

Financial Services Alerter

February 2018





Financial Services Alerter

Introduction

February 2018

Welcome to Simmons & Simmons' Financial Services Alerter, our monthly bulletin containing brief details of significant legal and regulatory developments of relevance to the fund management and investment banking communities.

Although the primary focus of Financial Services Alerter is the UK, we also cover EU and other international developments of relevance to the UK.

The information contained in Financial Services Alerter is based exclusively on publicly available sources and relates to developments taking place in February 2018.

- **UK developments**
- **EU developments**
- **International developments**
- **ellexica and other client items**

Follow us on Twitter

For updates on the developments covered in this newsletter as they happen, follow the Financial Services Alerter Twitter feed [@Simmons_FS](#).

For further information, please contact [Darren Fox](#), [Charlotte Stalin](#), [Jonathan Melrose](#), [Penny Miller](#), or your usual contact at Simmons & Simmons.



Financial Services Alerter

UK developments

Bank of England/PRA publishes consultation on change to IDD commencement date

On 05 February 2018, the Bank of England/PRA published [consultation paper](#) CP4/18, “Insurance Distribution Directive: change to commencement date”, proposing to amend the effective dates of Bank of England/PRA rules related to the Insurance Distribution Directive (IDD) following a proposal by the European Commission to postpone the application date of the IDD from 23 February 2018 to 01 October 2018. The consultation period closes on 12 February 2018.

HM Government publishes Alternative Investment Fund Managers (Amendment) Regulations 2018

On 05 February 2018, HM Government published the [Alternative Investment Fund Managers \(Amendment\) Regulations 2018 \(SI 2018/134\)](#) and [explanatory memorandum](#). The Amending Regulations amend the Alternative Investment Fund Managers Regulations 2013 to ensure alignment with the amended EuVECA and EUSEF Regulations. The Amending Regulations enter into force on 01 March 2018, except for regulation 4, which comes into force on 02 April 2018.

FCA publishes consultation on amendments to DEPP and EG for implementation of Benchmarks Regulation

On 05 February 2018, the FCA published [consultation paper](#) CP18/5, “EU Benchmarks Regulation Implementation (DEPP and EG)”, summarising proposals to amend the Decision Procedure and Penalties manual (DEPP) and Enforcement Guide (EG) following the implementation of the Benchmarks Regulation and the UK Benchmarks Regulations 2018. The consultation period closes on 05 March 2018.

HM Government publishes Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018

On 05 February 2018, the [Financial Services and Markets Act 2000 \(Benchmarks\) Regulations 2018 \(SI 2018/135\)](#) were published by HM Government along with an [explanatory memorandum](#), concerning the UK implementation of the Benchmarks Regulation. There will be a transitional period until 01 May 2020 during which the current and a new regulation regime for benchmarks will operate in tandem, after which time the new regime will take over.

Bank of England/PRA publishes consultation on incident reporting by CCPs

On 09 February 2018, the Bank of England/PRA published a [consultation paper](#), “Consultation on a new rule for Central Counterparties relating to incident reporting”, seeking feedback on a new rule on incident reporting, requiring central counterparties (CCPs) to notify the Bank of England of certain incidents having an impact on their information technology systems. The consultation period closes on 03 April 2018.

FCA publishes report on algorithmic trading

On 12 February 2018, the FCA published a [report](#), “Algorithmic Trading Compliance in Wholesale Markets”. The report discusses how key oversight functions can keep pace with technological advancements, and focuses on the following topics:

- defining algorithmic trading
- development and testing
- risk controls
- governance and oversight
- market conduct

Bank of England/PRA publishes consultation on algorithmic trading

On 12 February 2018, the Bank of England/PRA published [consultation paper](#) CP5/18, “Algorithmic trading”, seeking comments on expectations regarding firms’ governance and risk management of algorithmic trading, and proposing to publish a new supervisory statement on algorithmic trading. The consultation period closes on 07 May 2018.

LMA publishes Guidance on GDPR

On 16 February 2018, the Lloyd's Market Association (LMA) published [Guidance](#), “GDPR Core Information Notice”, summarising how personal data may be processed by the various data controllers under GDPR. It does this by way of a table that provides examples of the likely characterisation of insurance market participants in different scenarios.

Bank of England/PRA publishes consultation on amending supervisory statement on credit risk mitigation

On 16 February 2018, the Bank of England/PRA published [consultation paper](#) CP6/18, “Credit risk mitigation: Eligibility of guarantees as unfunded credit protection”. The CP outlines proposed amendments to Supervisory Statement (SS) 17/13 ‘Credit risk mitigation’, defining expectations regarding the eligibility of guarantees as unfunded credit protection under the Capital Requirements Regulation (CRR). The consultation period closes on 16 May 2018.

FCA and CFTC complete FinTech co-operation agreement

On 19 February 2018, the FCA published a [press release](#), “FCA and US CFTC sign arrangement to collaborate on FinTech innovation”, announcing that the UK and US regulators have agreed to collaborate with and support innovative firms through each other’s fintech initiatives, LabCFTC and FCA Innovate.

FCA publishes call for input on using technology to achieve smarter regulatory reporting

On 20 February 2018, the FCA published a [call for input](#), “Using technology to achieve smarter regulatory reporting”, summarising the technical steps developed under a November 2017 “proof of concept”, designed to help firms meet their regulatory reporting requirements more efficiently. The document also requests views on enhancements to this process. The call for input closes on 20 June 2018.

Treasury Committee inquiry into digital currencies

On 22 February 2018, the House of Commons Treasury Committee published a [webpage](#), “Digital Currencies inquiry”, announcing that it has set up an enquiry to examine the following issues:

- the role of digital currencies in the UK, including the risks and opportunities associated with digital currencies
- the potential impact of distributed ledger technology on financial institutions
- the regulatory response to digital currencies from HM Government, the FCA and the Bank of England in relation to Anti-Money Laundering legislation and how regulation could be balanced to provide protection for consumers and businesses without hindering innovation

The deadline for written submissions is 13 April 2018.

FCA publishes policy statement on personal recommendations on retail investments

On 23 February 2018, the FCA published [policy statement](#) PS18/3, “Perimeter guidance on personal recommendations relating to retail investments”, outlining the feedback received on the PERG material in PS17/25. The policy statement also retires FG15/1 and contains final Handbook Guidance which will take effect from 23 February 2018.

FCA publishes Handbook Notice 52

On 23 February 2018, the FCA published [Handbook Notice 52](#), setting out changes made to the FCA Handbook under instruments made by the FCA board on 22 February 2018. The following parts of the FCS Handbook are affected:

- FCA 2018/4 – Glossary, FEES 6 and TP 18
- FCA 2018/5 - SUP 16
- FCA 2018/6 - DEPP 4
- FCA 2018/8 - COBS 6, SUP 12, PERG 2, 5, 7, 8 and 13

FCA publishes policy statement on persistent debt and earlier intervention

On 27 February 2018, the FCA published [policy statement](#) PS18/4, “Credit card market study: Persistent debt and earlier intervention – feedback to CP17/43 and final rules”. The final rules and guidance on persistent debt and earlier intervention made by the FCA came into force on 01 March 2018, however firms have until 01 September 2018 to be fully compliant.



Financial Services Alerter

EU developments

Implementing Regulation on technical information for calculation of technical provisions and basic own funds for Q1 2018 reporting under Solvency II published in OJ

On 03 February 2018, [Commission Implementing Regulation \(EU\) 2018/165](#) laying down technical information for the calculation of technical provisions and basic own funds for reporting for Q1 2018 under the Solvency II Directive was published in the OJ. The Implementing Regulation entered into force on 04 February 2018 and applied from 31 December 2017.

ESMA publishes updated Q&As on Benchmarks Regulation

On 05 February 2018, the European Securities and Markets Authority (ESMA) updated its [webpage](#), “Questions and Answers on the Benchmarks Regulation (BMR)”, adding two new Q&As on commodity benchmarks and the definition of a benchmarks in relation to investment funds.

ESMA publishes updated Q&As on EMIR implementation

On 05 February 2018, the European Securities and Markets Authority (ESMA) updated its [webpage](#), “Questions and Answers Implementation of [EMIR]”, adding a Q&A on timelines for trade repositories related to the provision of data and to the validation of a request for access to data.

ESMA publishes updated Q&As on Short Selling Regulation

On 05 February 2018, the European Securities and Markets Authority (ESMA) updated its [webpage](#), “Questions and Answers on the Regulation on short selling and certain aspects of credit default swaps (SSR)”, updating a Q&A on covering a short sale with claims to as yet unissued shares.

ESMA publishes updated Q&As on CSDR

On 06 February 2018, the European Securities and Markets Authority (ESMA) updated its [webpage](#), “Questions and Answers: Implementation of the Regulation (EU) No 909/2014 on improving securities settlement in the EU and on central securities depositories”, adding new Q&As on:

- Ancillary services
- Organisational requirements: general
- Prudential requirements – Operational risks

OJ publishes Delegated Regulation on RTS on materiality threshold for credit obligations past due

On 06 February 2018, [Commission Delegated Regulation](#) (EU) 2018/171 supplementing the Capital Requirements Regulation (CRR) with regulatory technical standards (RTS) on the materiality threshold of credit obligations past due was published in the OJ. The Delegated Regulation enters into force on 26 February 2018 and will apply from 07 May 2018.

EIOPA publishes paper on systemic risk and macroprudential policy in insurance sector

On 06 February 2018, the European Insurance and Occupational Pensions Authority (EIOPA) published a [paper](#), “Systemic risk and macroprudential policy in insurance”. The first section outlines the status of the discussion on the systemic risk and macroprudential policies in insurance and describes the lessons learned from the financial crisis. The second section analyses the social aspect of macroprudential policy and financial stability, and the third section highlights ways in which systemic risk can be created.

ESMA publishes final report on CCP conflict of interest management guidelines under EMIR

On 07 February 2018, the European Securities and Markets Authority (ESMA) published a [final report](#), “Guidelines on CCP conflict of interest management”, outlining rules under Article 33 of EMIR that relate to management of conflicts of interest by central counterparties (CCPs). The draft rules were published in ESMA’s June 2017 consultation paper.

ESMA publishes updated MiFID2 Q&As on transparency topics

On 07 February 2018, the European Securities and Markets Authority (ESMA) updated its [webpage](#), “Questions and Answers on MiFID2 and MiFIR transparency topics”, adding two new Q&As on pre-trade transparency waivers.

Insurance Europe publishes paper on Brexit transitional arrangement

On 09 February 2018, Insurance Europe published a [paper](#), “Transitional arrangements needed in the Brexit context” arguing for a transitional arrangement that would allow insurers to fulfil their commitments to consumers on a cross-border basis until legal clarity on the future UK/EU relationship is reached.

ESAs publish warning on virtual currencies

On 12 February 2018, the European Supervisory Authorities (ESAs) published a [joint warning](#), “ESMA, EBA and EIOPA warn consumers on the risks of Virtual Currencies”, underlining the dangers of buying and/or holding Virtual Currencies (VCs) and highlighting the following potential risks:

- extreme volatility and bubble risk
- absence of protection
- lack of exit options
- lack of price transparency
- operational disruptions
- misleading information

- unsuitability of VCs for most purposes, including investment or retirement planning

ESRB publishes recommendation on leverage and liquidity in investment funds

On 14 February 2018, the European Systemic Risk Board (ESRB) published a [Recommendation](#), “Recommendation of the European Systemic Risk Board of 07 December 2017 on liquidity and leverage risks in investment funds” containing recommendations under the following sections:

- Liquidity management tools for redemption
- Additional provisions to reduce the likelihood of excessive liquidity mismatches
- Stress testing
- UCITS reporting
- Guidance on Article 25 of [AIFMD]

ECON publishes report on proposal to delay IDD application date

On 15 February 2018, the Economic and Monetary Affairs Committee (ECON) of the European Parliament published a [report](#), “Report on the proposal for a directive of the European Parliament and of the Council amending [the Insurance Distribution Directive] as regards the date of application of Member States' transposition measures”. The report consists of a draft legislative resolution containing a provision that the Insurance Distribution Directive should come into force by 01 July 2018 and apply from 01 October 2018.

AFME publishes FAQs on Brexit and wholesale financial services contracts

On 19 February 2018, the Association for Financial Markets in Europe (AFME) published a [webpage](#), “How might wholesale financial services contracts be impacted by Brexit? FAQs for clients”. The FAQs provide guidance to financial services firms on the operational and contractual consequences likely to arise as a result of Brexit.

OJ publishes Implementing Regulation on ITS on co-operation under MAR

On 27 February 2018, [Commission Implementing Regulation \(EU\) 2018/292](#) laying down implementing technical standards on forms and procedures for co-operation between national competent authorities under MAR was published in the OJ. The Implementing Regulation enters into force on 19 March 2018.



Financial Services Alerter

International developments

IOSCO publishes consultation on retail OTC leveraged products

On 13 February 2018, the International Organization of Securities Commissions (IOSCO) published a [consultation paper](#), “Report on Retail OTC Leveraged Products”. The CP requests comments on ways of identifying and promoting regulatory practices that can improve the protection of retail investors who trade OTC leveraged products. The consultation period closes on 27 March 2018.

IAIS publishes consultation on use of digital technology in inclusive insurance

On 15 February 2018, the International Association of Insurance Supervisors (IAIS) published a [consultation paper](#), “Draft Application Paper on the Use of Digital Technology in Inclusive Insurance”, providing guidance to regulators when implementing regulations on the use of digital technology in inclusive insurance. The consultation period closes on 16 March 2018.

CPMI publishes report on cross-border retail payments

On 16 February 2018, the Committee on Payments and Market Infrastructures (CPMI) published a [report](#), “Cross-border retail payments”, outlining the various types of cross-border retail payment and the clearing and settlement processes that lie behind them. It also suggests changes that could be made to improve the market.

BCBS publishes report on implications of fintech for banks and bank supervisors

On 19 February 2018, the Basel Committee on Banking Supervision (BCBS) published a [report](#), “Sound Practices: Implications of fintech developments for banks and bank supervisors”, providing, among other things, fintech product analysis and commentary on BCBS member surveys to outline the potential impact of fintech on the banking industry and bank supervision.

IOSCO publishes consultation on conflicts of interest in equity capital raising process

On 21 February 2018, the International Organization of Securities Commissions (IOSCO) published a [consultation](#), “Conflicts of interest and associated conduct risks during the equity capital raising process”, outlining Guidance to IOSCO members on the following risks:

- conflicts of interest and pressures on ‘connected analysts’ while developing views on an issuer in the pre-offering phase of a capital raising
- conflicted connected research during investor education and price formation in equity IPOs

- conflicts of interest during the allocation of securities
- management of underwriting risk by firms managing the offering and linked conflicts of interest in the pricing of securities
- conflicts associated with personal transactions by staff employed within firms conducting the offering

The consultation period closes on 04 April 2018.

BCBS publishes consultation on updated framework for Pillar 3 disclosure

On 27 February 2018, the Basel Committee on Banking Supervision (BCBS) published a [consultative document](#), “Pillar 3 disclosure requirements – updated framework”, outlining the following additional disclosure requirements to the Pillar 3 framework following on from the completion of the Basel III post-crisis regulatory reforms in December 2017:

- updated disclosure requirements for credit risk, operational risk, leverage ratio and credit valuation adjustment (CVA)
- new disclosure requirements to benchmark the risk-weighted asset (RWA) outcomes of banks’ internal models with RWA calculated according to the standardised approaches
- updated disclosure requirements for overview templates on risk management, RWA and key prudential metrics

The consultation period closes on 25 May 2018.

Lexis and other client items

01 February 2018	<u>AFM publishes best practices for AIFMs</u>
05 February 2018	<u>The Amsterdam Derivatives Academy presents: Brexit, Initial Margin and the EMIR Refit</u>
09 February 2018	<u>FML Timeline: UBS AG and Kommunale Wasserwerke Leipzig GmbH</u>
19 February 2018	<u>Luxembourg's new central ultimate beneficial owner register: the legal and practical consequences</u>
19 February 2018	<u>Cross-border disputes: Paris is now more attractive as an international jurisdiction</u>
19 February 2018	<u>CAIA series: UK Government infrastructure investment panel</u>
21 February 2018	<u>ESRB recommendation on liquidity and leverage risks in investment funds</u>
21 February 2018	<u>BaFin publishes guidance on the regulatory categorisation of tokens and cryptocurrencies</u>
22 February 2018	<u>Changes to UK securitisation companies tax regulations</u>
26 February 2018	<u>Salaried members Round 2: HMRC step up their scrutiny of asset managers</u>

Offices

Amsterdam

Simmons & Simmons LLP
PO Box 79023 1070 NB
Claude Debussylaan 247 1082 MC Amsterdam
The Netherlands
T +31 20 722 2500 F +31 20 722 2599

Beijing

Simmons & Simmons
33rd Floor China World Tower A
1 Jianguomenwai Avenue
Beijing 100004 People's Republic of China
T +86 10 8588 4500 F +86 10 8588 4588

Bristol

Simmons & Simmons LLP
One Linear Park Temple Quay
Bristol BS2 0PS United Kingdom
T +44 20 7628 2020 F +44 20 7628 2070

Brussels

Simmons & Simmons LLP
Avenue Louise/Louizalaan 143 1050 Brussels Belgium
T +32 2 542 09 60 F +32 2 542 09 61

Doha

Simmons & Simmons Middle East LLP
Level 5 Al Mirqab Tower Al Corniche Street
PO Box 23540 Doha State of Qatar
T +974 4409 6700 F +974 4409 6701

Dubai

Simmons & Simmons Middle East LLP
Level 7 The Gate Village Building 10
Dubai International Financial Centre
PO Box 506688 Dubai United Arab Emirates
T +971 4 709 6600 F +971 4 709 6601

Düsseldorf

Simmons & Simmons LLP
Kö-Bogen
Königsallee 2a
40212 Düsseldorf Germany
T +49 2 11-4 70 53-0 F +49 2 11-4 70 53-53

Frankfurt

Simmons & Simmons LLP
MesseTurm Friedrich-Ebert-Anlage 49
60308 Frankfurt am Main Germany
T +49 69-90 74 54-0 F +49 69-90 74 54-54

Hong Kong

Simmons & Simmons
13th Floor One Pacific Place
88 Queensway Hong Kong
T +852 2868 1131 F +852 2810 5040

Jeddah

Hammad & Al-Mehdar in alliance with Simmons & Simmons
Office #1209, King Road Tower, Malik Road,
PO Box 864 Jeddah 21421
Kingdom of Saudi Arabia
T +966 92 000 4626 F +966 2 606 9190

Lisbon

Sociedade Rebelo de Sousa in association with
Simmons & Simmons
Rua D. Francisco Manuel de Melo 21
1070-085 Lisbon Portugal
T +351 21 313 2000 F +351 21 313 2001

London

Simmons & Simmons LLP
CityPoint One Ropemaker Street
London EC2Y 9SS United Kingdom
T +44 20 7628 2020 F +44 20 7628 2070

Luxembourg

Simmons & Simmons Luxembourg LLP
Royal Monterey 26A Boulevard Royal
L-2449 Luxembourg
Grand Duchy of Luxembourg
T +352 26 21 16 01 F +352 26 21 16 02

Madrid

Simmons & Simmons LLP
Calle Miguel Angel 11 5th floor 28010 Madrid Spain
T +34 91 426 2640 F +34 91 578 2157

Milan

Studio Legale Associato in affiliation with
Simmons & Simmons LLP
Via Tommaso Grossi 2 20121 Milan Italy
T +39 02 72505.1 F +39 02 72505.505

Munich

Simmons & Simmons LLP
Lehel Carré, Thierschplatz 6
80538 Munich Germany
T +49 89-20 80 77 63-00 F +49 89-20 80 77 63-01

Paris

Simmons & Simmons LLP
5 boulevard de la Madeleine 75001 Paris France
T +33 1 53 29 16 29 F +33 1 53 29 16 30

Riyadh

Hammad & Al-Mehdar in alliance with Simmons & Simmons
Level 18 Princess Al-Anood Tower 2
King Fahad Road Olaya
Riyadh Kingdom of Saudi Arabia
T +966 92 000 4626 F +966 12 606 9190

Shanghai

Simmons & Simmons
20th Floor HKRI Centre Two, HKRI Taikoo Hui
No. 288 Shi Men Yi Road
Shanghai 200041 People's Republic of China
T +86 21 6249 0700 F +86 21 6249 0706

Singapore

Simmons & Simmons JWS Pte. Ltd.
168 Robinson Road #11-01
Capital Tower
Singapore 068912
T +65 6831 5600 F +65 6831 5688

Tokyo

Simmons & Simmons Gaikokuho Jimu Bengoshi Jimusho
(Gaikokuho Joint Enterprise TMI Associates)
23rd floor Roppongi Hills Mori Tower
6-10-1 Roppongi Minato-ku Tokyo 106-6123 Japan
T +81 3 6438 5255 F +81 3 6438 5256

elexica.com is the award winning online legal resource of Simmons & Simmons

© Simmons & Simmons LLP 2018. All rights reserved, and all moral rights are asserted and reserved.

This document is for general guidance only. It does not contain definitive advice. SIMMONS & SIMMONS and S&S are registered trade marks of Simmons & Simmons LLP.

Simmons & Simmons is an international legal practice carried on by Simmons & Simmons LLP and its affiliated practices. Accordingly, references to Simmons & Simmons mean Simmons & Simmons LLP and the other partnerships and other entities or practices authorised to use the name "Simmons & Simmons" or one or more of those practices as the context requires. The word "partner" refers to a member of Simmons & Simmons LLP or an employee or consultant with equivalent standing and qualifications or to an individual with equivalent status in one of Simmons & Simmons LLP's affiliated practices. For further information on the international entities and practices, refer to simmons-simmons.com/legalresp

Simmons & Simmons LLP is a limited liability partnership registered in England & Wales with number OC352713 and with its registered office at CityPoint, One Ropemaker Street, London EC2Y 9SS. It is authorised and regulated by the Solicitors Regulation Authority.

A list of members and other partners together with their professional qualifications is available for inspection at the above address.