FIG Bulletin

Recent developments
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General

UK Future Regulatory Framework Review: consultation deadline extended

HM Treasury has extended the deadline for responding to its Phase II consultation relating to the Future Regulatory Framework Review by one month to 19 February 2021.

End of Brexit transition period: UK government and FCA remind firms to be ready

The UK Financial Conduct Authority (FCA) has published a press release reminding firms to be ready for the end of the Brexit transition period, in particular, for the end of passporting and for the 31 December 2020 deadline for incoming EEA firms to notify the FCA of their intention to enter the temporary permissions regime (TPR).

The FCA advises firms that it will continue to provide regular updates on its dedicated Brexit webpages, and firms can also call the FCA Brexit information line (on 0800 048 4255) if they have any further questions.

Separately, UK Finance has published a blog post, written by the government, on key actions for firms in the banking and finance industry to take to prepare for the end of the Brexit transition period, including:

- to practise or service clients in the EU from 1 January 2021, it is important that firms make sure their staff's UK qualifications are recognised by EU regulators. Without this, an individual might not be able to practice their profession;
- firms with staff who travel to the EU for work purposes need to check if a visa or work permit is required. If the answer is yes, applications should be made now to avoid potential delays or refusal at the border from 1 January 2021; and
- firms need to make sure their business is prepared on data protection and data transfers. From 1 January 2021, a firm may not be able to legally receive personal data from the EEA if it has not put alternative safeguards in place to cover EU to UK personal data flows.

The government directs firms to its webpages on recognition of qualifications, using personal data and work permits and visas for more information. It also recommends that firms use its transition checker tool for a tailored summary of actions they need to take.

Work of FCA: further evidence for House of Commons Treasury Committee

The House of Commons Treasury Committee has published a letter from Nikhil Rathi, FCA Chief Executive, responding to questions raised by Mel Stride, Committee Chair following an evidence session held by the committee on 4 November 2020 on the work of the FCA. In his letter, Mr Rathi also provides further information on a range of topics.

The House of Commons Treasury Committee has also published a separate letter from Charles Randell, FCA Chair, responding to the questions raised by the committee regarding the FCA, Prudential Regulation Authority (PRA) and Bank of England (BoE) joint consultation paper on complaints against the regulators.

SIPP operators: FCA Dear CEO letter on supervisory strategy

The FCA has published a Dear CEO letter setting out its key concerns and expectations for firms in its self-invested pension plan (SIPP) operators' supervisory portfolio. The issues identified in the letter relate to the following headings:

- financial resources;
- complaints handling;
- pension scams;
- product governance;
- international SIPPs; and
- issues affecting all firms, including COVID-19 and Brexit.

The FCA notes that CEOs are responsible for ensuring their firm meets FCA requirements and expectations, including those set out in the letter. It will use the senior managers and certification regime to engage directly with accountable individuals on areas of concern, and it will maintain a focus on the key issues identified.

Seizing the opportunities from digital finance: BoE speech

The BoE has published a speech given by Andy Haldane on seizing the opportunities from digital finance. In his speech, Mr Haldane discusses the pace of innovation and shifts in behaviour resulting from COVID-19 which presents "a real opportunity to refashion the payments and lending landscape, for good, in ways which benefit households, companies and the economy".

Among other things, Mr Haldane discusses the evolving payments and lending landscapes with a focus on payments by individuals and lending to small and medium-sized enterprises (SME), and digital identity.

Loyalty price discrimination: CMA publishes update and economic research

The Competition and Markets Authority (CMA) has published its fourth update on its loyalty penalty investigation in five key markets (mobile, broadband, household insurance, cash savings and mortgage markets). The CMA notes that COVID-19 continues to affect the work of the sectoral regulators and brings financial pressures on consumers which make tackling the loyalty penalty even more important. However, the CMA is encouraged by the regulators' progress to date, including the FCA's work in relation to mortgage payment deferrals in response to COVID-19 and its proposed package of remedies to tackle price walking (gradual annual price increases) in the insurance sector.

The CMA also published a report, prepared by E.CA Economics and commissioned by the CMA, on economic research on loyalty price discrimination. The research report contains a review of the academic literature on loyalty price discrimination, considers the main theories and concepts that contribute to the understanding of the loyalty penalty and identifies possible causes of loyalty penalties. It also examines certain business practices that can lead to consumer inertia. The report concludes by examining the policy implications and the various policy responses that might be used to try to address the harms resulting from loyalty penalties (including measures to activate consumers, to improve transparency and information, to regulate prices, to regulate business practices and to encourage the use of intermediaries).

FCA Handbook Notice 82

The FCA has published Handbook Notice 82, which sets out changes to the FCA Handbook made by the FCA board on 22 October, 12 November and 26 November 2020.

The Handbook Notice reflects changes made to the Handbook by the following instruments:

- Individual Accountability (FCA Authorised Firms) (COVID-19 and Extension of Deadlines) Instrument 2020 (FCA 2020/64);
- Disclosure Guidance and Transparency Rules Sourcebook (Electronic Reporting Format) Instrument 2020 (FCA 2020/65) and Technical Standards (Electronic Reporting Format) Instrument 2020 (FCA 2020/66);
- COVID-19 Consumer Credit Instrument 2020 (FCA 2020/68);
- Debt Advice Levy (Additional Sum 2020/2021) Instrument 2020 (FCA 2020/69);
- Technical Standards on Strong Customer Authentication and Common and Secure Methods of Communication Instrument 2020 (FCA 2020/70), Payment Services (Amendment No 2) Instrument 2020 (FCA 2020/71) and Technical Standards on Strong Customer Authentication and Common and Secure Methods of Communication (Amendment of eIDAS Certificate) Instrument 2020 (FCA 2020/72); and
- Prospectus Regulation Rules (Amendment) Instrument 2020 (FCA 2020/73).

RDR and FAMR impact: FCA evaluation report

The FCA has published a report of its evaluation of the impact of the Retail Distribution Review (RDR) and the Financial Advice Market Review (FAMR). Alongside the report, the FCA has published a consumer research report, which informed the evaluation.

The FCA conducted its research through 2019 and 2020. This included qualitative and quantitative research with consumers, data collection from a representative sample of firms operating in the market, and looking at international markets to see what lessons can be learned.

Overall, the FCA found that the financial advice market is improving, albeit slowly. However, many consumers are still holding money in cash rather than investing it to provide potentially higher returns. Many do not seek, or receive, help with their finances that would enable them to make better investment decisions. Although there has been some innovation in the market (particularly around the development of automated advice), there is scope for further development and innovation of models and services that could serve more consumers at different stages of their lives.

The FCA considers that more can be done to support mass market consumers to help them engage with their finances and make better investment decisions. This could include more tailored guidance services and simpler advice services.

Some firms have raised concerns about understanding the point at which more general forms of support become advice, suggesting this limits their ability to innovate. The FCA understands that the current regulatory framework may pose challenges to further market development in sufficiently meeting consumer needs.

The FCA will use the evidence from the evaluation and the feedback to its Call for Input on Consumer Investments to inform its work addressing some of the regulatory challenges. It expects to carry out this work during the first half of 2021 and will provide a further update at that point. The FCA's research was completed before March 2020. As a result, long-term changes resulting from COVID-19 will need to be considered as part of its future work.

UK sanctions framework after Brexit transition period: OFSI blog

The Office of Financial Sanctions Implementation (OFSI) has published blog entitled "Get ready for the end of the transition period". The blog covers changes to the UK sanctions framework after 31 December 2020.

UK regime for overseas firms: IRSG interim report

The International Regulatory Strategy Group (IRSG) has published an interim report on the current UK regulatory regime for overseas firms and whether it could be improved, with a view to enhancing the UK's global competitiveness. The IRSG intends to publish a more detailed report in early 2021, with detailed suggestions for legislative and regulatory changes.

Advanced analytics and AI in financial services: UK Finance report on ethical principles

UK Finance has published a report on ethical principles for advanced analytics and artificial intelligence (AI) in financial services. The report sets out the following five, high-level ethical principles that financial services firms can apply when developing products, services and back-office applications that rely on advanced analytics and AI (AAAI):

- Principle 1: explainability and transparency - be transparent about how AAAI is used and provide appropriate explanations on decisions;
- Principle 2: integrity of AAAI - adopt appropriate controls for the integrity, sourcing and sharing of AAAI and its associated data throughout the AAAI lifecycle;
- Principle 3: fairness and alignment to human rights - design and use AAAI that produces fair outcomes;
- Principle 4: contestability and human empowerment - support the empowerment of AAAI subjects, respecting their decision-making; and
- Principle 5: responsibility and accountability - be responsible and accountable for AAAI.

The principles are not rules; they are intended to serve as a valuable resource to firms as a point of reference for developing or enhancing their own internal principles and governance. They are designed to be sufficiently flexible to be adapted, as appropriate, to the diverse use cases to which AAAI can be applied, using a proportionate and risk-based approach. Each principle is supported by several sub-principles, which provide more detailed consideration.

Tackling algorithmic bias: Centre for Data Ethics and Innovation report

The Centre for Data Ethics and Innovation (CDEI) has published a report on the use of algorithms in the financial services, local government, policing and recruitment sectors. For each sector it includes findings, case studies and recommendations as well as overarching recommendations for government, regulators and organisations.

In financial services the report found the sector more mature and keen to test systems for bias. However, there was still a risk of bias in relation to historically underrepresented groups in the financial system and issues around data availability, quality and ethical sourcing of data in relation to credit scoring decisions. The report suggests that future regulation may need to be adapted or adjusted to account for developments in money laundering algorithms in order to protect consumers. The CDEI will be an observer on the FCA's and Bank of England's AI Public Private Forum, which will explore means to support the safe adoption of machine learning and artificial intelligence within financial services.

IFD and IFR: corrigenda

The following corrigenda to the Investment Firms Directive (IFD) and the Investment Firms Regulation (IFR) have been published in the Official Journal of the EU.

- corrigendum to the IFD amending Article 2(2), Article 54, Article 63(2) and Article 67(1) (second sub-paragraph); and
- corrigendum to the IFR amending Article 57(2), Article 62(10)(a), (11)(a), (12)(a), (25) and (33), Article 63(6) and (7), and Article 66(3)(b).

Banking and Finance

Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020

The Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (SI 2020/1350) have been published, together with an explanatory memorandum. The Regulations transpose aspects of the amending Bank Recovery and Resolution Directive (BRRD) (BRRD II), which make amendments to the EU bank resolution framework set out in the BRRD. They also correct deficiencies arising in retained EU law relating to bank resolution to ensure the UK maintains a fully functioning regulatory and legal framework following the end of the transition period.

Parts 1 to 3 and Chapter 3 of Part 4 of the Regulations, which relate to elements of BRRD II that the UK intends to retain, come into force on 28 December 2020. Part 4, which relates to amendments which correct deficiencies in UK legislation relating to bank resolution arising from Brexit, comes into force on IP completion day, with the exception of Chapter 3. Part 5, which contains provisions relating to elements of BRRD II that the UK does not intended to retain, comes into force on 28 December 2020, but ceases to have effect on IP completion day.

Financial Holding Companies (Approval etc) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020

The Financial Holding Companies (Approval etc) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020 (SI 2020/1406) have been published, together with an explanatory memorandum. The Regulations implement the Capital Requirements Directive V (CRD V) which amends the EU Capital Requirements Directive IV (CRD IV).

As HM Treasury's implementation of CRD IV delegated significant responsibility to the Prudential Regulation Authority (PRA), these Regulations only contain provisions which are legislatively necessary to update the UK's implementation of CRD IV (to reflect the amendments to CRD IV that have been made by CRD V). This includes providing the PRA with new or updated powers to implement CRD V, and to ensure that the PRA can update its rulebook as needed.

In addition, the Regulations address deficiencies in retained EU law arising from the withdrawal of the UK from the EU.

Regulations 1, 4, 5(5) and 9 to 20 came into force on 27 November 2020. Regulation 2(7) (which inserts a new Part 12B (Approval of certain holding companies) into the Financial Services and Markets Act 2000 (FSMA) comes into force on 28 December 2020 to the extent necessary for making rules under new section 192V of FSMA, and on 29 December 2020 for all other purposes. The other provisions in the Regulations come into force on 29 December 2020.

Holding company regulatory transaction fees: PRA CP21/20

The PRA has published a consultation paper, CP21/20, setting out a proposed rule on regulatory transaction fees for applications for approval or exemption as a holding company made under section 192Q of FSMA. The PRA explains that CRD V introduces new requirements for certain types of parent financial holding companies (FHCs) or mixed FHCs (MFHCs) that substantively control their group. They will be subject to supervisory approval and consolidated supervision.

The Financial Holding Companies (Approval etc) and Capital Requirements (Capital Buffers and Macro-prudential Measures) (Amendment) (EU Exit) Regulations 2020 (see above) extend powers to the PRA to supervise, monitor, exercise discretions, impose additional requirements, and enforce breaches of obligations in respect of approved FHCs and MFHCs.

The PRA proposes a regulatory transaction fee of £2,500 for an application for approval or exemption as a holding company. The proposed fee amount has been set to recover the approximate costs to the PRA of assessing each application, including related system changes and other linked regulatory transactions. The PRA will keep these costs under review and will consider consulting on changes to the fee in the event of material cost changes.

Comments can be made on the proposals until 8 January 2021. The PRA proposes to implement the new rule on 1 March 2021.

Operational resilience: PRA and ECB statements on supervisory cooperation

The PRA has published a statement regarding supervisory cooperation on operational resilience in which it states that the PRA recognises the global and interconnected nature of banks and the importance of supervisory coordination. The PRA is committed to working closely with the European Central Bank (ECB) and the Federal Reserve to ensure that supervisory approaches on operational resilience are well coordinated. The ECB has published a similar statement emphasising its commitment to work closely with the PRA and the Federal Reserve.

Shari'ah compliant non-interest based deposit facility: BoE speech

The Bank of England (BoE) has published a speech by Andrew Hauser, BoE Executive Director, Markets, on why Islamic finance has an important role to play in supporting the recovery from COVID-19 and how the BoE's new Shari'ah compliant non-interest based deposit facility can help. Points of interest in Mr Hauser's speech include:

- the Basel III liquidity rules give national supervisors discretion to treat sukuk as high quality liquid assets (HQLA), subject to haircuts or other conditions. However, the proportion of sukuk classed as eligible for regulatory buffers remains relatively modest compared to demand. Islamic banks can therefore face an uneven playing field relative to conventional banks when it comes to liquidity management;
- in 2015, the BoE began work to assess the feasibility of establishing a standalone non-interest based facility, aimed at providing greater flexibility to UK Islamic banks in meeting their Basel III liquidity requirements. It consulted on possible models in 2016 and 2017;
- following this process, the BoE's new Alternative Liquidity Facility (ALF) will launch in Q1 2021. The ALF will provide UK Islamic banks (and other UK banks with formal restrictions on engaging in interest-based activity) with greater flexibility in meeting HQLA requirements, enabling them to hold a reserves-like asset in a non-interest based environment;
- the ALF will be structured as a wakalah or fund-based facility (that is, participant deposits will be backed by a fund of assets, the return from which, net of hedging and operational costs, will be passed back to depositors in lieu of interest);
- the ALF will grow as the UK Islamic bank sector grows, and it will be well-placed to exploit the growing diversification of available HQLA-eligible sukuk assets; and
- over the coming months, the BoE will finalise legal documentation, complete its operational testing and begin the onboarding process for eligible applicants. Firms should expect to commence this work from January 2021. Once operational, the ALF will help put the UK Islamic finance sector on a more level footing, giving firms greater

flexibility in meeting liquidity requirements, and helping them compete with conventional peers while staying true to their founding principles.

Implementing CRD V: PRA update

The PRA has published a statement explaining when firms can expect further information on the PRA's approach to transposing CRD V, including its approach to revisions to the definition of capital for Pillar 2A. The PRA states that it intends to publish a policy statement by mid-December 2020. It will summarise the responses to its consultation and explain the PRA's policy approach, including any further supervisory processes required for implementation.

COVID-19: LSB resource for firms on problem gambling

The Lending Standards Board (LSB) has published a resource for firms that considers how, in the context of the COVID-19 pandemic and the associated restrictions the government has put in place, firms can identify the early signs of problem gambling and act to protect and support vulnerable customers.

COVID-19: EBA reactivates guidelines on legislative and non-legislative moratoria on loan repayments

On 2 December 2020, the European Banking Authority (EBA) published a press release announcing the reactivation of its guidelines on legislative and non-legislative moratoria on loan repayments in light of the second wave of COVID-19 and the continued constraints on the availability of credit to businesses and private individuals. It has also published a document containing amendments to the guidelines and a consolidated version of the guidelines themselves.

The EBA has introduced a new deadline for the application of moratoria of 31 March 2021, replacing the previous date of 30 September 2020. The EBA has also amended the guidelines to introduce new constraints intended to ensure that the support provided by moratoria is limited to bridging liquidity shortages triggered by the new lockdowns and that there are no operational restraints on the continued availability of credit:

- the period of time for which payments on a loan can be suspended, postponed or reduced as a result of the application (and reapplication) of general payment moratoria should not exceed an overall length of nine months; and
- banks are requested to notify to the relevant competent authority or authorities their plans for assessing borrowers' unlikeness to pay in relation to exposures subject to legislative or non-legislative general payment moratoria.

Transitional arrangements will apply to exposures that would have met the criteria specified in the guidelines in the period between 1 October 2020 and 1 December 2020.

Bank boards and supervisory expectations: ECB speech

The ECB has published a *speech* by Elizabeth McCaul, ECB Supervisory Board Member, on bank boards and supervisory expectations. Among other things, Ms McCaul indicates that the ECB will publish a revised guide on fit and proper assessments in 2021, clarifying its expectations on the suitability of bank directors. The ECB has also established a dedicated fit and proper department, and an enforcement and sanctioning committee, to streamline the process further.

SSM banks: ECB guide on climate-related and environmental risks

The ECB has published a guide on climate-related and environmental risks for banks in the single supervisory mechanism (SSM). The guide applies with immediate effect. Banks are expected to consider the extent to which their current management and disclosure practices for climate-related and environmental risks are sound, effective and comprehensive in light of the expectations set out in the guide. Where needed, banks are expected to promptly start enhancing their practices. A report has been published alongside the guide that aims to provide an overview of the level of disclosure of climate-related and environmental risks in SSM countries.

CRR: EBA final draft RTS on treatment of non-trading book positions subject to foreign exchange risk or commodity risk

The EBA has published a final report containing final draft regulatory technical standards (RTS) on the treatment of non-trading book positions subject to foreign exchange (FX) risk or commodity risk under Article 325(9) of the CRR.

Article 325(9) mandates the EBA to develop draft RTS to specify how institutions should calculate the own funds requirements for non-trading book positions that are subject to FX risk or commodity risk in accordance with the alternative standardised approach (SA) and the alternative internal model approach (IMA). In addition, Articles 325bf(4) and 325bg(9) mandate the EBA to draft RTS to specify how institutions are to calculate the changes in hypothetical profit and loss (HPL), actual profit and loss (APL) and risk theoretical profit and loss (RTPL) for the purpose of the back-testing and P&L attribution requirements.

The EBA proposes that the draft Delegated Regulation should enter into force twenty days after its publication in the Official Journal of the EU (OJ).

The EBA will submit the final draft RTS to the European Commission for adoption.

SRB 2021 work programme and multi-annual programme

The Single Resolution Board (SRB) has published a document containing its work programme for 2021 and its multi-annual programme, covering the period 2021-23.

SRF: Eurogroup statement on early introduction of common backstop

The Eurogroup has announced that it has decided to proceed with the early introduction of the backstop to the Single Resolution Fund (SRF) with the aim of its entry into force by the beginning of 2022.

BRRD II: European Commission notice on interpretation

A European Commission notice relating to the interpretation of certain legal provisions of the revised bank resolution framework in the BRRD (in reply to questions raised by member states' authorities) has published in the OJ. The notice also considers the interaction of certain aspects of BRRD II with the CRR, CRD IV and the Single Resolution Mechanism Regulation.

Mitigating COVID-19 impacts: BCBS oversight body commits to coordinated approach and endorses future direction of work

The Basel Committee on Banking Supervision (BCBS) has published a press release announcing that the Group of Central Bank Governors and Heads of Supervision (GHOS), the oversight body of the BCBS, has committed to a coordinated approach to mitigating COVID-19 risks to the global banking system and endorsed the future direction of BCBS work.

Reporting on Principles for Responsible Banking: UNEP FI consults on guidance

The United Nations (UN) Environment Programme Finance Initiative (UNEP FI) has published a consultation paper on a draft guidance document designed to support signatories of the Principles for Responsible Banking with reporting on their implementation of the principles. The principles were launched in September 2019, with related guidance, to provide a global framework for a sustainable banking system.

UNEP FI member banks can submit comments on the consultation until 29 January 2021.

Consumer Finance

Mainstream consumer credit lenders: FCA Dear Board of Directors letter on supervisory strategy

The UK Financial Conduct Authority (FCA) has published a Dear Board of Directors letter sent to firms in the FCA's mainstream consumer credit lenders (MCCLs) portfolio, which is made up of firms providing regulated unsecured overdrafts, loans or credit cards. In the letter, the FCA sets out its views of the risks MCCLs may pose to consumers or markets and outlines its expectations of MCCLs.

The FCA will use its supervisory tools to test and, where necessary, mitigate potential areas of harm. The FCA advises that it will act where it finds poor customer outcomes from a failure to follow its rules.

Rent-to-own price cap: FCA evaluation paper

The FCA has published an evaluation paper, EP20/1, on its price cap on rent-to-own (RTO) products. The FCA welcomes comments on the paper. The FCA carried out the evaluation to test the effectiveness of the price cap, which came into force in April 2019. It evaluated two aspects:

- the effect of the price cap's benchmarking requirements on product prices. The FCA expected the benchmarking requirement to reduce the gap between RTO base prices and those of products sold by other retailers; and
- the effectiveness of the rules preventing revenue recovery through insurance, arrears and other charges.

The FCA's evaluation results estimate that the price cap's benchmarking requirements have brought RTO prices much closer to the high-street average, contributing to lower costs of financing for consumers. It has found no evidence to suggest that RTO firms raised the prices of add-ons and connected goods or services to recoup revenue lost because of the price cap.

As a result of the COVID-19 pandemic, the FCA was not able to carry out a full cost benefit analysis. This means it was not able to assess whether the price cap achieved all of the costs and benefits estimated at the time of the intervention. It notes that this may limit the wider applicability of the lessons learned from the evaluation. However, the FCA believes that some lessons can be drawn if it were to consider introducing price caps in other markets in the future.

Payments

UK payment systems: Pay.UK recommendations for adopting ISO 20022

Pay.UK published a report containing conclusions and recommendations relating to adopting the common global messaging standard for UK payments, known as ISO 20022, along with other key standards for the clearing and settlement capability that will be enabled by the New Payments Architecture (NPA).

The report is relevant to developers of ISO 20022 messages, service and solution providers, and end users (businesses, charities, and individuals). It provides a statement of Pay.UK's intentions regarding the implementation of the UK retail standard, what it has already started doing, and its plan for the next 18 months, focusing on:

- the recommended direction for implementing ISO 20022 to enable the core clearing and settlement capability of the NPA;
- foundational technical details for the ISO 20022 message standard, including Pay.UK's technical design and ISO 20022 readiness approach; and
- future direction on concepts that require a degree of standardisation across the payments ecosystem.

Systemically important payment systems: ECB consults on revisions to oversight requirements

The European Central Bank (ECB) has published a consultation on amendments to the Regulation on oversight requirements for systemically important payment systems (the SIPS Regulation) and two implementing ECB Decisions. The SIPS Regulation sets out the oversight requirements for both large-value and retail payment systems of systematic importance. It applies to payment systems operated both by central banks and by private operators.

The consultation is on draft versions of:

- a Regulation amending the SIPS Regulation on oversight requirements for SIPS;
- a Decision amending Decision (EU) 2017/2098 on procedural aspects concerning the imposition of corrective measures for non-compliance with the SIPS Regulation; and
- a Decision amending Decision (EU) 2019/1349 on the procedure and conditions for exercise by a competent authority of certain powers in relation to oversight of SIPS.

The consultation closes on 8 January 2021.

EPC SEPA request-to-pay scheme rulebook

Following its consultation, the European Payments Council (EPC) has published the first version of the Single European Payments Area (SEPA) Request-To-Pay (RTP) scheme rulebook. The rulebook covers the set of operating rules and technical elements that allow a payee to request the initiation of a payment from a payer in a range of physical or online use cases. The effective date of the first release is 15 June 2021.

An EPC press release gives some important dates related to the new scheme and its maintenance cycle:

- implementation guidelines relating to the rulebook are due to be published in January 2021;

- change requests relating to the rulebook should be submitted to the EPC by 26 February 2021;
- the EPC is expected to launch a request for proposal relating to the certification of applicants in February 2021;
- the scheme adherence process is due to open in May 2021; and
- a second version of the rulebook, which will support more functionality, is due to be published in November 2021.

Enhancing cross-border payments: FATF survey

The Financial Action Task Force (FATF) has published a survey on enhancing cross-border payments.

The FATF explains that cross-border payment services generally face four main challenges: high cost, low speed, limited access for users and payment service providers (PSPs) and limited transparency. The FATF notes that a number of factors contribute to these challenges, including divergent national anti-money laundering (AML) and counter-terrorist financing (CTF) measures. Identifying what works well and what needs to be improved is key to finding solutions to the challenges. This is why the FATF, in collaboration with the Basel Committee on Banking Supervision (BCBS), has developed on online questionnaire.

The aim of the questionnaire is to gather information from the private sector about these challenges and possible ways to address them without compromising AML and CTF safeguards. In particular, the FATF wants information to help it identify areas of divergence in how jurisdictions have implemented customer due diligence (CDD) and other measures stemming from its AML and CTF standards. It gives the examples of inconsistent customer identity documents or sanctions screening requirements across different jurisdictions. However, the FATF recognises that some differences may be necessary or justified based on different underlying risks or different legal systems.

The FATF is seeking feedback from PSPs, banks, FinTech companies, money or value transfer service providers and others. Completed questionnaires can be submitted until 15 January 2021.

In the second phase of the project, the FATF will consider how to reduce the identified challenges by clarifying or updating its standards using various options available. These include amending the standards, issuing further guidance or best practice papers, or convening national authorities in a co-ordination body. However, the FATF does not presume that its standards will need amending.

Securities and Markets

Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020

The Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020 (SI 2020/1385) have been published, together with an explanatory memorandum. Among other things, the Regulations:

- make transitional and savings provisions concerning trade repositories in relation to of the Regulation on reporting and transparency of securities financing transactions (SFTR) and securitisation repositories in relation to the Securitisation Regulation;
- amend cross-references in primary and secondary legislation; and
- make miscellaneous amendments to Brexit statutory instruments and retained direct EU legislation relating to financial services and capital markets.

Different Parts of the Regulations will come into force at different times as set out in regulation 1 (either on the day after the day on which they are made, IP completion day or immediately before IP completion day).

UK securitisation repositories: FCA application form

The UK Financial Conduct Authority (FCA) has updated its webpage on securitisation repositories (SRs) under the Securitisation Regulation to add a link to the application form for registration as a UK SR. Firms wishing to apply to become a UK SR must complete this application form and email it to a specified email address at the FCA, together with any related queries regarding their application.

The FCA reminds firms that, to be authorised as a UK SR, they must meet the conditions set out in article 10 of the UK Securitisation Regulation. Firms must be able to evidence that they have the necessary competence to carry out the collecting and maintaining of securitisation records.

Recognition of non-UK CSDs before and after Brexit transition period: BoE update

The Bank of England (BoE) has updated its webpage on the effect of Brexit on financial market infrastructure (FMI) supervision with information relating to the recognition of non-UK central securities depositories (CSDs).

The Equivalence Determinations for Financial Services (Amendment etc) (EU Exit) Regulations 2020 (SI 2020/1055) came into force on 30 September 2020. Under this legislation, if HM Treasury makes any equivalence decisions relating to the EEA during the Brexit transition period, EEA CSDs will be able to apply to the BoE for recognition before the end of the transition period. In any event, a formal recognition application must be submitted within six months from the end of the transition period.

As equivalence decisions relating to each EEA state were made by HM Treasury on 9 November 2020, the BoE has published a letter sent to EEA CSDs notifying them of the actions they need to take. Among other things, the letter refers to guidance that sets out the manner in which recognition applications may be made and the information that must accompany them.

The BoE explains that the procedure for other non-UK (excluding EEA) CSDs remains unchanged and no equivalence decisions will be made by HM Treasury until after the end of the transition period. As the end of transition period is approaching, the BoE has also published a letter sent to non-EEA CSDs to remind them of the action they need to take to prepare for the end of transition period.

The BoE has published an interim list (dated 22 October 2020) of third-country CSDs that intend to provide CSD services in the UK using transitional provisions. This list will be updated periodically and the final list will be published on the BoE website at the end of the transition period.

Receiving UK settlement finality protection after Brexit transition period: BoE update

The BoE has also updated its webpage on the effect of Brexit on FMI supervision with information relating to applying to receive UK settlement finality protection.

In its update, the BoE refers to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (SI 1999/2979) (UK SFRs). These set out how overseas central counterparties (CCPs), CSDs and payment systems can receive settlement finality designation within the UK.

To maintain continued UK settlement finality protection while the designation process is underway, the UK's Temporary Designation Regime (TDR) will be in operation at 11pm on 31 December 2020. Systems that have submitted a valid notification will be in the TDR. The temporary designation lasts for a period of three years beginning on the day after the end of the Brexit transition period. The conditions of the TDR require that a system must apply for "steady state" settlement finality designation within six months from the day after the end of the transition period.

The BoE has published a letter sent to systems in the TDR reminding them of the actions they need to take to prepare for the end of the transition period. The letter provides details of how to apply for "steady state" designation, and refers to guidance for non-UK systems on designation applications. The BoE previously advised that it does not intend to charge fees to non-UK law FMIs for UK settlement finality designation.

The BoE has also published an interim list (dated 22 October 2020) of EEA systems whose operators have notified the BoE for such systems to receive settlement finality protection under the TDR. The final list will be published on the BoE website at the end of the transition period. Operators of EEA systems who have not done so can continue to notify their intent to enter the temporary settlement finality designation before the end of the transition period.

MiFIR share trading obligation: FCA draft transitional direction

The FCA has published a draft transitional direction, together with an explanatory note, for the share trading obligation (STO) under the Markets in Financial Instruments Regulation (MiFIR). The FCA has also updated its statement on the STO to include a link to the draft transitional direction.

The FCA is using its temporary transitional power (TTP) to allow firms to continue trading all shares on EU trading venues and systematic internalisers (SIs) where they choose to do so, and where the regulatory status of those venues and SIs permits such activity. This is to mitigate the disruption that the FCA considers might arise from compliance with onshored obligations, in particular the obligations in article 23(1) of MiFIR, during the period after the end of the transition period.

The direction will take effect from the end of the transition period and may be varied or revoked.

UK EMIR: FCA update on clearing threshold and intragroup exemption notifications

The FCA has updated its EMIR news webpage with details about the retained EU law version of the European Market Infrastructure Regulation (EMIR) (UK EMIR). The FCA explains that, when UK EMIR enters into force at the end of the transition period, UK financial counterparties (FCs) and non-financial counterparties (NFCs) must notify the FCA if they exceed the clearing thresholds under Article 4. The first clearing threshold notification needs to be completed by 17 June 2021.

All UK FCs and NFCs subject to the clearing obligation must submit a first notification, regardless of whether they choose to calculate their positions. This also applies to a UK FC or NFC which was subject to the clearing obligation before the UK EMIR regime came into force. The FCA highlights how counterparties need to determine their aggregate group, month-end, and average position of OTC derivatives in each asset class for the previous 12 months and compare them with the clearing thresholds as prescribed by UK EMIR.

Following the first notification, if a counterparty chooses to calculate positions in OTC derivatives, it should perform this calculation every 12 months. There is no requirement to notify the FCA if there's no change to the result of the subsequent calculations. A counterparty must always notify the FCA if the result of the calculation in OTC derivatives means that it no longer exceeds the clearing threshold in Article 4 of UK EMIR.

The FCA also provides information about intragroup exemptions following HM Treasury publishing a statement about equivalence in November 2020. UK firms that currently benefit from intragroup exemptions from the clearing obligation and margin requirements for uncleared derivative transactions with their EU group entities covered by the equivalence decision must:

- notify the FCA of the entity pairs to which the equivalence direction applies; and
- confirm whether there have been any other changes to the conditions under which the original intragroup derogation was granted.

Notifications must be submitted by 1 February 2021 to continue benefitting from existing exemptions.

UK benchmarks register: FCA update

The FCA has published an update on the UK benchmarks register. In preparation for the end of the Brexit transition period on 31 December 2020, the FCA has developed a UK benchmarks register to replace the ESMA benchmarks register for UK supervised users, and UK and third country-based benchmark administrators that want their benchmarks to be used in the UK.

The UK benchmarks register will be accessible from 11.00 pm on 31 December 2020, in the "Other registers" section of the Financial Services Register. It will have a search facility to help locate a specific administrator or benchmark. It will also be possible to download details of third country benchmarks as .csv documents.

The UK benchmarks register will comprise the following two sections:

- the benchmark administrator register: a public record of all benchmark administrators that are authorised, registered or recognised by the FCA, or that benefit from an equivalence decision adopted by the UK; and
- the third country benchmarks register: a public record of all benchmarks provided by third country benchmark administrators that are recognised by the FCA, endorsed by a

UK-authorised or registered benchmark administrator (or other supervised entity) for use in the UK, or provided by benchmark administrators that have notified the FCA they benefit from an equivalence decision adopted by the UK.

The FCA notes that, in relation to third country benchmarks, the UK government previously extended the transitional period from the end of 2019 to the end of 2022. The government now intends, under the Financial Services Bill 2019-21, to further extend this transitional period, from 31 December 2022 to 31 December 2025. As a result, third country administrators that want to continue using their benchmarks in the UK after 31 December 2025 must apply to the FCA for approval, through equivalence, recognition or endorsement, before this date.

Non-linear derivatives transition to SONIA: Sterling Working Group paper

The Working Group on Sterling Risk-Free Reference Rates has published a paper examining how the non-linear derivatives market could potentially be structured using compounded in arrears SONIA. The paper covers a range of products and is intended to help the non-linear derivatives market meet the Working Group's target milestone for participants to cease initiating new GBP LIBOR-linked non-linear derivatives by the end of Q3 2021.

Supervision of FMIs: BoE Annual Report

The BoE has published the 2020 Annual Report on its supervision of FMIs, covering the period from 15 February 2019 to 3 December 2020. Among other things, in the report the BoE outlines its future priorities in the context of FMI supervision.

The BoE will continue to promote FMIs' financial and operational resilience. The impact of COVID-19 on financial markets and FMIs' operating environment is expected to remain the BoE's immediate supervisory priority. Over a longer period, it has additional priorities to enhance its framework for FMI supervision, including continuing to develop the approach to supervising operational resilience, publishing further information on central counterparty (CCP) supervisory stress testing, and further developing the UK CCP resolution regime. In addition, the BoE continues to consider that there is a strong case for introducing a senior managers and certification regime for FMIs.

The BoE is examining the procyclicality of margin calls and the resilience of non-bank liquidity when faced with margin calls. It is carrying out further analysis to ensure that CCPs' margining practices are not excessively procyclical and assess the extent to which non-banks are able to anticipate margin calls as part of their liquidity risk management.

Innovation in payments will remain a key area of focus. The BoE will continue its work to ensure that technological change at FMIs, including the next generation of payments infrastructure, is designed and implemented in a way that promotes the resilience of individual FMIs and the broader financial system. It will also continue to work with international counterparts to ensure that international standards reflect innovation in the payments landscape and to develop principles for the regulatory response to stablecoins.

The BoE will also develop an approach to recognition and supervision of incoming CCPs.

Post-transitional period: FCA Primary Market Bulletin 32

The FCA has published Primary Market Bulletin 32, in which it reminds issuers, investors and other market participants of certain changes that will take effect when onshored legislation enters into force at the end of the Brexit transition period. These include developments relating to the Market Abuse Regulation (MAR) and the Prospectus Regulation. It also provides an update on the FCA's work to implement some aspects of the onshored legislation.

BMR: Delegated Regulations on sustainable finance issues

The following Delegated Regulations supplementing the Benchmarks Regulation (BMR) on sustainable finance issues have been published in the Official Journal of the EU:

- Delegated Regulation (EU) 2020/1816 supplementing the BMR as regards the explanation in the benchmark statement of how environmental, social and governance (ESG) factors are reflected in each benchmark provided and published;
- Delegated Regulation (EU) 2020/1817 supplementing the BMR as regards the minimum content of the explanation on how ESG factors are reflected in the benchmark methodology; and
- Delegated Regulation (EU) 2020/1818 supplementing the BMR as regards minimum standards for EU climate transition benchmarks and EU Paris-aligned benchmarks.

The Delegated Regulations enter into force and apply on 23 December 2020.

Proposed Regulation amending BMR: political agreement

The European Parliament has published a press release announcing that it and the Council of the EU have reached political agreement on the proposed Regulation amending the 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 European Commission has welcomed the agreement.

The agreed amendments empower the Commission to designate a replacement benchmark that covers all references to a widely used reference rate that is phased out, such as LIBOR, when this is necessary to avoid disruption of the financial markets in the EU. The Commission explains that with regards to other interbank lending (IBOR) rates, it is still in market participants' best interests to actively prepare for the transition to alternative reference rates. This will provide the greatest degree of control over the fate of contracts if a reference rate ceases to be published.

The Parliament and the Council have also agreed to postpone the entry into application of the rules on third-country benchmarks until 31 December 2023, with the possibility of an extension by the Commission. The Commission explains that this means that EU benchmark users will continue to have access to these benchmarks.

The next step is for the Parliament to formally approve the proposed Regulation.

Market data in secondary markets for equity securities: IOSCO consultation

The International Organization of Securities Commissions (IOSCO) has published a consultation report on market data in the secondary equity markets. The consultation report outlines several issues relating to market data in equity markets and seeks industry views on both the issues and possible solutions. The issues highlighted include:

- what market data is necessary to facilitate trading in today's markets (that is, what is considered "core" market data for use by market participants, including investors);
- fair, equitable and timely access to market data;
- fees for market data, and how these fees are determined and charged to subscribers;
- the need for and extent of data consolidation; and

- how other products or services that relate to accessing market data are provided by trading venues or other regulated data providers (RDPs), and the fees associated with such products and services.

IOSCO considers the consultation report will provide a useful source of information for jurisdictions considering their approach and access to market data. Based on an analysis of the responses received, IOSCO will consider whether any policy work is required.

The consultation ends on 26 February 2021.

Implementation of OTC derivatives reforms: FSB 2020 progress report

The Financial Stability Board (FSB) has published a report reviewing progress made, since its 2019 report, by standard-setting bodies, national and regional authorities and market participants towards meeting the G20 commitments for reforms to global OTC derivatives markets. The report also contains an overview of the response by jurisdictions to the impact of COVID-19 on the OTC derivatives markets.

Insurance

UK Solvency II review: HM Treasury extends response deadline

HM Treasury has extended the deadline for responding to its call for evidence relating to its review of the Solvency II prudential regulatory regime for insurance firms by one month to 19 February 2021.

Publishing Solvency II technical information after transition period: PRA PS24/20

Following its consultation in CP5/20, the Prudential Regulation Authority (PRA) has published a policy statement, PS24/20, on its approach to publishing Solvency II technical information after the end of the Brexit transition period. The PRA has made minor changes to the draft policy it consulted on. It has clarified its approach to determining the PRA relevant currencies and updated the timing of publication of the volatility adjustment (VA) representative portfolios (RPs). The PRA advises that the changes do not result in any additional requirements on firms.

The PRA's final policy in this area, explaining how it will fulfil its obligation to publish technical information, is contained in a Statement of Policy (SoP), The PRA's approach to the publication of Solvency II technical information, which is set out in Appendix 1 to PS24/20. Generally, the PRA has retained the methodologies and judgments that EIOPA incorporates in its technical information, with some exceptions set out in chapter 3 of the SoP. The SoP is effective from 2 December 2020.

The implementation date for the final policy in this area, and the reference date for the PRA's first publication of technical information, is the end of the transition period. This means that UK firms are required to use the PRA's published technical information for their regulatory reporting from and including 11.00 pm on 31 December 2020.

The technical information will be impacted by the PRA's proposed use of temporary transitional powers (TTP) at the end of the transition period. Use of the TTP would have the effect of maintaining the current preferential risk treatment and calculation methodologies of EU exposures and assets under the applicable capital frameworks for 15 months after the end of the transition period. As a result, the fundamental spreads for EU27 government bonds will be identical to those published by EIOPA during the 15 month transition period.

The PRA plans to consult, at the earliest practicable date (expected to be in early 2021), on its proposed approach to determining the technical information in the light of the expected transition from LIBOR to SONIA.

High risk and uncertainty: PRA speech

The PRA has published a speech, given by Charlotte Gerken, PRA Executive Director, Insurance Supervision, on the importance of insurers being prepared for a world of high risk and uncertainty on multiple and interacting fronts. Among other things, Ms Gerken talks about the impact of COVID-19, use of tech and cyber resilience, stress testing and scenario analysis.

Solvency II: EIOPA 2020 report on long-term guarantees measures and measures on equity risk

The European Insurance and Occupational Pensions Authority (EIOPA) has published its 2020 Annual Report on long-term guarantee (LTG) measures and measures on equity risk, produced under Article 77(f)(1) of the Solvency II Directive. This is EIOPA's fifth and final such report.

The analysis that EIOPA has carried out in its annual reports since 2016 has served as a basis for its opinion on an assessment of the application of the LTG measures and the measures on equity risk, which is to be delivered to the European Commission by the end of 2020. This opinion will form part of EIOPA's opinion on the 2020 Solvency II review, and will include proposals to improve the design of the LTG measures.

Taxonomy Regulation Article 8 disclosures: EIOPA consultation

EIOPA has published a consultation paper on advice to the European Commission under Article 8 of the EU Taxonomy Regulation. This follows the European Commission's call for advice from the European Supervisory Authorities (ESAs), issued in September 2020. The Commission seeks input on delegated acts under Article 8 of the Taxonomy Regulation, which amends disclosure requirements contained in the Non-Financial Reporting Directive (NFRD).

This consultation refers to the relevant ratios to be mandatorily disclosed by insurers and reinsurers falling within the scope of the NFDR as well as on the methodologies to build those ratios. EIOPA considers whether the mandatory ratios of non-financial undertakings, as set out in the Taxonomy Regulation, are relevant and appropriate to depict insurance and reinsurance activities or whether they need to be "translated" to the most appropriate and comparable key performance indicators for insurance and reinsurance businesses.

Following the public consultation, EIOPA will finalise its advice and submit to the European Commission in February 2021.

Inclusion of climate change in Solvency II natural catastrophe standard formula: EIOPA discussion paper

EIOPA has published a discussion paper on a methodology for the potential inclusion of climate change in the standard formula under the Solvency II Directive when calculating natural catastrophe underwriting risk. The discussion paper is a follow-up to EIOPA's opinion on sustainability within Solvency II issued in September 2019, which concluded that there is a need to consider if and how climate change-related perils could be better captured in the Solvency II framework under the natural catastrophe risk submodule.

EIOPA explains that the frequency and severity of natural catastrophes is expected to increase due to climate change. Improved climate projections provide evidence that weather extremes such as heat waves, heavy precipitation, droughts, top wind speeds and storm surges will rise in many European regions. To ensure the financial resilience of (re)insurers covering natural catastrophes, the solvency capital requirements for natural catastrophe underwriting risk need to remain appropriate in light of climate change.

In line with that, EIOPA proposes different methodological steps and process changes to integrate climate change in the calculation of natural catastrophe risk.

Comments are welcome on the discussion paper until 26 February 2021. EIOPA will consider the feedback received and expects to publish its final report in spring 2021, together with a feedback statement.

Funds and Asset Management

TMPR: FCA webpage on adding new sub-fund to umbrella scheme

The UK Financial Conduct Authority (FCA) has published a new webpage on adding a new sub-fund to an umbrella scheme that will be in the temporary marketing permissions regime (TMPR). To use the TMPR, a sub-fund must satisfy the following conditions specified in regulation 63(3) of the Collective Investment Schemes (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/325) (the CIS Regulations):

- the new sub-fund must become authorised by its home state regulator on or after 31 December 2020;
- when the new sub-fund becomes authorised by its home state regulator, at least one other sub-fund of the new sub-fund's umbrella scheme must be a recognised scheme in the TMPR.
- after the new sub-fund becomes authorised by its home state regulator and while at least one other sub-fund of the umbrella scheme continues to be so authorised, the operator of the new sub-fund must have notified the FCA that they wish the new sub-fund to enter the TMPR; and
- the notification must be given before the start of the period specified by the FCA directing the new sub-fund's umbrella scheme to apply for individual recognition under section 272 of the Financial Services and Markets Act 2000 (FSMA).

The FCA plans to give a direction on 31 December 2020, under regulation 64 of the CIS Regulations, setting out the information required to make a valid notification of a new sub-fund.

Before the TMPR takes effect, the FCA has published a draft direction and a draft notification letter for reference. These documents are subject to change and for information purposes only.

The new regime applies to sub-funds authorised on or after 31 December 2020. Sub-funds authorised by their relevant home state regulator before this date must be included in a fund manager's TMPR notification.

The FCA has also updated its webpage on the types of firms and investment funds that can use the TPR, and its webpage on the notification process for funds, to reflect this development.

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