European Leveraged Finance Association

BRIEFINGS

LEGAL & REGULATORY

26 April 2021

Legal and Regulatory Updates

19/04/2021 – 23/04/2021

Key Highlights

- This Legal & Regulatory Update covers the week commencing **19/04/2021**.
- Bank of England publishes updated UK Money Markets Code.
- FCA consults on second phase of proposed rules to introduce the UK Investment Firm Prudential Regime (IFPR).
- ECB releases monetary policy decisions April 2021.
- Commission adopts a Sustainable finance package, which includes the EU Taxonomy Climate Delegated Act, the Corporate Sustainability Reporting Directive, and amending Delegated Acts on fiduciary duties, investment and insurance advice.
- Commission welcomes provisional agreement on the European Climate Law.
- CBI publishes its latest economic outlook.
- BCBS gives speech on evaluating the effectiveness of Basel III during Covid-19 and beyond.
- ICMA AMIC and EFAMA issue joint response to IOSCO consultation on fund liquidity management by open-ended funds.
- ICMA ERCC publishes consultation paper on the role of repo in green and sustainable finance.
- 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)

21 April 2021: Bank of England publishes updated UK Money Markets Code

The Bank of England (BoE) published an updated UK Money Markets Code. The UK Money Markets Code, originally published in 2017, sets out best practice in the unsecured, repo and securities lending markets in the UK. It was written by market participants from across all sectors, and is owned by the Bank of England's Money Market Committee (MMC). Members of the committee are drawn from a wide range of those active in the UK money markets. The MMC has considered how money markets have evolved since the original Code was published, and the key findings have been incorporated into a 2021 update to the Code written by market participants. The updated Code has been recognised as an industry standard by the FCA.

The overarching Principles of the Code have not changed, but there have been some significant changes in the following five areas:

- Diversity and Inclusion: the updated Code recognises and promotes the benefit of diverse and inclusive money market participants' teams;
- Working from Home: the updated Code reflects the response to Covid-19, and emphasises it is acceptable to work from home, provided the same level of robust systems and controls are applied;
- Environmental, Social and Governance (ESG) Criteria: ESG criteria are becoming increasingly relevant to financial markets. The updated Code adds commentary about the increasing importance of ESG;
- Electronic Trading: electronic trading via platforms is now more widely used than in 2017, especially in the repo market. The updated Code sets out how it applies to such trading and details best practice for using electronic venues; and
- Trade Settlement Discipline: the updated Code stresses the importance of high standards of settlement discipline, in response to concern in the market that the level of non-settled trades has increased.

19 – 23 April 2021: Speeches, Letters & Publications

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

- PRA issues statement on Remuneration Benchmarking and Remuneration High Earners reporting templates – this statement advises firms on the PRA's approach to the Remuneration Benchmarking and Remuneration High Earners reporting templates, as part of the EBA's Taxonomy 2.10
- Minutes of Money Markets Committee meeting March 2021 – the Money Markets Committee is a forum for market participants and authorities to discuss the UK unsecured deposits and funding market and securities lending and repo markets
- The Bank of England and fintech: public support for private innovation – Speech by Dave Ramsden
- Meeting varied people – Speech by Andrew Bailey given at Diversity in Market Intelligence: Launching our Meeting Varied People Initiative
- Slow recoveries, endogenous growth and macroprudential policy – Staff Working Paper No. 917
- How do we monitor UK financial conditions? – Bank Overground

Financial Conduct Authority (FCA)

19 April 2021: FCA consults on second phase of proposed rules to introduce the UK Investment Firm Prudential Regime (IFPR)

The Financial Conduct Authority (FCA) launched its consultation on the second phase of proposed rules to introduce the UK Investment Firm Prudential Regime (IFPR). IFPR is a new prudential regime for UK firms authorised under the Markets in Financial Instruments Directive (MiFID). It will create a single, proportionate regime that reflects firms' size and business. The regime focuses prudential requirements on the potential harm to consumers, clients, and the market. It includes the amount of liquid assets and capital levels a firm should hold to enable it to wind down in an orderly way if required. The regime should provide for better competition between firms and simplify requirements for new market entrants. The FCA is asking for feedback until 28 May 2021.

In the second of the FCA's 3 consultations, the FCA is asking for views on:

- remaining aspects on own funds requirements (such as the Fixed Overheads Requirement),
- the basic liquid assets requirement,
- remuneration requirements, and
- risk management – the Internal Capital and Risk Assessment (ICARA) process.

The first consultation introduced the UK IFPR and focused on the categorisation of investment firms, prudential consolidation, own funds and own funds requirements, and new reporting requirements. The FCA will publish the Policy Statement and near-final rules on the first consultation in Q2 2021. Following this second consultation, the FCA will issue a third consultation in Q3 2021. The FCA is consulting earlier on more complex issues where possible to allow firms to prepare for the regime, which will be introduced in January 2022.

19 – 23 April 2021: Speeches, Letters & Publications

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

- FCA makes key sustainability and technology hires – FCA appointed Sacha Sadan as Director of Environment Social and Governance. Sacha will develop and advocate for the FCA's approach to sustainable finance domestically and internationally. He will lead the development of policy that will help ensure the long-term safety and soundness of firms, the proper functioning of markets and the protection of consumers
- Cautious optimism for the post-pandemic world – Speech by Charles Randell, Chair of the FCA and PSR, to the Finance & Leasing Association
- Why black inclusion matters to us – Speech by Sheldon Mills, Executive Director, Consumers and Competition, delivered at New Financial
- Levelling the playing field-innovation in the service of consumers and the market – Speech by FCA CEO, Nikhil Rathi, to FinTech Week

Financial Reporting Council (FRC)

19 – 23 April 2021: Speeches, Letters & Other Publications

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

- FRC announces international conference on the importance of culture – the conference will explore the link between audit firm culture and audit quality with the objective of accelerating the pace of change for cultural transformation in the audit profession
- FRC proposes extending application period for accounting requirements covering COVID-19-related rent concessions – the FRC issued an Exposure Draft that proposes to extend the application period of requirements that cover the accounting treatment of temporary rent concessions occurring as a direct consequence of the COVID-19 pandemic by one year. The amendments are proposed to be effective for accounting periods beginning on or after 1 January 2021, with early application permitted. Comments on FRED 78 are invited by 11 May 2021

European insurance and Occupational Pensions Authority (EIOPA)

19 – 23 April 2021: Speeches, Letters & Other Publications

During the week, 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 issues Opinion on the supervision of the use of climate change risk scenarios in ORSA – in this Opinion EIOPA sets out expectations on the supervision of the integration of climate change risk scenarios by insurers in their ORSA
- The calculation of the Ultimate Forward Rate for 2022 – EIOPA calculated the UFR for 2022 in accordance with the methodology to derive the UFR

European Central Bank (ECB)

22 April 2021: ECB releases monetary policy decisions April 2021

The Governing Council of the European Central Bank (ECB) decided to reconfirm its very accommodative monetary policy stance:

- The interest rate on the main refinancing operations and the interest rates on the marginal lending facility and the deposit facility will remain unchanged at 0.00%, 0.25% and -0.50% respectively;
- The Governing Council will continue to conduct net asset purchases under the pandemic emergency purchase programme (PEPP) with a total envelope of €1,850 billion until at least the end of March 2022 and, in any case, until it judges that the coronavirus crisis phase is over;
- Net purchases under the asset purchase programme (APP) will continue at a monthly pace of €20 billion; and
- Finally, the Governing Council will continue to provide ample liquidity through its refinancing operations.

19 – 23 April 2021: Speeches, Letters & Other Publications

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

- ECB's large-scale review boosts reliability and comparability of banks' internal models – the ECB published the results of its targeted review of internal models (TRIM). This review aimed to ensure that internal models comply with the rules and provide different outcomes only when the underlying risks are different. In other words, TRIM reduced non-risk-based variability of models' outputs. With 200 on-site investigations conducted in 65 significant banks using internal models, TRIM is the largest project ever carried out by ECB Banking Supervision

- Results of the ECB Survey of Professional Forecasters in the second quarter of 2021 – in the ECB Survey of Professional Forecasters (SPF) for the second quarter of 2021, HICP inflation expectations stood at 1.6%, 1.3% and 1.5% for 2021, 2022 and 2023, respectively. Compared with the previous round for the first quarter of 2021, these were revised upward by 0.7 percentage points for 2021 but unchanged for 2022 and 2023. Respondents reported that they considered the factors behind the upward revision for 2021 to be largely temporary. Longer-term inflation expectations (for 2025) stood at 1.7%, also unchanged compared with the previous round Regarding GDP growth, SPF respondents revised down their expectations for 2021 but up for 2022, implying a further delay in the expected recovery. The expectations imply a return of GDP during 2022 to above its 2019 level
- ECB publishes results of April 2021 euro area bank lending survey – according to the April 2021 euro area bank lending survey (BLS), credit standards - i.e. banks' internal guidelines or loan approval criteria - tightened moderately for loans or credit lines to enterprises (net percentage of banks standing at 7%, see Chart 1) in the first quarter of 2021
- Main findings from the ECB's recent contacts with non-financial companies – Economic Bulletin
- Capital flows-at-risk: push, pull and the role of policy – Working Paper Series

European Commission

21 April 2021: Commission adopts a Sustainable finance package, which includes the EU Taxonomy Climate Delegated Act, the Corporate Sustainability Reporting Directive, and amending Delegated Acts on fiduciary duties, investment and insurance advice

The European Commission has adopted an ambitious and comprehensive package of measures to help improve the flow of money towards sustainable activities across the European Union. By enabling investors to re-orient investments towards more sustainable technologies and businesses, the measures will be instrumental in making Europe climate neutral by 2050. They will make the EU a global leader in setting standards for sustainable finance.

The package is comprised of:

- The EU Taxonomy Climate Delegated Act: aims to support sustainable investment by making it clearer which economic activities most contribute to meeting the EU's environmental objectives. The College of Commissioner reached a political agreement on the text. The Delegated Act will be formally adopted at the end of May once translations are available in all EU languages. A Communication, also adopted by the College, sets out the Commission's approach in more detail;
- A proposal for a Corporate Sustainability Reporting Directive (CSRD): this proposal aims to improve the flow of sustainability information in the corporate world. It will make sustainability reporting by companies more consistent, so that financial firms, investors and the broader public can use comparable and reliable sustainability information; and
- Finally, six amending Delegated Acts: on fiduciary duties, investment and insurance advice, which will ensure that financial firms, e.g. advisers, asset managers or insurers, include sustainability in their procedures and their investment advice to clients.

To ensure the transition in finance and prevent greenwashing, all elements of this package will enhance the reliability and comparability of sustainability information. It will put the European financial sector at the heart of a sustainable and inclusive economic recovery from the COVID-19 pandemic and the longer-term sustainable economic development of Europe.

For more information, please check the Commission's Q&As for both the "Taxonomy Climate Delegated Act and Amendments to Delegated Acts on fiduciary duties, investment and insurance advice" and the "Corporate Sustainability Reporting Directive proposal".

21 April 2021: Commission welcomes provisional agreement on the European Climate Law

The European Commission welcomed the provisional agreement between the co-legislators on the European Climate Law. As one of the key elements of the European Green Deal, the European Climate Law enshrines the EU's commitment to reaching climate neutrality by 2050 and the intermediate target of reducing net greenhouse gas emissions by at least 55% by 2030, compared to 1990 levels.

In addition to the 2050 climate neutrality target, the deal strengthens the European framework for climate action by introducing the following elements:

- an ambitious 2030 climate target of at least 55% reduction of net emissions as compared to 1990, with clarity on the contribution of emission reductions and removals;
- recognition of the need to enhance the EU's carbon sink through a more ambitious LULUCF regulation, for which the Commission will make proposals in June 2021;
- a process for setting a 2040 climate target, taking into account an indicative greenhouse gas budget for 2030-2050 to be published by the Commission;
- a commitment to negative emissions after 2050;
- the establishment of European Scientific Advisory Board on Climate Change, that will provide independent scientific advice;
- stronger provisions on adaptation to climate change;
- strong coherence across Union policies with the climate neutrality objective; and
- a commitment to engage with sectors to prepare sector-specific roadmaps charting the path to climate neutrality in different areas of the economy.

Once this provisional agreement is formally approved by Parliament and Council, the European Climate Law will be published in the Official Journal of the Union and will enter into force.

Central Bank of Ireland (CBI)

19 – 23 April 2021: Speeches, Letters & Other Publications

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

- The latest economic outlook – Blog
- "Enterprise financing and investment in Ireland – tackling the challenges of COVID-19, digitalisation and climate change" – Webinar

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Commission de Surveillance du Secteur Financie (CSSF)

19 – 23 April 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:

- CSSF publishes Circular21/771 – application of the guidelines of the European Securities and Markets Authority on disclosure requirements under the Prospectus Regulation

Basel Committee on Banking Supervision (BCBS)

19 – 23 April 2021: Speeches, Letters & Other Publications

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

- Evaluating the effectiveness of Basel III during Covid-19 and beyond – Keynote address by Pablo Hernández de Cos, Chair of the Basel Committee on Banking Supervision and Governor of the Bank of Spain, at the BCBS-Bundesbank-CEPR workshop on evaluating financial regulation, 20 April 2021
- Assessing the impact of Basel III: Evidence from macroeconomic models: literature review and simulations – Working papers

International Capital Market Association (ICMA)

21 April 2021: ICMA AMIC and EFAMA issue joint response to IOSCO consultation on fund liquidity management by open-ended funds

The International Capital Market Association's (ICMA) AMIC and EFAMA submitted a joint response to the IOSCO consultation on fund liquidity management by open-ended funds. The response highlights how industry practices and existing regulatory provisions in Europe are well aligned with the Liquidity Risk Management (LRM) recommendations issued by IOSCO in 2018. AMIC and EFAMA also acknowledge the positive impact of the LRM recommendations, as they have incentivised national supervisors to encourage and facilitate the use of LMTs, which are now available in most European jurisdictions and in all main fund domicile centres, covering almost all AuM managed by UCITS and AIFs.

The response also notes that, in the context of the COVID-19 market downturn in March/April 2020, liquidity risk was well management by investment funds domiciled in Europe and refer to an ESMA report which concluded that (1) out of the 174 AIFs studied, none used substantial leverage nor had to suspend redemption and (2) out of the 459 UCITS fund studied, only 6 UCITS funds suspended temporarily (up to 13 days). This shows that fund liquidity risk management is overall sound in European funds and that existing EU rules - including those implementing IOSCO LRM - are sufficient. However, AMIC and EFAMA reiterate the need to facilitate the access to information related to shares/units held by the different categories of underlying investors to better appraise liability risks.

22 April 2021: ICMA ERCC publishes consultation paper on the role of repo in green and sustainable finance

The ICMA European Repo and Collateral Council (ERCC) published a consultation paper on the role of repo in green and sustainable finance, exploring the sustainability aspects of repo and collateral as well as assessing the existing opportunities and potential risks in this area. In particular, the paper looks at the different possible intersections between the repo and collateral market and sustainable finance: 1) Repo with green and sustainable collateral; 2) Repo with green and sustainable cash proceeds; and 3) Repo between green and sustainable counterparties.

ICMA invites all interested stakeholders to respond and comment on the paper by filling in our online survey which will be open until 28 May 2021. The results will help the ICMA ERCC to identify areas of focus going forward and help to frame future workstreams, if required.

19 – 23 April 2021: Speeches, Letters & Other Publications

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

- ICMA Podcast: Monthly Market update: ICMA Asset Management & Investors Council – Robert Parker, Chair of ICMA's Asset Management and Investors Council, reviews the market events of the past weeks, including Q1 GDP growth and recovery, stabilisation of the US 10 year treasury yields and geopolitical risks to be considered by investors

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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

- Brussels faces backlash over delay to decision on whether gas is green
  "The European Commission is facing a political and scientific backlash over its decision to delay part of its landmark classification system for investors in an attempt to resolve a dispute about how to label energy sources such as natural gas and nuclear power"
- Coalition of big investors pushes banks to defund carbon emitters
  "Goldman Sachs, HSBC, BNP Paribas and 24 other global banks are coming under pressure from a coalition of large investors to stop financing carbon-intensive projects and to scale up their green lending. The group of 35 big investors managing $11tn in assets, which include Amundi, Legal and General Investment Management, the Church Commissioners for England and Nordea Asset Management, have called on the banks to align their financing with a goal of net zero emissions and to ensure that executive pay is linked to this target. The move is the latest sign that investors' climate focus is shifting from big carbon emitters, such as oil and gas groups, to those providing the finance for carbon-intensive projects"
- Barclays pulls out of underwriting debt deal to fund Alabama prisons
  "Barclays has pulled out of underwriting an $840m debt deal by CoreCivic to fund the building of two prisons in Alabama, after the bank came under scrutiny for its involvement"
- Invesco launches first 'green building' ETF
  "Invesco is launching what is believed to be the world's first "green building" exchange traded fund, aiming to fill a gap in portfolios in a world increasingly focused on climate change. The Invesco MSCI Green Building ETF (GBLD), due to list on the New York stock exchange today will target the buildings sector, estimated by the UN Environment Programme to account for 38 per cent of global carbon emissions"
- Big pay battles loom as investors say no to pandemic bonuses
  "The revolt came after a series of big investors, from Legal and General Investment Management to Fidelity International, urged companies to show restraint around executive pay this year, particularly if they had been hard hit by the pandemic. While many businesses have taken on board shareholders' warnings, others have not — setting the scene for a tense annual meeting season"
- UK competition watchdog provisionally clears Asda deal
  "The UK's competition regulator has provisionally cleared the owners of the petrol station company EG Group to buy Asda, the UK's third-largest supermarket chain, if they address concerns about a possible loss of competition in 36 local areas"
- FirstGroup sells US bus operations to EQT for £3.3bn
  "UK-listed transport operator FirstGroup has agreed to sell its US bus operations to EQT's infrastructure fund in a £3.3bn deal that will pass the operation of tens of thousands of yellow school buses to the Swedish private equity group"
- CVC steps back from plans to take Toshiba private
  "CVC Capital Partners has taken a major step back from its plans to take Toshiba private in Japan's biggest leveraged buyout in a letter telling the company it would step aside for now"
- End of Libor stirs anger on Wall Street
  "Ending the use of dollar Libor, the scandal-tinged benchmark bank funding rate, was always going to be problematic. Some Libor traders went to jail for collusion and self-enrichment. The Fed and its fellow regulators put together a public-private committee on Libor replacement big enough to swamp a ferry boat. That hasn't entirely worked"
- 'Litigation will take over': US lawmakers warned of Libor chaos
  "US regulators and government officials last week appeared en masse before a congressional committee to make a plea over the country's sluggish transition away from scandal-hit interest rate benchmark Libor"
- ECB cracks down on deficiencies in big banks' risk modelling
  "The biggest eurozone banks have repeatedly been too optimistic in their risk-modelling, the European Central Bank said as it presented the results of a five-year review that has wiped out a chunk of their capital ratios. The findings of the review appear to confirm longstanding suspicions among regulators and analysts that larger banks have often artificially inflated the strength of their balance sheets by underestimating the riskiness of their assets, giving them a short-term advantage over more cautious rivals"
- How Credit Suisse rolled the dice on risk management — and lost
  "Senior executives pushed compliance to become more commercial and dissenting voices were suppressed"

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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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