

Regulation Round Up

Edited by **Andrew Wingfield**
and **John Verwey**

October 2017

For more information,
please contact:

Andrew Wingfield

Partner

t: +44.20.7280.2021

awingfield@proskauer.com

John Verwey

Special Regulatory Counsel

t: +44.20.7280.2033

jverwey@proskauer.com

Claudia Mercer

Special Counsel

t: +44.20.7280.2140

cm Mercer@proskauer.com

This publication is a service to our clients and friends. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice, or render a legal opinion.

© 2017 PROSKAUER ROSE LLP
All Rights Reserved.

Welcome to the Regulation Round Up, a regular bulletin highlighting the latest developments in UK and EU financial services regulation.

Key developments in October 2017:

3 October

The Prudential Regulator Authority (PRA) published a [policy statement](#) on strengthening accountability in banking and changes to senior managers regime (SMR) forms. The changes to the SMR forms will become live on the PRA website on 12 November 2017.

4 October

Sam Woods (PRA Chief Executive Officer) gave a [speech](#) on Geofinance in which he also provided an overview of the issues faced by the PRA and by PRA-regulated firms in their preparations for Brexit. This included the expectation that a large number of EEA firms currently operating in the UK will apply to the PRA for authorisation, on the assumption that they will lose their current passporting rights. Mr Woods also emphasised the importance of a transitional or implementation period. He warned that if there is no agreement on a transitional period by the end of 2017, firms will start planning on the basis that there will be no transitional arrangements.

5 October

An updated [Q&A](#) on the AIFMD was published by ESMA. This included a new question and answer confirmation that remuneration-related disclosure requirements under Article 22(2)(e) of the AIFMD also apply to the staff of the delegate of an AIFM to whom portfolio management or risk management activities have been delegated. The answer sets out how AIFMs can comply with this requirement.

6 October

The Competition Appeal Tribunal (CAT) handed down a [judgment](#) unanimously upholding the fine of £130,000 imposed by the Competition & Markets Authority on Balmoral Tanks Limited and Balmoral Group Holdings Limited for exchanging competitively sensitive information with competitors at a single meeting in July 2012. This is the first time in the UK that a company has been fined for participation in a single meeting where competitively-sensitive information was exchanged.

9 October

ESMA published a [briefing](#) on the importance of legal entity identifier (LEI), in particular under the Markets in Financial Instruments Regulation (MIFIR). An LEI provides a unique identifier for all entities participating in financial transactions that can also be used on a cross border basis, through a free and open database updated on a daily basis. The common framework is important to regulatory authorities to identifying clearly each exposure for risk management of financial transactions, to create transparency, and conduct market surveillance. Market participants should assess whether they need an LEI as part of their preparation for MiFID II.

The European Council published a [press release](#) formally that adopted the proposed Regulation amending the European Venture Capital Funds Regulation (Regulation 345/2013) (EuVECA Regulation) and the European Social Entrepreneurship Funds Regulation (Regulation 346/2013) (EuSEF Regulation). One of the key objectives of the amendments is to encourage more funds to be registered under the EuVECA Regulation or EuSEF Regulation. The new Regulation will enter into force 20 days after its publication in the Official Journal of the EU (OJ). It will apply three months from the date of its entry into force.

13 October

The European Banking Agency published a [report](#) which included its final guidelines for competent authorities on the complaints procedures to be taken into consideration to ensure compliance by payment service providers with the revised Payment Services Directive ((EU) 2015/2366) (PSD2). The guidelines will come into force on 13 January 2018, which is the date from which PSD2 applies.

16 October

The FCA published a [press release](#) announcing the launch of its Asset Manager Authorisation Hub. The Hub aims to remove unnecessary barriers to asset managers seeking to become authorised in the UK while still maintaining its high regulatory standards.

17 October

The UK Government published [proposals](#) to enable it to intervene in mergers that raise national security concerns. These changes target key areas, specifically companies that design or manufacture military and dual use products, and also parts of the advanced technology sector. In these areas, the Government currently can only intervene in mergers involving companies with a UK turnover of more than £70 million or where the share of UK supply increases to 25% or over. Additionally, the Government will lower the threshold whereby ministers can scrutinise investment to businesses with a UK turnover of over £1 million, and remove the requirement for a merger to increase a business's share of supply of, or over, 25%. Officials are now waiting on responses to the first part of the consultation which is set to last 4 weeks.

18 October

The FCA published position limits for certain commodity derivative contracts on its [website](#) (this was subsequently updated on 26 October). The position limits apply as of 3 January 2018 and are part of the UK's overall implementation of MiFID II.

The FCA published a [press release](#) announcing the publication of the results of its Financial Lives Survey 2017. The survey covers a number of areas, including the FCA also detailing potential harm arising from mis-selling, scams, personal security and poor treatment by providers when consumers are in difficulty or making a complaint.

20 October

The FCA issued a [statement](#) confirming that on 3 October, the Court of Appeal refused 'We Fight Any Claim' permission to appeal the decision of the Administrative Court on 4 August 2017 to refuse We Fight Any Claim permission to bring a claim for judicial review of the FCA's new package of measures in relation to PPI complaints (including a 29 August 2019 deadline for making new PPI complaints). The decision made by the Court of Appeal cannot be further challenged.

24 October

The FCA issued a [press release](#) which stated that following engagement with the FCA, BrightHouse has committed to pay over £14.8 million (in the form of cash payments and balance adjustments) to 249,000 customers in respect of 384,000 agreements for lending which may not have been affordable and payments which should have been refunded.

25 October

The FCA published a [paper](#) on the first phase of its Strategic Review on Retail Banking Business Models. This first phase focuses on gathering information. The second phase will consider areas of specific focus that the FCA has identified, together with any additional areas identified through the first phase. The FCA intends to publish an update on its work in the second quarter of 2018, explaining its preliminary analysis and the next steps.

26 October

The EU Commission published guidance in the form of [FAQs](#) that clarify EU investment firms' obligations when they seek out brokerage and research services from broker-dealers in non-EU countries.

The Commission's guidance is not restricted to the obtaining of brokerage and research services from US brokers, but explains how such services might be obtained from third country jurisdictions. The US SEC also published a related press release explaining the steps it has taken (in the form of "no-action letters") to facilitate the cross-border implementation of the MiFID II research provisions.

The FCA has published a [statement](#) welcoming the announcements of the Commission and the US SEC. The statement explains that the announcements enable arrangements that comply with MiFID II and other jurisdictions' rules, while enabling EU firms' continued access to research produced by US and other non-EU jurisdictions.

27 October

The PRA published a [note](#) aimed at non-executive directors ("NEDs") setting out the key milestones for implementation of International Financial Reporting Standard (IFRS) 9 ahead of the standard being introduced on 1 January 2018.

October (ongoing)

The Competition and Markets Authority (CMA) is conducting a full market investigation into the investment consultants sector to ensure the market is operating competitively. The CMA's investigation follows a request for a reference by the FCA on 14 September after the FCA identified various concerns over the functioning of the asset management sector in the UK. Updates are set out on the UK Government's [website](#).

The CMA is investigating suspected breaches of the UK Chapter I prohibition and Article 101 of the Treaty on the Functioning of the European Union (TFEU) in the use of certain retail most favoured nation clauses by a price comparison website in relation to home insurance products. The investigation was launched on 26 September and updates are set out on the UK Government's [website](#).