13 July 2021

Legal and Regulatory Updates

12/07/2021 – 16/07/2021

Key Highlights

- This Legal & Regulatory Update covers the week commencing **12/07/2021**.
- BoE's FPC publishes Financial Stability Report - July 2021.
- BoE and FCA publish report on assessing the resilience of market-based finance.
- ESMA publishes its third report on CSDR implementation.
- European Commission's Platform for Sustainable Finance publishes draft recommendations on a social taxonomy and a draft proposal for an extended taxonomy to support economic transition, and launches a call for feedback on both subjects.
- European Commission publishes factsheets on delivering the European Green Deal.
- AMF makes proposals for more European supervision and improved regulation.
- AMF provides update on the Climate and Sustainable Finance Commission.
- ICMA comments on the new EC sustainable finance strategy.
- FSB identifies preliminary lessons for financial stability from the COVID-19 experience.
- Industry calls for clarity on mandatory buy-in rules.
- 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)

13 July 2021: BoE's FPC publishes Financial Stability Report - July 2021

The Bank of England's (BoE) Financial Policy Committee (FPC) published its Financial Stability Report - July 2021. The Financial Stability Report sets out the FPC's view on the stability of the UK financial system and what it is doing to remove or reduce any risks to it. According to the report:

- the economic outlook has improved, but risks to the recovery remain, especially those related to the spread of Covid;
- households and businesses will need continued support from the UK financial system as the economy recovers and the Government's exceptional support measures unwind over the coming months;
- banks have the capital and liquidity to be able to support the economy; and
- risky asset prices have continued to increase, and in some markets asset valuations appear high relative to where they have been in the past. This partly reflects the improved outlook for the economy. But it may also reflect a search for yield in a low interest rate environment and higher risk-taking.

Finally, the FPC also wants to ensure that the financial system is ready to serve the future economy. Therefore, the FPC is doing two things:

- stress testing banks to check their resilience to climate change – both physical risks and the transition to net zero; and
- looking at new forms of digital money.

12 – 16 July 2021: Speeches, Letters & Publications

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

- BoE publishes report on assessing the resilience of market-based finance – the report is produced by Bank of England staff, under the guidance of the Financial Policy Committee. This report includes the conclusions of the joint Bank of England and Financial Conduct Authority review into vulnerabilities associated with liquidity mismatch in open-ended funds
- Minutes of the Working Group on Sterling Risk-Free Reference Rates June 2021 – the Working Group on Sterling Risk-Free Reference Rates, which is comprised of a diverse set of market participants, is working to catalyse a broad-based transition to SONIA by end-2021
- Navigating the economy through the Covid crisis – Speech by Dave Ramsden
- The inflation outlook – speech by Michael Saunders
- A tail of three occasionally-binding constraints: a modelling approach to GDP-at-Risk – Staff Working Paper No. 931

Financial Conduct Authority (FCA)

12 – 16 July 2021: Speeches, Letters & Publications

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

- FCA commits to being a more innovative, assertive and adaptive regulator – the commitment reflects the FCA's Business Plan for 2021/22, the first annual plan since Nikhil Rathi joined the FCA as Chief Executive in October 2020
- FCA publishes Annual Report and Accounts 2020/21
- Transforming to a forward-looking, proactive regulator – Speech by our CEO, Nikhil Rathi, delivered at the FCA's Our Role and Business Plan webinar

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Financial Reporting Council (FRC)

12 – 16 July 2021: Speeches, Letters & Other Publications

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

- Challenger firms increase their share of the FTSE 250 audit market – the FRC revealed the the challenger audit firms have increased their share of FTSE 250 audits, up from 4.8% to 7.6%, however all FTSE 100 companies continue to be audited by a Big Four firm. Improving competition across the FTSE 350 audit market remains a key focus for the FRC, and the Government recently consulted on major reforms to improve choice and competition in the audit market

European Securities and Markets Authority (ESMA)

16 July 2021: ESMA publishes its third report on CSDR implementation

The European Securities and Markets Authority (ESMA) published its CSDR Report on the provision of banking-type ancillary services by central securities depositories (CSDs). The report contains suggestions to enhance the authorisation process for CSDs to provide banking-type ancillary services themselves. More importantly, it also includes several proposals to facilitate the provision of banking-type ancillary services by non-banking CSDs; in particular to enable them to offer settlement services in foreign currencies. ESMA's recommendations will inform the European Commission's ongoing CSDR Targeted Review, which has identified facilitating the provision of banking-type ancillary services as a key policy priority. The Commission is expected to prepare a legislative proposal by the end of 2021.

12 – 16 July 2021: Speeches, Letters & Other Publications

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

- ESMA consults on amendments to MAR Guidelines on delayed disclosure of inside information – issuers, under MAR, can delay the disclosure of inside information where immediate disclosure is likely to prejudice an issuer's legitimate interest, the delay of disclosure is not likely to mislead the public and confidentiality is ensured. The ESMA MAR Guidelines include a list of legitimate interests of issuers that are likely to be prejudiced by immediate disclosure of inside information. The purpose of this consultation is to build and expand on these Guidelines, in the context of the interaction between the MAR transparency obligations vis-à-vis inside information and the prudential supervisory framework
- ESMA publishes disclosure and investor protection guidance on SPACs – the statement, in view of both the complexity and the diversity of SPAC transactions, sets out ESMA's expectations on how issuers should satisfy the specific disclosure requirements of the Prospectus Regulation to enhance the comprehensibility and comparability of SPAC prospectuses
- ESMA launches public consultations on central counterparty (CCP) recovery regime – ESMA launched seven public consultations to gather stakeholder feedback on how to implement its central CCP recovery mandates. The seven consultation papers contain, among others, proposals for Draft Regulatory Technical Standards (RTS) on the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources, Guidelines on the consistent application of the triggers for the use of Early Intervention Measures as well as Guidelines on CCP recovery plan indicators and scenarios

European Central Bank (ECB)

12 – 16 July 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: May 2021
- Climate Change and Central Banks: Analysing, Advising and Acting – Speech by Christine Lagarde, President of the ECB, at the International Climate Change Conference in Venice
- A new strategy for a changing world – Speech by Isabel Schnabel, Member of the Executive Board of the ECB, at the virtual Financial Statements series hosted by the Peterson Institute for International Economics

European Commission

12 July 2021: European Commission's Platform for Sustainable Finance publishes draft recommendations on a social taxonomy and a draft proposal for an extended taxonomy to support economic transition, and launches a call for feedback on both subjects

The European Commission's Platform for Sustainable Finance published draft recommendations on a social taxonomy and a draft proposal for an extended taxonomy to support economic transition, and launched a call for feedback on both subjects. The two drafts are important steps in Platform's main deliverables to advise the Commission on potential social and extended environmental taxonomy. Platform's advice on this will feed in to Commission's report on potential extension of taxonomy framework to be adopted by the end of 2021 as set under Article 26 (2a and 2b) of the Taxonomy Regulation.

The draft proposal for a social taxonomy argues that in the face of a pandemic, unanswered social questions around a sustainable transition, continuing human rights abuses and continuously rising costs for housing, the time is right to identify economic activities that contribute to advancing social objectives. Just as the EU environmental taxonomy defines activities that substantially contribute to environmental objectives, a social taxonomy would do the same for social objectives. Built on the foundation of international norms and principles like the sustainable development goals (SDG) and the UN guiding principles for businesses and human rights, a social taxonomy would help investors to contribute to finance solutions around ensuring decent work, enabling inclusive and sustainable communities and affordable healthcare and housing. A social taxonomy would be a tool to help investors identify opportunities to contribute to these objectives.

The draft proposal for taxonomy extension options linked to environmental objectives focuses on support for the environmental transition needed in the whole economy – it proposes further clarity on both: activities that are significantly harmful to environmental sustainability, and those that have no significant impact on it. The aim is to support transitions in areas currently of "significant harm". They should transition to a level that at least does not cause significant harm, even if they do not actually reach substantial contribution (green). The report will set out options to build on the existing taxonomy and its use.

The Platform will welcome stakeholder feedback on both drafts through two calls for feedback, which will run from 12 July to 27 August 2021. After considering the stakeholder input, the Platform will submit final reports with their advice to the

Commission in autumn 2021. The Commission will analyse and consider these reports in view of the continuous developing of the EU taxonomy, as anticipated in the new sustainable finance strategy.

12 – 16 July 2021: Speeches, Letters & Other Publications

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

- European Commission publishes factsheets on delivering the European Green Deal
- The COVID-19 Pandemic and Productivity Growth in G20 Countries – this Economic Brief discusses productivity developments in G20 countries and policies to unlock productivity growth
- Quantifying Spillovers of Next Generation EU Investment – this study quantifies macroeconomic spillover effects of Next Generation EU investment

Autorité des marchés financiers (AMF)

13 July 2021: AMF makes proposals for more European supervision and improved regulation

The Autorité des marchés financiers (AMF) published its main proposals as part of the European Commission's consultation on supervisory convergence, which closed in May 2021. The aim of these proposals is to endow ESMA with a greater role in order to achieve harmonised, unified supervision, ensuring a level playing field while minimising the possibility of regulatory arbitrage. The AMF believes that efforts to promote supervisory convergence through exercises such as peer reviews or common supervisory actions have reached their limits, since they rely heavily on the resources of national authorities and can be time-consuming. However, the EU capital market needs harmonised and unified supervision, which ensures a level playing field for all market participants and eliminates opportunities for regulatory arbitrage, with a central role for ESMA.

The AMF is therefore in favour of:

- evolving towards genuinely centralised supervision within ESMA of new unregulated activities, and of certain categories of entities and activities on account of their cross-border nature, or their significant or systemic impact: ESMA could be given a role in authorising and monitoring these entities, for example European clearing houses;
- an ESMA endowed with redesigned tools such as no action letters comparable to those existing in other jurisdictions, such as the US. These make it possible to quickly and temporarily suspend the application of certain rules when they may have harmful consequences;
- ESMA governance allowing for a decision-making process with a more European dimension, which could be achieved through an independent Management Board, composed of permanent members, empowered to take decisions on supervisory convergence and through a weighted majority vote by the Board on strategic decisions; and
- simplification of the way in which the rules are drawn up, in order to facilitate possible recalibration, where this is necessary, and by privileging maximum harmonisation of the regulation, to minimise divergent interpretations from one country to another.

12 – 16 July 2021: Speeches, Letters & Other Publications

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

- AMF provides update on the Climate and Sustainable Finance Commission – the Climate and Sustainable Finance Commission was set up by the AMF on 2 July 2019 and brings stakeholders together on the issue of sustainable finance. The role of this commission is to help the AMF carry out its regulatory and supervisory missions on issues related to sustainable finance
- The AMF emphasises the importance of independence in financial analysis – in response to a letter from the President of the Société Française des Analystes Financiers (SFAF), the President of the AMF has written to emphasise the fundamental importance of independence in financial analysis, in order to guarantee that professionals can carry out their activities freely and without any undue pressure

Commission de Surveillance du Secteur Financier (CSSF)

12 – 16 July 2021: Speeches, Letters & Other Publications

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

- CSSF provides that COVID-19 reportings relating to investment fund managers to end on 30 July 2021 – on 10 March 2020, the CSSF implemented a specific monitoring of the largest investment fund managers (IFM) by collecting data on significant developments/issues as well as large redemptions for the investment funds they manage. These reportings allowed the CSSF to continue ongoing supervision of the investment fund sector during the period of market turbulence experienced last year. The collected information also served the CSSF for the discussions at a European and International level with other authorities and with market players to identify issues at an early stage and to assist with the resolution of these. In view of the evolution of financial markets in general and investment funds/IFM more specifically since the March/April episode, the CSSF decided, at the current juncture, to end these ad hoc reportings at the end of July 2021. On this basis, the relevant IFM have to provide the last reportings for the reference date 30 July 2021 (IFM notification on fund issues and large redemptions), respectively the reference week from 26 July to 30 July 2021 (Weekly IFM Questionnaire). At the same time, the reporting "Early Warning on large redemptions", which is only applicable to a limited number of UCITS that have in the past been contacted directly by the CSSF, will be reinstated with effect from 2 August 2021. The CSSF will reach out to the concerned IFM separately with more specific instructions.
- Karen O'Sullivan, Head of the CSSF's Innovation, Payments, Market Infrastructures and Governance Department spoke at the Funds Europe webinar on tokenisation and asset management – Remarks
- Isabelle Jaspart, Head of division Legal Department, and Anne-George Kuzuhara, Deputy Head of the Banking Supervisory and SSM Coordination Department at the CSSF, discussed the post-Brexit world from the regulators perspective – Remarks

Central Bank of Ireland (CBI)

12 – 16 July 2021: Speeches, Letters & Other Publications

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

- European Central Bank's New Strategy – Governor's Blog

International Capital Market Association (ICMA)

15 July 2021: ICMA comments on the new EC sustainable finance strategy

On 6 July 2021, the European Commission (EC) published its Strategy for Financing the Transition to a Sustainable Economy. The International Capital Market Association (ICMA) explained that it supports the overall ambition and key objectives of the new strategy: (1) financing the transition, (2) inclusiveness, (3) financial sector resilience and contribution to the EU Green Deal target, and (4) global ambition. ICMA agrees that the capital markets can help the EU deliver on these key objectives, especially through the growth and further development of sustainable finance that the strategy aims in turn to foster. ICMA also strongly supports the priority given to adopt a delegated act under the EU Taxonomy covering the remaining four environmental goals, i.e. water, biodiversity, pollution prevention and circular economy by Q2-2022. However, ICMA is concerned that other initiatives relating to the Taxonomy focus essentially on widening its scope as a classification tool rather than enabling it as a transition financing resource. ICMA cautions that expanding the Taxonomy to defining economic activities that "do not have a significant impact on environmental sustainability" and to those "that significantly harm environmental sustainability" are unlikely to stimulate the supply of transition finance.

Additionally, ICMA published it comments on the proposed EU Green Bond Standard. ICMA identifies a risk of duplication of market initiatives in the strategy's proposal to launch official labels for sustainability-linked or transition bonds. Conversely, ICMA agrees that European labels for sustainable fund products can address the emerging risk of fragmentation in this area in the EU.

12 – 16 July 2021: Speeches, Letters & Other Publications

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

- ICMA provides update on SFTR reporting one year on – since the start of SFTR reporting on 13 July 2020, ICMA has been collecting and aggregating the SFTR public data on a weekly basis. Following the buy-side go-live in October 2020 and the start of reporting for non-financial counterparties in the EU in January 2021, the data now covers the entire population of firms required to report under SFTR. ICMA has been publishing separate figures for the UK and the EU since SFTR was split into two separate reporting regimes after the post-Brexit transition period, which ended on 31 December 2020

Financial Stability Board (FSB)

13 July 2021: FSB identifies preliminary lessons for financial stability from the COVID-19 experience

The Financial Stability Board (FSB) published its Interim Report on the Lessons Learnt from the COVID-19 Pandemic from a Financial Stability Perspective. The report identifies preliminary lessons for financial stability and aspects of the functioning of the G20 financial reforms that may warrant attention at the international level. According to the report, the COVID-19 experience reinforces the importance of completing remaining elements of the G20 reform agenda. Those parts of the global financial system where implementation of the reforms is most advanced displayed resilience. The functioning of capital and liquidity buffers may warrant further consideration, while some concerns about excessive financial system procyclicality remain.

Additionally, the report explains that the March 2020 market turmoil has underscored the need to strengthen resilience in non-bank financial intermediation. The FSB has developed a comprehensive work programme to enhance the resilience of the NBFI sector while preserving its benefits. The pandemic has also highlighted the importance of effective operational risk management arrangements, the need to enhance further crisis management preparedness, and the importance of promoting financial resilience amidst rapid technological change more generally.

Further, the report highlights that the COVID-19 crisis may yet test the resilience of the global financial system. Banks and non-bank lenders could face additional losses as support measures are unwound. Addressing debt overhang, including by facilitating the market exit of unviable companies and by promoting the efficient reallocation of resources to viable firms, may be a key task for policymakers going forward.

The FSB will engage with external stakeholders on preliminary findings and issues raised in this report. The final report, to be delivered to the G20 Summit in October, will set out tentative lessons and next steps to address the identified issues.

Other Updates

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

14 July 2021: Industry calls for clarity on mandatory buy-in rules

Sixteen trade associations representing buy-side, sell-side and market infrastructures, wrote to ESMA and the European Commission regarding the timeline for implementation of the mandatory buy-in rules as part of the Central Securities Depositories Regulation (CSDR) Settlement Discipline Regime. The Joint Associations welcome the Report from the Commission on the CSDR Review published in July 2021 and fully support the Commission's intention to consider amendments to the mandatory buy-in regime, subject to an impact assessment.

In light of this, the Joint Associations request ESMA and the Commission to take action to ensure that the mandatory buy-in rules for non-CCP transactions are not subject to application on 1 February 2022, when the relevant RTS is currently set to enter into force, and to provide clarity to market participants on the matter on an urgent basis. The Joint Associations remain committed to further improving settlement efficiency in Europe's capital markets.

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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

- Companies must get moving on the journey to combat climate change
  "All of us must seize this opportunity. There are two possible roads ahead: a deeply flawed business as usual approach, or a global economy that protects people, the planet and the natural systems that sustain us. And business as usual is no longer an option . . . The UN Global Compact is determined to help business be a force for that change. Only by supporting a green, inclusive recovery can companies secure their own survival and our collective future. We are calling on companies to set more ambitious, measurable targets for sustainability, and we are holding them accountable to meet those milestones"
- Adding social issues to the corporate balance sheet | Moral Money
  "The FT's Gillian Tett looks at how employees, investors and customers are increasingly demanding transparency across supply chains and corporate structures"
- Global climate change laggards identified by MSCI emissions tracker
  "Greenhouse gas emissions from global listed companies will blow past the global warming targets set by the Paris climate accord in just six years, despite the plethora of net zero corporate pledges, according to a new tracker by index provider MSCI covering more than 9,000 companies. The MSCI analysis identifies some of the worst-performers, in terms of the biggest emitters that have failed to make any disclosures at all, at a time when investors are seeking to assess the progress of listed companies in curbing climate risk"
- UK watchdog criticises lack of central co-ordination on climate goals
  "Ministers have promised to publish a road map for reaching the country's climate goals and a Treasury assessment of where costs will fall before the international climate summit, known as COP26, hosted this year by the UK in November in Glasgow. But with the meeting just months away, these documents are still unpublished"
- Climate policy takeaways from the G20 finance meeting
  "The International Financial Reporting Standards Foundation's upcoming International Sustainability Standards Board is now the main venue for efforts to harmonise green accounting standards, based on Task Force on Climate-related Financial Disclosures frameworks. The Financial Stability Board has thrown its weight behind this, and the G20 is backing it too. This may not please Europeans, since the IFRS approach appears designed to get a common minimum base that focuses on one-way materiality (what the environment is doing to companies, not the other way round); groups such as the Global Reporting Initiative and European Commission want double materiality systems that capture companies' carbon footprints. But the IFRS will be the key focus in Glasgow"
- The G20 has failed to meet its challenges
  "Yet, given the genuine achievements, why am I so critical? The answer is that humanity confronts two global challenges: escaping from this pandemic (and future pandemics); and climate change. Next to these, the agreements on corporate taxation and even SDRs, welcome though they are, are just not that important. The question is whether we can co-operate where we must"
- Brussels unveils sweeping plan to reduce Europe's carbon footprint
  "Brussels set out sweeping plans on Wednesday for the EU to become the world's first mover on achieving net zero emissions in order to limit global warming, with a strategy targeting all sectors of the economy and trade. The European Commission unveiled 13 policies designed to address climate change by ensuring the continent meets its goal of reducing average greenhouse gas emissions by 55 per cent in 2030 and net zero by 2050, compared to 1990 levels"
- Brussels offers financial cushion to get support for climate plan
  "Brussels wants to allow industry in the EU to maintain free carbon credits for more than a decade and offer potentially billions of euros of financial aid to poorer households in a bid to win support for its effort to limit global warming"
- Carmakers and airlines warn EU's climate plan imperils innovation
  "Europe's most polluting businesses have accused the EU of jeopardising investment and innovation after Brussels unveiled ambitious plans to halve the bloc's emissions by 2030 in an effort to curb global warming"
- It's been a good week for carbon pricing
  "The EU, of course, is well placed to achieve comprehensive carbon pricing given that it already has a carbon price for those sectors covered by its existing emissions trading system. It is now strengthening its focus on the approach, expanding emissions trading to new sectors (aviation, shipping, road transport and buildings) in a bet that by redistributing some of the revenues that a higher carbon price would raise, it could calm the opposition from people facing higher costs of living. That is a bet the US, in particular, is so far unwilling to take"
- Environmentalists cast doubt on carbon offsets
  "They argue that companies buying carbon offset credits can claim they are working towards climate targets while they fail to address emissions from their own operations and carry on polluting"

13 July 2021

- The $4bn bet on cleaning up emissions
  “General Atlantic, the powerhouse private equity firm, is teaming up with John Browne, the former BP chief executive, to launch a new climate solutions fund”
- The activist antidote to ESG guff
  “The risk of this stunning outcome is that companies spend even more money on ESG consultants at PwC. The hope is that Engine and like-minded activists can see through the guff and take action at other targets where capitalism and a cleaner world go hand in hand”
- How to tackle climate change: an intergenerational conversation
  “Young campaigners tell the former Irish president that governments must listen to their anxieties”

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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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