green and social bonds — are set to exceed $1tn later this year, according to a recent study from S&P Global, green bonds alone are projected to hit $1tn in 2023, according to the Climate Bonds Initiative."

- Why stewardship failings pose questions for whole asset management sector
  "The stewardship code covers the bog-standard business of strategy, risk and performance — as well as the ESG issues that are ever more important in attracting clients' money. Showing how those work together well in the long term remains a question for the whole sector, admitted as code signatories or otherwise."

- Evergrande liquidity crisis: why the property developer faces risk of default
  "Fitch on Wednesday became the latest group to issue a warning, slashing Evergrande's foreign currency credit rating from triple C plus to double C and saying that a default of some kind "appears probable". This week, Moody's downgraded the company for the third time in as many months, saying creditors had "weak recovery prospects" in the event of a default."

- Pimco/Columbia Property: bond giant bets on a rush back to the office
  "Pimco is best known as a fixed-income manager. It has been seeking to expand beyond its core bond business amid falling bond yields and pressure on management fees. The group took over management of Allianz Real Estate last year, creating a combined real estate investment unit with more than $100bn in assets."

- ETFs struggle to adapt to EU's new SFDR sustainable fund rules
  "Vanguard, which has 3 per cent of its passive Ucits fund assets in article eight funds, said it took a "disciplined and thoughtful approach to product development", including how the firm "evolves" its ESG line-up to meet the needs of its investors."

- Morningstar joins race to provide direct indexing services
  "ESG and other drivers will lead to a future of mass or even hyper customisation," said Tobias Sproehnle, chief executive of Moorgate who will become head of Morningstar Indexes in Europe."

- Goldman Sachs plans IPO for $5bn Petershill Partners
  "Investors have been increasing their exposure to private equity and private debt in a search for returns in an environment of low interest rates. Assets in the overall alternatives industry are expected to grow at a compound annual rate of 9.8 per cent, from $10.7tn in 2020 to $17.2tn by 2025, according to data provider Preqin."

- How must boards change to tackle the climate crisis?
  "Backed by groups including the UK's Institute of Directors, the Boardroom 2030 initiative asks companies to conduct a board or senior leadership meeting as if it were already COP26's target date for emissions cuts."

14 September 2021

- London warned of risk of losing status as top financial centre
  "It urged the government to work with the sector to help open new global markets in areas of future demand, such as investment in environment, social and governance areas. It pointed to the need for partnerships with other countries to create global ESG disclosure standards."
- ECB to slow bond-buying as Europe's economy improves
  "Konstantin Veit, portfolio manager at Pimco, said inflation was unlikely to rise enough for the ECB to lift its deposit rate from minus 0.5 per cent until late 2023 at the earliest, predicting it would "continue to buy assets for years to come"

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**

Important Information: