European Leveraged Finance Association

BRIEFINGS

LEGAL & REGULATORY

1 June 2021

Legal and Regulatory Updates

24/05/2021 – 28/05/2021

Key Highlights

- This Legal & Regulatory Update covers the week commencing **24/05/2021**.
- FRC emphasises that workforce engagement lies at heart of good corporate governance.
- CSSF publishes its Newsletter No 244, May 2021.
- CSSF publishes information on the global situation of undertakings for collective investment at the end of April 2021.
- IOSCO issues industry surveys on conduct risks in leveraged loans and collateralized loan obligations.
- FSB Europe group discusses global vulnerabilities and addressing risks related to money market funds and climate change.
- 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 – 28 May 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:

- Prudential Regulation Authority Business Plan 2021/22 – the Business Plan sets out the PRA's strategy, workplan, and budget for 2021/22
- BoE releases information on Capital Issuance April 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
- Cyber Risk: 2015 to 2027 and the Penrose steps – Speech by Lyndon Nelson
- What are government bond yields telling us about the economic outlook? – Speech by Gertjan Vlieghe
- Measure for measure: evidence on the relative performance of regulatory requirements for small and large banks – Staff Working Paper No. 922

Financial Reporting Council (FRC)

24 May 2021: FRC emphasises that workforce engagement lies at heart of good corporate governance

The UK Corporate Governance Code asks companies to report on their engagement with the workforce. The Financial Reporting Council (FRC) published research by Royal Holloway, University of London and the Involvement and Participation Association which found that many FTSE 350 annual reports appear to downplay the importance of their workforce engagement. The report explains that changes in workforce engagement have been more an evolution than a revolution, with many companies amending existing practices that have been in place for several years. The case studies included in the report set out innovative approaches and fresh thinking that could potentially be applied more widely. Good practice identified in the research shows how the exact mechanism of engagement is less important than companies' desire to genuinely engage with employee views and recognise the benefits that such engagement can bring.

24 – 28 May 2021: Speeches, Letters & Other Publications

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

- Maureen Beresford, Head of Corporate Governance at the FRC, speaks with Chris Rees, Professor of Employment Relations, Royal Holloway, University of London and Patrick Brione, Head of Policy and Research, IPA about the findings of the workforce engagement report – Podcast
- Survey: FRC Scenario Analysis Research – the FRC recently commissioned a research project to explore the use of scenario analysis by FTSE350 companies. The objective is to learn more about the processes through which companies develop their scenario analyses and how the outcomes influence strategic planning and decision making. The first stage of this research, an online survey, has now launched
- UK Endorsement Board receives delegated powers – the Secretary of State for Business, Energy and Industrial Strategy (BEIS) delegated statutory powers to the newly established UK Endorsement Board (UKEB). Under its delegated functions, the UKEB will play a pivotal role in influencing the development of international financial reporting standards (IFRS) and is responsible for the endorsement and adoption of IFRS for use by UK companies

European Securities and Markets Authority (ESMA)

24 – 28 May 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 updates its Opinion on reporting information under the AIFMD – the ESMA Opinion provides details on a set of additional information that, in ESMA view, NCAs could require

AIFMs to report on a periodic basis pursuant to Article 24(5), first sub-paragraph of the AIFMD. In particular, the updates aim at providing clarifications to three risk measures (Value-at-Risk, Net FX delta and Net commodity delta) already included in the Opinion in the section "Information on risk measures"
- ESMA consults on draft regulatory technical standards (RTS) implementing the amended Securitisation Regulation (SECR) – the amended SECR requires that certain securitisations meeting pre-defined simple, transparent and standardised (STS) requirements must be reported using standardised templates for STS notification published on ESMA's website
- ESMA consults on Disclosure Requirements for Initial Reviews and Preliminary Ratings – the purpose of this Consultation Paper is to propose guidance that will address inconsistencies in the interpretation of these provisions
- ESMA launches call for evidence on digital finance – the call for evidence aims to gather relevant information on particular issues including value chains, platforms and groups' provision of financial and non-financial services

European Banking Authority (EBA)

24 – 28 May 2021: Speeches, Letters & Other Publications

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

- EBA provides a comparison of provisioning in the United States and the European Union in the context of the COVID-19 pandemic – the EBA published a thematic note comparing provisioning practices in the US and the EU during the peak of the COVID-19 pandemic. The note looks into the differences in the macroeconomic impact of the pandemic, in banks' loan portfolios, and in accounting rules that might explain why the CoR of US banks was much higher compared to their EU peers in the first half of 2020 and fell at a faster pace afterwards
- EBA publishes final draft technical standards on own funds and eligible liabilities – since their entry into force, the RTS on own funds have significantly enhanced regulatory harmonisation of prudential rules and contributed to strengthening the quality of regulatory capital. With the revised Capital Requirements Regulation (CRR) introducing new criteria and requirements for eligible liabilities, these amended RTS capture several aspects of eligible liabilities as well as the changes to the own funds framework
- EBA shows good progress in the reduction of MREL shortfall for the largest banks – the EBA published its second quantitative Report on minimum requirements for own funds and eligible liabilities (MREL) under the new methodology. The Report shows that as of December 2019, the largest institutions have made good progress in reducing MREL shortfalls and that smaller institutions tend to lag behind
- EBA issues Report on the application of the BRRD early intervention framework – the EBA published a report on the application of early intervention measures under the Bank Recovery and Resolution Directive (BRRD). The report highlights the key challenges faced by supervisors in the application of the current regulatory framework on the EIMs and various options for addressing them
- EBA consults on institutions' Pillar 3 disclosure of interest rate risk exposures – the EBA launched a public consultation on draft implementing technical standards (ITS) on Pillar 3 disclosures regarding exposures to interest rate risk on positions not held in the trading book (IRRBB)

European Central Bank (ECB)

24 – 28 May 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:

- Climate change and financial integration – Keynote speech by Luis de Guindos, Vice-President of the ECB, at the joint ECB and European Commission conference on "European Financial Integration and Stability"
- Societal responsibility and central bank independence – Keynote speech by Isabel Schnabel, Member of the Executive Board of the ECB, at the "VIII. New Paradigm Workshop", organised by the Forum New Economy
- The effectiveness of European banks' boards: progress and shortcomings – Speech by Andrea Enria, Chair of the Supervisory Board of the ECB, at the Florence School of Banking and Finance online seminar "Banks' Board Members and Policy Makers: A Conversation"
- The COVID-19 shock and challenges for time series models – Working Paper Series
- On the effectiveness of macroprudential policy – Working Paper Series
- What drives euro area financial market developments? The role of US spillovers and global risk – Working Paper Series

Central Bank of Ireland (CBI)

24 – 28 May 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:

- Intergenerational Macroeconomics – Blog

Autorité des marchés financiers (AMF)

24 – 28 May 2021: Speeches, Letters & Other Publications

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

- Special information to unitholders and shareholders of collective investment undertakings : the AMF publishes a guide and new letter templates – some changes made during the life of UCITS and certain AIFs require special information to be provided to unitholders or shareholders to enable them to decide whether to keep or dispose of their investment with full knowledge of the facts. These changes are in the form of a "letter to unitholders". As these information letters are increasing long and complex, the AMF has decided to publish new templates and a guide

Commission de Surveillance du Secteur Financie (CSSF)

24 – 28 May 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 its Newsletter No 244, May 2021 – the Newsletter includes information on the latest publications of the CSSF and the statistics relating to the financial sector

- CSSF publishes information on the global situation of undertakings for collective investment at the end of April 2021 – as at 30 April 2021, the total net assets of undertakings for collective investment, comprising UCIs subject to the 2010 Law, specialised investment funds and SICARs, amounted to EUR 5,293.816 billion compared to EUR 5,248.971 billion as at 31 March 2021, i.e. an increase of 0.85% over one month. Over the last twelve months, the volume of net assets rose by 20.21%. The Luxembourg UCI industry thus registered a positive variation amounting to EUR 44.845 billion in April. This increase represents the sum of positive net capital investments of EUR 29.457 billion (+0.56%) and of the positive development of financial markets amounting to EUR 15.388 billion (+0.29%)

Basel Committee on Banking Supervision (BCBS)

24 – 28 May 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:

- The procyclicality of loan loss provisions: a literature review – Working Paper
- The changing role of a bank supervisor – Comments by Ms Carolyn Rogers, Secretary General of the Basel Committee on Banking Supervision, for the 2021 Starling annual Compendium

International Organization of Securities Commissions (IOSCO)

24 May 2021: IOSCO issues industry surveys on conduct risks in leveraged loans and collateralized loan obligations

The International Organization of Securities Commissions (IOSCO) issued four questionnaires for industry participants on conduct risks in Leveraged Loans (LLs) and Collateralized Loan Obligations (CLOs) targeting bank lenders, CLO investors, CLO managers and LL sponsors. IOSCO, through its Committee 3 on Regulation of Market Intermediaries and its Committee 5 on Investment Management, is conducting work to understand the potential conflicts of interest and misaligned incentives among participants in the LL and CLO markets across the chain of intermediation, from credit origination to the sale to end-investors.

To help inform this analysis both Committee 3 and Committee 5 are asking bank lenders, CLO investors, CLO managers and LL sponsors to complete the respective surveys. The purpose of the questionnaires is to support IOSCO's project by furthering its understanding of the LL and CLO markets. In particular, the questionnaires seek to determine where potential conflicts of interest and conduct issues may exist and how they are managed by the respective market participants. IOSCO will consider the questionnaire responses when formulating any report regarding LLs and CLOs. The submission deadline is 30 June 2021.

International Capital Market Association (ICMA)

24 – 28 May 2021: Speeches, Letters & Other Publications

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

- Asia-Pacific to tackle USD 190 billion of tough legacy bonds as LIBOR transition looms – a report by ICMA and Bloomberg on tough legacy bonds in APAC has found that work will need to accelerate significantly to mitigate potential for disruption of the APAC bond markets as a result of the transition from LIBOR to risk free rates (RFRs)
- Podcast: Monthly Market update: ICMA Asset Management & Investors Council (19 May 2021) – Robert Parker, Chair of ICMA's Asset Management and Investors Council, reviews the market events of the past weeks, including central bank response to the rise in inflation, economic recovery in light of the COVID-19 pandemic and investor positioning
- The Human Side of Finance | Episode 1 | Is the grass greener on the other side? – Podcast

Financial Stability Board (FSB)

27 May 2021: FSB Europe group discusses global vulnerabilities and addressing risks related to money market funds and climate change

The Financial Stability Board (FSB) Regional Consultative Group (RCG) for Europe held a virtual meeting to discuss global and regional macroeconomic and financial market developments, and their potential impact on European economies. The group exchanged views on financial stability issues during the recovery from the COVID-19 pandemic, including potential threats to regional financial stability arising from the pandemic. Members also discussed authorities' considerations in exiting from temporary public support measures, when conditions allow.

The group discussed the most recent FSB initiatives to address climate-related risks to financial stability, including promoting consistent regulatory and supervisory approaches to climate risk and identifying gaps in data for monitoring financial stability. Members also discussed promoting greater uptake and consistency in national and regional climate-related disclosures, using the Task Force on Climate-Related Financial Disclosures (TCFD) recommendations as the basis with respect to climate-related financial risks. Members were informed of the FSB's ongoing work to develop a coordinated roadmap to address climate-related financial risks, which will be submitted to the G20 and published in July.

In the News

During the week, the Financial Times published the following news that might be of interest to our readers.

Financial Times

- How should companies decide on their ESG goals?
  "Not a day goes by without companies being pressured to take a stance in political debates. Long gone are the days when chief executives could echo the economist Milton Friedman in saying the only social responsibility of business was to increase its profits. In the fourth-quarter earnings calls for 2020, more than one in four S&P 500 companies discussed environmental, social and governance (ESG) objectives. But should companies be involved in ESG and, if so, how should they decide the type and the level of their involvement"
- Companies grapple with Scope 3 emissions climate challenge
  "Measuring emissions is sometimes like measuring calories in a diet — there is a touch of art along with the science. And, for companies, it is most difficult to be purely scientific over indirect, or Scope 3, emissions — the greenhouse gases emitted all along their supply chains and in the use of their products . . . Investors are also turning to Scope 3 estimates as they try to understand the risks companies will face from rising carbon prices and more stringent national emissions policies"
- A 'corporate currency' as a path to sustainable success
  "Measuring this new corporate currency can be difficult, though. Agreement on what to measure, access to different types of data, and the level of analytical sophistication will vary by company. Critical, however, is understanding the sentiment of stakeholders, especially that of the workforce. Increasingly, company boards are waking up to the importance of governing these elements rigorously, and investors are calling for evidence of this. All of which will surely continue, given the heightened emphasis now placed on a company's commitment to environmental, social and governance (ESG) — which often includes metrics specific to company purpose and culture"
- Can businesses deliver on their climate promises?
  "It is to bridge this gap between action and ambition that the FT and Statista have launched their first listing of Europe's Climate Leaders: those companies that have already achieved a significant reduction in their direct carbon emissions. Its aim is to indicate which companies have the best chance of meeting their climate pledges, and the targets set by governments . . . But this initial FT-Statista listing is only a starting point. It will not provide an accurate picture of the companies making the biggest contribution to limiting climate change until it can include all of their Scope 3, or indirect, emissions — which many still fail to calculate and few report in a standardised way"
- What does green mean? Investors grapple with definitions and data
  "Coming up with accurate data on companies' environmental, social and governance records has always been difficult for investors. Demand for so-called ESG funds may be high, but understanding where the green capital should flow is not always obvious. The problem is most often a lack of meaningful, reliable data"
- Banks feel the heat on financed emissions
  "Banks and asset managers are under growing pressure to calculate and reduce carbon emissions across their portfolios — a hugely complex task that involves measuring the impact on climate change of everything from small business loans to global shareholdings. And an assessment based on the emissions enabled by their investing, lending and underwriting would look quite different. These so-called financed emissions tend to be much larger, in aggregate, than the emissions from a bank or asset manager's direct operations or energy consumption, yet they are still not widely measured or reported"
- Stakeholder collaboration will help companies and society thrive
  "A board, however, cannot ignore its duty to think long term. In this regard, the two critical risks are climate change and cyber security. Directors have to build them into their business models and strategies for the longer term, for when economies regain momentum. At least, finally, the framework providers for economic, social and governance (ESG) standards are collaborating after years of seeing one another as competitors. That had been an outrage because they were all dealing with improving outcomes for society, by making corporate reporting more informed, and accountability more transparent"
- Exxon shareholder victory charts new course for ESG advocates
  "The top highlight for environmental, social and governance investors came from ExxonMobil, where activist hedge fund Engine No 1 scored a big win when shareholders voted to add at least two of its nominees to the Exxon board"
- Dutch court orders Shell to accelerate emissions cuts
  "Royal Dutch Shell has lost a landmark legal case, with a Dutch court ordering the oil company to increase its emissions cuts in a ruling that could set a global precedent for corporate polluters. Judge Larisa Alwin of the district court in The Hague ordered Shell to ensure its net carbon emissions were 45 per cent lower in 2030 than in 2019"

1 June 2021

- Why Shell's climate defeat matters
  "But beyond Shell's near-term operations, the judgment shows where the expectations of companies — in this sector and others — are heading. It gave a clear view that oil and gas companies have a responsibility for what customers do with their products (Scope 3 emissions) and not just their own operations. It knocked down the argument that if big international companies do not produce this oil, someone else will and possibly in a less responsible fashion. It also made clear that reducing emissions intensity (which is possible even if production expands, and is the basis for goal-setting for most of the industry) is not good enough. True, Shell's court-mandated target for cutting emissions by 45 per cent is on a net basis, leaving scope for tree-planting, carbon capture or other offsetting technologies"
- Climate activists hail breakthrough victories over Exxon and Shell
  "Big Oil has suffered a climate backlash after a court ordered Royal Dutch Shell to aggressively slash carbon emissions and ExxonMobil shareholders backed an activist investor that said the supermajor faced existential risk because of its focus on fossil fuels. The twin moves come as global governments accelerate plans to decarbonise their economies in pursuit of net-zero goals and international oil companies try to navigate an uncertain transition to cleaner fuels despite still-robust demand for the lucrative hydrocarbons they produce"
- Amazon, Chevron, Exxon and Facebook face shareholder showdowns
  "This week activists are creating convulsions at annual general meetings in the US — but with environmental, social and governance issues. To be fair, such ESG attacks are not entirely new: earnest Scandinavian pension funds and nuns have been staging AGM protests for years. But while the C-suite used to dismiss those, ESG activists have become so powerful — and mainstream — that they are hard to ignore. Just look at the drama at Exxon. Will these protests prevail? When Moral Money went to press it was uncertain. But what is clear is that activists have become adept at using digital tools to track what companies are doing, and mobilise — and ESG investors are watching to see what mighty asset managers such as State Street, Vanguard and BlackRock do too. The new mantra is not Greed is Good but transparency is all"
- Young voices grow louder in company strategies and values
  "As these younger generations move up through the workforce everywhere, they will inevitably have a growing influence on how companies are run. Forward-thinking leaders, therefore, are paying attention to how young people think, and what they set as goals or aspirations"
- Convertible bonds: the worst of both worlds
  "The convertible bond market had been hot, not only because of low yields and high stock prices but also because of volatility. Volatility, all else equal, makes the call option more valuable. But that may not be enough to compensate for extended concerns about inflation and interest rates. If a convertible bond with a 75 basis point yield is what counts for a hedge, the sharp run up in growth stocks may finally be facing its reckoning"
- Italian bank collapses on exposure to Greensill and GFG
  "Aigis Banca's problems stemmed from investment products linked to invoices it had purchased from Greensill, according to people familiar with the matter. These included receivables-backed notes linked to Gupta's metals empire, with a document seen by the FT showing that the bank had exposure linked to his Liberty Commodities business"

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

Important Information:

European Leveraged Finance Association
35 Ballards Lane, London N3 1XW
T +44 (0)7921 384457
E support@elfainvestors.com