FIG Bulletin

Recent developments

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General

UK and Switzerland to deepen cooperation on financial services

HM Treasury has published a press release announcing plans to move forward to the next stage of talks between the UK and Switzerland on an agreement on financial services. Following initial exploratory talks, the two countries will move forward with negotiations on the ambition of delivering a comprehensive mutual recognition agreement that would reduce costs and barriers for UK firms accessing the Swiss market, and vice versa. Negotiations are expected to cover a wide range of sectors such as insurance, banking, asset management and capital markets, including market infrastructure.

Discussions between the UK and Switzerland are set to continue at official levels over coming months.

Separately, HM Treasury has announced that reciprocal arrangements between the UK and Switzerland concerning the share trading obligation have entered into force, following the removal of restrictions on UK trading venues by the Swiss authorities. The Swiss Financial Market Supervisory Authority (FINMA) has also published confirmation and guidance on its decision.

Green Finance: UK joins International Platform on Sustainable Finance

HM Treasury has announced that the UK has become a member of the International Platform on Sustainable Finance (IPSF). It also published the text of the Joint Statement of the IPSF that was signed by Rishi Sunak, Chancellor of the Exchequer, on 12 January 2021.

The IPSF is a forum for public authorities in charge of developing environmentally sustainable finance policies and initiatives, such as ministries of finance, central banks and supervisory and regulatory authorities. Its aim is to coordinate approaches and initiatives for the capital markets (such as taxonomies, disclosures, standards and labels), which are key to enabling private investors to identify and seize environmentally sustainable investment opportunities worldwide.

Pre-paid funeral plans: Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2021

The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2021 (SI 2021/90) has been published, together with an explanatory memorandum.

The Order amends the regulatory framework for providers of pre-paid funeral plan contracts so that providers of funeral plan contracts will generally need to be authorised under the Financial Services and Markets Act 2000 (FSMA) when entering into, or carrying out, such contracts. The Order also makes other amendments relating to the intermediation and financial promotion of funeral plan contracts, and expands the permitted business of appointed representatives, so that such persons can intermediate the sale of funeral plan contracts as either an arranger or an agent.

Finally, the Order makes various transitional modifications to the ombudsman scheme established under FSMA, scheme, by making provision, in certain circumstances, for complaints made on or after the date on which the Order comes fully into force relating to acts or omissions that occurred before that date to be dealt with by the Financial Ombudsman Service (FOS). In particular, the FOS will have jurisdiction to deal with complaints made in relation to acts or omissions that took place at a time when the funeral plan provider was registered with the Funeral Planning Authority (FPA) and subject to the FPA's Code of Conduct and Rules.

Parts of the Order come into force on the day after the day on which it was made (28 January 2021) (initial commencement date). The rest of it comes into force on the first day following the expiry of a period of 18 calendar months beginning on the day after the initial commencement day (that is, 28 July 2022). This period is to allow sufficient time for the UK Financial Conduct Authority (FCA) to design, consult on and implement the architecture for the new regulatory regime, and for funeral plan providers and intermediaries to take the necessary steps (including seeking authorisation) to meet the requirements of the new regulatory framework.

UK implementation of IFPR and Basel III standards: HM Treasury consultation

HM Treasury has published a consultation paper on the implementation of the Investment Firms Prudential Regime (IFPR) and Basel III (referred to by HM Treasury as Basel 3) standards.

HM Treasury explains that, once the Financial Services Bill 2019-21 (FS Bill) receives Royal Assent, it will enable the FCA and the UK Prudential Regulation Authority (PRA) to introduce the IFPR and the outstanding Basel III prudential standards for credit institutions. The latter include those standards which make up the UK equivalent to the outstanding elements of the EU's second Capital Requirements Regulation (CRR II). The Government, the FCA and the PRA have announced their intention to implement these regimes by 1 January 2022. The PRA and the FCA will be consulting on the key elements of the new regimes in the first half of 2021. The FCA already published its first IFPR consultation paper on 14 December 2020.

In the consultation, HM Treasury seeks views on issues that will be addressed in secondary legislation, to be made once the FS Bill receives Royal Assent. These include:

- details of the provisions in the provisions in the UK Capital Requirements Regulation (UK CRR) that are to be revoked by HM Treasury using its powers under the FS Bill. These provisions will be replaced by PRA rules, on which the PRA will consult in due course;
- the Treasury's policy approach to two issues where it will not be taking the same approach as the EU CRR II;
- HM Treasury’s approach to applying the Standardised Approach reporting requirements in relation to the Fundamental Review of the Trading Book (FRTB);
- the suggested exercise of HM Treasury delegated powers in the FS Bill to ensure effective implementation of the IFPR, with a focus on definitions regarding the entities within a group structure to whom the rules may apply on a consolidated basis;
- consequential changes to the statute book, in particular the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 (SI 2013/556), as a result of changes to the level of initial capital requirements for investment firms, which will be set in FCA rules; and
- the application of the UK resolution regime in Part 1 of the Banking Act 2009 to FCA investment firms.

The consultation closes on 1 April 2021.

FOS: Treasury Committee outlines concerns

The House of Commons Treasury Committee has published a series of correspondence with Caroline Wayman, Financial Ombudsman Service (FOS) Chief Ombudsman and Chief Executive, in which the Committee expresses concerns about several issues, including the FOS' proposed budget and funding proposals, a strategy to reduce the backlog of unallocated or unresolved cases, and case handling times.

The exchange of letters between Ms Wayman and Mel Stride MP, Chair of the Treasury Committee, follows on from Ms Wayman's appearance before the committee at a hearing on 9 November 2020.

The Committee intends to invite Ms Wayman and Baroness Manzoor, FOS Chair, to provide further evidence around the time that the FOS publishes its final budget in spring 2021.

Zero or negative BoE Bank Rate: PRA Dear CEO letter regarding firms' operational readiness

The PRA has published a Dear CEO letter from Sam Woods, Bank of England (BoE) Deputy Governor for Prudential Regulation and PRA CEO, giving feedback on the Dear CEO letter and information request it sent to specific firms in October 2020 regarding their operational readiness for a zero or negative BoE Bank Rate.

Mr Woods explains that firms' responses have informed the PRA's understanding of the operational implications for PRA-authorised firms in the context of its objectives. Responses have been shared across the BoE to inform the Monetary Policy Committee (MPC) about the operational timelines for firms to implement a zero or negative Bank Rate.

A summary of firms' responses is included as an annex to the letter. They show that firms are already able to deal with near-zero rates (down to at least two decimal places) and that, generally, a zero Bank Rate would pose a lesser operational challenge than a negative Bank Rate and would take less time to implement. While a small number of firms do not require development work to implement a negative Bank Rate, most firms would need to make some changes to systems and processes to implement either a strategic or tactical solution. The PRA defines strategic solutions as permanent changes, involving material systems upgrades that feed through internal systems for managing the calculation of interest, customer communications, treasury, accounting and risk models. Tactical solutions are typically shorter-term fixes, involving workarounds on the periphery of core systems, along with overrides in downstream systems and customer communications.

The PRA understands that most firms would be able to implement tactical solutions to accommodate a negative Bank Rate within six months, without material risks to safety and soundness. It considers an implementation period of less than six months would attract increased operational risks and could adversely impact some firms' safety and soundness and the PRA's wider statutory objectives.

Having considered the MPC's request, as set out in the minutes of its 3 February 2021 meeting, the PRA will now engage with PRA-authorised firms on their development of tactical solutions, with the aim of firms putting themselves in a position to be able to implement a negative Bank Rate at any point after six months.

Strategic solutions to implement a negative Bank Rate have been reported by many firms as having a significantly longer timeframe than tactical solutions. Since this could involve reprioritising other important projects, the PRA does not expect firms to commence work to implement these strategic solutions unless they are already included in their plans.

FCA approach document on international firms

The FCA has published "Our approach to international firms", in which the FCA sets out its general approach to international firms providing or seeking to provide financial services that require authorisation in the UK. The FCA emphasises that it is not changing existing rules or other provisions in the FCA Handbook. The document supplements the FCA Handbook, existing policy statements and guidance.

The approach document intends to explain how the FCA will assess international firms against minimum standards when they apply for authorisation and during ongoing supervision by the FCA, and its general expectations for these firms. It also sets out the circumstances where these international firms could present higher risks of harm and how those risks can be mitigated.

The FCA has published a feedback statement, FS21/3, on the feedback received to its preceding consultation and its response.

FCA Handbook Notice 84

The FCA has published Handbook Notice 84, which sets out changes to the FCA Handbook made by the FCA board on 22 December 2020 and 28 January 2021 by the following instruments:

- Financial Conduct Authority Technical Standards (Capital Requirements Directive and Regulation) (EU Exit) (No 2) Instrument 2020 (FCA 2020/88). Except for the revocation of a previous EU exit instrument, which took effect on 23 December 2020, the instrument entered into force on IP completion day;
- Technical Standards (Miscellaneous Amendments) (No 2) (EU Exit) Instrument 2020 Instrument 2020 (FCA 2020/89). Except for amendments to EU exit instruments and onshored technical standards, which took effect on 23 December 2020, the instrument entered into force on IP completion day;
- Fees (Trade Repositories and Securitisation Repositories) Instrument 2021 (FCA 2021/1), which came into force on 29 January 2021;
- Markets in Financial Instruments (Tick Sizes) Instrument 2021 (FCA 2021/2), which came into force on 29 January 2021; and
- Listing Rules (Open-ended Investment Companies) Instrument 2021 (FCA 2021/3), in force from 4 January 2022;

EU digital finance strategy: European Commission requests ESA technical advice

The European Commission has requested technical advice relating to its digital finance strategy from the European Supervisory Authorities (ESAs). The Commission asks the ESAs for advice on how to address several issues, in the following areas:

- regulation and supervision of more fragmented or non-integrated value chains;
- platforms and bundling of various financial services;
- risks of groups combining different activities;
- non-bank lending (requested from EBA); and
- protection of client funds and the articulation to the Deposit Guarantee Scheme Directive (DGSD) (requested from EBA).

The Commission advises that as part of its DFS over the next four years it may propose new legislation, amend existing EU legislation or take other actions. The ESAs' technical advice will be a key input to this work.

SFDR: Joint Committee of ESAs final report on draft RTS on ESG disclosures

Taking into account feedback to its April 2020 consultation, on 4 February 2021, the Joint Committee of the European Supervisory Authorities (ESAs) published the final report, including draft regulatory technical standards (RTS), on the content, methodologies and presentation of disclosures under the EU Regulation on sustainability-related disclosures in the financial services sector (SFDR).

The proposed RTS aim to strengthen protection for end-investors by improving environmental, social and governance (ESG) disclosures to end-investors on the principal adverse impacts of investment decisions and on the sustainability features of a wide range of financial products. This will help to respond to investor demands for sustainable products and reduce the risk of greenwashing.

The main proposals cover entity-level principal adverse impact disclosures, and proposals relating to pre-contractual information, information on the entity's website, information in periodic reporting, and information relating to the "do not significantly harm" principle.

The European Commission is expected to endorse the RTS within three months of their publication. The ESAs propose in the draft RTS that the application date of the RTS should be 1 January 2022. In October 2020, the Commission confirmed that the application of the RTS would be delayed until after the SFDR comes into force on 10 March 2021.

CRR and Solvency II: Joint Committee of ESAs consults on amending ITS on mapping credit assessments of ECAIs

The Joint Committee of the European Supervisory Authorities (ESAs) has published the following consultation papers containing draft implementing technical standards (ITS) amending Implementing Regulation (EU) 2016/1799 and Implementing Regulation (EU) 2016/1799 on the mapping of external credit assessment institutions' (ECAIs) credit assessments under the Capital Requirements Regulation (CRR) and the Solvency II Directive:

- consultation paper on draft ITS amending Implementing Regulation (EU) 2016/1799 on the mapping of ECAIs' credit assessments under Article 136(1) and (3) of the CRR. The ITS reflect a mandate in Article 136(1) of the CRR; and
- consultation paper on draft ITS amending Implementing Regulation (EU) 2016/1800 on the allocation of credit assessments of ECAIs to an objective scale of credit quality steps under the Solvency II Directive. The ITS reflect a mandate in Article 109a(1) of the Solvency II Directive.

Implementing Regulation (EU) 2016/1799 establishes the mapping methodology for the use of external credit assessments of ECAIs in the calculation of the capital requirements for credit institutions and financial institutions. Implementing Regulation (EU) 2016/1800 specifies the allocation of relevant credit assessments of ECAIs to an objective scale of credit quality steps for the purposes of the calculation of the solvency capital requirement (SCR) by insurance and reinsurance undertakings. Article 111(1)(n) of the Solvency II Directive specifies that the Solvency II approach to mapping ECAI credit assessments should be consistent with the CRR approach.

The ESAs propose to amend both Implementing Regulations to reflect the registration of additional credit rating agencies (CRAs) by the European Securities and Markets Authority (ESMA) under the CRA Regulation and the deregistration of other ECAIs for which the Implementing Regulations provide a mapping.

The deadline for responses to both consultations is 5 March 2021.

PRIIPs Regulation: EIOPA adopts draft final report on RTS amending PRIIPs KID Delegated Regulation

The ESAs have submitted to the European Commission draft final report which EIOPA has adopted (following its previous refusal), on RTS amending Commission Delegated Regulation 2017/653 on key information documents (KID) for packaged retail and insurance-based investment products (PRIIPs) (PRIIPs KID Delegated Regulation).

The draft report follows a request from the European Commission in December 2020 for the ESAs to submit the draft. In a further letter dated January 2021, the Commission confirmed its approach to a broader review of the PRIIPs Regulation. The review will take place as soon as the results (due at the end of 2021) are known from the cross-sectoral study on disclosure, inducements and suitability rules for retail investors announced in September 2020 as part of the Commission's second CMU action plan.

EIOPA's Board of Supervisors had previously refused to adopt the draft RTS. However, in a letter dated 3 February 2021, the ESAs confirmed that a qualified majority of EIOPA's board have adopted the draft final report based on the further details provided by the Commission. Accordingly, the ESAs have now submitted the draft final report to the Commission.

The next step will be for the Commission to adopt the draft report, following which it will be scrutinised by the Council of the EU and the European Parliament.

Banking and Finance

UK ring-fencing and proprietary trading independent reviews: Terms of Reference

HM Treasury has published the Terms of Reference for the upcoming statutory reviews of the ring-fencing regime legislation and banks' proprietary trading activities.

The Financial Services (Banking Reform) Act (FSBRA) 2013 requires the Treasury to appoint an independent panel to review the operation of the legislation relating to ring-fencing. Separately, FSBRA also requires the Treasury to appoint an independent panel to review banks' proprietary trading activities, following a statutory report that was required from the Prudential Regulation Authority (PRA) and published in September 2020. Given the inherent links between the structure of the banking sector and proprietary trading activities, the Treasury has appointed a single panel to conduct both reviews.

The terms of reference set out:

- the scope of the review;
- the panel's remit to make recommendations; and
- the timetable.

Having conducted the review in line with the prescribed scope, the panel is required to make written reports to HM Treasury on ring-fencing and proprietary trading. The aim is for the panel to finalise its written reports to HM Treasury within one year of the beginning of the reviews. HM Treasury will lay a copy of the reports before Parliament.

COVID-19: BoE decides not to restart 2019 liquidity Biennial Exploratory Scenario

On 3 February 2021, the Bank of England (BoE) announced that it will not restart the 2019 liquidity Biennial Exploratory Scenario (BES). The liquidity BES, which was launched in July 2019, was intended to explore the implications of a severe and broad-based liquidity stress affecting major UK banks simultaneously. In March 2020, the BoE announced that, in light of COVID-19, it had paused the liquidity BES until further notice.

The BoE states that insights from the liquidity BES have already helped to shape aspects of its response to the impact of COVID-19 and that these insights will continue to help inform several strands of the BoE's work in future.

COVID-19: FCA asks banks to reconsider branch closures during lockdown

On 28 January 2021, the UK Financial Conduct Authority (FCA) published a statement asking banks to reconsider branch closures during the COVID-19 lockdown.

The FCA notes that its September 2020 guidance supports its consumer protection objective and is designed to protect consumers by setting expectation that firms should assess customer needs and consider the availability and provision of alternative arrangements where branch closures or ATM closures and conversions are planned. Despite this, and the subsequent national lockdown, some banks and building societies are intending to go ahead with branch closures already announced or are continuing to announce new branch closures.

The FCA is concerned that these activities could have significant consequences for customers. It may be harder than usual to reach all customers under the current restrictions and engage with them on closure proposals effectively (for example, small businesses that are temporarily closed). Some customers may need to access in-branch services to help them prepare for closures but may be unable to do so. Customers may also need additional help to access online banking and making payments.

The FCA wants banks and building societies to review their plans against its September 2020 guidance. Where they are unable to meet the expectations of the FCA's guidance during lockdown measures, firms should consider pausing or delaying new branch closures where possible, particularly where this could have significant impact on vulnerable customers. This would be similar to the approach firms took during lockdown measures in 2020.

Where firms consider it is appropriate to continue with plans during this period, the FCA expects them to have considered its guidance and be able to demonstrate how they have taken the concerns and expectations set out in its statement into account.

If firms are considering new closures or advancing those previously announced during this period, the FCA expects them to:

- communicate with customers in a way that is clear, fair and not misleading to inform them of the closure proposals. Consideration should be given to the best way to make sure vulnerable and hard-to-reach customers are aware of the proposals and are able to contact the firm;
- give customers clear information about how the firm can help them access alternatives during this period of national restrictions, for example support to use online banking; and
- where appropriate, engage with customers to understand their needs and properly consider how they will be affected by the proposals.

LIBOR transition: Investment Association letter

The Investment Association (IA) has published a letter addressed to companies issuing LIBOR-linked sterling bonds, calling on them to take urgent action to transition away from GBP LIBOR referencing bonds.

The IA notes that, as of early 2021, there remains many outstanding LIBOR-referencing bonds which have not yet transitioned to a new rate. The potential impact of these bonds not being transitioned to the new rate ahead of the deadline is severe, with the risk of significant market disruption and harm to investors if bonds continue to reference a non-representative rate.

The IA is aware some issuers may have found it difficult to identify bondholders to engage with them on the topic of LIBOR transition and, as a result, they may have been reluctant to launch consent solicitation processes in case those processes do not receive bondholder approval. Therefore, the IA states that its members are reaching out to issuers to encourage them to put into effect plans to transition these instruments as quickly as possible. This is critical if a broad-based market transition is to be achieved by the deadline outlined by the authorities.

IA members would like to express to issuers their support for the transition process, and, to highlight their support for past consent solicitations launched by issuers looking to transition their LIBOR bonds to a new rate. Alternatively, IA members would also be willing to consider alternative arrangements with issuers, such as buybacks.

SSM: ECB 2020 SREP outcome and 2021 supervisory priorities

The European Central Bank (ECB) has published its supervisory priorities for the single supervisory mechanism (SSM) for 2021, which are based on the outcomes of its 2020 Supervisory Review and Evaluation Process (SREP). Sources of banking sector risk are set out in a risk assessment for 2021.

In 2020, the ECB adopted a pragmatic approach to the SREP focusing on banks' ability to address the challenges and risks to capital and liquidity arising from COVID-19, which meant that SREP requirements and guidance were stable. In the light of the pandemic, the ECB postponed the deadlines of previous SREP qualitative measures. As a result, many findings remain unaddressed and unresolved from previous SREP cycles, in particular those on internal governance. Supervisory concerns were addressed mainly through qualitative recommendations rather than supervisory measures.

The SREP 2020 outcomes indicate that euro area banks started 2020 with significantly higher capital levels and far greater resilience to economic deterioration than was the case in the 2008 financial crisis. However, vulnerabilities remain in several areas. Based on the SREP analysis and the situation triggered by the pandemic, the ECB banking supervision has identified the following four priority areas for 2021:

- credit risk management;
- capital strength;
- business model sustainability; and
- internal governance.

The ECB notes that supervisory activity will also focus on action taken by banks in response to the ECB guide on climate-related and environmental risks. It will also focus on prudential threats stemming from money laundering, cyber and digitalisation-related risks and banks' preparedness for Basel III implementation.

COVID-19: EBA report on implementation of selected COVID-19 policies: January 2021

The European Banking Authority (EBA) has published an updated version of its report on the implementation of selected COVID-19 policies. The aim of the report is to provide a follow-up on the implementation issues around COVID-19 credit risk policy relief measures and to monitor how such measures are implemented. The report contains FAQs on the implementation of the requirements set out in the EBA's guidelines on moratoria and on COVID-19 reporting and disclosure. The EBA has expanded the report by including new FAQs on the two sets of guidelines.

EBA launches 2021 EU-wide stress test

The EBA has announced the launch of the 2021 EU-wide stress test for banks and released the macroeconomic scenarios. Following the postponement of the 2020 exercise due to COVID-19, the EBA notes the 2021 EU-wide stress test will provide valuable input for assessing the resilience of the European banking sector. Accordingly, the adverse scenario is based on a narrative of a prolonged COVID-19 scenario in a "lower for longer" interest rate environment, in which negative confidence shocks would prolong the economic contraction.

The EBA expects to publish the results of the exercise by 31 July 2021.

The EBA has published the following documents:

- a methodology, which describes the common methodology that defines how banks should calculate the stress impact of the common scenarios and sets constraints for their calculations. It also aims to provide banks with guidance and support for performing the test;
- templates and template guidance;
- information on the macro-financial scenario, prepared by the European Systemic Risk Board (ESRB), together with an excel version on the scenario provided for analytical purposes;
- information in pdf and excel formats relating to a market risk scenario prepared by the ESRB;
- a letter from the ESRB on the preparation of the scenarios; and
- FAQs on the stress test.

The ECB has also published a press release on its role in the stress test as prudential supervisor of banks in the SSM.

Consumer Finance

Woolard Review sets out vision for unsecured credit

The UK Financial Conduct Authority (FCA) has published a report, to the FCA board on a review of change and innovation in the unsecured consumer credit market. The report is published following a review by Christopher Woolard, former FCA Interim CEO (the Woolard review), commissioned by the FCA board.

The report sets out how regulation can better support a healthy market for unsecured lending, considering the impact of the COVID-19 pandemic, changing business models and new developments in unregulated buy-now pay-later (BNPL) unsecured lending. It sets out 26 recommendations to the FCA, government and other bodies to make the unsecured credit market fit for the future.

Read more in our separate briefing: Woolard Review sets out vision for unsecured credit: now over to the FCA to make it happen.

HM Treasury has published a press release confirming that interest free buy-now-pay-later (BNPL) products are to be regulated by the FCA following a recommendation from the Woolard review that such products should be brought into FCA supervision. HM Treasury indicates that the government will consult with stakeholders before bringing forward the necessary legislation to ensure the approach to regulating BNPL is proportionate.

Securities and Markets

Reciprocal UK-Swiss share trading obligation equivalence

HM Treasury has announced that reciprocal arrangements between the UK and Switzerland concerning the share trading obligation (STO) have entered into force, following the removal of restrictions on UK trading venues by the Swiss authorities. The Swiss Financial Market Supervisory Authority (FINMA) has also published confirmation and guidance on its decision.

UK MiFID markets regime: FCA update on trading Swiss shares

The UK Financial Conduct Authority (FCA) has updated its webpage on the operation of the MiFID markets regime following the end of the transition period to give information about the trading of Swiss shares.

The FCA explains that it will soon be possible for UK firms to meet their obligations under the share trading obligation on Swiss exchanges, and for UK trading venues to be able to offer trading in Swiss shares. It confirms how aspects of UK markets regulation will apply to Swiss shares that resume trading on UK trading venues.

For the purposes of calibrating the pre and post-trade transparency regime, the FCA advises that Swiss shares that resume trading on UK trading venues will be treated as if they are being traded on a UK trading venue for the first time. An estimate will be made of the relevant parameters based on the characteristics of the shares to apply from their first day of trading. These estimates will then be updated after six weeks based on data from the first four weeks of trading in the UK.

The FCA explains that the same logic as for transparency parameters will apply for tick sizes, with an initial estimate updated after six weeks by a calculation based on data for the first four weeks of trading in the UK. These figures may result in different tick sizes than currently apply for trading of these instruments on exchanges in Switzerland. UK trading venues will be allowed to use the minimum tick size that applies in Switzerland where that is smaller than the minimum tick size based on the figures for the average daily number of transactions (ADNTE) that the FCA publishes through its Financial Instruments Transparency System (FITRS).

EU MiFID: ESMA updates Q&As on market structures and transparency

The European Securities and Markets Authority (ESMA) has updated its Q&As on market structures topics under the Markets in Financial Instruments Directive (MiFID) and the Markets in Financial Instruments Regulation (MiFIR). The updated Q&As cover the following topics:

- the classification of Direct Electronic Access (DEA) trades (section 3, question 32);
- matched principal trading by investment firms (section 5.3, question 32).

EU MiFID: ESMA consults on draft guidelines on aspects of appropriateness and execution-only

ESMA is consulting on draft guidelines on certain aspects of the MiFID appropriateness and execution-only requirements. The purpose of the draft guidelines is to enhance clarity and foster convergence in the application of certain aspects of the appropriateness and execution-only requirements. This consultation builds on relevant parts from ESMA's Guidelines on certain aspects of the MiFID II suitability requirements, while adjusting them to the appropriateness and execution-only framework. In addition, it considers the results of supervisory activities conducted by national competent authorities (NCAs) on the application of the appropriateness and execution-only requirements, in particular resulting from the 2019 common supervisory action (CSA) on appropriateness.

The consultation closes on 29 April 2021. ESMA will consider the feedback received and expects to publish the final report and guidelines in Q3 2021.

EU MiFID product governance rules: ESMA launches common supervisory action

ESMA has announced the launch of a common supervisory action (CSA) with NCAs on the application of product governance rules under the EU MiFID. The CSA will be conducted during 2021. It will allow ESMA and the NCAs to assess the progress made by manufacturers and distributors of financial products in the application of these requirements. ESMA believes this initiative, and the related sharing of practices across NCAs, will help ensure the consistent implementation and application of the MiFID product governance rules, and enhance investor protection.

EU MiFIR: ESMA 2020 annual report on application of waivers and deferrals for equity and equity-like instruments

ESMA has published its annual report on the application of waivers and deferrals for equity and equity-like instruments under the EU MiFIR. Under Articles 4(4), 7(1), 9(2) and 11(1) of MiFIR, ESMA is required to monitor the application of pre-trade transparency waivers and deterred trade-publication. As part of this mandate, it submits an annual report to the European Commission on how equity and non-equity waivers and deferrals regimes are applied in practice.

EU BMR: Council of the EU adopts Regulation amending BMR to address benchmark cessation risks and exempt certain third-country FX benchmarks

The Council of the EU has announced that it has adopted its position at first reading on the proposed Regulation amending the Benchmarks Regulation (BMR) as regards the exemption of certain third-country foreign exchange (FX) benchmarks and the designation of replacement benchmarks for certain benchmarks in cessation. The Council has also published the adopted text of the amending Regulation.

The Council explains that the amendments have been made against the background of an expected phasing-out of the London Inter-Bank Offered Rate (LIBOR) by the end of 2021. The aim of the new rules is to reduce legal uncertainty and avoid risks to financial stability by making sure that a statutory replacement rate can be put in place by the time a systemically-important benchmark is no longer in use.

The new rules also cover the replacement of a benchmark designated as critical in one member state, through national legislation. In addition, the amendments to the BMR extend the transition period for the use of third-country benchmarks until the new rules governing the use of such benchmarks are applied.

EU-supervised entities will be able to use third-country benchmarks until the end of 2023. The Council explains that the European Commission may further extend this period until the end of 2025 in a delegated act to be adopted by 15 June 2023, if it provides evidence that this is necessary in a report to be presented by that time.

The Council advises that the text of the adopted Regulation will be signed on 10 February 2021 and is expected to be published in the Official Journal of the European Union (OJ) on 12 February 2021. It will enter into force and apply from the following day.

EU BMR: ESMA final report on technical advice on fees for benchmark administrators

ESMA has published a final report on technical advice to the European Commission on supervisory fees for benchmark administrators under the BMR. The technical advice focuses on the supervisory fees to be paid by benchmark administrators that will be supervised by ESMA from 1 January 2022. The fees will be collected from administrators of critical benchmarks and those of third-country benchmarks that are subject to the EU recognition regime.

The final report takes account of the feedback received, including the fact that the transitional period for third-country administrators has been postponed until 31 December 2023.

EU ESG ratings and assessment tools: ESMA outlines potential legal framework

On 29 January 2021, ESMA published a letter it has sent to the European Commission sharing its views on the main challenges in the area of environmental, social and governance (ESG) ratings and assessment tools. The letter builds on ESMA's response to the Commission's July 2020 consultation on a renewed sustainable finance strategy.

The market for ESG ratings and other assessment tools is currently unregulated and unsupervised. ESMA explains that this gives rise to increased risks of greenwashing, capital misallocation and products mis-selling when combined with increasing regulatory demands for consideration of ESG information. To address these issues, ESMA outlines a potential future legal framework which is described in the letter.

ESMA states that it is ready to support possible future, direct supervisory responsibilities in this area.

EU CRAs: ESMA consults on technical advice on fees

ESMA has published a consultation paper on technical advice on fees for credit rating agencies (CRAs).

Commission Delegated Regulation (EU) 272/2012 (Fees Regulation) sets out details of the fees that ESMA can charge for the certification of CRAs and the ongoing supervision of certified CRAs. In July 2020, the Commission sent a letter (set out in Annex II to the consultation paper), requesting ESMA to provide technical advice for a review of the Fees Regulation. In particular, the Commission asked ESMA to ensure that the advice reflected ESMA's experience of applying the Fees Regulation in practice and ensured consistency with the equivalent delegated regulations on fees for trade repositories (TRs).

In the consultation paper, ESMA seeks views on proposed amendments to the Fees Regulation, as well as to the general budgetary approach and fee collection process.

The deadline for responses is 15 March 2021. ESMA intends to submit its final technical advice to the Commission by 31 June 2021.

Insurance

Solvency II: PRA letter to life insurers on application of effective value test

The UK Prudential Regulation Authority (PRA) has sent a letter to the Chief Actuaries of life insurers on feedback on the application of the effective value test (EVT).

In the letter, the PRA explains that its Supervisory statement, SS3/17 "Solvency II: illiquid unrated assets", sets out a diagnostic test, the EVT, to assesses the appropriateness of the matching adjustment (MA) benefit life insurers derive from restructured equity release mortgages (ERMs). Following its review of the submissions from life insurers reporting the results of the EVT at year-end 2019, and the models and data provided in response to a data request of 27 February 2020, the PRA is giving feedback to firms in this letter. To promote the clarity and consistency of submissions, the PRA asks firms to consider key points set out in the letter when conducting the EVT. The key points cover:

- structure of economic value;
- use of appropriate assumptions; and
- presentation and submission of results.

The PRA expects life insurers to incorporate the recommendations around best practice set out in its letter into their EVT models at the "nearest convenience" and, at the latest, by 31 December 2021, when the full expectations of SS3/17 will come into effect.

EU Solvency II 2020 review: European Commission summary report of consultation

The European Commission has published a summary report of its public consultation on the review of prudential rules for insurance and reinsurance companies (Solvency II). In the report, the Commission summarises the feedback received to its consultation.

The Commission explains that it will consider the feedback, alongside the European Insurance and Occupational Pension Authority's (EIOPA's) work on the review, when it is shaping the legislative proposal it plans to adopt in the third quarter of 2021.

Solvency II: EIOPA 2019 report on use of capital add-ons by NCAs

EIOPA has published its annual report on the use by national competent authorities (NCAs) of capital add-ons (CAOs) under the Solvency II Directive. The analysis in the report addresses the CAOs set during 2019 to solo undertakings or insurance groups from the 30 EEA countries (or members) and from the UK.

EIOPA supervision: speech on 10-year anniversary

EIOPA has published a speech by Gabriel Bernardino, outgoing EIOPA Chair, delivered at EIOPA's 10th anniversary conference. In his speech, Mr Bernardino considers EIOPA's achievements since its establishment in 2011 and outlines three structural reforms he considers necessary for the next decade under the following headings:

- the urgency to deliver adequate and sustainable pensions to EU citizens;
- a new approach to consumer disclosures; and
- the need for centralised insurance supervision.

Open insurance: EIOPA discussion paper

EIOPA has published for consultation a discussion paper on open insurance, which focuses on access to and sharing of insurance-related data. In the paper, EIOPA explores questions on whether and how far insurance value chains should be "opened" up by the sharing of insurance-related and specific policyholder data amongst insurance and non-insurance firms, to protect policyholder rights and to allow for innovation in products and services. The main areas of the consultation paper include:

- open insurance definition and use cases;
- risks and benefits of open insurance;
- regulatory barriers; and
- possible areas to consider for a sound open insurance framework.

The consultation closes on 28 April 2021.

EIOPA will assess the feedback to this discussion paper to better understand open insurance developments and risks and benefits related to that. It states that this could also help to provide informed insurance supervisory specific input for the upcoming legislative initiatives foreseen in the European Commission Data Strategy and Digital Finance Strategy. In addition, it could supplement EIOPA's ongoing work on areas such as (re)insurance value chain and new business models arising from digitalisation, insurance platforms and ecosystems, digital ethics, RegTech/SupTech and blockchain. EIOPA will work further on this together with national competent authorities (NCAs) on supervisory responses to further support supervisors and supervisory convergence while maintaining a strong and open dialogue with all the stakeholders.

EIOPA updated single programming document 2021-23

EIOPA published an updated version of its single programming document 2021-23 (SPD), which includes its annual work programme 2021.

Funds and Asset Management

EU ELTIF Regulation review: ESMA letter highlights areas for review

The European Securities and Markets Authority (ESMA) has published a letter it has sent to the European Commission highlighting the areas where it considers improvements could be made to the Regulation on European long-term investment funds (ELTIF Regulation).

ESMA includes an Annex I to its letter giving an overview of the ELTIF market based on ESMA data and an Annex II detailing ESMA's proposed changes to the ELTIF Regulation. In Annex II, ESMA comments that bringing ELTIFs more in line with the needs of investors, both retail and professional, would make it a more attractive investment vehicle for professional investors, as well as a savings' placement alternative for retail investors. It considers that the review of the ELTIF framework should aim to achieve the right balance between encouraging participation by retail investors while ensuring adequate standards of protection. It sets out proposed changes to the ELTIF Regulation in the following areas:

- eligible assets and investments;
- the authorisation process;
- portfolio composition and diversification;
- redemptions;
- disposal of ELTIF assets;
- prospectus and cost disclosure;
- local physical presence;
- specific requirements concerning retail investors; and
- other residual area.

EU Regulation on cross-border distribution of investment funds: ESMA final report on draft ITS

ESMA has published a final report on draft implementing technical standards (ITS) produced under Articles 5(3), 10(3) and 13(3) of the Regulation on the cross-border distribution of investment funds. The draft ITS focus on the publication of information by national competent authorities (NCAs) on their websites regarding the national rules governing marketing requirements for funds, and the regulatory fees and charges levied by NCAs relating to fund managers' cross-border activities. They also cover the notification of information by NCAs to ESMA for developing and maintaining a central database listing UCITS and alternative investment funds (AIFs) marketed cross-border on ESMA's website.

ESMA has advised that the final draft ITS largely reflect its earlier consultation proposals. A summary of the feedback received and ESMA's response to it, is set out in the final report.

ESMA has submitted the draft Implementing Regulation to the European Commission for endorsement. The Commission has three months within which to decide whether to adopt it, but may extend this period by a further month.

The draft Implementing Regulation states that it will enter into force twenty days after publication in the Official Journal of the European Union (OJ). It goes on to state that it will apply from the date of entry into force, with some exceptions. Articles1 and 3(1) shall apply from 2 August 2021, and Articles 5 and 6 shall apply from 2 February 2022.

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