



# FIG Bulletin

Recent developments  
14 December 2020

Hogan  
Lovells

# Contents

---

<b>General</b>	<b>4</b>
Hogan Lovells Brexit resources	4
European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020	4
FCA Brexit FAQs	4
Financial Services Bill 2019-21	4
LIBOR cessation: BoE speech	5
FCA quarterly consultation No 30: CP20/23	5
Approach of insolvency practitioners to regulated firms: FCA GC20/5	5
FCA policy development update	6
Climate Financial Risk Forum: PRA summary of November 2020 meeting	6
Counter-Terrorism (Sanctions) (EU Exit) (Commencement) Regulations 2020	6
Data localisation impact on financial services sector: IRSG report	6
MLD4: European Commission draft Delegated Regulation removing Mongolia from high-risk third countries	7
Islamic financial services: IFSB to adopt two new standards	7
Digital trust and identity for legal entities: GLEIF development programme	7
<b>Banking and Finance</b>	<b>9</b>
UK implementation of CRD V: PRA PS26/20	9
CRR II: PRA CP22/20 on designation of firms within certain consolidation groups	9
Systemic risk buffer rates: PRA update	10
BRRD: PRA PS25/20 on simplified obligations for recovery planning	10
BRRD II: FCA statement on transposition	10
COVID-19: FCA guidance consultation on BBLS and collecting debts	11
Bank mergers and acquisitions: SRB guidance	11
Post-Brexit transition period: ESAs confirm status of STS transactions	11
Basel III: EBA capital monitoring report	12

Basel III: BCBS monitoring exercise report	12
<b>Payments</b>	<b>13</b>
PIs and EMIs: HM Treasury consults on a new special administration regime	13
Production and distribution of cash: House of Commons Public Accounts Committee report	13
APP scams voluntary code: extension of interim funding to 30 June 2020	14
APP scams voluntary code: LSB report	14
Payment threats and fraud trends: EPC 2020 report	15
<b>Securities and Markets</b>	<b>16</b>
Post-Brexit transition period: migrating to FCA FIRDS and FITRS	16
EMIR: European Commission consults on draft Delegated Regulation on procedure for penalties imposed on third-country CCPs	16
EMIR: European Commission consults on draft Delegated Regulation on procedure for penalties imposed on trade repositories	17
CSDR review: European Commission consultation	17
Questionnaire on continuity of access to FMIs for firms in resolution: FSB Q&A	18
FX Global Code: GFXC meeting to discuss progress on review	18
<b>Insurance</b>	<b>19</b>
Part VII FSMA insurance business transfers: Court of Appeal decision	19
Natural catastrophes: EIOPA's pilot dashboard on insurance protection gap	19
Collaboration of insurance supervisory authorities: EIOPA peer review report	19
Non-life underwriting and pricing in light of climate change: EIOPA discussion paper	20
IAIS summarises future activities	20
<b>Funds and Asset Management</b>	<b>21</b>
MMF Regulation: ESMA updates reporting instructions	21

# General

## Hogan Lovells Brexit resources

As the UK-EU Brexit transition period draws to an end, take a look at our various "Beyond Brexit transition" bulletins on the [Hogan Lovells Brexit Hub](#).

## European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020

The European Union Withdrawal (Consequential Modifications) (EU Exit) Regulations 2020 ([SI 2020/1447](#)) have been published, together with an [explanatory memorandum](#). The purpose of SI 2020/1447 is to ensure that the UK statute book works coherently and effectively following the end of the transition period. For example, among other things it clarifies how certain terms, including EU-related definitions, should be interpreted in domestic legislation on or after IP completion day, and makes technical repeals to redundant provisions within primary legislation arising from the European Union (Withdrawal) Act 2018 to tidy up the statute book.

SI 2020/1447 comes into force on IP completion day other than regulations 1 (Citation, commencement, extent and interpretation) and 10 (Revocations), which come into force immediately before IP completion day.

## FCA Brexit FAQs

The UK Financial Conduct Authority (FCA) has published a new [webpage](#) containing a set of FAQs addressing key questions about Brexit and the temporary permissions regime (TPR) to help firms prepare for the end of the Brexit transition period. The transition period is due to end on 31 December 2020. Questions addressed include:

- What is the TPR and what happens with the TPR after the transition period?
- What if I want to make changes to my TPR submission?
- When passporting ends who will it affect, what do I need to do next, and what has the FCA done to make sure firms can continue to do business in the EEA?
- How has EU law been onshored?
- What is the temporary transitional power?
- What impact will the end of the transition period have on transaction reporting?

The FCA also provides details of a dedicated telephone helpline it has made available to firms in need of help considering the implications of a no-deal exit.

## Financial Services Bill 2019-21

Parliament has published a [revised version](#) of the Financial Services Bill 2019-21, as amended in the committee stage, together with a [document](#) containing details of all proceedings at the committee stage. This document lists those amendments to the Bill that were made in the committee stage, which is now complete. A [letter](#) John Glen, Economic Secretary to the Treasury, to Pat McFadden MP, has also been published which clarifies certain issues raised in the House of Commons committee stage debate.

The date for the House of Commons report stage for the Bill will appear on the Bill's [webpage](#) when scheduled.

## LIBOR cessation: BoE speech

The Bank of England (BoE) has published a [speech](#) by Andrew Hauser, BoE Executive Director for Markets, on firms' preparations for LIBOR cessation at the end of 2021. Mr Hauser identifies three key actions for market participants over the coming months:

- move all new business off LIBOR;
- adopt the ISDA fallbacks for existing derivatives; and
- reduce the legacy of post-2021 LIBOR-linked contracts.

## FCA quarterly consultation No 30: CP20/23

The FCA has published its 30th quarterly consultation paper, [CP20/23](#). CP20/23 proposes to:

- clarify, in a joint FCA and [Prudential Regulation Authority](#) (PRA) consultation, the regulators' expectations where a senior manager takes temporary, long-term (longer than 12 week) absences. The FCA is also proposing to make these changes in relation to approved persons at appointed representatives (in SUP 10A), but not with regards to statements of responsibilities, as these do not apply to approved persons at appointed representatives;
- remove references to collective investment schemes being able to issue bearer certificates, in line with draft Government legislation banning the use of bearer certificates;
- amend the rules in the FCA Handbook, COBS 4.5.12R to COBS 4.5.15R, to narrow the scope of their application to communications which could influence a retail investor's investment decision;
- make changes to the minimum levels of professional indemnity insurance (PII) cover to align FCA rules with the revised limits as published in Commission Delegated Regulation (EU) 2019/1935 amending the Insurance Distribution Directive (IDD);
- make changes to the cancellation form in the FCA Handbook, SUP 6 Annex 6, to improve the cancellation application process; and
- transpose Article 1(16) of the Bank Recovery and Resolution Directive II ((EU) 2019/879) into FCA rules.

In addition, the FCA seeks views from interested stakeholders about whether it should recognise the Global Precious Metals Code.

The deadline for comments is 4 January 2021, except for the proposals to make changes to the cancellation form, which is 4 February 2021.

## Approach of insolvency practitioners to regulated firms: FCA GC20/5

The FCA has published a guidance consultation, [GC20/5](#), on proposed guidance for insolvency practitioners on how to approach regulated firms. GC20/5 sets out the FCA's view on how an insolvency practitioner should ensure regulated firms meet their ongoing financial services regulatory obligations following appointment. The proposed guidance is aimed at insolvency practitioners appointed over firms solely authorised or registered by the FCA but may also be relevant to firms that are dual regulated by the FCA and PRA.

The FCA is not the regulatory authority for insolvency practitioners but has engaged with the recognised professional bodies who licence and regulate insolvency practitioners on the proposed guidance.

The consultation period ends on 18 January 2021.

## FCA policy development update

The FCA has updated its [policy development update](#) webpage for December 2020, setting out information on recent and future FCA publications. Newly added to the update this month is a consultation on amendments to accommodate Breathing Space Regulations, due for publication in Q4 2020.

## Climate Financial Risk Forum: PRA summary of November 2020 meeting

The PRA has published a short [summary](#) of the fifth meeting of the Climate Financial Risk Forum (CFRF), which it co-hosts with the FCA. The meeting was held in November 2020. Among other things:

- the PRA and FCA welcomed a new member organisation, the Universities Superannuation Scheme (USS), and two new observers, The Pensions Regulator (TPR) and the Financial Reporting Council (FRC);
- since the publication of the CFRF guide in June 2020 and the last CFRF meeting in July 2020, the working group chairs, members and secretariats have been considering how they can further their respective topics of risk management, scenario analysis, disclosure and innovation. The CFRF noted the importance of progress in the development and understanding of climate data and metrics. Given this, it was decided that data and metrics should be a thematic topic that is addressed by all CFRF working groups in the next phase of work;
- the CFRF discussed each working group's plans and the progress made to date;
- the CFRF noted the importance of the 26th UN Climate Change Conference of the Parties (COP26), the major international climate summit being hosted by the UK in November 2021. It was agreed the CFRF should explore ways it can support the COP26 aims; and
- the next CFRF meeting will take place in Q1 2021 where a programme of deliverables will be agreed and next steps to engage with external stakeholders ahead of COP26 will be discussed.

## Counter-Terrorism (Sanctions) (EU Exit) (Commencement) Regulations 2020

The Counter-Terrorism (Sanctions) (EU Exit) (Commencement) Regulations 2020 ([SI 2020/1416](#)) bring the power to designate a person as subject to the regime of the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 (SI 2019/577) (Sanctions Regulations) into force from 7 December 2020. All other provisions of the Sanctions Regulations are brought into force on IP completion day.

The Sanctions Regulations were made under section 1 of the Sanctions and Anti-Money Laundering Act 2018.

## Data localisation impact on financial services sector: IRSG report

The International Regulatory Strategy Group (IRSG) has published a [report](#) on how the trend for data localisation is affecting the financial services sector. The IRSG explains that "data localisation" is a term used to describe a variety of different types of restrictions and requirements imposed by national governments and regulators, which require (or have as a consequence) that data, with an increasing trend toward personal data, originating within a jurisdiction remains in that jurisdiction.

In its report, the IRSG provides an overview of the types of restrictions applied by jurisdictions throughout the world to the extra-territorial transfer of data. It considers the consequences of



such restrictions on the financial services sector and highlights some related key concerns. The report includes recommendations on how alternative measures could potentially better address the concerns of both national governments and regulators that have resulted in data localisation.

#### **MLD4: European Commission draft Delegated Regulation removing Mongolia from high-risk third countries**

The European Commission has adopted a [Delegated Regulation](#) which deletes Mongolia from the list of high-risk third countries with strategic anti-money laundering (AML) and counter-terrorist financing (CTF) deficiencies the Annex to Delegated Regulation (EU) 2016/1675 (which is produced under Article 9(2) of the Fourth Money Laundering Directive (MLD4)).

The next step will be for the Council of the EU and the European Parliament to consider the Delegated Regulation. If neither the Council nor the Parliament object, it will be published in the OJ and will enter into force 20 days after its publication.

#### **Islamic financial services: IFSB to adopt two new standards**

The Islamic Finance Standards Board (IFSB) has [announced](#) that its Council has resolved to approve the adoption of the following new standards:

- IFSB-24: Guiding Principles on Investor Protection in Islamic Capital Markets; and
- IFSB-25: Disclosures to Promote Transparency and Market Discipline for Takāful/Retakāful Undertakings.

Softcopies of IFSB-24 and IFSB-25 will be made available on the [IFSB website](#) in due course.

#### **Digital trust and identity for legal entities: GLEIF development programme**

The Global LEI Foundation (GLEIF) has [announced](#) plans to launch a cryptographically verifiable Legal Entity Identifier (LEI) development programme, in response to demand from the financial services, pharmaceutical, healthcare, telecom and automotive sectors.

The GLEIF is extending the global LEI system to create a fully digitised LEI service capable of enabling instant and automated identity verification between counterparties operating across all industry sectors, globally. It has started exploring technical approaches across several industry sectors, with the aim of identifying an open and universally interoperable model.

The GLEIF is already engaged in research partnerships and technical trials with stakeholders in the financial services, pharmaceutical, healthcare, telecom and automotive sectors. A range of blockchain, self-sovereign identity and other decentralised key management propositions are currently being explored. It is now inviting stakeholders from across the digital economy to engage in a cross-industry development program to create an ecosystem and credential governance framework, together with a technical supporting infrastructure, for a verifiable LEI (vLEI).

The vLEI will be a digitally verifiable credential containing the LEI. The GLEIF explains that by embedding new and existing LEIs in verifiable credentials, the vLEI will create a cryptographically secure chain of trust that replaces the existing manual processes required to access and confirm an entity's LEI data.

The vLEI will give government organisations, companies and other legal entities around the world the capacity to use non-repudiable identification data pertaining to their legal status, ownership structure and authorised representatives in a growing number of digital business

activities, including approving business transactions and contracts, onboarding customers, transacting within import and export and supply chain business networks, and submitting regulatory filings and reports.



# Banking and Finance

## UK implementation of CRD V: PRA PS26/20

The Prudential Regulation Authority (PRA) has published a policy statement, [PS26/20](#), on the implementation of the Capital Requirements Directive V (CRD V). The UK is committed to implementing CRD V measures that must be implemented before the end of the Brexit transition period. The PRA has also published additional rulebook instruments and supervisory statements where it considers that certain policies would need to be amended under the European Union (Withdrawal) Act 2018 (EUWA) to make the legislation operable following the end of the Brexit transition period.

In PS26/20, which has 37 appendices accessible from the PRA's [webpage](#), the PRA sets out near-final rules instruments (appendices 1 to 13), Statements of Policy (appendices 16, 26 and 27), Supervisory Statements (appendices 17 to 25 and 28 to 33), and templates (appendices 13 and 14). Appendices 34 to 37 to PS26/20 contain near-final revised versions of documents relating to model requirements for [capital buffers](#) and Pillar 2A and for the [Additional Leverage Ratio Buffer](#). The FCA also gives feedback to responses to its two consultation papers on CRD V: CP12/20, published in July 2020, and CP17/20, published in October 2020.

The PRA will publish the final rulebook instruments and supervisory material on 28 December 2020. The PRA has not yet made the final versions of its rules and other materials as its power to make rules imposing consolidated or sub-consolidated requirements on holding companies cannot be exercised before 28 December 2020. However, the PRA states that it does not intend to change policy or make significant alterations to the text of the instruments before the publication of the final policy material.

## CRR II: PRA CP22/20 on designation of firms within certain consolidation groups

The PRA has published a consultation paper, [CP22/20](#), on its proposed approach to designating entities within certain banking UK consolidation groups as responsible for ensuring that consolidated prudential requirements are met during a transitional period. CP22/20 is relevant to banks and PRA-designated investment firms that are part of a UK consolidation group controlled by a UK parent financial holding company or mixed financial holding company.

The PRA explains that, from 28 December 2020, CRR II requires a UK consolidation group's approved parent holding company – where it has one – to become responsible for ensuring that consolidated prudential requirements are met. CRR II does not, however, specify the entity or entities responsible for ensuring compliance with consolidated prudential requirements for the period from Monday 28 December 2020 until the date on which the UK parent financial holding company's application for approval or exemption is finally determined. The proposals in CP22/20 set out how responsibility for meeting these consolidated requirements would be allocated during this period.

The PRA is implementing its proposals through two rule instruments:

- the draft PRA Rulebook: CRR Firms: Designation (Consolidation) Instrument 2020 creates a new Designation Part of the PRA Rulebook; and
- the draft PRA Rulebook: Designation (Consolidation) (EU Exit) Instrument 2020 amends the new designation rule so that it operates effectively in the UK following the end of the Brexit transition period. The instrument comes into force on 31 December 2020.

The consultation closes on 16 December 2020 to meet the transposition date for CRD V and apply the CRR II requirement on 28 December 2020.

### **Systemic risk buffer rates: PRA update**

The PRA has [announced](#) that, in response to the ongoing economic shock caused by COVID-19, it will maintain firms' systemic risk buffer (SRB) rates at the rate set in December 2019 for a further year, until December 2022, with no rate changes taking effect until January 2024. The SRB applies to ring-fenced banks (RFBs) and certain large building societies.

The PRA also explains in its statement that, as part of the implementation of CRD V, the SRB will be replaced by the other systemically important institutions (O-SII) buffer on 29 December 2020. The O-SII buffer will be set at the same rate as firms' current SRB buffer. The PRA will next reassess firms' O-SII rates in December 2022, based on balance sheet positions at the end of 2021. This aims to provide lenders with greater certainty about capital requirements.

The PRA expects to set an O-SII rate consistent with its statement of policy and the Financial Policy Committee framework in December 2022. The PRA will take into consideration the impact of COVID-19 and any decision will take effect from January 2024.

The PRA reiterates its expectation that all elements of banks' capital and liquidity buffers can be drawn down.

### **BRRD: PRA PS25/20 on simplified obligations for recovery planning**

Following its consultation in CP10/20, the PRA has published a policy statement, [PS25/20](#), on simplified obligations for recovery planning in the light of the discretion it has under Article 4(1) of the Bank Recovery and Resolution Directive (BRRD) as to whether to apply simplified obligations. PS25/20 is relevant to PRA-authorized UK banks, building societies, PRA-designated UK investment firms, and their qualifying parent undertakings, to which the Recovery Plans Part of the PRA Rulebook applies. The policy is likely to be of interest to smaller and non-systemic firms that do not perform critical functions.

The PRA gives its response to the feedback it received in response to CP10/20. The PRA has made minor changes to its policy following feedback but is otherwise introducing simplified obligations.

The appendix to PS25/20 contains an [updated version](#) of SS9/17, which takes effect from 7 December 2020.

### **BRRD II: FCA statement on transposition**

The FCA has updated its [webpage](#) on the Handbook rules relating to the BRRD to set out its approach to the transposition of BRRD II which the UK is required to transpose by 28 December 2020.

The FCA explains that, under the Bank Recovery and Resolution (Amendment) (EU Exit) Regulations 2020 (SI 2020/1350), certain revisions to the BRRD made by BRRD II will come into force on 28 December 2020 and then cease to have effect at the end of the Brexit transition period at 11pm 31 December 2020 (the four-day period).

The FCA states that, in contrast to the PRA which consulted on some short-lived rule changes, the FCA has not identified any conflicts between its current requirements and those in the Regulations. It states that firms should be aware that the FCA will not be addressing those new

requirements in BRRD II that do not apply to FCA solo-regulated firms. Firms should consult the websites of HM Treasury and the PRA for further information on these changes.

The FCA highlights certain BRRD II reforms that will apply to IFPRU 730K firms (that is, FCA solo-regulated firms within the scope of the BRRD):

- article 48(7) on the priority of debts in insolvency: firms should be aware that there are certain changes to the priority of debts in insolvency in the case of insolvency proceedings commenced during the four-day period;
- article 55 on the contractual recognition of bail-in: BRRD II supplements existing FCA requirements in IFPRU 11.6 on the contractual recognition of bail-in by adding a mechanism for firms to notify the resolution authority in situations where it is "legally or otherwise impracticable" to include the required terms in contractual provisions. The FCA states that these additional requirements do not conflict with its existing rules. Any notifications submitted that have not already been acted upon will automatically lapse on 1 January 2021; and
- article 44a which addresses the sale of subordinated eligible liabilities to retail clients and will be introduced via Handbook rules. The FCA notes that it is consulting on the introduction of the requirements in this area in its [Quarterly Consultation Paper No. 30](#).

### COVID-19: FCA guidance consultation on BBLs and collecting debts

The FCA has published a [guidance consultation](#) on the Bounce Back Loan Scheme (BBLs) and pay as you grow (PAYG) options. The consultation sets out guidance for firms collecting payments under a Bounce Back Loan where the collection of that debt is a regulated activity. It sets out how firms can:

- use and offer PAYG options in a manner compliant with CONC 7;
- recognise vulnerability and respond to the needs of vulnerable customers; and
- assist borrowers who need debt advice.

Where CONC 7 does not apply to debt collection under BBLs, firms are expected to use chapter 5 of the proposed guidance regarding the Lending Standards Board's standards of lending practice for business customers.

### Bank mergers and acquisitions: SRB guidance

The Single Resolution Board (SRB) has published a [paper](#) outlining its expectations for how banks engaging in mergers, acquisitions and other corporate transactions can ensure resolvability.

The SRB notes that such transactions, in addition to prudential and competition law implications, are highly likely to have consequences for banks' resolvability. However, bank consolidation, if well designed and well executed, can enhance banks' resilience and profitability, leading to strengthened resolvability.

### Post-Brexit transition period: ESAs confirm status of STS transactions

The European Supervisory Authorities (ESAs) have published a [communication](#) highlighting the change in status of simple, transparent and standardised (STS) securitisations after the end of the Brexit transition period. The ESAs remind investors that, for a transaction to qualify as a European STS securitisation, the Securitisation Regulation requires that the originator, sponsor and the special purpose vehicle be established in the EU. This means that transactions currently

labelled as EU STS securitisations will lose the STS status where one or more of the parties is established in the UK after the end of the transition period.

The ESAs therefore advise investors to assess the impact of the change of status on their balance sheet and investments ahead of 31 December 2020, as the loss of the STS status means that the preferential capital treatment available for investments in STS securitisations will come to an end.

### **Basel III: EBA capital monitoring report**

The European Banking Authority (EBA) has published a [report](#) containing the results of the exercise it has carried out to monitor the impact of implementing the final Basel III reforms on EU banks' capital. The results are based on data as of 31 December 2019. The EBA has also published an [interactive tool](#) for the first time that shows the main results. It has made this available for analytical purposes.

The EBA also announces that it will be publishing a more detailed ad hoc report on 15 December 2020 in response to the European Commission's call for advice on Basel III. While this will be based on the same reference date, it notes that the cumulative results of the two reports are not directly comparable, as they are based on slightly different samples (composition and size) and two key methodological differences.

### **Basel III: BCBS monitoring exercise report**

The Basel Committee on Banking Supervision (BCBS) has published a [report](#) summarising the aggregate results of its latest Basel III monitoring exercise, based on data as of 31 December 2019. The report assesses the impact of the Basel III framework on banks and captures the effects of the BCBS' finalisation of the Basel III reforms in December 2017. It also includes a special feature on counterparty credit risk and credit valuation adjustment risk.

Given the December 2019 reporting date, the results do not reflect the economic impact of COVID-19 on participating banks. However, the BCBS believes that the information contained in the report will provide relevant stakeholders with a useful benchmark for analysis.

The BCBS summarises the results of the monitoring exercise in a [press release](#) that it has published alongside the report. It also announces that, for the first time, the report is accompanied by a [dashboard](#) that presents the results of the liquidity section of the Basel III monitoring report using an interactive tool to visualise the data. It notes that it may add similar dashboards related to other sections of the report at a later stage.

# Payments

## PIs and EMIs: HM Treasury consults on a new special administration regime

HM Treasury is consulting on proposed insolvency changes for payment institutions (PIs) and electronic money institutions (EMIs), including a bespoke special administration regime (SAR). HM Treasury notes the shortcomings of the current insolvency regime and is making these proposals ahead of the conclusion of the Payments Landscape Review to protect consumers in the event of the insolvency of PIs and EMIs.

The proposed SAR is intended to have the following key features:

- an explicit objective on the special administrator to return customer funds as soon as reasonably practicable;
- a bar date for client claims to be submitted to speed up the distribution process;
- a mechanism to facilitate the transfer of customer funds to a solvent institution;
- a post-administration reconciliation to top-up or drawdown funds to or from the safeguarding process;
- provisions for continuity of supply to minimise disruption;
- rules for treatment of shortfalls in the institutions' safeguarding accounts;
- rules for allocation of costs; and
- an explicit objective on the special administrator for timely engagement with payment systems and authorities.

The Treasury explains that Part 24 of the Financial Services and Markets Act 2000 provides the Financial Conduct Authority (FCA) with specific powers to protect consumers in an insolvency process of an FCA authorised firm. While the Payment Services Regulations 2017 and Electronic Money Regulations 2011 incorporate some FSMA insolvency provisions, it also proposes extending the full suite of provisions to PIs and EMIs so that the FCA has the same rights to participate and protect consumers in an insolvency process for PIs and EMIs, as it does for other FCA supervised firms.

Two annexes to the consultation paper provide details of the draft regulations for the proposed SAR. The regulations will create the new regime. On 17 December 2020, the Government will publish a further annex with details regarding rules for the proposed SAR. The rules will be closely related to the investment bank SAR rules with minor modifications.

Responses on this consultation (and its two annexes) are requested by midnight on 14 January 2021. Responses specifically on proposals for the rules published on 17 December 2020 are requested by midnight on 28 January 2021.

## Production and distribution of cash: House of Commons Public Accounts Committee report

The House of Commons Public Accounts Committee (PAC) has published a [report](#) on the production and distribution of cash. In its summary, it states that oversight of the UK's cash system is fragmented. HM Treasury, the Bank of England (BoE), the FCA and the Payment Systems Regulator (PSR) all have responsibility for aspects of the system. The PAC is concerned that responsibilities among these bodies are currently unclear. No one body is in overall charge of making sure that people and businesses have access to cash.

The PAC is also worried that these bodies appear to be unclear on what they are trying to deliver for consumers and businesses. They do not appear to have grasped the full impact a lack of

access can have on communities, or the real detriment caused to some groups and consumers. Unless the government acts quickly, the PAC warns that there are clear dangers of hardship for some individuals and groups if the UK moves towards a cashless society.

The PAC also finds that the BoE does not appear to have a convincing reason for why the demand for bank notes keeps increasing. It says the BoE needs to be much more curious about what is driving the increase and work with HMRC and other public agencies to shed light on this.

Recommendations in the report include:

- HM Treasury needs to give overall responsibility for the cash system to a single body, with the other bodies having clearly defined roles to support this. It should also address potential gaps in oversight;
- by January 2021, HM Treasury and the PSR should provide the PAC with a detailed assessment of the prevalence across the UK of cash only being available via paid for cash machines or Post Office counter withdrawals. They should also set out the steps they have undertaken to ensure adequate access to free cash machines; and
- by the end of March 2021 at the latest, HM Treasury should publish a plan of action, including draft legislation, for securing access to cash across the UK. The plan should include clear commitments, including a clear statement of what the regulators are expected to achieve in terms of cash access for communities and vulnerable groups. The plan should also include definite steps to allow cash back without having to make a purchase, and evidence that regulators will have effective powers to act if access to cash is threatened.

### **APP scams voluntary code: extension of interim funding to 30 June 2020**

UK Finance has published a [press release](#) relating to the interim funding arrangement to compensate victims of authorised push payment (APP) scams under the voluntary APP Contingent Reimbursement Code (also known as the Contingent Reimbursement Model Code or CRM Code).

The interim funding is being provided by seven PSPs to ensure customer reimbursement takes place while regulators and the government work to deliver a long-term, sustainable funding arrangement. The seven PSPs have agreed to extend the interim funding arrangements for a further six months until 30 June 2021. This is intended to provide further time for legislation to be agreed and implemented, placing the voluntary CRM Code on a statutory footing.

### **APP scams voluntary code: LSB report**

The Lending Standards Board (LSB) is the official governing body for the CRM Code, with responsibility for independent oversight of its implementation and ongoing adherence by the industry. It has published a [summary report](#) of its findings from a review of how firms have implemented the effective warnings provision (that is, provision SF1(2)) of the CRM Code for APP scams. The CRM Code requires that where firms identify APP scam risks in a payment journey, they should take reasonable steps to provide their customers with effective warnings, which should include appropriate actions for those customers to take to protect themselves from APP scams.

The review was carried out between August and November 2020. The LSB evaluated how all nine signatory firms have implemented the effective warnings provision. Overall, the LSB found that the firms had taken the provision of effective warnings as a key tool in efforts to prevent APP scams taking place. All participants acknowledged that warnings could be improved and



enhanced, but that they could not prevent all occurrences of customers falling victim to scams. Most firms were in the process of reviewing the warnings in place and many had change programmes underway with a view to improving the design and impact of warnings. The LSB also found that all firms have improved the level of customer education information provided.

However, some CRM code breaches were identified, as well as key areas for improvement across the industry. The LSB will work with the relevant firms to ensure the breaches are resolved as a priority.

The LSB concluded that there is still work to be done to meet all the CRM code requirements and reach a position where firms are displaying dynamic, targeted and effective warnings. The areas for improvement, and good practices identified, are set out in the report.

Individual reports have been issued to the firms. These include the LSB's recommendations on how they must improve customer protection. The LSB will monitor firms' progress in embedding the recommendations and plans to carry out a follow-up review in 2021. The findings from the review will feed into the LSB's wider CRM Code review, the results of which will be published in the new year.

### **Payment threats and fraud trends: EPC 2020 report**

The European Payments Council (EPC) has published its [2020 report](#) on payment threats and fraud trends. The EPC reports annually on the latest trends in security threats impacting payments and outlines how these threats could generate payment fraud. The 2020 report provides an overview of the current most important threats in the payments landscape, including social engineering and phishing, malware, advanced persistent threats, (distributed) denial of service, botnets and monetisation channels.

For each identified threat, the EPC provides a definition and a description, together with an analysis of the impact and context. The EPC also offers guidance on implementing controls and mitigation measures to address these payment risks. Annex I to the 2020 report contains an overview matrix listing the threats and the main suggested controls and mitigation measures.



# Securities and Markets

## Post-Brexit transition period: migrating to FCA FIRDS and FITRS

The UK Financial Conduct Authority (FCA) has published a [press release](#) announcing details of the cutover plan for firms migrating to the FCA Financial Instruments Transparency System (FCA FITRS) and FCA Financial Instruments Reference Data System (FCA FIRDS) after the Brexit transition period.

The European Securities and Markets Authority (ESMA) will switch off the FCA's access to reporting systems built under the Markets in Financial Instruments Directive (MiFID) and the Markets in Financial Instruments Regulation (MiFIR) on 31 December 2020. To prepare for this, and provide operational continuity to UK firms, the FCA has built equivalent FCA systems in the UK, called FCA FIRDS and FCA FITRS.

The FCA states that firms can currently use these systems for testing, however, both systems will be unavailable from 16 December 2020 until 2 January 2021 while the FCA rebuilds its data. The FCA will then re-launch the systems with refreshed data.

On its [webpage](#) for MiFID reporting after the transition period, the FCA gives more detail of the timeline of each system's availability and outages, and when the systems will be deployed in early January. The webpage also confirms instrument coverage in both FCA systems.

## EMIR: European Commission consults on draft Delegated Regulation on procedure for penalties imposed on third-country CCPs

The European Commission is [consulting](#) on a draft Delegated Regulation supplementing the European Market Infrastructure Regulation (EMIR) with regard to rules of procedure for penalties imposed on third-country central counterparties (CCPs) or related third parties by ESMA.

Articles 25j and 25k of EMIR (introduced by EMIR 2.2) empowers ESMA to impose fines on third-country CCPs and periodic penalty payments on third-country CCPs and related third parties. Article 25q of EMIR permits ESMA to impose supervisory measures on Tier 2 CCPs. The procedural rules for taking supervisory measures and imposing fines are laid down in Article 25i. Article 25i(7) of EMIR empowers the Commission to adopt delegated acts to specify further the rules of procedures for the power to impose penalties, including provisions on the rights of the defence, temporal provisions, and the collection of fines or periodic penalty payments, and the limitation periods for the imposition and enforcements of penalties.

In proposing to adopt the draft Delegated Regulation under Article 25i (7) of EMIR, the Commission has fully considered all representations received, including technical advice provided by ESMA, the responses to ESMA's public consultation and feedback from the European Securities Committee on the provisional content of this delegated act. It gives responses to feedback received in its consultation paper.

The consultation closes on 4 January 2021. Following this, if neither the Council nor the Parliament object to the draft Delegated Regulation, it will be published in the Official Journal of the EU and will enter into force the day after its publication.

## **EMIR: European Commission consults on draft Delegated Regulation on procedure for penalties imposed on trade repositories**

The European Commission is [consulting](#) on a draft Delegated Regulation amending Delegated Regulation EU 667/2014 with regard to the content of the file to be submitted by the investigation officer to ESMA, the right to be heard in relation to interim decisions and the lodging of fines and periodic penalty payments. Delegated Regulation (EU) 667/2014 supplements EMIR with regard to rules of procedure for penalties imposed on trade repositories (TRs) by ESMA, including rules on the right of defence.

The EMIR Refit Regulation introduced into EMIR several changes concerning the rights to access to the file of the persons subject to the investigations (such as the limits to this access excluding ESMA's internal preparatory documents and other confidential information), the amount of the fines and periodic payments that ESMA can impose on TRs, and the right of defence. Therefore, this draft Delegated Regulation amends Delegated Regulation 667/2014 to adapt the existing rules of procedure to take into account the EMIR Refit changes.

In proposing to adopt the draft Delegated Regulation under Article 64(7) of EMIR, the Commission has fully considered all representations received, including the technical advice provided by ESMA, the responses to ESMA's public consultation and feedback from the EGESC.

The consultation closes on 4 January 2021. Following this, if neither the Council nor the Parliament object to the draft Delegated Regulation, it will be published in the OJ and will enter into force the day after its publication.

## **CSDR review: European Commission consultation**

The European Commission has published a [consultation paper](#) on a targeted review of the Central Securities Depositories Regulation (CSDR). The Commission notes that a comprehensive review of the CSDR is not yet possible as some requirements did not apply until the entry into force of the relevant regulatory technical standards in March 2017, certain core requirements and procedures provided for under CSDR are yet to be implemented (in particular, the settlement discipline regime), and some EU central securities depositories (CSDs) have only recently been authorised under the CSDR. Nevertheless, the forthcoming Commission report should consider a wide range of specific areas where targeted action may be necessary to ensure the fulfilment of the objectives of CSDR in a more proportionate, efficient and effective manner.

The Commission states that recent developments, in particular the pressure put on markets by COVID-19, has drawn attention to the implementation of rules emerging from CSDR. For example, certain stakeholders argue that mandatory buy-ins would have been disproportionate as they would have heavily impacted market making and liquidity for certain asset classes (in particular the non-cleared bond market).

Also, under Article 81(2c) of the ESMA Regulation, the Commission is required to assess the potential supervision by ESMA of third-country CSDs, including considering recognition based on systemic importance, ongoing compliance, fines and periodic penalty payments.

The Commission's 2021 work programme and its 2020 Capital Markets Union Action Plan have already announced the Commission's intention to bring forward a legislative proposal to simplify the CSDR and contribute to developing a more integrated post-trading EU landscape. The Commission explains that enhanced competition among CSDs would lower the costs incurred by investors and companies in cross-border transactions, and also strengthen cross-border

investment. In addition, the legislative proposal will contribute to achieving an EU rulebook in this area.

Comments can be made on the consultation paper until 2 February 2021. Responses will be used by the Commission in preparing its final report.

### **Questionnaire on continuity of access to FMIs for firms in resolution: FSB Q&A**

The Financial Stability Board (FSB) has published a [note and Q&A](#) of issues raised during a meeting that was held in September 2020 to discuss its questionnaire on the continuity of access to financial market infrastructures (FMIs) for firms in resolution. The FSB published the [questionnaire](#) in August 2020. The questionnaire is a common template for gathering information about the continuity of access to FMIs for firms in resolution and all FMIs are encouraged to complete the questionnaire and publish their responses.

The FSB advises FMIs that have further questions on the questionnaire to engage with their supervision authorities and the bank resolution authority in their jurisdiction to seek guidance.

The FSB hopes that FMIs will be able to finalise their questionnaire responses in late 2020 and will subsequently submit these to their authorities and FMI participants, and publish either the responses themselves or publish a "presumptive path" summary. The FSB intends to evaluate the results of the exercise and the need for potential enhancements to the questionnaire and/or the industry engagement process during 2021.

### **FX Global Code: GFXC meeting to discuss progress on review**

The Global Foreign Exchange Committee (GFXC) has published a [press release](#) following a meeting to discuss progress on the review of the FX Global Code of Conduct, among other things.

The GFXC is on track to finalise the review in mid-2021. Ahead of its latest meeting, GFXC members received papers prepared by the working groups for each of the focus areas of the review: buy-side outreach, disclosures, anonymous trading, algorithmic trading, settlement risk and execution principles. One major theme across all areas of the review is the importance of clear and accessible disclosures. There is widespread support for standardised disclosures cover sheets. They have the potential to move the FX market forward in a material way, promoting greater transparency and supporting market participants in making informed choices.

The GFXC discussed the feedback on these papers from the local foreign exchange committees (FXCs). The papers and the proposed changes to the Code will be revised on the back of that feedback and then recirculated to the FXCs for another round of detailed feedback in March 2021. A public request for feedback on some of the review proposals will be launched in April 2021. The final proposals will be submitted for approval by the GFXC at its June 2021 meeting.

The minutes of the meeting will be published in January 2021.

# Insurance

## Part VII FSMA insurance business transfers: Court of Appeal decision

Several important issues were raised in relation to Part VII transfers in the recent hearing before the Court of Appeal relating to the proposed transfer of annuity business from The Prudential Assurance Company Limited to Rothesay Life Plc. This is the first time that the Court of Appeal has considered the approach that the Court should adopt in dealing with applications to sanction Part VII transfers of insurance business; and the judgment provides a very helpful summary of the approach to be taken. Read more in our summary: [Court of Appeal delivers its verdict on the Prudential/Rothesay Part VII transfer](#).

## Natural catastrophes: EIOPA's pilot dashboard on insurance protection gap

The European Insurance and Occupational Pensions Authority (EIOPA) has published its first [pilot dashboard](#), the main purpose of which is to monitor the risks related to the insurance protection gap for natural catastrophes (Nat Cat) in Europe. EIOPA has also [published](#) "The pilot dashboard on insurance protection gap for natural catastrophes in a nutshell" and "Technical description: the pilot dashboard on insurance protection gap for natural catastrophes", both of which provide information on the pilot dashboard.

In the light of climate change, EIOPA is concerned that affordability and insurability of Nat Cat insurance cover is likely to become an increasing concern. Currently, only 35% of the total losses caused by extreme weather and climate-related events across the EU are insured. This shows that there is a protection gap. Climate projections provide evidence that future climate change will increase climate-related extremes in many EU regions. To address the protection gap, EIOPA explains that increasing insurance penetration is not enough as, due to the increasing frequency or intensity of some events, some risks may become uninsurable. Proactive measures on buildings' vulnerability, localisation of exposure and optimised insurance coverages will be important elements of a resilient society. Therefore, it is important to understand the current insurance protection gap and identify where it comes from.

EIOPA acknowledges its limitations of the pilot dashboard which was developed based on publicly available data and expert judgment. However, the aim of the dashboard is to establish a framework for identifying key risk drivers for the Nat Cat insurance protection gap and collecting relevant evidence and data. EIOPA states that the methodology for deriving the relevant scoring, as well as the existence of data gaps will be subject to review and will be updated based on further evidence and discussion in the future.

EIOPA welcomes views from stakeholders on the methodology and data used in the dashboard by 31 March 2020 using the [EU survey](#). Questions on the dashboard are also welcome to be sent to [protection\\_gap\\_dashboard@eiopa.europa.eu](mailto:protection_gap_dashboard@eiopa.europa.eu).

## Collaboration of insurance supervisory authorities: EIOPA peer review report

EIOPA has published the [findings](#) of a peer review analysing supervisory practices relating to its decision on the collaboration of the insurance supervisory authorities in relation to insurance cross-border activities, data storage and portfolio transfer. The peer review focuses on how national supervisory authorities (NSAs) approach cross-border insurance activities, how they exchange supervisory information and collaborate, how data is stored, and practices relating to portfolio transfers.

EIOPA found differences in NSAs' approaches and practices, and as a result has issued 60 recommended actions to 26 NSAs with the aim of achieving greater supervisory convergence. EIOPA expects NSAs to implement the recommended actions by Q4 of 2022 at the latest. As a follow-up, it will start to assess by the end of 2022 how NSAs have implemented the recommended actions.

## **Non-life underwriting and pricing in light of climate change: EIOPA discussion paper**

EIOPA has published a [discussion paper](#) on non-life underwriting and pricing in the light of climate change. The discussion paper is follow-up work on EIOPA's September 2019 opinion on sustainability within Solvency II, where EIOPA noted that a common argument for non-life undertakings not to include climate change-related risks in their pricing methodology is because many non-life insurance business have short-term duration of contracts (typically 12-month contracts) which allow them to re-price annually. This also means that they may be able to adjust the price if the risk changes.

However, in its discussion paper, EIOPA explains that there are commercial and societal limits to non-life insurance re-pricing. In the context of climate change, climate-related losses are expected to grow. To reflect increasing climate-related risk, the premium would therefore also have to increase. Over the medium to long term, EIOPA considers that this might lead to the risk of the insurance coverage becoming unaffordable for the policyholder, as well as the industry crowding itself out of certain risks. To address the protection gap in the context of climate change, EIOPA believes that the insurance sector has the chance to play a key role by not only transferring and pooling the risk, but also by contributing to climate change mitigation and adaptation. EIOPA has therefore introduced the concept of Impact Underwriting.

In its discussion paper, EIOPA aims to highlight the challenges associated with short-term non-life contracts and annual re-pricing using past Nat Cat events, and the impact of climate change on the premium, affordability and protection gap. EIOPA also identifies how insurers could address the protection gap issues in the context of climate change and contribute to climate change mitigation and adaptation.

EIOPA invites comments on its discussion paper by 26 February 2021. It will consider the feedback received and expects to publish its final report in spring 2021, together with a feedback statement.

## **IAIS summarises future activities**

The International Association of Insurance Supervisors (IAIS) has published a [press release](#) following its AGM and 27th annual conference. In the press release, the IAIS summarises discussions at these events, which focused on the impact of COVID-19 on the insurance sector and setting the direction for the IAIS' 2021 activities. The IAIS intends to publish its consolidated 2021-22 roadmap early in 2021.

# Funds and Asset Management

## MMF Regulation: ESMA updates reporting instructions

The European Securities and Markets Authority (ESMA) has [announced](#) that it has updated its validation rules regarding the EU Regulation on money market funds (MMF Regulation). The update relates to the requirements of Article 37 of that MMF Regulation which requires money market fund managers to submit data to national competent authorities, which then transmit the data to ESMA. The updates are available on ESMA's fund management reporting [webpage](#).

Following feedback received by market participants after the publication of the validation rules, ESMA has decided to implement amendments to them. ESMA states that the proposed changes do not relate to the published XML schemas. Instead, the changes provide clarifications on existing validation rules in order to fix inconsistencies or ease the understanding of the rules. It also extends the Classification of Financial Instruments codes for eligible assets.

Alicante  
Amsterdam  
Baltimore  
Beijing  
Birmingham  
Boston  
Brussels  
Budapest\*  
Colorado Springs  
Denver  
Dubai  
Dusseldorf  
Frankfurt  
Hamburg  
Hanoi  
Ho Chi Minh City  
Hong Kong  
Houston  
Jakarta\*  
Johannesburg  
London  
Los Angeles  
Louisville  
Luxembourg  
Madrid  
Mexico City  
Miami  
Milan  
Minneapolis  
Monterrey  
Moscow  
Munich  
New York  
Northern Virginia  
Paris  
Perth  
Philadelphia  
Riyadh\*  
Rome  
San Francisco  
São Paulo  
Shanghai  
Shanghai FTZ\*  
Silicon Valley  
Singapore  
Sydney  
Tokyo  
Ulaanbaatar\*  
Warsaw  
Washington, D.C.  
Zagreb\*

\*Our associated offices

Legal Services Center: Berlin

**[www.hoganlovells.com](http://www.hoganlovells.com)**

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.

For more information about Hogan Lovells, the partners and their qualifications, see [www.hoganlovells.com](http://www.hoganlovells.com).

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.

©Hogan Lovells 2020. All rights reserved.