European Leveraged Finance Association

BRIEFINGS

LEGAL & REGULATORY

4 August 2021

Legal and Regulatory Updates

26/07/2021 – 30/07/2021

Key Highlights

- This Legal & Regulatory Update covers the week commencing **26/07/2021**.
- FCA consults on proposals to boost disclosure of diversity on listed company boards and executive committees.
- ECB publishes the results of the 2021 stress test, which show that the euro area banking system is resilient to adverse economic developments.
- Central Bank of Ireland welcomes the publication of the General Scheme of the Central Bank (Individual Accountability Framework) Bill 2021 by the Department of Finance.
- CSSF publishes its Newsletter No 246, July 2021.
- CSSF publishes information on the global situation of undertakings for collective investment at the end of June 2021.
- ICMA pushes for clarification on possible postponement of mandatory buy-ins.
- IOSCO consults on ESG Ratings and Data Providers.
- 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)

26 – 30 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:

- BoE publishes information on Capital Issuance - June 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

Financial Conduct Authority (FCA)

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

The Financial Conduct Authority (FCA) launched a consultation on proposals to improve transparency for investors on the diversity of listed company boards and their executive management teams. The FCA's proposals aim to build on progress achieved under existing initiatives to improve diversity on the boards of the largest UK companies. Such initiatives include the Hampton-Alexander Review and Parker Review, and similar initiatives in international markets. The changes also follow the FCA's recent discussion paper published earlier in July, exploring how to promote diversity and inclusion across the financial services sector as a whole. Diversity will be an ongoing focus for the FCA, beyond the proposals it sets out here.

The FCA is consulting on changes to its Listing Rules to require listed companies to publish annually:

- A 'comply or explain statement' on whether they have achieved certain proposed targets (see notes to editors) for gender and ethnic minority representation on their boards; and
- As part of the same annual disclosure obligation, data on the make-up of their board and most senior level of executive management in terms of gender and ethnicity.

The FCA is also proposing changes to its disclosure and transparency rules to require companies to ensure any existing disclosure on diversity policies addresses key board committees and also considers broader aspects of diversity. This could include, for example, considerations of ethnicity, sexual orientation, disability, lower socio-economic background and other diversity characteristics. The FCA also encourages companies to provide further data on the result of their diversity policies considering these wider aspects where possible.

The Listing Rule diversity targets are not mandatory for companies to meet, so the FCA is not setting 'quotas', but providing a positive benchmark for issuers to report against. The proposals would apply to UK and overseas companies with equity shares in either the premium or standard listing segments of the FCA's Official List, while the disclosure and transparency changes apply to companies with securities traded on UK regulated markets, such as the Main Market of the London Stock Exchange. While some companies may already provide diversity disclosures to existing voluntarily UK initiatives and in annual reports, the FCA's measures will help ensure reporting beyond the largest listed companies and ensure more consistency. Its approach also provides flexibility for overseas companies, since the 'comply or explain' approach allows any national or cultural context to be explained.

The FCA is consulting for 12 weeks on these proposals, with a closing date of 22 October 2021. Subject to consultation feedback and FCA Board approval, it will seek to make relevant rules by late 2021.

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Financial Reporting Council (FRC)

26 – 30 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:

- Financial Reporting Lab newsletter: July 2021 – in this issue, the team reflects on the work it has completed over the past few months, provide updates on the Lab's ongoing and future projects and welcome new team members to the Lab
- FRC issues a feedback statement following publication of its thought leadership paper on the Future of Corporate Reporting – the FRC's thought leadership paper - A Matter of Principles: The Future of Corporate Reporting was published in October 2020 and closed for comments on 5 February 2021. There were over 75 responses to the consultation with the majority of respondents welcoming the FRC's initiative. There was support for: 1) A model accommodating the interests of investors and other stakeholders; 2) The concept of a reporting network but recognition that the idea would need further development before it is practicable; 3) A model that puts digital first; and 4) Standardisation of non-financial reporting. In addition, respondents encouraged the FRC to align any UK developments with those internationally

European Securities and Markets Authority (ESMA)

26 – 30 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 publishes MiFID II/MiFIR Annual Review Report on RTS 2 – ESMA published the MiFID II/MiFIR Annual Review Report under Commission Delegated Regulation (EU) 2017/583 (RTS 2). ESMA proposes to the European Commission to move to stage three of the phase-in for the transparency requirements, for both the average daily number of trades threshold used for the quarterly liquidity assessment of bonds, and for the pre-trade size specific to the instrument threshold for bonds
- ESMA makes first CTP data available – ESMA made available the first consolidated tape provider (CTP) data
- ESMA makes new bond liquidity data available – ESMA made available new data for bonds subject to the pre- and post-trade requirements of MiFID II and MiFIR through its data register
- ESMA publishes data for the systematic internaliser calculations – ESMA published data for the systematic internaliser quarterly calculations for equity, equity-like instruments, bonds and for other non-equity instruments under MiFID II and MiFIR

European Banking Authority (EBA)

26 – 30 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 consults on technical standards to identify shadow banking entities – the EBA launched a public consultation on draft regulatory technical standards (RTS) setting out criteria for the identification of shadow banking entities for the purposes of reporting large exposures. The consultation runs until 26 October 2021
- EBA publishes the results of its 2021 EU-wide stress test – the EBA published the results of its 2021 EU-wide stress test, which involved 50 banks from 15 EU and EEA countries, covering 70% of the EU banking sector assets. This exercise allows to assess, in a consistent way, the resilience of EU banks over a three-year horizon under both a baseline and an adverse scenario, which is characterised by severe shocks taking into account the impact of the pandemic. The individual bank results promote market discipline and are an input into the supervisory decision-making process. The adverse scenario has an impact of 485 bps on banks' CET1 fully loaded capital ratio (497 bps on a transitional basis), leading to a 10.2% CET1 capital ratio at the end of 2023 (10.3% on a transitional basis)
- EBA publishes its final Guidelines on the monitoring of the threshold for establishing an intermediate EU parent undertaking – the EBA published its final Guidelines on the monitoring of the threshold and other procedural aspects on the establishment of intermediate EU parent undertakings (IPU) as laid down in the Capital Requirements Directive (CRD). The Guidelines specify how third country groups should calculate and monitor the total value of their assets in the Union in order to ensure timely application of the IPU requirement

European Central Bank (ECB)

26 – 30 July 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:

- Stress test shows euro area banking system resilient under challenging macroeconomic scenario – the ECB published the results of the 2021 stress test, which show that the euro area banking system is resilient to adverse economic developments. The Common Equity Tier 1 (CET1) capital ratio of the 89 banks in the stress test would fall by an average of 5.2 percentage points, to 9.9% from 15.1%, if they were exposed to a three-year stress period marked by challenging macroeconomic conditions. The CET1 ratio is a key measure of a bank's financial soundness
- After the crisis: Economic lessons from the pandemic – Blog post by Fabio Panetta, Member of the Executive Board of the ECB
- Corporate loans, banks' internal risk estimates and central bank collateral: evidence from the euro area – Working Paper Series
- A time-varying carbon tax to protect the environment while safeguarding the economy – Research Bulletin No. 86

European Commission

26 – 30 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 publishes a call for tender for its Study on the Feasibility, Minimum Standards and Transparency Requirements of an EU ESG Benchmark Label – in the consultation on the renewed sustainable finance strategy, a question was asked to market participants on whether the EU should take action to create such label with the majority responding that the EU should take action to create an 'ESG benchmark'. Many market participants would welcome the creation of such new EU label in order to integrate social and governance considerations, on top of climate, which is the main focus of the EU Climate Benchmarks, which have been recently introduced. The general objective of this study is to obtain a comprehensive analysis regarding the feasibility of the creation of an EU ESG Benchmark label, including the minimum standards and transparency requirements
- Commission publishes its July-August issue of it Banking and Finance Newsletter

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Central Bank of Ireland (CBI)

26 – 30 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:

- Central Bank of Ireland welcomes the publication of the General Scheme of the Central Bank (Individual Accountability Framework) Bill 2021 by the Department of Finance – the following four key components of the Individual Accountability Framework (IAF) set out to achieve the behavioural, cultural and regulatory objectives: 1) The Senior Executive Accountability Regime will require firms to set out clearly and comprehensively where responsibility and decision-making lie in order to achieve transparency as to who is accountable for what within firms; 2) The enforceable Conduct Standards set out the behaviour expected of firms and their staff, including obligations to conduct themselves with honesty and integrity, to act with due skill, care and diligence, and in the best interest of consumers; 3) The Central Bank's Fitness & Probity Regime will be enhanced and will place a greater onus on firms to proactively certify that certain staff are fit and proper and capable of performing their roles with integrity and competence; 4) The Central Bank's Administrative Sanctions Procedure will be strengthened to ensure that individuals can be pursued directly for their misconduct rather than only where they have participated in a firm's wrongdoing. The reforms will also provide for greater process efficiency, clarity and administrative consistency to all involved, including those who may be the subject of enforcement action. A continued focus by the Central Bank on proportionality and fair procedures is a key theme of its IAF proposals

Commission de Surveillance du Secteur Financier (CSSF)

26 – 30 July 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 246, July 2021 – discover the latest publications of the CSSF and the statistics relating to the financial sector
- "ESG is not another piece of regulation, it is about saving the planet" – Remarks by Claude Marx, Director General of the CSSF, about sustainable finance at ESG2 Financial Square
- CSSF publishes information on the global situation of undertakings for collective investment at the end of June 2021 – as at 30 June 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 5,487.526 billion compared to EUR 5,332.392 billion as at 31 May 2021, i.e. an increase of 2.91% over one month. Over the last twelve months, the volume of net assets rose by 19.68%. The Luxembourg UCI industry thus registered a positive variation amounting to EUR 155.134 billion in May. This increase represents the sum of positive net capital investments of EUR 47.881 billion (+0.90%) and of the positive development of financial markets amounting to EUR 107.253 billion (+2.01%)
- CSSF publishes results of its thematic review in relation to Regulation (EU) 2016/1011 of 8 June 2016 (Benchmarks Regulation or BMR) – the thematic review focuses on the obligations of Luxembourg investment fund managers (IFMs) as benchmark users. The thematic review took place from July to November 2020 and included six authorised Luxembourg IFMs. Overall, the CSSF observed a low level of BMR compliance among the inspected entities. This was most prominent in the required prospectus disclosures of UCITS funds in relation to the ESMA Register, which were found to be often missing, incorrect or incomplete
- European Commission announcements related to Regulation (EU) 2019/2088 - SFDR – the CSSF would like to bring to the attention of financial market participants and financial advisers some recent publications made by the European supervisory authorities (the ESAs) in respect of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR)

Basel Committee on Banking Supervision (BCBS)

26 – 30 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:

- Proportionality in bank regulation and supervision - a joint global survey – the BCBS and the World Bank published the results of a global survey conducted with bank supervisors and regulators. The report summarises the responses from 90 authorities, with a broad distribution across geographical regions and income groups. According to the report, challenges remain during the design of proportionate approach and after proportionality is implemented. Examples of the former are: how to define the tiering criteria, how to maintain a level playing field and how to avoid opportunities for regulatory arbitrage. The latter challenges include: how to ensure financial positions are still comparable across banks and how to achieve net reduction in compliance costs and stress on supervisory resources and constraints

International Capital Market Association (ICMA)

29 July 2021: ICMA pushes for clarification on possible postponement of mandatory buy-ins

The International Capital Market Association (ICMA), on behalf of its members, announced that it continues to engage with the European Commission, ESMA, EU member states, national regulators, and MEPs to press the importance of not implementing the mandatory buy-in provisions when CSDR Settlement Discipline (SD) goes live in February 2022, and the urgent need to communicate this to the industry at the earliest opportunity. It is broadly understood that not only will mandatory buy-ins (MBIs) be disproportionately damaging to EU bond market liquidity and functioning, but the current framework, largely as the result of Level 1 drafting, contains a number of critical design flaws as well as significant ambiguity around scope and process. It is therefore hoped that the other elements of CSDR-SD, including cash penalties, will go live as scheduled on 1 February 2022, but without the MBI regime, and that this will be clarified soon. As well as meeting with various regulators and policy makers, ICMA has shared widely a briefing note outlining the industry's concerns.

26 – 30 July 2021: Speeches, Letters & Other Publications

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

- Monthly Market update: ICMA Asset Management & Investors Council – in this Podcast, Robert Parker, Chair of ICMA's Asset Management and Investors Council, reviews the market events of the past weeks, including the Chinese equities sell-off, the pause in the reflation trade, and the ECB policy guidance

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International Organization of Securities Commissions (IOSCO)

26 July 2021: IOSCO consults on ESG Ratings and Data Providers

The International Organization of Securities Commissions (IOSCO) announced that it is soliciting feedback on a set of proposed recommendations regarding Environmental, Social and Governance (ESG) Ratings and Data Providers. The IOSCO Consultation Report on ESG Ratings and Data Providers (Consultation Report) aims at assisting IOSCO members in understanding the implications of the activities of ESG ratings and data providers and in establishing frameworks to mitigate risks stemming from these activities. In doing so, it proposes a set of recommendations to mitigate these risks and address some of the challenges faced by users of products and services from ESG ratings and data providers, and the companies that are the subject of these ESG ratings and data products. Comments may be submitted on or before 6 September 2021.

To inform its work, IOSCO undertook a fact-finding exercise that revealed, amongst other risks and challenges, a lack of transparency about the methodologies underpinning ratings or data products and an often uneven coverage of products offered across industries and geographical areas. IOSCO has observed that this could lead to gaps and inconsistencies when applied to investment strategies and raise concerns around the management of potential conflicts of interest, such as fee structures and insufficient separation of business lines that provide advisory services to issuers to improve their ratings performance.

IOSCO explained that the market for ESG ratings and data has grown considerably over the past few years due inter alia to a lack of consistent information disclosures at the entity level, the increasing interest of investors in ESG products and the legislative and regulatory focus on financial market participants' consideration of the ESG characteristics of potential investments. This market, however, currently does not fall within the typical remit of securities regulators, hence leading IOSCO to propose key considerations for securities regulators in this area.

The Consultation Report is an additional piece to the overall framework for sustainability that IOSCO is developing in close coordination with its members and other international organizations. The Report on Sustainability-related Issuer Disclosures, published in June, addresses data gaps at the corporate level. The Report on Recommendations on Sustainability Related Practices, Policies, Procedures and Disclosure in Asset Management, also issued in June, focusses on the activities of asset managers as an important agency-model business that channels investor capital into sustainable finance. It underscores the importance of ESG ratings and data products in the decisions made by these asset managers.

26 – 30 July 2021: Speeches, Letters & Other Publications

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

- New IOSCO SPAC Network discusses regulatory issues raised by SPACs – IOSCO's SPAC network held its first meeting to discuss the issues raised by special purpose acquisition companies

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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

- Why bond funds may be riskier than they seem
“More risky, volatile junk bonds mean that they move more in tandem with the equity market. That is fine if it is transparently sold as a racier vehicle, but can be a nasty surprise for many investors that buy bond funds as a counterweight in their portfolios”
- M&A alone not enough to save fund managers, says Amundi chair
“The chair of Amundi, who over the past decade built the group into Europe’s largest asset manager, says that mergers and acquisitions are not enough to solve the challenges facing his industry and cautioned against striking deals in pursuit of scale alone”
- UK dividends recovery lags behind other markets
“UK companies are expected to lag behind global businesses in restoring their dividends to pre-Covid levels, according to major investors, as many British groups pare down their payouts despite a bumper earnings season. Globally, dividends are forecast to bounce back to pre-pandemic levels as early as this year as companies resume payouts that were put off during the worst of the Covid crisis. However a full recovery in the UK is not expected until as late as 2025”
- Big investors demand annual vote on companies’ net zero plans
“More than 50 large investors are demanding companies publish details of efforts to tackle climate change and give shareholders a vote on their plans, arguing that many businesses making net zero commitments for 2050 are doing little to act on them. JPMorgan Asset Management, M&G and 51 other investors, which together manage more than $14tn in assets, have called on companies to disclose a plan to cut their greenhouse gases, make a board director responsible for those actions and allow investors to vote annually on progress on the plan, where it is permissible in local law”
- Social bond issuance to stay high post-pandemic
“The size of the overall ESG debt market nearly doubled to $608bn last year, from $326bn in 2019, according to Environmental Finance. Green bonds, typically used to fund climate change mitigation projects, at $296bn made up nearly half of the total ESG debt in 2020. Issuance of sustainability bonds, a hybrid of green and social debt, tripled to $140bn last year. Sustainability-linked bonds, which have specific performance targets, totalled $8.78bn, the data showed”
- UK pension funds warn diversity will count when choosing asset managers
“Asset managers have been put on notice to tackle the lack of diversity in their workforce or risk losing clients by a group of UK pension funds and investment consultants that collectively oversee more than £1tn in assets. The group, which includes UK workplace pension scheme Nest and the Church of England Pension Board, have signed up to a new charter that commits them to including factors such as gender and ethnic mix in their decisions about which fund managers win contracts to manage money”
- LGIM denies ‘greenwashing’ over ESG China bond ETF
“The UK’s largest asset manager has denied accusations of greenwashing in relation to a fund investing purely in securities issued by wholly Chinese government-owned entities that is presented as being in line with environmental, social and governance (ESG) principles”
- TPG and Brookfield haul in $12bn for climate funds
“In yet another sign that sustainability is serious business, Brookfield and TPG, two of the world’s largest private equity investors, both announced this week they have raised billions of dollars for their new climate-focused funds. TPG said it had brought in commitments worth $5.4bn for its first Rise Climate Fund, and Brookfield said it raised even more, $7bn, for its Global Transition Fund”
- Food industry starts to measure sustainability
“An increasing number of stakeholders in the world’s food system — including companies, non-profits, farmers and governments — are backing a growing number of new sustainability metrics and rankings. This trend is being driven by a view that benchmarks and index rankings can raise awareness of sustainability factors, while also helping to guide banks, investors and those in the supply chain to engage with food systems that will not damage the planet”

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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**

Important Information:

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