



# FIG Bulletin

Recent developments

1 April 2021

Following a seasonal break, the next update will be published on 19 April 2021

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# Contents

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<b>General</b>	<b>5</b>
UK-EU MoU on regulatory cooperation in financial services	5
UK-US bilateral agreement on insurance and reinsurance prudential measures: first committee meeting	5
Money Laundering and Terrorist Financing (Amendment) (High-Risk Countries) Regulations 2021	5
HM Treasury advisory notice on AML and CTF controls in higher risk jurisdictions	5
Draft Capital Requirements Regulation (Amendment) (EU Exit) Regulations 2021	6
FPC meeting summary and record	6
Pension freedoms: House of Commons Work and Pensions Committee first-stage report on pension scams	6
Guide for employers and pension trustees on providing support with financial matters without FCA authorisation	7
Advising on DB pension transfers: FCA FG21/3	7
Operational resilience: FCA, PRA and BoE policy statements	7
Outsourcing and third party risk management: PRA PS7/21	8
LIBOR transition: Joint PRA and FCA Dear CEO letter on priority areas	8
Transition to SONIA: Working Group on Sterling RFRs meeting minutes	9
2021/22 FSCS management expenses levy limit: PRA PS5/21	9
Open finance: FCA FS21/7	9
FCA Handbook Notice 86	10
FCA regulation of LC&F: Andrew Bailey letter on lessons learnt	10
Extending annual financial crime reporting obligation: FCA PS21/4	10
Schemes of arrangement: FCA evaluation approach	11
FOS 2021/22 plans and budget	11
EEA Joint Committee Decisions amending Annex IX (Financial Services) to EEA Agreement	11
Assessment of the application of ESA Guidelines on complaints-handling	12
EU IFR: EBA consults on RTS on disclosure of investment policy	12
	2

<b>Banking and Finance</b>	<b>13</b>
EU CRR: Corrigendum to Commission Implementing Regulation containing ITS on reporting requirements for market risk	13
CRD: Delegated Regulation amending RTS on methodology for identification of G-SIIs and definition of subcategories of G-SIIs	13
Bail-in for international debt securities: SRB guidance	13
Delegated Regulation amending arrangements for payments of contributions to SRB's administrative expenditures	14
BRRD: European Commission adopts Delegated Regulation containing RTS on estimating Pillar 2 and combined buffer requirements for setting MREL	14
<b>Consumer Finance</b>	<b>15</b>
COVID-19: FCA updates mortgage guidance and reports on mortgage and consumer credit firms' implementation of tailored support guidance	15
Claims management companies and high cost lenders: FCA statement	15
Credit card market remedies: LSB summary report on thematic review	16
<b>Payments</b>	<b>17</b>
CRM Code for APP scams: LSB call for input	17
Instant payments: European Commission consultation	17
<b>Securities and Markets</b>	<b>18</b>
LIBOR transition: FCA and BoE encourage switch to SONIA in sterling non-linear derivatives market	18
MiFID: Delegated Regulation on thresholds for weekly position reporting of commodity derivatives	18
EU MiFIR: Delegated Regulation on liquidity thresholds and trade percentiles used to determine SSTI applicable to non-equity instruments	18
COVID-19: ESMA statement on temporary suspension of MiFID RTS 27 reports	19
EU MiFIR: ESMA final report on reference data and transaction reporting obligations	19
MiFID: ESMA updates Q&As on investor protection and intermediaries	20
MiFID: ESMA advice on the application of administrative and criminal sanctions	20
EU MiFIR: ESMA final reports on framework for DRSPs	20
EU EMIR: ESMA updates Q&As	20

EU BMR: ESMA updates Q&As	20
EU BMR: ESMA technical advice on procedural rules for penalties imposed on benchmark administrators	21
CSDR: ESMA updates Q&As	21
EU Securitisation Regulation: ESA Q&As	21
Securitisation Regulation: ESA opinion on jurisdictional scope	21
Use of Term SONIA reference rates: FMSB consults on draft standard	21
<b>Insurance</b>	<b>22</b>
Review of Solvency II effective value test parameters: PRA statement	22
Use of LEIs: EIOPA consults on revised guidelines	22
IDD: EIOPA completes analysis of national general good rules	22
<b>Funds and Asset Management</b>	<b>24</b>
Liquidity management in UK open-ended funds: BoE and FCA report	24
EU MMF Regulation: ESMA consultation on reforms	24
AIFMD and UCITS Directive: ESMA updates Q&As	24

# General

## UK-EU MoU on regulatory cooperation in financial services

HM Treasury has [announced](#) that technical discussions on the text of the memorandum of understanding (MoU) on UK-EU regulatory cooperation in financial services have concluded. HM Treasury states that formal steps need to be undertaken on both sides before the MoU can be signed but that it expects that that this can be done expeditiously. The text of the final version of the MoU has not yet been published.

## UK-US bilateral agreement on insurance and reinsurance prudential measures: first committee meeting

The UK and the US have held the [first meeting](#) of the Joint Committee established under the UK-US bilateral agreement on insurance and reinsurance prudential measures.

During this first Joint Committee meeting under the agreement, participants on both sides discussed progress made toward timely implementation of the agreement, including the removal of collateral and local presence requirements for reinsurers and the provisions on group supervision measures. In addition, the parties affirmed their commitment to the agreement and to close coordination between the two sides as implementation continues. Consistent with the agreement, both sides continue to encourage relevant authorities to refrain from taking any measures that are inconsistent with any provisions of the agreement.

## Money Laundering and Terrorist Financing (Amendment) (High-Risk Countries) Regulations 2021

The Money Laundering and Terrorist Financing (Amendment) (High-Risk Countries) Regulations 2021 ([SI 2021/392](#)) have been published, together with an [explanatory memorandum](#). The Regulations came into force on 26 March 2021.

The Regulations insert a new Schedule 3ZA into the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs 2017), which sets out a list of high-risk third countries. The Regulations also change the definition of a "high-risk third country" in regulation 33(3)(a) of the MLRs 2017 from a country that has been defined as such by a European Commission delegated act to a country specified in the new Schedule 3ZA, and they make a consequential amendment to regulation 39(4).

The Regulation also revoke the retained EU law version of Commission Delegated Regulation (EU) 2016/1675 which set out the list of third countries identified by the European Commission as high risk. This list has been superseded by the new list set out in Schedule 3ZA.

## HM Treasury advisory notice on AML and CTF controls in higher risk jurisdictions

HM Treasury has updated its [advisory notice](#) on money laundering (AML) and terrorist financing (CTF) controls in higher risk jurisdictions. This notice replaces all previous notices issued by HM Treasury on the subject. The revised notice follows two statements published by the Financial Action Task Force (FATF) on 25 February 2021, identifying jurisdictions with strategic deficiencies in their AML/CTF regimes.

## Draft Capital Requirements Regulation (Amendment) (EU Exit) Regulations 2021

HM Treasury has published a [draft version](#) of the Capital Requirements Regulation (Amendment) (EU Exit) Regulations 2021, together with a [draft explanatory memorandum](#). These Regulations amend the UK Capital Requirements Regulation (UK CRR) to provide that exemptions for commodities dealers will continue to apply until 1 January 2022. This is the date on which the new UK Investment Firms Prudential Regime will come into effect.

The Regulations are intended to come into force on the 22nd day after the day on which they are laid before Parliament.

## FPC meeting summary and record

The Bank of England (BoE) has published the [financial policy summary and record](#) (FPSR) of the meeting of its Financial Policy Committee (FPC) on 11 March 2021. Announcements made in the FPSR relate to topics including:

- open-ended funds: the FPC considered the findings of the joint BoE-Financial Conduct Authority (FCA) survey of liquidity management in open-ended funds, also published on 26 March 2021. The FPC will set out in the next Financial Stability Report (FSR) its views on how a liquidity classification could be developed and an approach for how more consistent and complete swing pricing could be developed in order to promote financial stability;
- Long-Term Asset Fund (LTAF): the FPC noted that the BoE, HM Treasury and the FCA had established an industry working group to facilitate investment in productive finance through the launch of an LTAF structure. It states that the FCA plan to publish a consultation on the LTAF in the first half of 2021;
- UK Countercyclical Capital Buffer (CCyB) rate: the FPC agreed to maintain the UK CCyB rate at 0% in 2021 Q1. It expects to maintain a UK CCyB rate of 0% until at least December 2021, which means that any subsequent increase is not expected to take effect until Q4 2022 at the earliest; and
- 2022 cyber stress test: the FPC set out its initial thinking on the 2022 cyber stress test, which will test firms' abilities to withstand cyber incidents and to restore functioning after a cyber incident. It agreed that the test should involve a scenario where data integrity had been compromised. It will be an exploratory test, rather than a formal pass-fail assessment. Participating firms will, however, be expected to share their findings and plans with their supervisors. The FPC intends to provide more information on the 2022 cyber stress test in due course.

The annex to the FPSR lists the FPC policy decisions that remain in force. These relate to the CCyB rate, mortgage loan to income ratios and mortgage affordability.

## Pension freedoms: House of Commons Work and Pensions Committee first-stage report on pension scams

The Work and Pensions Committee of the House of Commons published [Protecting pension savers - five years on from the pension freedoms: Pension scams](#). This is the first report under the Committee's three-part inquiry into the impact of the pension freedoms introduced in 2015 on pension savers. The first report concerns pension scams and focuses on Project Bloom, the multi-agency initiative set up in 2012 to combat pension scams. In February 2021, the Committee issued a call for evidence on the second stage of its inquiry. This will look at accessing retirement products.



## **Guide for employers and pension trustees on providing support with financial matters without FCA authorisation**

The FCA and the Pensions Regulator have published an [updated version](#) of their guide for employers and trustees on providing support with financial matters without needing to be subject to FCA regulation. The purpose of the guide is to provide a non-exhaustive explanation of the type of assistance that employers and pension trustees may provide to help employees, without needing to be authorised by the Financial Conduct Authority (FCA) under the Financial Services and Markets Act 2000. It also provides details of actions that could trigger a requirement for authorisation, such as helping scheme members towards certain FCA-regulated products or helping them make decisions on their pension in a way that would likely be considered as providing financial advice.

The FCA consulted on a revised version of the guide as part of its guidance consultation (GC20/1) on advising on pension transfers. It has published a [feedback statement](#) relating to GC20/1, setting out the feedback received to the proposed revisions to the guide and its policy decisions in response to that feedback.

### **Advising on DB pension transfers: FCA FG21/3**

The FCA has published finalised guidance, [FG21/3](#), on advising on pension transfers. The guidance is aimed at firms providing advice on the conversion or transfer of pension benefits and relevant advice on where any transferred funds may be invested. It is intended to help firms to understand how to apply FCA rules and guidance when giving defined benefit (DB) transfer advice. The guidance came into effect immediately, as it is based on existing rules.

### **Operational resilience: FCA, PRA and BoE policy statements**

Following their December 2019 consultations, the FCA ([PS21/3](#)), the Prudential Regulation Authority (PRA) ([PS6/21](#)) and the [Bank of England](#) (BoE) have published a [joint feedback statement](#), policy statements and supervisory materials setting out their final rules and guidance on operational resilience. The FCA has also updated its [webpage](#) on operational resilience.

The authorities are introducing new operational resilience framework for firms and financial market infrastructures (FMIs). Under this framework, firms and FMIs are required to identify the important business services that, if disrupted, would impact the authorities' objectives. Firms and FMIs are required to set an impact tolerance for each of their important business services and take actions to meet specified standards relating to operational resilience.

The new rules introduced by the framework will come into effect on 31 March 2022. The authorities have set out a timetable for the implementation of the framework, which will consist of a one-year implementation period, ending on 31 March 2022, and a three-year transitional period, ending on 31 March 2025. During the implementation period, firms and FMIs should identify their important business services and set impact tolerances. They should also develop and put into effect a strategy or plan setting out how they will comply with the authorities' requirements and expectations.

By the end of the transitional period, firms and FMIs should have in place sound, effective, and comprehensive strategies, processes, and systems enabling them to address risks to their ability to remain within their impact tolerance for each important business service.

## Outsourcing and third party risk management: PRA PS7/21

Following its December 2019 consultation in CP30/19, the PRA has published feedback and a policy statement, [PS7/21](#), on outsourcing and third party risk management. The PRA has made some revisions to its final policy, including:

- definitions, scope and proportionality: firms should assess the materiality and risks of all third party arrangements, irrespective of whether they fall within the definition of outsourcing. Where non-outsourcing, third party arrangements are deemed to be material or high risk, the PRA expects firms to implement effective, risk-based controls. The PRA has included additional examples of how proportionality can apply to intragroup arrangements and third-country branches;
- governance and record keeping: the PRA is planning an additional consultation setting out proposals for an online portal on which all firms will need to submit information on their outsourcing and third party arrangements. The PRA also plans to undertake further analysis on whether additional policy measures to manage the risks that critical third parties could pose to their objectives might be appropriate;
- agreements: if a third party service provider in a material outsourcing (or other third party) arrangement is unable or unwilling to include certain terms within the contract that reflect the firm's obligations, that firm should make the PRA aware of this issue; and
- data and access: the PRA expects firms to adopt a risk-based approach to the location of data that allows them to leverage the operational resilience advantages of outsourced data being stored in multiple locations while managing relevant risks. Additional guidance has been added about the conduct of on-site audits.

[Appendix 1](#) contains the supervisory statement on outsourcing and third party risk management (SS2/21), which firms are expected to comply with by 31 March 2022. Outsourcing arrangements entered on or after 31 March 2021 should meet the expectations in SS2/21 by 31 March 2022. Firms should review and update legacy outsourcing agreements entered into before 31 March 2021 at the first appropriate contractual renewal or revision point to meet the expectations in SS2/21 as soon as possible on, or after, 31 March 2022.

For the avoidance of doubt, the PRA states that it considers that it is no longer proportionate for firms to make every effort to comply with the indicative timeline and process for reviewing their material (i.e. critical or important) legacy outsourcing arrangements, as set out in paragraphs 15 and 16 of the European Banking Authority (EBA) Outsourcing Guidelines. Likewise, firms are not expected to inform the PRA if they have not met the timeline set out in the EBA Outsourcing Guidelines. The PRA has made this decision due to the disruption and reprioritisation caused by the COVID-19 pandemic and changes to the UK, EU, and global regulatory landscape in this area, and in consideration of responses to CP30/19.

The PRA is planning a follow-up consultation setting out detailed proposals for an online portal which all firms would need to populate with certain information on their outsourcing and third party arrangements.

## LIBOR transition: Joint PRA and FCA Dear CEO letter on priority areas

The PRA and the FCA have sent a [joint Dear CEO letter](#) on the transition from LIBOR to risk-free rates (RFRs). In the letter, the PRA and the FCA set out a list of priority areas where further action by firms is necessary to prepare for the cessation of LIBOR. This follows the FCA's statement on 5 March 2021 announcing the dates that panel bank submissions for all LIBOR settings will cease.



The PRA and the FCA will monitor firms' progress and may take supervisory action where they see insufficient progress, or incidents of poor risk management or governance of transition, including in respect of the expectations set out in the letter. The regulators state that responsible senior managers functions (SMFs) should satisfy themselves that all appropriate actions are being taken to ensure an orderly transition and that this transition should form part of the performance criteria for determining responsible SMFs' variable remuneration.

### **Transition to SONIA: Working Group on Sterling RFRs meeting minutes**

The BoE has published the [minutes](#) of the February 2021 meeting of the Working Group on Sterling RFRs. Among other things, the working group discussed comments by the PRA at a recent meeting of the senior advisory group (SAG). The PRA's comments include:

- it would intensify supervisory oversight in the coming weeks and months with an active meeting programme and monitoring to ensure firms make progress in line with industry milestones;
- the lending market was a more challenging area than other segments. Data from Q4 2020 suggested less than 20% of new commercial lending was taking place on a "day 1" SONIA basis, which was not a volume that gave the PRA comfort that all firms had made the necessary preparations to meet the Q1 2021 GBP lending milestone;
- the PRA is aware that some firms in syndicates are holding back progress by advising clients to remain on LIBOR. The PRA sends a strong message that they would not allow these firms to act as a brake on transition; and
- the PRA expects that wherever possible all legacy LIBOR contracts would be amended to include at least a contractually robust fallback, or preferably an agreed conversion to an alternative rate no later than the end of 2021.

The FCA confirmed to the working group its alignment with the approach the PRA presented at the SAG meeting. It warned that firms should consider the increasing conduct risks associated with continued offering of LIBOR products especially where liquidity in these products was likely to deteriorate. It would challenge firms where it believed they should be doing more to shift business away from LIBOR. It and the PRA would act on intelligence where syndicates were not moving away from GBP LIBOR and the FCA had already discussed this with some participants of a syndicate deal that closes in Q2 2021.

### **2021/22 FSCS management expenses levy limit: PRA PS5/21**

The PRA has published a policy statement, [PS5/21](#), on the 2021/22 management expenses levy limit (MELL) for the Financial Services Compensation Scheme (FSCS). In PS5/21, the PRA sets out feedback to the responses it received to its consultation paper on the MELL, published jointly with the FCA in January 2021 (PRA CP4/21 / FCA CP21/2). The responses did not raise issues that require the proposals to be altered and so the PRA is proceeding on the basis of the proposals it consulted on. The FSCS MELL will apply for the financial year ending 31 March 2022.

The FCA published its response to feedback in Handbook Notice 86.

### **Open finance: FCA FS21/7**

Following its December 2019 call for input, the FCA has published a feedback statement, [FS21/7](#), on open finance. The FCA sees open finance as an opportunity to build on the concept of open banking and allow consumers and SMEs to access and share their data with third party providers (TPPs). It involves extending open banking-like data sharing and third-party access to

a wider range of financial sectors and products. The feedback statement summarises the responses received by the FCA to its call for input, setting out comments received on the issues of maximising the potential of open banking and open finance, as well as the FCA's draft principles for open finance.

Our separate briefing on the FCA's feedback statement will shortly be available on [Hogan Lovells Engage](#).

## **FCA Handbook Notice 86**

The FCA has published Handbook Notice 86, which sets out changes to the FCA Handbook made by the FCA board on 25 March 2021. It also sets out changes made by the Financial Ombudsman Service (FOS) board on 25 March 2021. The Handbook Notice reflects changes made to the Handbook by the following instruments:

- [Exiting the European Union: Gibraltar \(Fees\) Instrument 2021 \(FCA 2021/8 / FOS 2021/2\)](#), in force from 1 April 2020;
- [Fees \(Crypto-asset Business\) \(Periodic Fees\) Instrument 2021 \(FCA 2021/9\)](#), in force from 1 April 2020;
- [Fees \(Multilateral Trading Facilities and Organised Trading Facilities Fees Amendments\) Instrument 2021 \(FCA 2021/10\)](#), in force on 1 April 2020;
- [Financial Services Compensation Scheme \(Management Expenses Levy Limit 2021/22\) Instrument 2021 \(FCA 2021/11\)](#), in force from 1 April 2020; and
- [Financial Services Compensation Scheme \(Appointed Representatives\) Instrument 2021 \(FCA 2021/12\)](#), in force from 26 March 2021.

## **FCA regulation of LC&F: Andrew Bailey letter on lessons learnt**

The House of Commons Treasury Committee has published a [letter](#) sent to the Committee by Andrew Bailey, BoE Governor. The letter was written in response to the Committee's request for Mr Bailey to clarify certain statements made during an oral evidence session in February 2021 relating to the Committee's inquiry into the FCA's regulation of London Capital & Finance plc (LC&F). In the letter, Mr Bailey sets out, among other things, the lessons that he learnt from the FCA's failings in regulating LC&F. The letter also addresses certain statements made in the evidence session that appeared to contradict the account of events given by Dame Elizabeth Gloster. The Committee has also published a [letter](#) from Dame Elizabeth setting out her views on these statements.

## **Extending annual financial crime reporting obligation: FCA PS21/4**

Following its consultation in CP20/17, the FCA has published a policy statement, [PS21/4](#), on extending its annual financial crime reporting obligation (REM-CRIM) to include firms carrying on regulated activities that potentially pose a higher money laundering risk. The FCA confirms that it will bring the following entities within the scope of the REP-CRIM obligation:

- certain authorised firms falling within the scope of the MLRs 2017 that either hold client money or assets or carry on an activity that the FCA consider poses higher money laundering risk (such as dealing in investments as agents and managing investments);
- payments institutions, subject to certain exceptions, and all electronic money institutions;
- all multilateral trading facilities and organised trading facilities; and
- all cryptoasset exchange providers and custodian wallet providers.

The FCA has also removed two activities from the REP-CRIM reporting obligation, which it considers are outside of the scope of the MLRs: home finance mediation and making arrangements with a view to transactions in investments.

The FCA has also made [directions](#) under regulation 74A of the MLRs 2017 directing cryptoasset exchange providers and custodian wallet providers to comply with the REP-CRIM obligation. The instrument and the directions both came into force on 30 March 2022.

Firms being brought into scope are required to submit their first REP-CRIM within 60 business days after their first accounting reference date falling after 30 March 2022.

### **Schemes of arrangement: FCA evaluation approach**

The FCA has issued a [statement](#) and published a [letter of concerns](#) in relation to an application by a firm to implement a scheme of arrangement under Part 26 of the Companies Act 2006. While the letter relates to a specific scheme application, Annex 2 to the letter sets out the FCA's general approach to its evaluation of arrangements proposed by FCA-regulated firms. This approach includes consideration as to whether a proposed scheme is compatible with FCA rules, including the Principles for Businesses. In particular, the FCA assesses the compatibility of schemes of arrangement with Principle 6 (treating customers fairly), Principle 7 (customers' information needs) and Principle 8 (managing conflicts of interest).

### **FOS 2021/22 plans and budget**

Following consultation, the FOS has published its [2021/22 plans and budget](#). Alongside the 2021/22 plans and budget, the FOS has published the final version of the [Fees Manual \(Financial Ombudsman Service Case Fees 2021/2022\) Instrument 2021 \(FOS 2021/1\)](#). This instrument was made by order of the FOS board on 22 March 2021 and by order of the FCA board on 25 March 2021. It came into force on 1 April 2021.

### **EEA Joint Committee Decisions amending Annex IX (Financial Services) to EEA Agreement**

The following two Decisions of the EEA Joint Committee that amend Annex IX (Financial Services) to the EEA Agreement to incorporate various pieces of EU financial services legislation into the EEA Agreement have been published in the Official Journal of the European Union:

- [Decision 213/2018 of 26 October 2018 amending Annex IX \(Financial Services\) to the EEA Agreement \[2021/496\]](#), which incorporates Commission Implementing Regulation (EU) 2018/730 of 4 May 2018 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 March 2018 until 29 June 2018 under the Solvency II Directive. The Decision's date of entry into force is specified as 27 October 2018, subject to all requisite notifications under Article 103(1) of the EEA Agreement; and
- [Decision 214/2018 of 26 October 2018 amending Annex IX \(Financial Services\) to the EEA Agreement \[2021/497\]](#), which incorporates the Insurance Distribution Directive (IDD), together with Directive (EU) 2018/411 amending the IDD as regards the date of application of member states' transposition measures. The Decision also repeals the Insurance Mediation Directive (IMD) under the EEA Agreement, since this Directive was repealed by the IMD. The Decision's date of entry into force is specified as 27 October 2018, subject to all requisite notifications under Article 103(1) of the EEA Agreement.

## Assessment of the application of ESA Guidelines on complaints-handling

The European Supervisory Authorities (ESAs) have published a [Joint Committee Report](#) on the assessment of the application of the ESAs' guidelines on complaints-handling. In the report, the ESAs consider the application of the guidelines published by the European Insurance and Occupational Pensions Authority (EIOPA) in June 2012 and December 2013 on complaints-handling by insurance undertakings and insurance intermediaries respectively, as well as the joint guidelines for the securities and banking sectors published by ESMA and the EBA in June 2014. The report refers to these guidelines collectively as the guidelines on complaints-handling.

The ESAs conclude that the guidelines have contributed to achieving the purposes for which they were developed and have resulted in better outcomes for consumers. They conclude that there is no need to revise the guidelines at this stage or to continue the assessment of the guidelines by approaching firms directly for their views.

## EU IFR: EBA consults on RTS on disclosure of investment policy

The EBA has published a [consultation paper](#) on draft regulatory technical standards (RTS) on the disclosure of the investment policy by investment firms under the Investment Firms Regulation (IFR). Article 52 of the IFR requires investment firms other than small and non-interconnected firms to publicly disclose information on their investment policy. Article 52(3) mandates the EBA to develop draft RTS specifying templates for these disclosures.

[Annex I](#) to the draft RTS contains templates and tables for the purpose of the disclosure of information on firms' investment policies. [Annex II](#) contains detailed instructions, which provide legal references and guidance concerning specific positions for these templates and tables.

The deadline for responses to the consultation is 1 July 2021.

# Banking and Finance

## EU CRR: Corrigendum to Commission Implementing Regulation containing ITS on reporting requirements for market risk

A [corrigendum](#) to Commission Implementing Regulation (EU) 2021/453 containing implementing technical standards (ITS) on specific reporting requirements for market risk under the Capital Requirements Regulation (CRR) has been published in the Official Journal of the European Union (OJ).

The corrigendum inserts Annex III to the Implementing Regulation, which contains data point model and the validation formulae used in firms' reporting of certain issues relating to market risk. This Annex was not included in the version of the Implementing Regulation published in the OJ on 16 March 2021.

The Implementing Regulation enters into force on 5 April 2021 and applies from 5 October 2021.

## CRD: Delegated Regulation amending RTS on methodology for identification of G-SIIs and definition of subcategories of G-SIIs

[Commission Delegated Regulation \(EU\) 2021/539](#) amending Delegated Regulation (EU) 1222/2014 supplementing the Capital Requirements Directive (CRD) with regard to regulatory technical standards (RTS) for the specification of the methodology for the identification of global systemically important institutions (G-SIIs) and for the definition of subcategories of G-SIIs has been published in the OJ. The revisions made by the Amending Regulation:

- reflect revisions to the Basel Committee on Banking Supervision (BCBS) framework that were published in July 2018. The BCBS originally intended for the revised assessment methodology to take effect on 1 January 2021, but in April 2020 it postponed the implementation of the framework to 1 January 2022 because of COVID-19;
- introduce an additional EU methodology to allocate G-SII buffer rates to identified G-SIIs. This reflects reforms made by CRD V enabling competent and designated authorities to use sound supervisory judgement to reallocate a G-SII from a higher subcategory to a lower subcategory on the basis of the additional overall score that accounts for the specificities of the European banking union and the Single Resolution Mechanism within cross-border activity indicators; and
- provide that the detailed specification of the indicator values for assessing G-SIIs will now be set in EBA guidelines, rather than by reference to the Basel framework.

The Amending Regulation entered into force on, and applied from, 30 March 2021, with the exception of points (4)(a), 4(b) and (5), which relate to the BCBS' reforms, which will apply from 1 December 2021.

## Bail-in for international debt securities: SRB guidance

The Single Resolution Board (SRB) has published [guidance](#) on reflecting bail-in in the books of the international central securities depositories (ICSDs). In the guidance, the SRB sets out the elements that banks should consider for the operationalisation of the bail-in in respect of international bearer debt securities (that is, eurobonds) issued by and safekept in the ICSDs, Euroclear Bank and Clearstream Banking Luxembourg. The SRB expects banks to reflect the guidance in their bail-in playbooks as from 2021. The guidance is intended to build on the SRB's

Expectations for Banks document and its guidance on bail-in playbooks, which were published in April 2020 and August 2020 respectively.

### **Delegated Regulation amending arrangements for payments of contributions to SRB's administrative expenditures**

[Commission Delegated Regulation \(EU\) 2021/517](#) amending Delegated Regulation (EU) 2017/2361 as regards the arrangements for the payment of contributions to the administrative expenditures of the SRB has been published in the OJ. The Amending Delegated Regulation entered into force and applied on 26 March 2021.

### **BRRD: European Commission adopts Delegated Regulation containing RTS on estimating Pillar 2 and combined buffer requirements for setting MREL**

The European Commission has adopted a [Delegated Regulation](#) containing draft RTS specifying the methodology to be used by resolution authorities to estimate the Pillar 2 and combined buffer requirements at resolution group level. This is for the purpose of setting the minimum requirement for own funds and eligible liabilities requirement (MREL) under the Bank Recovery and Resolution Directive (BRRD).

The Council of the EU and the European Parliament will now scrutinise the draft Delegated Regulation. It will enter into force 20 days after its publication in the OJ.



# Consumer Finance

## COVID-19: FCA updates mortgage guidance and reports on mortgage and consumer credit firms' implementation of tailored support guidance

On 25 March 2021, the UK Financial Conduct Authority (FCA) published updated [Finalised Guidance on Mortgages and Coronavirus: Tailored Support Guidance](#). The updated guidance sets out the FCA's expectations on repossessions from 1 April 2021.

The changes include that from 1 April 2021, subject to any relevant government restrictions on repossessions, firms may enforce repossession provided they act in accordance with the guidance, chapter 13 of the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB 13), and relevant regulatory and legislative requirements.

Also, firms should have appropriate policies and procedures for the fair treatment of vulnerable customers and consider the needs of customers with protected characteristics under the Equality Act 2010. They should also consider whether any customer, or a member of their household, is at greater risk of harm from COVID-19 if they are required to vacate the property. Where this is the case, repossession should not be enforced until those risks have passed or can be appropriately managed.

The FCA consulted on the guidance earlier in March 2021. It summarises the feedback received and its response in a [feedback statement](#) (FS21/6). The updated guidance is unchanged from that proposed in the consultation.

The FCA has also published the [key findings](#) from its review of mortgage and consumer credit firms' implementation of its Tailored Support Guidance and firms' operational readiness to support customers in financial difficulty. It found that firms have progressed well in implementing the guidance. To follow up on its findings, the FCA will be implementing a workplan over the next year to assess whether firms are effectively implementing their policies and procedures. Where it has identified concerns with a firm's approach, the FCA states that it will follow up through the usual course of its supervisory work, taking robust action to stop and prevent harm.

## Claims management companies and high cost lenders: FCA statement

The FCA has published a [press release](#) urging claims management companies (CMCs) and high cost lenders (HCLs) to work better together. The FCA states that it has become aware of tensions between CMCs and HCLs arising from CMCs handling customers' complaints against HCLs. It provides examples of some of the issues that have caused tension, including HCLs suspending lending to clients making complaints while a claim is being investigated, the use by CMCs of "catch all" letters of authority to pursue claims against more than one HCL and an unwillingness by HCLs to share information efficiently with CMCs that are exploring potential claims.

The FCA reminds HCLs and CMCs that it expects them to work together to resolve disputes and disagreements in the interest of their customers and it encourages CMCs and HCLs to agree streamlined claims handling processes with each other, where possible. Firms should have regard to previous decisions of the Financial Ombudsman Service when they are dealing with complaints.

The FCA also reminds CMCs that:

- they must not make or pursue a claim if they have reasonable grounds to suspect the claim does not have a good arguable base or is fraudulent, frivolous or vexatious;
- they should take all reasonable steps to investigate the existence and merits of each element of a potential claim before making or pursuing a claim; and
- their investigations should enable them to make representations when presenting a claim that substantiate the basis of the claim, relate to the nature of the claim and are specific to the claim and are not false, misleading or an exaggeration.

The FCA states that all firms should consider the points in its statement to ensure consumers' interests are not compromised and to ensure firms can demonstrate they comply with FCA rules. It also reminds firms of its Dear CEO portfolio letters relating to [HCLs](#) and [CMCs](#).

### **Credit card market remedies: LSB summary report on thematic review**

The Lending Standards Board (LSB) has published a [summary report](#) on its review of how the package of remedies set out in the FCA's final report on the credit cards market has impacted consumers' use of their credit card. The FCA published its final report in July 2016.

Overall, the LSB concluded that the remedies were having a positive impact. Where breaches have been identified, this was in isolated cases and no industry-wide systemic non-compliance with the remedies was found. However, it did find a number of areas for improvement, which it details in its report.

The LSB suggests that further work is needed to draw out the effectiveness of the remedies, and that they should be included within its Standards of Lending Practice for personal customers. It also proposes that additional guidance should be formulated to draw out the expectations relating to the effective operation of the remedies. This guidance could be incorporated into the Information for Practitioners, which sits alongside the Standards of Lending Practice.

# Payments

## CRM Code for APP scams: LSB call for input

The Lending Standards Board (LSB) has published a [call for input](#) on the contingent reimbursement model code (CRM Code) for authorised push payment (APP) scams. The call for input follows on from the LSB's report following its review of the code, which was published in January 2021. This LSB call for input focuses on specific topics for which there was insufficient evidence submitted in the full review to enable it to form policy and decisions relating to the code.

The deadline for responses is 26 May 2021.

## Instant payments: European Commission consultation

The European Commission has published a [public consultation](#) on instant payments. The aim of the consultation is to identify concerns that would need to be addressed to incentivise EU payments market players to offer innovative, convenient, safe and cost-efficient pan-European payment solutions based on instant credit transfers. Feedback will enable the Commission to decide on whether EU coordinated action and/or policy measures are warranted in order to ensure that a critical mass of EU payment service providers offer instant credit transfers. The consultation also seeks to identify factors that would be relevant for stimulating customer demand towards instant credit transfers.

The deadline for responses is 23 June 2021.

# Securities and Markets

## **LIBOR transition: FCA and BoE encourage switch to SONIA in sterling non-linear derivatives market**

The Financial Conduct Authority (FCA) and the Bank of England (BoE) have published a [joint statement](#) announcing that they encourage liquidity providers in the sterling non-linear derivatives market to adopt new quoting conventions for inter-dealer trading based on SONIA instead of LIBOR from 11 May 2021. This is to facilitate a further shift in market liquidity toward SONIA, bringing benefits for a wide range of users as they move away from LIBOR.

In the period leading up to 11 May, the FCA and the BoE will engage with market participants to determine whether market conditions allow the switch to proceed smoothly.

## **MiFID: Delegated Regulation on thresholds for weekly position reporting of commodity derivatives**

[Commission Delegated Regulation \(EU\) 2021/527](#) amending Commission Delegated Regulation (EU) 2017/565 (the MiFID Delegated Regulation) as regards the thresholds for weekly position reporting under the Markets in Financial Instruments Directive (MiFID) has been published in the Official Journal of the European Union (OJ).

Article 83 of the MiFID Delegated Regulation establishes the minimum thresholds for the weekly reporting of positions held by specified persons in commodity derivatives, as required under Article 58(1) of MiFID. The Delegated Regulation amends certain aspects of those minimum thresholds.

The Delegated Regulation entered into force on 29 March 2021.

## **EU MiFIR: Delegated Regulation on liquidity thresholds and trade percentiles used to determine SSTI applicable to non-equity instruments**

[Commission Delegated Regulation \(EU\) 2021/529](#) has been published in the OJ. The Delegated Regulation establishes regulatory technical standards (RTS) amending Delegated Regulation (EU) 2017/583 (RTS 2) as regards adjustment of liquidity thresholds and trade percentiles used to determine the size specific to the instrument (SSTI) applicable to certain non-equity instruments.

RTS 2 imposes transparency requirements for trading venues and investment firms in respect of bonds, and other non-equity products. In particular, it provides the methodology to assess the liquidity and the SSTI of bonds. Both liquidity and SSTI are relevant for the application of transparency waivers and deferrals under the Markets in Financial Instruments Regulation (EU MiFIR).

RTS 2 introduced a phased approach to both the methodology to calculate the liquidity of bonds and, in respect of pre-trade transparency, the SSTI of non-equity instruments, including bonds. Under this approach, the European Securities and Markets Authority (ESMA) assesses annually, for four years, if a move to another, more strict, phase is warranted. At present, the first phase (stage S1) is active.

Based on an assessment undertaken by ESMA the Delegated Regulation provides for a move to stage S2 for determining bonds for which there is a liquid market and for the size specific to the instrument for bonds. The move to stage S2 should increase the level of transparency available in

the bond market without causing a negative impact on liquidity. However, since for other non-equity instruments than bonds ESMA's first annual transparency calculations have only been published this year, there was not enough evidence to move to stage S2 for other classes of financial instruments.

The Delegated Regulation enters into force on 15 April 2021.

### **COVID-19: ESMA statement on temporary suspension of MiFID RTS 27 reports**

ESMA has published a [public statement](#) on the application of the temporary suspension of the obligation to publish RTS 27 reports under Delegated Regulation (EU) 2017/575, which supplements MiFID. The purpose of the statement is to promote coordinated action by national competent authorities (NCAs) regarding the amendments made in respect of RTS 27 reports by Directive (EU) 2021/338 (the Amending Directive).

Commission Delegated Regulation (EU) 2017/575, which supplements MiFID contains RTS (known as RTS 27) specifying the content, the format and the periodicity of the data to be published by execution venues relating to the quality of execution of transaction. The Amending Directive, which was published in the OJ in February 2021, made targeted amendments to MiFID intended to help the EU's economic recovery from the COVID-19 pandemic, including the temporary suspension of the obligation to make the reports required by RTS 27.

ESMA has observed that there is confusion among market participants on the application date of this suspension. In particular, although Article 1(6) of the Amending Directive provides that the requirement to publish RTS 27 reports will not apply until 28 February 2023, Article 4(1) requires member states to apply the measures necessary to comply with the Amending Directive by 28 February 2022.

ESMA states that the legislative aim of the Amending Directive was to suspend the best execution reports for two years as of the date of its entry into force. On that basis, ESMA expects NCAs not to prioritise supervisory actions towards execution venues relating to the obligation to publish the RTS 27 reports until the date on which the national transposition measures of the Amending Directive postpone that obligation in national law.

### **EU MiFIR: ESMA final report on reference data and transaction reporting obligations**

ESMA has published its [final report](#) containing recommendations and possible legislative amendments to simplify the current transaction reporting and reference data regime under EU MiFIR. ESMA's recommendations include the following:

- replacing the trading on a trading venue concept with the systematic internaliser approach for OTC derivatives, taking into account the conclusions of ESMA's final report on the transparency regime for non-equity instruments and the trading obligation for derivatives;
- removing the short sale indicator;
- aligning the regime with the reporting regimes under other legislation such as the Market Abuse Regulation (EU MAR), the European Market Infrastructure Regulation (EU EMIR) and the Benchmarks Regulation (EU BMR); and
- including three additional data elements, with a view to harmonise the way they are reported and avoid inconsistent and duplicative reporting of the same information at the national level. In particular, these are indicators for buyback programs, information on MiFID client categories and transactions pertaining to aggregated orders.

ESMA has submitted the report to the European Commission. Based on ESMA's recommendations, the Commission is expected to adopt legislative proposals.

### **MiFID: ESMA updates Q&As on investor protection and intermediaries**

ESMA has published an updated version of its [Q&As](#) on investor protection and intermediaries under MiFID and MiFIR. The updated version includes a new Q&A on the conditions to be met for inducements to be considered to enhance the quality of services to clients. ESMA analyses the meaning of "additional" or "higher-level" service, what it means to provide services to a relevant client, and the need for firms to demonstrate that quality enhancements are proportional to the level of inducements received.

### **MiFID: ESMA advice on the application of administrative and criminal sanctions**

ESMA has published its [final report](#) containing its technical advice to the European Commission on the application of administrative and criminal sanctions under MiFID and MiFIR. The report follows the Commission's May 2019 request for advice on MiFID. ESMA's advice includes proposals to:

- amend MIFID requirements for NCAs to disclose and report information on sanctions and measures because of diverging requirements;
- amend the MIFID requirement for NCAs to liaise with judicial authorities to gather information on criminal sanctions, as well as clarifying the sanction reporting procedure;
- include settlement powers in the range of sanctions and measures available to NCAs to increase the efficiency of their enforcement proceedings, and enlarge the types of sanctions and measures in Article 70(6) of MiFID;
- amend the current requirements in Article 86(1) of MiFID on precautionary measures.

### **EU MiFIR: ESMA final reports on framework for DRSPs**

ESMA has published the following final reports providing advice to the European Commission on the fees, fines and penalties applicable to data reporting service providers (DRSPs), as well as the criteria for determining whether certain DRSPs may be exempted from ESMA supervision (derogation criteria), under MiFIR:

- [final report on DRSP criteria](#);
- [final report on technical advice on ESMA's fees to DRSPs](#); and
- [final report on technical advice on procedural rules for penalties imposed on DRSPs](#).

### **EU EMIR: ESMA updates Q&As**

ESMA has updated its [Q&As](#) on the implementation of EMIR. ESMA has amended the trade repository (TR) Q&A 51 to clarify issues concerning the exemption for intragroup transactions involving non-financial counterparties under Article 9(1) of EMIR. These issues relate to reporting the details of derivatives when the exemption ceases to be valid and the location of the parent undertaking for the purposes of the exemption.

### **EU BMR: ESMA updates Q&As**

ESMA has updated its [Q&As](#) on the EU BMR. It has updated the answer to question 9.3 to further clarify the applicable transitional provisions for third-country benchmarks, as set out in the EU BMR.



## **EU BMR: ESMA technical advice on procedural rules for penalties imposed on benchmark administrators**

ESMA has published a [final report](#) on technical advice submitted to the European Commission on procedural rules for penalties imposed on benchmark administrators under the EU BMR. The technical advice is intended to assist the Commission in its work on producing a delegated regulation under Article 48i(10) of EU BMR specifying the procedures that ESMA should follow when using its new powers to impose fines or periodic penalty payments on benchmark administrators.

## **CSDR: ESMA updates Q&As**

ESMA has updated its [Q&As](#) on the implementation of the Central Securities Depositories Regulation (CSDR). The updated Q&As include answers to:

- question 9 on the provision of services in other member states in Part II (central securities depositories);
- question 6 on settlement instructions sent by central counterparties (CCPs), in Part III (settlement discipline); and
- question 6(f) on the exemption from the application of cash penalties and the buy-in requirements for settlement fails relating to transactions involving CCPs.

## **EU Securitisation Regulation: ESA Q&As**

The Joint Committee of the European Supervisory Authorities (ESAs) has published a set of [Q&As](#) on the Securitisation Regulation, covering questions that fall outside the scope of any one of the three ESAs. In addition to helping market participants comply with their obligations, the Q&As aim to foster common supervisory practices in the application of the Securitisation Regulation and promote cross-sectoral consistency at an EU level.

## **Securitisation Regulation: ESA opinion on jurisdictional scope**

The ESAs have published an [opinion](#) to the European Commission on the jurisdictional scope of the Securitisation Regulation.

## **Use of Term SONIA reference rates: FMSB consults on draft standard**

The FICC Markets Standards Board (FMSB) has published a draft [standard](#) on the use of Term SONIA reference rates. Although UK authorities have previously made clear their expectations that markets should, in the main, use SONIA compounded in arrears, they have acknowledged that Term SONIA will be used in limited circumstances. The draft standard, which applies to Sterling fixed income and wholesale lending products, has been developed to help market participants decide when they should adopt Term SONIA.

The FMSB invites comments on the draft standard by 28 May 2021.

The FCA, the BoE and the Working Group on Sterling Risk-Free Rates have issued a joint [statement](#) welcoming the draft standard and encouraging market participants to respond to the FMSB's invitation to comment.

# Insurance

## Review of Solvency II effective value test parameters: PRA statement

The UK Prudential Regulation Authority (PRA) has published a [statement](#) setting out the findings from its review of the minimum deferment rate, which is one of the effective value test (EVT) parameters relating to the UK implementation of the Solvency II Directive.

The PRA has decided to retain the minimum deferment rate used in the EVT at 0.5% per annum, following an analysis of long-term real interest rates at a range of long-term tenors from 10 to 30 years and having taken into account current market conditions. It also confirms that the volatility parameter to be used has not been reviewed and remains unchanged at 13% per annum.

The deferment rate parameter specified in the statement applies from 31 March 2021. Firms that have elected to use a minimum deferment rate of 0% to conduct the EVT before 31 December 2021 may continue to do so.

The EVT is a diagnostic tool to monitor compliance with Solvency II requirements relating to the calculation of the matching adjustment benefit where liabilities are matched by restructured equity release mortgages. Details of its calculation are set out in the PRA supervisory statement on Solvency II and illiquid unrated assets (SS3/17). The minimum deferment rate parameter and the volatility parameter are two of the inputs used to calculate the EVT. Further information on these parameters is set out on a PRA [webpage](#).

The PRA expects to review the minimum deferment rate twice a year and to publish an updated value confirm the prior value, by the end of March and September each year. It expects to review and update or confirm the volatility parameter once per year, by the end of September.

## Use of LEIs: EIOPA consults on revised guidelines

The European Insurance and Occupational Pensions Authority (EIOPA) has published a [consultation paper](#) on revised guidelines on the use of the legal entity identifier (LEI). EIOPA intends to revise its existing guidelines, published in October 2014, on the use of the LEI as a unique identification code for the supervision of the insurance and occupational retirement provision sectors. The deadline for responses is 30 June 2021.

## IDD: EIOPA completes analysis of national general good rules

EIOPA has [announced](#) that it has completed its analysis of all published general good rules on registration and professional and organisational requirements that could potentially be non-compliant with the Insurance Distribution Directive (IDD).

EIOPA notes that some national competent authorities (NCAs) have implemented actions to ensure compliance with the IDD by:

- removing registration and organisational requirements that are under the exclusive competence of a home member state (for example, provisions requiring incoming insurance intermediaries to hold a specific diploma before engaging in insurance distribution in a host member state);
- clarifying that registration and organisational requirements are only imposed on domestically registered insurance intermediaries; and
- indicating specific general good provisions rather than referring to a collection of national legislation.

A [table](#) with information about adjustments made to general good rules in different member states has also been published.

# Funds and Asset Management

## Liquidity management in UK open-ended funds: BoE and FCA report

The Bank of England (BoE) and the Financial Conduct Authority (FCA) have published a [report](#) on liquidity management in UK open-ended funds. The report contains findings of a joint survey launched in August 2020, covering a reporting period of Q4 2019 to Q2 2020, therefore incorporating market conditions triggered by the COVID-19 pandemic. The survey forms part of the ongoing joint review by the BoE and the FCA on open-ended funds liquidity mismatch.

## EU MMF Regulation: ESMA consultation on reforms

The European Securities and Markets Authority (ESMA) has published a [consultation paper](#) on the legislative review of the EU Regulation on money market funds (MMF Regulation). Article 46 of the MMF Regulation requires the European Commission to review the adequacy of the Regulation "from a prudential and economic point of view". ESMA's consultation is the first step in developing an opinion on this review and includes a discussion about the key issues faced by MMFs during the COVID-19 pandemic, which saw a number of funds face significant liquidity issues.

The consultation closes to comments on 30 June 2021. ESMA will consider feedback received in Q2 2021 and plans to publish an opinion on the review of the MMF Regulation in the second half of 2021.

## AIFMD and UCITS Directive: ESMA updates Q&As

ESMA has published an updated version of its [Q&As](#) on the application of the Alternative Investment Fund Managers Directive (AIFMD) and its [Q&As](#) on the application of the UCITS Directive. ESMA has added two new Q&As in each on its guidelines on performance fees in UCITS and certain types of alternative investment funds (AIFs).

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