22 June 2021

Legal and Regulatory Updates

14/06/2021 – 18/06/2021

Key Highlights

- This Legal & Regulatory Update covers the week commencing **14/06/2021**.
- BoE publishes its climate-related financial disclosure 2021.
- ESMA publishes its 2020 Annual Report.
- EIOPA publishes report on artificial intelligence (AI) governance principles.
- ECB's Governing Council confirms that exceptional circumstances continue to justify leverage ratio relief.
- European Commission releases the EU sustainable finance taxonomy compass.
- CBI publishes first Financial Stability Review of 2021.
- CSSF announces the publication of the Law of 20 May 2021 transposing the Capital Requirement Directive V.
- FSB publishes overview of responses to the public consultation on outsourcing and third-party risk.
- ICMA responds to US SEC request for public input on climate change disclosures.
- ICMA responds to FCA CP 21/15 on use of critical benchmarks.
- 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)

17 June 2021: BoE publishes its climate-related financial disclosure 2021

The Bank of England (BoE) published its climate-related financial disclosure in June 2021, which sets out the Bank's approach to managing the risks from climate change across its entire operations. The BoE published its first climate-related financial disclosure report in June 2020. The Bank's financial asset portfolios held for monetary policy purposes were included in the report, a first for a central bank, and led to the Bank receiving the 'Green Initiative' award from Central Banking. This year's report builds on the first by reflecting: the progress the Bank has made on its climate work plan over the past year; changes in the remits and recommendations to the Bank's policy committees; advances in climate data and modelling applied to the Bank's financial asset portfolios; progress on reducing emissions from the Bank's physical operations; and movement in the domestic and international climate agenda. The report also sets out how the Bank has further embedded climate change into its internal governance and risk management frameworks, as part of its organisation wide approach.

14 – 18 June 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:

- Prudential Regulation Authority Annual Report 2021 – the PRA has published its annual report covering PRA activities 1 March 2020 – 28 February 2021, alongside the Bank of England's Annual Report and Accounts
- Covid Corporate Financing Facility Limited Annual Report and Accounts 2020/21 – Annual Report
- Supervisory Stress Testing of Central Counterparties – Discussion Paper

Financial Conduct Authority (FCA)

14 – 18 June 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 and the Bank of England encourage market participants in a switch to SOFR in US dollar interest rate swap markets from 26 July – following close engagement with market participants, and to support the US-led 'SOFR First' initiative, the FCA and Bank of England support and encourage liquidity providers in the US dollar linear interest rate swaps market to adopt new trading conventions for interdealer trading based on SOFR instead of LIBOR from 26 July this year. This is to facilitate a shift in market liquidity towards SOFR, bringing benefits for a wide range of users as they move away from LIBOR

European Securities and Markets Authority (ESMA)

14 – 18 June 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 publishes its 2020 Annual Report – in this report, ESMA reviews its achievements in 2020 against its priorities and objectives in meeting its mission of enhancing investor protection and promoting stable and orderly financial markets in the European Union.

European Insurance and Occupational Pensions Authority (EIOPA)

14 – 18 June 2021: Speeches, Letters & Other Publications

During the European Insurance and Occupational Pensions Authority (EIOPA) released the following speeches, announcements, letters and publications that might be of interest to our readers:

- EIOPA publishes report on artificial intelligence (AI) governance principles – the report is from EIOPA's consultative expert group on digital ethics setting out AI governance principles for an ethical and trustworthy AI

European Systemic Risk Board (ESRB)

14 – 18 June 2021: Speeches, Letters & Other Publications

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

- Measuring the impact of a bank failure on the real economy: an EU-wide analytical framework – Working Paper Series No 122 / June 2021

European Central Bank (ECB)

14 – 18 June 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's Governing Council confirms that exceptional circumstances continue to justify leverage ratio relief – the Governing Council of the ECB has decided that it concurs with ECB Banking Supervision in that there continue to be "exceptional circumstances" allowing for the extension of the temporary exclusion of certain central bank exposures from the leverage ratio in order to support the transmission of the ECB's monetary policy. The Governing Council is of the view that the condition of exceptional circumstances warranting this temporary exclusion from the calculation of banks' total exposure measure continues to be met for the euro area as a whole
- ECB launches consultation on its revised Guide to fit and proper assessments – the enhancements contained in the documents aim to raise the bar, increase transparency and improve the quality and efficiency of fit and proper assessments and processes. They also introduce supervisory expectations on climate-related and environmental risks and explain the ECB's approach to diversity
- Patchy data is a good start: from Kuznets and Clark to supervisors and climate – Keynote Speech by Frank Elderson, Member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board of the ECB, at the ECB-EBRD joint conference on "Emerging climate-related risk supervision and implications for financial institutions"
- No country is an island: international cooperation and climate change – Working Paper Series
- Do macroprudential measures increase inequality? Evidence from the euro area household survey – Working Paper Series
- Measuring price selection in microdata: it's not there – Working Paper Series
- ECB Banking Supervision seeking greater diversity within banks – Blog

European Commission

16 June 2021: Commission releases the EU sustainable finance taxonomy compass

The European Commission released the EU sustainable finance taxonomy compass. This EU Taxonomy Compass provides a visual representation of the contents of the EU Taxonomy, starting with the Delegated Act on the climate objectives, as adopted on 4 June 2021. Looking forward, it will be updated to include future delegated acts specifying technical screening criteria for additional economic activities substantially contributing to the climate objectives and the other environmental objectives of the Taxonomy Regulation. It will also reflect reviews of the delegated acts in the future.

The EU Taxonomy Compass aims to make the contents of the EU Taxonomy easier to access for a variety of users. It enables users to check which activities are included in the EU Taxonomy (taxonomy-eligible activities), to which objectives they substantially contribute and what criteria they have to meet. It is important to note that minimum safeguards (social standards) have to be met for an economic activity to be considered taxonomy-aligned. The EU Taxonomy Compass also aims to make it easier to integrate the criteria into business databases and other IT systems (see download options below).

14 – 18 June 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 monitoring report on progress towards the SDGs in an EU context 2021 edition – the 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals (SDGs), adopted by the UN General Assembly in September 2015, have given a new impetus to global efforts for achieving sustainable development. The EU is fully committed to playing an active role in helping to maximise progress towards the Sustainable Development Goals. This publication is the fifth of Eurostat's regular reports monitoring progress towards the SDGs in an EU context. The analysis in this publication builds on the EU SDG indicator set, developed in cooperation with a large number of stakeholders. The indicator set comprises 102 indicators and is structured along the 17 SDGs. For each SDG, it focuses on aspects that are relevant from an EU perspective. The monitoring report provides a statistical presentation of trends relating to the SDGs in the EU over the past five years ('short-term') and, when sufficient data are available, over the past 15 years ('long-term'). The indicator trends are described on the basis of a set of specific quantitative rules
- Commission announces targeted consultation on improving transparency and efficiency in secondary markets for non-performing loans (NPLs)

Central Bank of Ireland (CBI)

16 June 2021: CBI publishes first Financial Stability Review of 2021

The Central Bank of Ireland (CBI) published the first Financial Stability Review of 2021. The Review highlights that the expansion of vaccination programmes has reduced uncertainty and downside risks to the macro-financial outlook. However, the recovery is likely to be uneven across countries and sectors and could be vulnerable to setbacks. Vulnerabilities in global financial markets have been building, amid higher levels of sovereign and corporate indebtedness. Looking beyond the pandemic, structural risks remain, including those stemming from changes in the banking sector, international tax changes, and climate change.

Commission de Surveillance du Secteur Financier (CSSF)

14 – 18 June 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 announces the publication of the Law of 20 May 2021 transposing the Capital Requirement Directive V – the CSSF would like to inform the public of the publication of the law of 20 May 2021, which, among others, transposes Directive (EU) 2019/878 of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (CRD V) and amends the law of 5 April 1993 on the financial sector (LFS)

Financial Stability Board (FSB)

14 June 2021: FSB publishes overview of responses to the public consultation on outsourcing and third-party risk

On 9 November 2020, the Financial Stability Board (FSB) published a discussion paper for public consultation on Regulatory and Supervisory Issues Relating to Outsourcing and Third-Party Relationships. The FSB received 39 responses from a wide range of stakeholders including banks, insurers, asset managers, financial market infrastructures (FMIs), third-party service providers, industry associations, public authorities, and individuals. The FSB also held a virtual outreach meeting in late February 2021, attended by around 200 participants. The FSB published a note summarising the main issues raised and views expressed in the public consultation, including the virtual outreach meeting.

International Capital Market Association (ICMA)

16 June 2021: ICMA responds to US SEC request for public input on climate change disclosures

The International Capital Market Association (ICMA) submitted its response to the US SEC consultation on climate-related disclosures, in which ICMA supported SIFMA's letter and emphasised important points relating to a global coordinated approach, principles-based materiality, safe-harbour protection and a handful of other issues.

16 June 2021: ICMA responds to FCA CP 21/15 on use of critical benchmarks

ICMA responded to an important FCA consultation on powers over use of critical benchmarks such as LIBOR, noting the importance for the bond market of a broad permission to use synthetic LIBOR for legacy LIBOR bonds.

14 – 18 June 2021: Speeches, Letters & Other Publications

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

- ICMA launches its 41st survey of the European repo market
- Podcast: The Human Side of Finance | Episode 4 | Humanising the Office – in this podcast, ICMA interviews thought leaders on workplace culture and design: Annie Coleman and Kursty Groves
- Podcast: ICMA AMIC - The impact of digitization on the Asset Management industry – as the buy-side explores new possibilities offered by technological innovations, this ICMA Asset Management and Investors Council (AMIC) virtual event discussed how the asset management industry is considering asset tokenisation and the use of artificial intelligence. The event also featured a presentation from the European Commission

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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

- US investors hunt for yield in junk-rated municipal debt
  "Investors are pouring into the $4tn US municipal bond market, pushing yields on debt issued by state and local governments across the country to the lowest level on record. The voracious investor appetite has helped state agencies and governments lock in low borrowing costs and at times raise more money than bankers working on the projects initially anticipated"

- Bond spreads collapse as investors rush into corporate debt
  "The premium between corporate debt and US Treasuries has dropped to its lowest level in more than a decade in a sign that investors are growing confident recent rises in inflation will not hinder the economic recovery. The collapse in the difference between investment yields — known as the spread — means buyers are demanding a much lower premium than previously for owning corporate debt, which is more risky than super-safe US Treasuries"

- CLOs draw in new support after showing resilience
  "CLOs have been viewed sceptically in the past. Before the pandemic struck, regulators had expressed concerns that they had facilitated risky lending with weaker standards, and that they could lay the groundwork for a future credit crisis. But CLO participants now feel vindicated, arguing that a strong rebound from the depths of the coronavirus-induced fall in markets has proved the resilience of the structure and offered comfort to cautious investors, even if critics still point to the large amount of assistance provided by the Federal Reserve that helped all credit markets — from bonds to loans — recover"

- Corporates know transition from Libor is painful but necessary
  "It used to be all so simple. Corporates, wanting to borrow at a floating rate, could take out loans or issue bonds safe in the knowledge that it could be underpinned by Libor, a benchmark that, for all its flaws, was easy to use and used the world over. No longer. Libor, or to give it its full name the London Interbank Offered Rate, is in its death throes"

- UK failing to prepare for climate change
  "In its latest, quinquennial stock take of the climate risks facing the UK published on Wednesday, the Climate Change committee said the recent focus on reducing emissions had not been accompanied by adaptation planning, which had failed to keep pace with the effects of a warming planet"

- Boohoo directors to face shareholder revolt over supplier labour abuse
  "Boohoo is set to face an investor rebellion at its annual meeting this week as shareholders and advisers raise concern over the role of its co-founders in the labour abuse scandal that has rocked the fast-fashion company. The Manchester-based group was hit last summer by fresh evidence of labour abuse among its UK suppliers, including pay far below minimum wage, and has since strived to convince shareholders its clothes are made ethically"

- Britain's largest investor blacklists AIG over climate risk concerns
  "Britain's biggest investor has dropped AIG from some of its funds over concerns that the US-based insurance group has insufficient policies in place over climate change risks. Legal and General Investment Management said on Tuesday that it would divest several of its holdings from actively managed portfolios after unsatisfactory responses to and breaches of red lines around an involvement in coal, carbon disclosures and deforestation. AIG was dropped from the £58bn portfolio for having no policy on thermal coal nor on the disclosure of carbon emissions associated with its investments, which LGIM said were red lines for the banks and insurers it invests in"

- Heavyweight investors demand more disclosure of environmental risks
  "Fears that climate change will result in catastrophic environmental damage are fuelling demands by institutional investors and regulators for companies to accelerate their efforts to reach the goal of a net zero carbon emissions economy. Ahead of the Cop26 climate conference in Glasgow scheduled for November, 168 asset managers and financial institutions from 28 countries, which together represent more than $17tn in combined assets, have signed up to support the Carbon Disclosure Project's campaign to ensure that data on climate change, deforestation and water usage are properly reported by companies"

- Labour's Ed Miliband backs reform to broaden businesses' responsibilities
  "Labour's shadow business secretary Ed Miliband has backed a fundamental rewriting of British company law to make it clear that every company should produce benefits for society and the environment, saying it could be the linchpin to a different future. The party's former leader believes legal clarity is needed to bolster work already done by many companies to put staff, customers, society and climate at the heart of their business model, not just the interests of shareholders"

- Top tech groups try to dilute ESG disclosure rules
  "Microsoft and Alphabet have pushed back against calls to include disclosures on environmental, social and governance issues in key US regulatory filings, setting them on course for a tussle with major asset managers. The tech companies told the top US securities watchdog that ESG information should not be included in a type of filing known as a 10k, which most public groups must submit each year. Microsoft and Alphabet said including ESG information in these filings would open them up to potential legal risks since such data are subject to more uncertainty than the detailed financials and risk disclosures that are currently required in 10ks"

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- [How lawyers are cleaning up supply chains]
  "Multinationals are digging deeper into the legal plumbing of their own organisations to maximise their sustainability credentials and meet climate or social pledges. As organisations reassess their supplier networks in order to fulfil environmental, social and governance (ESG) commitments, in-house lawyers can play an important role in helping to hit these targets by renegotiating supplier contracts and managing regulatory compliance"

- [Company lawyers under pressure on politicised business activities]
  "Top in-house lawyers are very much in the line of fire as companies come under increasing pressure from their customers and employees to take a stand on everything — from climate change to voting rights and racial equity. At the same time, investors have increased their scrutiny of environmental, social and governance (ESG) matters. Anxious chief executives need help handling these demands, and a split is developing over how general counsel should respond. As lawyers, GCs are by definition well-qualified to provide legal advice. But ESG and political questions have broader ramifications for a company's image, its regulatory relationships and even its profitability"

- [FTSE Russell threatens to expel 208 ESG offenders from FTSE4Good]
  "More than 200 companies are in danger of being thrown out of a family of FTSE Russell stock indices for failing to meet more stringent environmental standards. The 208 companies represent 13.5 per cent of the 1,546 stocks in the FTSE 4Good index series — designed to measure the performance of businesses with strong environmental, social and governance (ESG) practices — which is tracked by a range of exchange traded funds and investors such as the Japanese Government Pension Investment Fund, the world's largest pension fund. FTSE Russell has given the companies 12 months to meet its tighter climate-performance standards or face deletion from the indices"

- [Activist shareholders must push for environmental change]
  "Climate change is the most significant challenge facing humanity, and many commentators point to the malign influence of corporate profits, capital markets and investors in contributing to the trend. But while some argue the best response is divestment, our recent work suggests engagement by long-term shareholders such as pension funds is an effective way to improve companies' environmental impact. Activism, combined with monitoring and the threat of discipline by investors, can drive improvements"

- [Investors should prepare for impact of green stress tests on banks]
  "Will climate stress tests be as effective? Central bankers are not climate policymakers, but requiring data and scenario analysis is likely to change risk management practices to assess climate risk as a financial risk"

- [ESG shift fuels IP law collaboration and generates new work]
  "As climate change, loss of biodiversity and resource scarcity rise up the corporate agenda, the innovations needed to address these problems are generating more work for patent firms — and changing the way attorneys do their jobs. The past decade has seen a rise in the filing of patents related to environmental goals, such as net-zero carbon emissions — particularly in the energy sector — driven by an emergent green economy and a flow of funds into environmental, social and governance (ESG) focused investments"

- [Inside PwC's $12bn bet on ESG]
  "The opportunity ESG reporting presents to audit firms has been obvious for some time, not least in the Big Four's eagerness to shape the standards for how companies measure their environmental and social impact. Now we're starting to see how much they are willing to spend to capture that opportunity. PwC's $12bn, 100,000-person investment plan for the next five years, unveiled on Tuesday, is full of familiar talk of automation and Asian expansion, but at its core is the need to position its global network for the needs of clients struggling to keep pace with changing ESG expectations"

- [Biden's climate agenda bogged down in divided Congress]
  "President Joe Biden arrives back in the US this week after a foreign tour with a recurring theme: fighting climate change. But he returns to a Washington where his own party feels increasing anxiety that his administration's climate agenda will fall short at home"

- [UN climate talks hit a wall over tensions about finance]
  "Tensions over climate finance threaten to derail this year's COP26 summit after weeks of preliminary UN deliberations yielded little agreement over how to proceed with core principles of the Paris climate accord. The downbeat conclusion fuels further disappointment about progress on halting global warming, after the G7 leaders summit in Cornwall failed to produce specific plans for new climate funding"

- [How can the world get to net zero emissions by 2050?]
  "Meeting this goal, which has been adopted by major economies such as the EU, US and UK, would require a total transformation of the global economy over the next three decades"

- [The G7 is right to worry about Chinese credit terms]
  "Over 90 per cent of the bilateral Chinese contracts include clauses that allow the state-owned entity to terminate the contract and demand repayment if the debtor country implements a significant legal or policy change. All contracts with Chinese policy banks include cross-default clauses, allowing the creditor to demand immediate repayment if the borrower defaults on other lenders. These clauses allow the creditor to influence the borrower's foreign or domestic policy, tying its hands in the event of debt distress"

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- South Korea's SK accused of greenwashing after LNG U-turn
  "One of South Korea's biggest conglomerates is facing a backlash from activist groups after finalising a large Australian liquefied natural gas deal months after promising to end new overseas oil and gas investments. The scrutiny of SK Group, one of Asia's top producers of oil, electric vehicle batteries and computer chips, comes as activists turn their attention to overseas oil and gas projects, estimated to be valued at more than $100bn, in the wake of successful campaigns to stop companies and countries from investing in coal"
- Women in finance say 'mediocre' male managers block progress
  "Careers for some women in finance are being held back by "mediocre" male middle managers adept at playing internal politics, according to a report backed by some of the City of London's largest financial institutions. Research by Women In Banking and Finance and the London School of Economics — which has been supported by groups such as Goldman Sachs, Barclays and Citi, as well as the Financial Conduct Authority — also found a tendency among such managers to fake empathy when managing women, recognising that the trait was now seen as valuable"
- Credit Suisse readies insurance claims on Greensill losses
  "Credit Suisse is preparing its first insurance claims on losses stemming from its $10bn of funds tied to collapsed finance group Greensill Capital, according to people with knowledge of the process. The Swiss bank is trying to recoup billions of dollars owed to the group of supply-chain finance funds, which it was forced to close in March"

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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