# DCM Round Up: March 2021

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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## LIBOR

**LIBOR - Cessation, representativeness, contractual continuity and safe harbours**

Following the UK FCA announcement on 5 March 2021 on future cessation or loss of representativeness of 35 LIBOR settings (and the associated IBA and ISDA announcements) there has been significant discussion on:
(a) the impact on benchmark event triggers in the terms and conditions of outstanding bonds; and
(b) contractual continuity given the prospect of "synthetic LIBOR".

In the UK, the "Article 23A – 23D" powers to be given to the UK FCA in the draft UK Financial Services Bill (FS Bill) with regard to designation of benchmarks, modification to create a "synthetic LIBOR", prohibition of use and permitted use for English law contracts are still in progress. Separately, the question of whether there should also be legislation, at a primary or secondary level, to ensure contractual continuity and a safe harbour for those using synthetic LIBOR has been the subject of a UK HMT consultation. Click **here** to see the Clifford Chance 15 March 2021 response to the "**Supporting the wind-down of critical benchmarks**" consultation. For the House of Lords debate on 24 March 2021 on proposed amendments to the FS Bill to address contractual continuity and safe harbours, click **here** (see 6:37pm).

In the U.S., Senate Bill S297 - the NY legislation to address LIBOR cessation, as proposed by **ARRC** - was **passed** on 24 March 2021. This includes measures both for contractual continuity and a safe harbour.

In the EU, the EU BMR amendments which we mentioned in our January 2021 DCM Round Up were published in the Official Journal on 12 February 2021 (**Regulation (EU) 2021/168**).

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## ESG AND SUSTAINABILITY

**Sustainability-Linked Bond Principles (SLBP)**

In February, following discussions with the SLB working group (of which Clifford Chance is a member), ICMA published its **Sustainability Linked Bond Principles Q&A**. These look at key questions that might arise in using the SLBP in the following categories: Fundamentals and Definitions (e.g. the difference between SLBs, green bonds, transition bonds and ESG bonds); Issuers (e.g. who can issue an SLB); Selection of Key Performance Indicators and Calibration of Sustainability Performance Targets (e.g. what governance process is required to monitor SPTs); Bond Characteristics (e.g. what kind of structural changes might a SLB have); and Reporting and Verification (e.g. should SPT reporting be aligned with the issuer's corporate reporting).

**UK Government Green Gilt**

The Government announced in the 2021 Budget that it will issue its debut green gilt this summer with further issuance later in 2021. The intention is for the total green gilt issuance this year to be a minimum of GBP 15 billion. The green gilt framework will be published in June. More details **here**. As you may know we have been appointed as legal adviser.

**Green and Sustainable Bonds: trends and themes in Capital Markets Presentation**
We have spoken to a number of you already on this but please do get in touch if you would find it useful for us to speak to you on this topic in more depth.

**UK BEIS consultation - TCFD disclosures for UK listed companies**

The UK has launched a consultation on the application of mandatory climate related financial disclosures in accordance with the TCFD recommendations to all public quoted companies, large private companies and LLPs. This will capture all large UK companies with transferable securities listed on a UK regulated market. This builds on earlier announcements by the UK government as detailed in our previously circulated client briefing. The requirements are intended to be applied from 6 April 2022 in relation to financial periods beginning after that date.

**ESG newsletter**

For those of you interested in ESG matters you may want to subscribe to our monthly newsletter. You can find the March edition **here** and details of how to subscribe.

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## PROSPECTUS REGIME

**EU**

**ESMA updates Prospectus Regulation Q&A**
On 28 January European Securities and Markets Authority (ESMA) updated its **questions and answers (Q&A)** on the Prospectus Regulation. New Q&As added in this version cover:

- order of information in a prospectus;
- financial information which only covers short periods;
- use of the same prospectus to make several offers;
- disclosure requirements concerning statements prepared by an expert;
- application of an exemption in Article 1(5) of the Prospectus Regulation; and
- which disclosure annexes should be applied when drawing up a prospectus – this includes an updated "combinations table".

**ESMA Prospectus Regulation Guidelines**
On 4 March ESMA published its **final Guidelines on disclosure requirements** under the Prospectus Regulation and these replace the dated CESR Recommendations. Note that these Guidelines remain unamended from the version published in ESMA's final report in July 2020 but have now been translated into all EU languages. The Guidelines apply to National Competent Authorities and market participants. While applying mainly in the context of equity disclosure they cover, amongst other things, disclosure relating to profit forecasts, historical financial information and pro forma financial information.

**UK**

**Lord Hill Listing Review**
The **UK Listing Review** was published on 3 March. While mainly focusing on areas of specific interest to equity such as facilitating SPACs, reducing free float requirements and allowing for dual class share structures it also recommended "*a fundamental review of the prospectus regime so that in future, admission to a regulated market and offers to the public are treated separately - this will ensure it reflects the breadth and maturity of UK capital markets and the evolution in the types of business coming to market*". This is likely to have implications for debt markets. Market discussions indicate the willingness of the Government and UK regulators to embrace the opportunities provided by Brexit and Covid to move quickly to introduce a more dynamic set of rules governing capital markets.

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## BREXIT

**Bail-in – Limited grandfathering**
The Single Resolution Board (SRB) communication on **22 March 2021** confirmed that it will consider liabilities governed by UK law without a contractual bail-in recognition clause as eligible for minimum requirements for own funds and liabilities (MREL) until 28 June 2025 - but note that there are qualifying criteria, including that they must have been issued before November 2018.

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## MIFID II

**The MiFID II "quick fix" – UK to consult on similar changes**
In a speech on wholesale markets on **16 March 2021**, the UK FCA (Edwin Schooling Latter) stated that the UK FCA would soon be putting out a consultation on a similar (though not identical) set of changes to the EU MiFID II "quick fix" enacted in February 2021. (By way of a reminder, the EU changes, amongst other things, include the Article 16a "*Exemption from product governance requirements*" which will impact bonds with no other embedded derivative than a make-whole clause or where the financial instruments are marketed or distributed exclusively to eligible counterparties. The recent MiFID II changes were highlighted in this **Clifford Chance briefing** from 8 March 2021. As mentioned in the briefing, any MiFID II alleviations would need to be considered hand-in-hand with PRIIPS make-whole considerations.)

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## CORONAVIRUS

**Liquidity**

The UK COVID-19 Corporate Financing Facility (**CCFF**) ceased any new purchases from **23 March 2021**. The ECB, in contrast, **announced** that it will continue to conduct net asset purchases under its pandemic emergency purchase programme (**PEPP**) until at least the end of March 2022. Moreover, the ECB also expects purchases over the next few months to be at a significantly higher pace than in the first quarter of the year.

**COVID response bonds**

The approach from the ECB shows that, despite overwhelmingly positive news on vaccination, funding demands continue unabated. As a refresher, you might like to watch Deborah Zandstra and Eric Green in this short video on the **Thomson Reuters site** (log-in required) or the relevant **page** (no log-in needed). The talk builds on the May 2020 Clifford Chance **briefing** on Covid-19 response bonds, and considers whether Covid response bonds can be classified as social bonds, what they can be used for, and investor response.

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