

BRIEFINGS

LEGAL & REGULATORY

27 July 2021

Legal and Regulatory Updates

19/07/2021 – 23/07/2021

Key Highlights

- This Legal & Regulatory Update covers the week commencing **19/07/2021**.
- [FCA](#) sets guiding principles on design, delivery and disclosure of ESG and sustainable investment funds.
- [FRC](#) Lab publishes report on reporting on stakeholders, decisions and S172.
- [FRC](#) publishes report on Board Diversity and Effectiveness in FT350 Companies.
- [ESMA](#) sees small decrease in EEA prospectus approvals in 2020.
- [EBA](#) finds that extensive use of central bank facilities drove asset encumbrance ratios up in 2020.
- [ECB](#) publishes its monetary policy decisions July 2021.
- [Commission](#) launches a targeted consultation on the functioning of the EU securitisation framework.
- 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)

19 – 23 July 2021: Speeches, Letters & Publications

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

- [Seventh meeting of the PRA and FCA's joint Climate Financial Risk Forum](#) – since the last Forum in March, the working group chairs, members and secretariat have been progressing their respective topics of risk management, scenario analysis, disclosure and innovation, while also further developing the cross-cutting workstream on climate data and metrics. Members discussed the challenges facing the financial services industry and particular sectors in relation to climate-related financial risks. The discussion also focussed on potential future areas of focus for the CFRF. The next meeting will take place in October 2021, where working group outputs will be signed off prior to publication at an online launch event which will coincide with COP26
- [Staff Working Paper No. 932: Dash for dollars](#) – within-firm variation of corporate bond spreads around the Covid-19 outbreak shows that US dollar-denominated bonds experienced larger increases in spreads relative to non-dollar bonds, especially at short maturities. Differently, in the non-dollar sample it was the spreads of longer maturity bonds that widened more markedly. Price pressures arising from a liquidity-driven dash for cash alone cannot rationalize these findings. Instead, the patterns we uncover suggest a 'dash for dollars', in which investors sold their dollar-denominated assets first, with a consequent impact on prices
- [How has Covid affected global trade?](#) – Bank Overground
- [Will the pandemic "scar" the economy?](#) – Remarks by Jonathan Haskel
- [Emerging prudential lessons from the Covid stress](#) – Speech by Victoria Saporta
- [Mismatches between spending and supply, caused by the pandemic, in the UK and global economies](#) – Speech by Ben Broadbent

Financial Conduct Authority (FCA)

19 July 2021: FCA sets guiding principles on design, delivery and disclosure of ESG and sustainable investment funds

The Financial Conduct Authority (FCA) [published](#) a letter to the chairs of authorised fund managers setting out its expectations on the design, delivery and disclosure of environmental, social and governance (ESG) and sustainable investment funds. The FCA receives a high volume of applications for authorisation of funds with a sustainable focus. However, many of these applications are poor-quality and fall below the FCA's expectations. The FCA also expects clear and accurate ongoing disclosures to consumers where funds make ESG-related claims.

Therefore, the FCA developed a set of guiding principles, informed by broad stakeholder liaison and consumer research, to help firms apply its existing rules. The guiding principles are there to ensure that any ESG-related claims are clear and not misleading, both at the time of application and on an ongoing basis, so that consumers can make informed choices. The FCA will continue to scrutinise and challenge firms on their fund strategies and disclosures and to ensure that documentation submitted to it for authorisation meets its regulatory requirements.

The guiding principles are relevant where an FCA authorised investment fund pursues a responsible or sustainable investment strategy and claims to pursue sustainability characteristics, themes or outcomes. These principles are targeted at funds that make specific ESG-related claims, not those that integrate ESG considerations into mainstream investment processes. The guiding principles complement the FCA's recent proposals to implement climate-related disclosure rules for asset managers, life insurers and FCA-regulated pension schemes.

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Financial Reporting Council (FRC)

19 – 23 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:

- [FRC Lab publishes report on reporting on stakeholders, decisions and S172](#) – the report highlights that information on stakeholders and on decisions can help investors understand how a company is progressing in fulfilling its purpose and achieving long-term success. Section 172 statements can then be a helpful bridge between the two types of information. This report outlines what investors want to see reported in these areas and provides examples from current reporting practice that reflect possible helpful ways of addressing these needs. The report builds on the tips on Section 172 statements published in October 2020. Alongside the report, the Lab has published a [summary](#) of the questions for companies to consider in determining what information to report on stakeholders and decisions which meets investors' needs. A [podcast](#) is also available where the Lab's project manager, Marie Claire Tabone, speaks to Freddie Woolfe, Global Sustainable Equities Analyst at Jupiter Asset Management and Helen Price, Stewardship Manager at Brunel Pension Partnership. They discuss the importance of linking information on stakeholders and decisions to strategy and the long term success of the company
- [FRC publishes report on Board Diversity and Effectiveness in FT350 Companies](#) – the research published by the FRC in conjunction with London Business School, Leadership Institute and SQW found that the effort to diversify boards pays benefits in terms of boardroom culture and performance. To maximise these benefits, boards should recognise that change takes time and that diversity without active inclusion is unlikely to encourage new talent to the board
- [FRC publishes Annual Audit Quality Inspection Results 2020/21](#) – the 2020/21 results show that nearly one third of audits inspected by the FRC still require improvement
- [FRC on track to become a new, more resilient regulator](#) – the FRC published its Annual Report and Accounts. This looks at the progress made over 2020/21 and the next steps in delivering a programme of transformation towards the new robust and independent regulator, The Audit, Reporting and Governance Authority (ARGA) as set out in the Government's White Paper 'Restoring trust in audit and corporate governance', published on 18th March 2021. During a year dominated by the challenges presented by the pandemic, the FRC supported stakeholders by issuing consolidated Covid-19 guidance for companies and auditors while continuing to influence the development of international standards, including for climate and wider ESG reporting
- [Board Diversity and Effectiveness in FTSE 350 Companies](#) – Webinar

European Securities and Markets Authority (ESMA)

19 – 23 July 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 consults on remuneration requirements under MiFID II](#) – the remuneration of staff involved in the provision of investment and ancillary services and activities, or in selling or advising on structured deposits to clients is a crucial investor protection issue. Therefore, ESMA has developed draft guidelines that aim to clarify and foster convergence in the implementation of certain aspects of the new MiFID II remuneration requirements, replacing the existing ESMA guidelines on the same topic, issued in 2013

- [ESMA highlights areas for improvement in compliance with MiFID II suitability requirements](#) – ESMA published the results of the 2020 Common Supervisory Action (CSA) on MiFID II suitability requirements. The 2020 CSA has shown that firms overall comply with key elements of the suitability requirements that were already regulated under MiFID I, such as the understanding of products and clients and their processes and procedures to ensure the suitability of investments. However, shortcomings and areas of improvement have emerged about some of the new requirements introduced by MiFID II, notably the requirement to consider the cost and complexity of equivalent products, the costs and benefits of switching investments and suitability reports
- [New Q&As available](#) – ESMA updated its Questions and Answers on the following topics: AIFMD, UCITS, MiFIR data reporting, Prospectus, and BMR
- [ESMA publishes fourth annual report on use of sanctions for UCITS](#)
- [ESMA publishes second report on sanctions under AIFMD](#)
- [ESMA sees small decrease in EEA prospectus approvals in 2020](#) – ESMA found that the number of prospectus approvals across the European Economic Area (EEA) dropped by almost 5% compared to 2019, which appears to indicate that the Covid-19 crisis did not have the anticipated impact on approvals

European Banking Authority (EBA)

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

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

- [EBA finds that extensive use of central bank facilities drove asset encumbrance ratios up in 2020](#) – the EBA published its annual report on Asset Encumbrance. As COVID-19 spread across Europe, banks made extensive use of central bank facilities to strengthen their liquidity buffers and maintain the flow of credit to the real economy. This resulted in the largest yearly rise in the asset encumbrance ratio since data is available
- [EBA launches discussion on proportionality assessment methodology](#) – the EBA published a Discussion Paper aiming at gathering some preliminary input on how to standardise the proportionality assessment methodology for credit institutions and investment firms. The discussion paper invites all market participants affected by the proportional treatment in the application of EBA regulatory products to provide their input. The consultation runs until 22 October 2021

European Insurance and Occupational Pensions Authority (EIOPA)

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

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

- [EIOPA consults on the approach to the supervision of run-off undertakings](#) – EIOPA issued a consultation on the supervisory statement regarding the supervision of run-off undertakings. The aim of the supervisory statement is to ensure that a high-quality and convergent supervision is applied to run-off undertakings or portfolios that are subject to Solvency II regulation. Acquisition of run-off portfolios and run-off undertakings by other insurance undertakings is increasing and is attracting interest from specialised investment entities such as private equity. EIOPA believes that it is essential to specify supervisory expectations to better consider and deal with potential risks stemming from run-off business models. The supervision of run-off undertakings is particularly challenging because of the specific risk profile of such undertakings e.g. in

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relation to the changes in ownership. In addition, there is a lack of specific regulation for run-off undertakings in the Solvency II framework

European Central Bank (ECB)

22 July 2021: ECB publishes its monetary policy decisions July 2021

The Governing Council of the European Central Bank (ECB) [revised](#) its forward guidance on interest rates. It did so to underline its commitment to maintain a persistently accommodative monetary policy stance to meet its inflation target. In support of its symmetric two per cent inflation target and in line with its monetary policy strategy, the Governing Council expects the key ECB interest rates to remain at their present or lower levels until it sees inflation reaching two per cent well ahead of the end of its projection horizon and durably for the rest of the projection horizon, and it judges that realised progress in underlying inflation is sufficiently advanced to be consistent with inflation stabilising at two per cent over the medium term. This may also imply a transitory period in which inflation is moderately above target.

Having confirmed its June assessment of financing conditions and the inflation outlook, the Governing Council highlighted that it continues to expect purchases under the pandemic emergency purchase programme (PEPP) over the current quarter to be conducted at a significantly higher pace than during the first months of the year. The Governing Council also confirmed its other measures to support its price stability mandate, namely the level of the key ECB interest rates, its purchases under the asset purchase programme (APP), its reinvestment policies and its longer-term refinancing operations.

19 – 23 July 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 decides not to extend dividend recommendation beyond September 2021](#) – the ECB decided not to extend beyond September 2021 its recommendation that all banks limit dividends. Instead, supervisors will assess the capital and distribution plans of each bank as part of the regular supervisory process
- [Main findings from the ECB's recent contacts with non-financial companies](#) – Economic Bulletin Issue 5, 2021
- [Credit risk: Acting now paves the way for sound resilience later](#) – Blog post by Elizabeth McCaul, Member of the Supervisory Board of the ECB

European Commission

19 – 23 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:

- [Commission launches a targeted consultation on the functioning of the EU securitisation framework](#) – in order to deliver on the Commission's commitment in the capital markets union (CMU) action plan and in order to prepare the report mandated by Article 46 of the Securitisation Regulation, this targeted consultation seeks stakeholders' feedback on a broad range of issues. It covers the areas mandated by Article 46, namely: the effects of the regulation (Section 1), private securitisations (Section 2), the need for an equivalence regime

in the area of STS securitisations (Section 5), disclosure of information on environmental performance and sustainability (Section 6), and the need for establishing a system of limited licensed banks performing the functions of SSPEs – securitisation special purpose entities (Section 7). In addition, the questionnaire seeks feedback on a number of additional issues that have been identified and raised by stakeholders and by the Joint Committee of the ESAs as having an impact on the functioning of the securitisation framework

- [De-risking Energy Efficiency Platform: understanding the risk and benefits of energy efficiency investments through reference data](#)

Central Bank of Ireland (CBI)

19 – 23 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:

- [“The importance of the role of the Designated Person in Fund Management Companies”](#) – Speech by Director General, Financial Conduct, Derville Rowland

Basel Committee on Banking Supervision (BCBS)

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

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

- [Basel Committee consults on an amendment to the process for reviewing the G-SIB methodology](#) – the BCBS issued for consultation a proposal for a technical amendment to the Basel Framework. The amendment describes a new process that will be used by the Committee to review the assessment methodology for global systemically important banks (G-SIBs). The Committee assesses the systemic importance of global banks annually using an indicator-based methodology. It plans to replace the existing three-year review cycle of the assessment methodology with a process of ongoing monitoring and review

International Capital Market Association (ICMA)

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

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

- [Podcast: Taxonomies in sustainable finance](#) – why are they important? – in this podcast, Nicholas Pfaff (ICMA's Head of Sustainable Finance) discusses the main highlights of the ICMA's recent publication 'Overview and Recommendations of Sustainable Finance Taxonomies' with ICMA colleagues Ozgur Altun and Yanqing Jia. They cover what taxonomies mean for sustainable finance, approaches taken by major initiatives such as by the EU and China, the interplay of taxonomies with the Green Bond Principles, existing guidance as well as recommended success criteria for new taxonomy initiatives from other jurisdictions
- [Podcast: Secondary corporate bond markets in the US and Europe](#) – ICMA's Liz Callaghan discusses trends in corporate bond markets in the USA and in Europe with BondCliq CEO Chris White and Gabriele Frediani who heads business development for Bondcliq in Europe, highlighting similarities and the differences between the two markets. They also reflect on the need for a balanced approach for pre-trade transparency and data ownership and the lessons learned from Covid regarding market mechanics

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- [Podcast: Capital markets contributing to a healthier and more productive ocean](#) – ICMA's Mushtaq Kapasi speaks with Suzanne Johnson, Senior Advisor, Sustainable Ocean Business with UN Global Compact about business opportunities in sustainable oceans and the role that capital markets can play in scaling up ocean based solutions to meet the needs of our growing world. Suzanne discusses the concept of 'blue bonds' and how they relate to green and sustainability-linked bonds, the risks and opportunities for commercial investment in sustainable oceans, and how the bond markets can facilitate investment

International Organization of Securities Commissions (IOSCO)

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

During the week, the International Organization of Securities Commissions (IOSCO) released the following speeches, announcements, letters and publications that might be of interest to our readers:

- [The Committee on Payments and Market Infrastructures \(CPMI\) and the International Organization of Securities Commissions \(IOSCO\) publish a report on FMI's business continuity planning](#) – the review was part of regular monitoring of the implementation of the PFMI, which set international standards for payment, clearing and settlement systems. These standards are designed to ensure that the infrastructure supporting global financial markets is robust and well placed to withstand financial shocks. The latest assessment, [Implementation monitoring of PFMI: Level 3 assessment of FMI's business continuity planning](#) covers 38 FMIs from 29 jurisdictions. Although the survey of FMIs was carried out before the Covid-19 pandemic, all FMIs said their business continuity plans included a pandemic scenario. To complement this information, the report includes a high-level summary of FMIs' actual responses to Covid19 in some member jurisdictions. The summary outlines that overall, FMIs have not experienced service disruptions during the pandemic

Financial Stability Board (FSB)

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

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

- [The lessons we are learning from the COVID-19 pandemic: an FSB perspective](#) – Keynote speech by FSB Secretary General, Dietrich Domanski, at the Asian Banker Finance China 2021 Conference

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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

- [The private equity backlash against ESG](#)
“Call it Newton’s law of corporate ownership. As listed companies come under increasing investor pressure to act on everything from executive pay to carbon emissions, a reaction against those constraints seems to be fuelling a spate of buyouts by private equity firms”
- [Investors increase pressure on companies over racial issues](#)
“Investor support for resolutions at annual meetings that focused on diversity, such as calling for companies to report on their workforce inclusion efforts, has soared this year, according to figures from Proxy Insight, a data provider. The average of investor support for diversity-related resolutions globally in the first six months of 2021 was 42.4 per cent, compared with 23.9 per cent over the whole of 2020, the data showed”
- [Climate change litigation rattles companies and shareholders](#)
“While each court case is different and rulings will certainly diverge, climate change litigation is becoming an increasing worry for companies and their shareholders”
- [The world of work has changed — time for company law to catch up](#)
“The Better Business Act campaign, supported by hundreds of companies as well as the IoD, wants to change section 172. They argue — correctly — that what is there is woolly and embeds the idea that, when push comes to shove, shareholders come first: what is needed is a legal obligation putting social, environmental and shareholder interests on an equal footing. This sounds like a technical rewrite but would be a fundamental, and much-needed, overhaul — one that would drag the foundations of corporate obligations more into line with current thinking”
- [Corporate values matter but they must go beyond buzzwords](#)
“A new survey of 525 of the world’s largest public companies by the AMO advisory network confirms that my former bosses are not alone in their enthusiasm for vague principles. Integrity, innovation, respect, responsibility and sustainability topped the list of popular buzzwords, as stated in annual reports from the past two years. Some companies even opted for joy. I suspect their popularity lies in the fact that they are extremely hard to measure”
- [UBS launches portfolio to invest in women-led hedge funds](#)
“UBS has launched a portfolio that invests solely in hedge funds led by women in an effort to improve diversity and spot hidden talent in the traditionally male-dominated sector. The Swiss bank’s asset management arm launched the Carmen portfolio in recent weeks after trials, said people familiar with the matter. It will aim to pick 10-15 funds globally where a woman has sole or joint discretion over the investment of the assets”
- [BlackRock increases opposition to high executive pay in Europe](#)
“The world’s biggest asset manager BlackRock has increased its opposition to executive pay in Europe over the past year, voting against salary packages for bosses at a swath of companies that laid off workers during the pandemic. Details of BlackRock’s voting record, published on Tuesday, show it has become more willing to use its muscle as a leading shareholder in almost all the world’s largest public companies to try to drive up corporate governance standards. In the past, critics have accused it of not doing enough, given its claims to be a champion of environmental, social and governance standards”
- [Fidelity International threatens tough stance on climate and gender](#)
“Fidelity International, the global asset manager, says it will punish directors at more than 1,000 companies globally next year if they fail to tackle the issues of climate change and a lack of boardroom gender diversity. Large investors have traditionally been reluctant to vote against the re-election of directors at general meetings, but Fidelity said that from 2022 it would hold board members to account when companies were deemed to be making insufficient progress on board diversity or in their response to global warming”
- [Corporate Japan gets serious about ESG](#)
“The focus on human rights and sustainability has been increasing more than regular companies had anticipated”
- [Sony boss shows a passion for social purpose](#)
“For companies struggling with pandemic disruptions, talk of sustainability initiatives and purpose may feel like luxuries when the priority is to rebuild their business. However, for some chief executives, last year’s events — the pandemic, the Black Lives Matter protests and a string of natural disasters — have prompted a rethink of employee wellbeing and their companies’ social role”
- [Ex-chair of world’s biggest pension fund sounds caution on ESG](#)
“The ex-chair of the board of the world’s largest pension fund, who oversaw its \$1.7tn portfolio as it became a pioneer of responsible investment, has warned the institution to remember its core duty to Japanese pensioners: returns”

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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