

DCM Round Up: May 2022

Welcome to our periodic round up of key developments for DCM. Further details on some of these topics can also be found on the [Financial Markets Toolkit](#).

For a more detailed service please contact one of our experts, who can discuss in detail how these developments will affect your business and transactions.

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SANCTIONS

There are a number of already announced sanctions measures relevant to capital markets that are summarised in our [Clifford Chance briefing](#). As the situation continues to evolve and new sanctions are introduced our briefing will be updated so please do reach-out to us if you do not receive an updated version automatically through other Clifford Chance distribution channels.

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ESG / SUSTAINABILITY

SEC proposals on climate-related disclosures

On 21 March the SEC published its [proposed climate-related disclosure rules](#) and [factsheet](#) for SEC registrants. This approach tallies with the proposals and rules being put in place in other jurisdictions on sustainability disclosures, namely the EU (CSRD proposals) and the UK (TCFD rules). The SEC proposal would require certain climate related disclosures to be included in registration statements and periodic reports such as the 10k. These include: climate-related risks and their material impacts on the company's business, strategy and outlook; the company's greenhouse gas emissions; certain climate-related financial statement metrics and related disclosures in a note to the company's audited financial statements; and information about the company's climate-related targets and goals, and transition plans. The comment period in relation to this proposal is ongoing.

Update on EU Green Bond Standard

On 8 April the European Council finalised its [position on the EU Green Bond Standard](#). The Council's position is helpful in that it builds in some flexibility for issuances that cannot comply with the technical screening criteria (i.e. the 'flexibility pocket') and clarifies that compliance with the criteria in place on issuance date will be sufficient to maintain the EU GBS eligibility of a bond for its lifetime. The Council has however suggested that EU GBS bonds include a compliance undertaking in their terms and conditions. Industry bodies are lobbying on this point.

The European Parliament has not yet finalised its final position and the proposed discussion by the ECON Committee in late April was pushed back due in large part to lack of agreement on how to address nuclear energy. The final European Parliament position is likely to be published in the next few months. The positions of each of the co-legislators will then need to be discussed and finalised in triologue.

ESG monthly newsletter

This is a short section on recent ESG Developments. If you are interested in this topic we also prepare more detailed monthly newsletters. Recent editions (and details of how to subscribe) are available [here](#).

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EU AND UK REGULATORY DEVELOPMENTS

FCA amendments to PRIIPs regime

On 25 March the FCA published a [policy statement](#) setting out the finalised amendments to the UK PRIIPs regime. The amendments clarify the scope of the UK PRIIPs regime, replace the requirement for PRIIPs KIDs to contain performance scenarios with a requirement for PRIIPs KIDS to contain performance information and make minor changes regarding the calculation and disclosure of transaction costs.

Of particular note is the FCA guidance as to when a PRIIP is considered to be "made available" to retail investors in the United Kingdom. This consists of three limbs which, if satisfied, mean an instrument will not be considered to be "made available" to retail investors. The final limb requires the minimum denomination of the instrument to be £100,000 and this is likely to be problematic in practice due to the mismatch with the Euro 100,000 denomination for wholesale securities under the EU Prospectus

Regulation regime. There is industry body lobbying in relation to this point and helpfully a transition period in effect until 31 December 2022 before the new FCA rules must be complied with. Please refer to our [Clifford Chance briefing](#) for more.

ESAs publish PRIIPs review recommendations

On 2 May 2022 the Joint Committee of the European Supervisory Authorities (ESAs) published its [technical advice](#) to the EU Commission on the PRIIPs regulation (see also the related [press release](#)). The advice encourages the co-legislators to consider a broader view of the PRIIPs framework and to undertake appropriate consumer testing before proposed changes are made. The ESA's reiterate a number of their recommendations in the 2019 Supervisory Statement for example, that inclusion of make-whole clauses should not *per se* make a bond a PRIIP (pg 56) and that the scope of the PRIIPs regulation as regards financial instruments should be clarified (pg 57).

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LIBOR / BENCHMARKS / RFRs

US Congress pass legislation to facilitate LIBOR transition for legal contracts

Following on from our coverage of this item in our December Round Up, on 8 March President Biden signed into law the [Consolidated Appropriations Act 2022](#) which contains legislation related to the transition away from USD LIBOR. This legislation will supersede the New York LIBOR transition legislation except with respect to legacy contracts that reference 1-week and 2-month USD LIBOR (not addressed by the federal legislation). This [overview](#) by the Alternative Reference Rates Committee may also be useful.

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