European Leveraged Finance Association

BRIEFINGS

LEGAL & REGULATORY

29 June 2021

Legal and Regulatory Updates

21/06/2021 – 25/06/2021

Key Highlights

- This Legal & Regulatory Update covers the week commencing **21/06/2021**.
- BoE publishes monetary policy summary and minutes of the Monetary Policy Committee meeting.
- FCA consults on further climate-related disclosure rules.
- EBA publishes its report on management and supervision of ESG risks for credit institutions and investment firms.
- ECB takes over supervision of systemic investment firms.
- European Commission, ECB Banking Supervision, EBA, and ESMA encourage market participants to cease all LIBOR settings.
- AMF presents an initial overview of SFTR reporting data.
- CSSF publishes its Newsletter No 245 June 2021.
- CSSF publishes Feedback Report - ESMA Common Supervisory Action on UCITS Liquidity Risk Management
- ICMA AMIC responds to FCA consultation on UK MiFID research and best execution.
- 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)

24 June 2021: BoE publishes monetary policy summary and minutes of the Monetary Policy Committee meeting

At its meeting ending on 22 June 2021, the Bank of England's (BoE) Monetary Policy Committee (MPC) judged that the existing stance of monetary policy remained appropriate. The MPC voted unanimously to maintain Bank Rate at 0.1%. The Committee voted unanimously for the Bank of England to maintain the stock of sterling non-financial investment-grade corporate bond purchases, financed by the issuance of central bank reserves, at £20 billion. The Committee voted by a majority of 8-1 for the Bank of England to continue with its existing programme of UK government bond purchases, financed by the issuance of central bank reserves, maintaining the target for the stock of these government bond purchases at £875 billion and so the total target stock of asset purchases at £895 billion.

21 – 25 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:

- Minutes of the Working Group on Sterling Risk-Free Reference Rates May 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
- BoE publishes information on capital issuance May 2021 – the capital issuance statistics consist of non-government primary market issuance of bonds, commercial paper and equity, representing finance raised by UK resident entities
- Minutes of the Productive Finance Working Group April 2021 – investment in productive finance refers to investment that expands productive capacity, furthers sustainable growth and can make an important contribution to the real economy
- Minutes of the Productive Finance Working Group May 2021
- Joint readout of principals' meeting of UK and US authorities regarding central counterparty resolution – senior officials from the Bank of England, Federal Deposit Insurance Corporation, Commodity Futures Trading Commission, Securities and Exchange Commission, and Federal Reserve Board convened a virtual meeting today to discuss certain issues relating to the concept of resolution of a central counterparty (CCP)

Financial Conduct Authority (FCA)

22 June 2021: FCA consults on further climate-related disclosure rules

The Financial Conduct Authority (FCA) has published new proposals on climate-related disclosure rules for listed companies and certain regulated firms. The proposals follow the introduction of climate-related disclosure rules for the most prominent listed commercial companies in December 2020 which are aligned with the recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD).

In the consultations the FCA is proposing:

- to extend the application of its TCFD-aligned Listing Rule for premium-listed commercial companies to issuers of standard listed equity shares; and
- to introduce TCFD-aligned disclosure requirements for asset managers, life insurers, and FCA-regulated pension providers, with a focus on the information needs of clients and consumers.

The new proposals are among the FCA's first substantive policy proposals for the UK asset management and asset owner sectors since the end of the EU Withdrawal transition period. Given the global reach of regulated firms operating in the UK, the FCA has approached the design of the regime with international consistency in mind and to accommodate firms' different business models. The proposed rules are designed to help make sure that the right information on climate-related risks and opportunities is available along the investment chain – from companies in the real economy, to financial services firms, to clients and consumers. This should help encourage investment in more sustainable projects and activities, consistent with the Chancellor's expectations in the FCA's recent remit letter that the FCA should 'have regard' to the Government's commitment to achieve a net-zero economy by 2050.

Alongside these proposals, the FCA is also seeking views on other topical environmental, social and governance (ESG) issues in capital markets, including on green and sustainable debt markets and the increasingly prominent role of ESG data and rating providers. The FCA is inviting feedback to both consultations by 10 September 2021 and intends to confirm its final policy on climate-related disclosures before the end of 2021. The FCA will separately consider stakeholder views on the ESG-related discussion topics in capital markets, with a view to publishing a Feedback Statement in the first half of 2022.

21 – 25 June 2021: Speeches, Letters & Publications

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

- Building a regulatory environment for the future – Speech by FCA CEO, Nikhil Rathi, delivered at City Week 2021
- FCA consults on proposed decision to require synthetic LIBOR for 6 sterling and Japanese yen settings

Financial Reporting Council (FRC)

21 – 25 June 2021: Speeches, Letters & Publications

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

- FRC publishes latest list of companies whose reports and accounts have been reviewed by its Corporate Reporting Review function

European Banking Authority (EBA)

23 June 2021: EBA publishes its report on management and supervision of ESG risks for credit institutions and investment firms

The European Banking Authority (EBA) published its report on Environmental, Social and Governance (ESG) risks management and supervision. The Report, which is a key component of the EBA's broader ESG work, provides a comprehensive proposal on how ESG factors and ESG risks should be included in the regulatory and supervisory framework for credit institutions and investment firms. The report focuses on the resilience of institutions to the potential financial impact of ESG risks across different time horizons. This requires careful assessments by institutions and supervisors who should take a comprehensive and forward-looking view, as well as early, proactive actions.

The report provides the following:

- Impact of ESG risks - the report outlines the impact that ESG factors, especially climate change, can have on institutions' counterparties or invested assets, affecting financial risks. Also, the report illustrates available indicators, metrics and evaluation methods that are needed for effective ESG risk management and identifies remaining gaps and challenges on this front;
- Recommendations to incorporate ESG risks-related considerations - the EBA provides recommendations for institutions to incorporate ESG risks-related considerations in strategies and objectives, governance structures, and to manage these risks as drivers of financial risks in their risk appetite and internal capital allocation process. The EBA also recommends developing methodologies and approaches to test the long-term resilience of institutions against ESG factors and risks including the use of scenario analysis; and
- Proposal for a phase-in approach - to further enhance the supervisory review and evaluation process (SREP), the EBA sees a need to extend the time horizon of the supervisory assessment of the resilience of institutions' business models, applying at least a 10-year horizon to capture physical risks, relevant public policies or broader transition trends. The report proposes a phase-in approach, starting with the inclusion of climate-related and environmental factors and risks into the supervisory business model and internal governance analysis, whilst encouraging institutions and supervisors to build up data and tools to develop quantification approaches to increase the scope of the supervisory analysis to other elements.

This report should be considered in conjunction with the EBA and ESAs disclosure publications under the Capital Requirements Regulation (CRR), the Taxonomy Regulation and the Sustainable Finance Disclosure Regulation (SFDR) which provide key metrics to support strategies and risk management. The EBA will publish Pillar 3 disclosure requirements on ESG risks, transition risks and physical risks, as defined in this report, later this year.

21 – 25 June 2021: Speeches, Letters & Other Publications

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

- EBA updates on monitoring of Additional Tier 1 instruments of EU institutions and issues recommendations for ESG-linked capital issuances
- EBA publishes final draft technical standards on supervisory disclosure under the Investment Firms Directive
- The EBA launches consultation on amendments to reporting on securitisation, asset encumbrance and G-SIIs
- EBA launches consultation to amend technical standards on credit risk adjustments

European Central Bank (ECB)

25 June 2021: ECB takes over supervision of systemic investment firms

The European Central Bank (ECB) issued a press release explaining that it will supervise the largest and most systemic investment firms under new European Union (EU) legislation, which applies as of 26 June 2021. These investment firms must apply for a banking licence and as a consequence will be supervised by the ECB. The new legal framework aims to better address the specific activities and risks posed by investment firms, as explained in this Supervision Newsletter article.

The investment firms that will become subject to European banking supervision are those that provide key market and investment banking services and are thus exposed, in a similar way to banks, to credit and market risk. More specifically, the EU legislation defines systemic investment firms as those that trade financial instruments on their own account or place financial instruments on a firm commitment basis and have total consolidated assets above €30 billion. Such investment firms are seen as holding important risks on their balance sheet. The EU legislation on investment firms comprises the Investment Firms Directive, which EU Member States have to transpose into national law, and the Investment Firms Regulation, which is directly applicable in all EU Member States as of 26 June 2021. The first set of investment firms newly authorised as banks are expected to be added to the list of supervised banks in the second half of 2021, thus becoming subject to European banking supervision.

21 – 25 June 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 publishes Economic Bulletin Issue 4, 2021
- The impact of fiscal support measures on the liquidity needs of firms during the pandemic – published as part of the ECB Economic Bulletin, Issue 4/2021
- Implications of the 2021 stability programmes for fiscal policies in the euro area – published as part of the ECB Economic Bulletin, Issue 4/2021
- Developments in the euro area current account during the pandemic – published as part of the ECB Economic Bulletin, Issue 4/2021
- Globalisation and its implications for inflation in advanced economies – published as part of the ECB Economic Bulletin, Issue 4/2021
- Implications of the 2021 stability programmes for fiscal policies in the euro area – published as part of the ECB Economic Bulletin, Issue 4/2021
- Liquidity conditions and monetary policy operations in the period from 27 January to 27 April 2021 – published as part of the ECB Economic Bulletin, Issue 4/2021
- Voting right rotation, behavior of committee members and financial market reactions: Evidence from the U.S. Federal Open Market Committee – Working Paper Series
- Rational inattention: a review – Working Paper Series
- The ECB's policy response to the COVID-19 pandemic – Lecture by Isabel Schnabel, Member of the Executive Board of the ECB, at the School of Economics and Management, University of Cyprus
- Emerging risks for the European banking sector in the post-pandemic era – Speech by Elizabeth McCaul, Member of the Supervisory Board of the ECB, Salzburg Global Finance Forum, Financial Services in the Post-Pandemic Era: An Opportunity for a Green and Digitally-Enabled Recovery?

European Commission

24 June 2021: European Commission, ECB Banking Supervision, EBA, and ESMA encourage market participants to cease all LIBOR settings

The European Commission, the European Central Bank in its banking supervisory capacity (ECB Banking Supervision), the European Banking Authority (EBA), and the European Securities and Markets Authority (ESMA) issued a joint statement in which they strongly encourage market participants to use the time remaining until the cessation or loss of representativeness of USD LIBOR, GBP LIBOR, JPY LIBOR, CHF LIBOR and EUR LIBOR to substantially reduce their exposures to these rates.

The statement also encourages market participants to cease using the 35 LIBOR settings, including USD LIBOR, as a reference rate in new contracts as soon as practicable and by 31 December 2021 at the latest. Participants are also called on to limit the use of any LIBOR setting published under a changed methodology and to include robust fallback clauses nominating alternative rates in all contracts referencing LIBOR. The European Commission, ECB Banking Supervision, the EBA, and ESMA will monitor the situation and LIBOR exposures closely.

21 – 25 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:

- Commission adopts final one-year extension of the transitional regime for capital requirements for non-EU central counterparties (CCPs)

Autorité des marchés financiers (AMF)

21 – 25 June 2021: Speeches, Letters & Other Publications

During the week, the Autorité des marchés financiers (AMF) released the following speeches, announcements, letters and publications that might be of interest to our readers:

- AMF presents an initial overview of SFTR reporting data – based on the first six months of reporting data, the AMF is publishing an initial analysis of the market for securities financing transactions and providing details of the various use cases already identified for these data, whose reliability will have to be improved

Commission de Surveillance du Secteur Financier (CSSF)

21 – 25 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 publishes its Newsletter No 245 June 2021 – discover the latest publications of the CSSF and the statistics relating to the financial sector
- CSSF publishes Feedback Report - ESMA Common Supervisory Action on UCITS Liquidity Risk Management – in the course of 2020, the European Securities and Markets Authority (ESMA) performed a Common Supervisory Action (CSA) with national competent authorities (NCAs) across the EU/EEA on the supervision of UCITS managers' liquidity risk management. On 24 March 2021, ESMA published the results of the CSA in a Public Statement, including the experiences and findings of all 30 EU/EEA NCAs (including the CSSF) participating to the exercise. ESMA informed in that context that the overall level of compliance with the applicable rules on LRM was satisfactory for most UCITS managers, but that the exercise also showed shortcomings in some areas and the need for improvements in certain key areas. While the overall analysis of compliance for IFM in Luxembourg is consistent with the conclusions of ESMA, the CSSF would like to inform market participants

about the publication of the report "CSSF Feedback Report – ESMA Common Supervisory Action on UCITS Liquidity Risk Management" which presents the main observations made by the CSSF in the context of the CSA together with the related recommendations for improvements in view of the applicable regulatory requirements. The CSSF is currently engaging on a bilateral basis with IFM in relation to the observations made in the context of the CSA exercise, thereby asking these IFM to implement the necessary corrective measures for the shortcomings observed. In addition, the CSSF asks hereby all UCITS managers to conduct, by the end of 2021, a comprehensive assessment with regard to the compliance of their liquidity risk management set-ups in relation to the observations of ESMA and of the CSSF and to take, if applicable, the necessary corrective measures

International Capital Market Association (ICMA)

23 June 2021: ICMA AMIC responds to FCA consultation on UK MiFID research and best execution

The International Capital Market Association's (ICMA) Asset Management and Investors Council (AMIC) has responded to the FCA consultation paper CP21/9 on UK MiFID research and best execution. In its response, ICMA welcomed an exemption for FICC research from unbundling rules as well as the proposal to remove the RTS 27 and RTS 28 best execution reports.

21 – 25 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 hosts its Annual Conference 2021 – taking account of the global pandemic, key themes this year included: market developments and regulation in the primary, secondary and repo markets on the sell side and the buy side; progress on the transition from LIBOR to risk-free rates; the mainstreaming of sustainable finance; and how fintech is revolutionising capital markets
- Podcast: The Human Side of Finance | Episode 5 | Rebalancing Excess Masculinity in Finance – in this podcast ICMA interviews Dorrit Lowsen from Change Finance and Oren Shai from Enlivened Leadership Lab to explore the important conversation on Rebalancing Excessive Masculinity in Finance

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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

- New climate reporting rules to be extended by UK financial regulator
  "The UK financial regulator has outlined plans to extend climate reporting requirements to most UK listed companies as well as domestic asset managers, in an attempt to meet growing investor demand for disclosure. The Financial Conduct Authority said it wanted the reporting requirements, which ask companies to disclose the risks they face from climate change, to eventually cover 98 per cent of both assets under management in the UK market and those held by domestic money managers. It wants them to apply to standard as well as premium UK-listed companies"
- Investors pile $54bn in to ESG bond funds in fiery start to 2021
  "Investors poured $54bn in to bond funds specialising in environmental, social and governance issues in the first five months of 2021, even as concerns over potential greenwashing have escalated. After several years of bumper sales of equity products that focus on ESG, investors are now turning their attention to fixed-income funds, according to figures collated by Morningstar, the data provider. In total, sales of all ESG bond funds hit $54bn in the year to the end of May, compared with almost $68bn for all of 2020. The data cover open-ended funds and exchange traded funds globally"
- 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"
- ESG stays on trend despite data minefield
  "Affluent clients of wealth managers are increasingly demanding that their money be aligned with their values, pushing their advisers to make investments in tune with their environmental, social and governance (ESG) concerns. But while asking a wealth manager to build a sustainable investment portfolio is relatively simple, measuring the social and environmental impact of that portfolio is a far more complex proposition"
- Rise of ESG renews debate over whether passive funds can deliver
  "Passive providers will struggle to gain traction in some strategies focused on good environmental, social and governance (ESG) outcomes, because active managers have an edge in the area of stewardship, according to some analysts. Despite record inflows into passive ESG products, some see challenges ahead as the demand for sustainable investment strategies shifts from avoiding harm to actively doing good"
- ESG's lower (expected) returns
  "A simple point: betting on ESG to outperform is betting that the market still systematically underestimates consumers' and investors' taste for green products and assets — despite the fact that ESG products and funds have been very heavily promoted recently. If there are no surprises, ESG must underperform"
- UK failing to match climate rhetoric with action, adviser warns
  "Ministers have failed to develop coherent strategies for cutting emissions from the most polluting sectors of the economy, and are not matching their climate rhetoric with action, the UK government's environmental adviser warned on Thursday"
- UK aviation sets short-term targets in 2050 zero emissions pledge
  "Britain's aviation sector is setting 10 and 20 year targets to cut carbon emissions in a bid to reinforce its pledge to achieve its net zero CO_2 target by 2050. UK airlines, airports, manufacturers and air navigation service providers, under the aegis of the Sustainable Aviation alliance, are promising to reduce or offset the sector's net emissions by 15 per cent in 2030 compared to 2019 levels, and by 40 per cent in 2040"
- Samsung's carbon emissions rise despite ESG claims
  "Samsung Electronics's rising carbon emissions and slow reduction of fossil fuel use is undermining the group's sustainability claims, according to environmentalists. The criticism comes as companies are under increasing scrutiny over climate change and concerns about greenwashing, whereby organisations overstate their environmental commitments and achievements"

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- [Private equity ‘raid’ on UK companies sparks furious row in City]
“An attempt by private equity firm Clayton, Dubilier & Rice to take over the supermarket chain Wm Morrison’s would, if successful, mark one of Britain’s biggest leveraged buyouts since the 2008 crisis. It would also cap a frenzied six-month period in which private equity dealmakers have announced bids for UK-listed companies at the fastest pace in more than two decades, triggering a fierce row in the City of London. The push from the buyouts industry pits traditional fund managers, who have started to take the rare step of publicly speaking out against takeovers, against bullish dealmakers sitting on record-sized pots of cash, who claim some of the objections are unreasonable. Britain’s corporate boards are caught in the middle, treading a fine line between the two groups at a time when many companies’ operations have been disrupted by Brexit and the pandemic, making it harder to agree on a fair valuation”

- Don’t blame private equity for fund managers missing out
“The groups display a sharper eye when it comes to bids for cheap listed companies”

- Tesla investor warns of ‘deep sickness’ in UK capital markets
“In a scathing critique, James Anderson, whose early bets on Facebook, Amazon and Tesla have made him one of the world’s most successful investors, said that too many UK asset managers are obsessed with short-term performance rankings and fearful of taking risks”

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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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