



# FIG Bulletin

Recent developments  
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# Contents

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|   |           |
|---|-----------|
| <b>General</b>  | <b>4</b>  |
| Brexit: UK equivalence decisions for EEA states   | 4         |
| Future of financial services: UK Chancellor's statement   | 4         |
| Mandatory climate-related disclosures: UK government's TCFD taskforce interim report and roadmap                    | 5         |
| Brexit: FCA update for EEA firms  | 5         |
| Climate stress test exercise and regulatory expectations: BoE speech  | 5         |
| Rising to the climate challenge: FCA speech   | 6         |
| COVID-19: FCA and PRA update information on senior manager accountability and workplace arrangements                | 6         |
| COVID-19: FCA statement on changes to certain work  | 6         |
| FCA policy development update   | 7         |
| Brexit: EBA reminds firms to prepare for end of transition period   | 7         |
| DMD evaluation: European Commission staff working document  | 8         |
| CMU: European Court of Auditors report  | 8         |
| Outsourcing and third-party relationships: FSB discussion paper   | 8         |
| <b>Banking and Finance</b>  | <b>10</b> |
| COVID-19: FCA updates statement on CBILS and BBLs   | 10        |
| Review of BRRD, SRM Regulation and DGSD: European Commission inception impact assessment                            | 10        |
| CRR: European Commission adopts Delegated Regulation on prudential treatment of software assets                     | 10        |
| G-SIBs: FSB updates list for 2020   | 11        |
| <b>Consumer Finance</b>   | <b>12</b> |
| COVID-19: Consumer Credit (Enforcement, Default and Termination Notices) (Coronavirus) (Amendment) Regulations 2020 | 12        |
| <b>Securities and Markets</b>   | <b>13</b> |
| EMIR: ESMA report on post-trade risk reduction services   | 13        |

|   |           |
|---|-----------|
| MiFID: ESMA updates Q&As on investor protection and intermediaries  | 13        |
| MiFIR: updated guidance on Annex to ESMA opinion determining third-country trading venues for purpose of transparency | 13        |
| MiFIR assessments of third country trading venues: ESMA decision  | 13        |
| MiFID and MiFIR: ESMA consults on draft guidelines on market data obligations   | 14        |
| Brexit: ESMA updates statements on reporting and operation of ESMA databases and IT systems                           | 14        |
| BMR: ESMA updates Q&As  | 14        |
| CRAs: ESMA speech on key challenges   | 15        |
| <b>Insurance</b>  | <b>16</b> |
| COVID-19: FCA update on business interruption insurance test case   | 16        |
| IDD: EIOPA survey   | 16        |
| Comparable outcomes, liquidity metrics and resolution: IAIS consultations   | 16        |
| <b>Funds and Asset Management</b>   | <b>17</b> |
| Performance fees in UCITS and certain types of AIFs: ESMA guidelines  | 17        |
| COVID-19: ESMA report on ESRB recommendation on liquidity risk in investment funds                                    | 17        |
| UCITS Directive and AIFMD: ESMA annual reports on penalties   | 18        |

# General

## Brexit: UK equivalence decisions for EEA states

HM Treasury has [announced](#) its intention to make equivalence decisions in respect of the EEA across a number of financial services areas. The following directions will come into effect at the end of the transition period:

- [the Benchmarks Regulation Equivalence Directions 2020](#);
- [the Central Securities Depositories Regulation Equivalence Directions 2020](#);
- [the Credit Rating Agencies Regulation Equivalence Directions 2020](#);
- [the Short Selling Regulation Equivalence Directions 2020](#);
- [the European Market Infrastructure Regulation \(Article 2A\) Equivalence Directions 2020](#);
- [the European Market Infrastructure Regulation \(Article 13\) Equivalence Directions 2020](#);
- [the Capital Requirements Regulation Equivalence Directions 2020](#); and
- [the Solvency 2 Regulation Equivalence Directions 2020](#).

The government confirmed it is not ruling out further equivalence decisions for the EEA States in the future as it continues to believe that comprehensive mutual findings of equivalence between the UK and the EEA States are in the best interests of both parties, however, the UK awaits clarity from the EU about their intentions.

The government has also published a [Guidance Document for the UK's Equivalence Framework for Financial Services](#), and a related [webpage](#) which includes a link to an Excel document tracking UK equivalence decisions.

The FCA has published a [response](#) to the Treasury's announcement, summarising some of the decisions and what they mean for firms.

## Future of financial services: UK Chancellor's statement

Rishi Sunak, Chancellor of the Exchequer, has made a [statement](#) in the House of Commons on financial services, announcing UK government initiatives and decisions relating to equivalence (see above), access to UK markets, payments and FinTech and sustainable finance. The Chancellor announced that:

- HM Treasury will launch a call for evidence on the UK's overseas regime, establish a taskforce on the UK's listings regime and consult shortly on the UK's regime for investment funds. The UK will also treat financial services exports to the EU the same as for other countries, which means that UK firms will be able to reclaim input VAT on financial services exports to the EU;
- HM Treasury will shortly publish plans to support the payments sector, following the conclusion of the first stage of the Payments Landscape Review, as well as a consultation on stablecoins; and
- the UK intends to mandate climate disclosures by large companies and financial institutions by 2025 (see next item below), implement a new "green taxonomy" and issue its first ever Sovereign Green Bond in 2021, subject to market conditions. We report on these "green finance" measures in our separate update: [UK Government announces post-Brexit priorities to strengthen the UK's global leadership in green finance](#).

## **Mandatory climate-related disclosures: UK government's TCFD taskforce interim report and roadmap**

The UK government's TCFD taskforce has published an [interim report](#) and a [roadmap](#) on mandatory climate-related disclosures in line with the recommendations of the Task force on Climate-related Financial Disclosures (TCFD).

In the 2019 Green Finance Strategy, the government established a Taskforce, chaired by HMT and made up of regulators and government departments, to explore the most effective approach for implementing the recommendations of the TCFD.

The UK has now announced its intention to make TCFD-aligned disclosures mandatory across the economy by 2025, with a significant portion of mandatory requirements in place by 2023. The accompanying roadmap sets out an indicative pathway to achieving that ambition, illustrating how coverage of disclosures could increase each year as potential new regulatory or legislative measures come into force, subject to the outcomes of relevant regulators' and Government departments' consultation processes and other statutory requirements such as cost-benefit analyses.

The roadmap sets out a strategy for seven categories of organisation:

- listed commercial companies;
- UK-registered companies;
- banks and building societies;
- insurance companies;
- asset managers;
- life insurers and Financial Conduct Authority (FCA)-regulated pension schemes; and
- occupational pension schemes.

The implementation approach by each category is usefully summarised in the Annex to the interim report.

## **Brexit: FCA update for EEA firms**

The FCA has updated its [webpage](#) on firms' preparations for the end of the transition period to set out considerations for EEA firms conducting business in the UK. The FCA states that it expects EEA firms that are not intending to take advantage of the temporary permissions regime or the financial services contracts regime to notify the FCA of their plans by contacting it directly or through their usual supervisory contacts. It also emphasises that it expects firms to treat customers fairly, including when considering what notice to provide and what support customers need to make alternative arrangements.

## **Climate stress test exercise and regulatory expectations: BoE speech**

The Bank of England (BoE) has published a [speech](#) by Andrew Bailey, BoE Governor, about tackling climate change. Mr Bailey explains that the BoE's goal is to build a UK financial system resilient to the risks from climate change and supportive of the transition to a net-zero economy.

Mr Bailey announces in his speech that the climate stress test postponed because of COVID-19 will be launched in June 2021. Read more in our separate update: [Bank of England announces June 2021 launch date for climate stress test exercise](#).

## Rising to the climate challenge: FCA speech

The FCA has published a [speech](#) by Nikhil Rathi, FCA Chief Executive, about rising to the climate challenge. In his speech, Mr Rathi explains the FCA wants green and sustainable finance to be at the heart of growing London as a global financial centre and that good financial regulation will be key to facilitating the transition to a less carbon-intensive economy. The FCA is ready to support the UK government to fulfil its commitment to at least match the ambition of the EU sustainable finance action plan in the UK.

The FCA confirms it will be introducing a new rule that will require companies to include statements about TCFD recommendations from 1 January 2021. Work will be done in 2021 to extend the scope of the rule to more listed issuers and to move towards mandatory disclosure. The FCA is also aiming to bring in TCFD-related rules for asset managers, life insurers and FCA-regulated pension providers by 2022.

The FCA wants to ensure consumers can trust sustainable products. The FCA has been considering measures to combat potential greenwashing in the investment funds space. It has also developed a set of principles to help firms interpret existing rules requiring that disclosures are fair, clear and not misleading, including when they submit new products to the FCA for authorisation. The FCA plans to discuss these principles with industry with a view to finalising them in early 2021. The FCA also plans to run consumer experiments to better understand what information influences consumers choices in sustainable products.

Over the next year, the Climate Financial Risk Forum will look to refine and develop the recommendations contained in its June 2020 guide. Thematic work on metrics, data and methodologies is planned.

## COVID-19: FCA and PRA update information on senior manager accountability and workplace arrangements

On 9 November 2020, the FCA and the Prudential Regulation Authority (PRA) published updated information about COVID-19 and workplace arrangements. Both statements recommend that the Chief Executive Officer Senior Management Function (SMF1) is accountable for ensuring an adequate process for following and adhering to government guidance. For firms that do not have an SMF1, this will be the most relevant member of the senior management team.

The FCA's [statement](#) confirms that firms should continue to comply with relevant guidance from the government on coronavirus restrictions. In particular, firms should refer to the guidance on who should work from home if possible, and ensure workplaces are safe for those who cannot work from home.

The PRA's [statement](#) reiterates that firms should follow relevant government guidance, including:

- who should work from home, and ensuring that workplaces are safe;
- use of face coverings in close contact services (including branch staff); and
- coronavirus testing regimes.

## COVID-19: FCA statement on changes to certain work

The FCA has published a [statement](#) providing an update on work that it intends to either stop or postpone in light of the ongoing impact of COVID-19 and economic conditions.

The FCA is making the changes to allow it to focus its resources on the most urgent work where it can make the most immediate difference to consumers and markets. Key changes to the FCA's work relate to the following:

- potential duty of care for firms - the FCA now aims to consult on potential options in Q1 2021;
- given the continuing impact of COVID-19 and the low-interest rate environment, the FCA has decided to stop its work relating to introducing a single easy access rate (SEAR) for cash savings. As interest rates for new products fall, so does the gap between rates paid to new and longstanding customers, and the size of the harm falls. Therefore, the FCA does not consider that introducing the SEAR would be proportionate to the current level of harm in this market. However, it will continue to monitor the market and may revisit its priorities if it sees significant harm to consumers in the future; and
- in its policy statement on making investment platform transfers simpler (PS19/29), the FCA announced that it would consult on restricting platform exit fees in Q1 2020. This was delayed due to COVID-19, with an intention to consult in spring 2021. However, the FCA has now decided to stop work on the consultation in the light of the ongoing impact of COVID-19 and economic conditions. It will be closely monitoring the situation, with the potential to consult on new rules if market changes lead to harm re-emerging in this area.

### **FCA policy development update**

The FCA has updated its policy development update [webpage](#) for November 2020, setting out information on recent and future FCA publications.

### **Brexit: EBA reminds firms to prepare for end of transition period**

The European Banking Authority (EBA) has [reminded](#) financial institutions of the need for readiness in view of the Brexit transition period ending on 31 December 2020. It instructs financial institutions to finalise the full execution of their contingency plans and reminds them to ensure adequate communication regarding their preparations and possible changes to any affected EU customers. Among other things, the EBA highlights the following issues:

- UK-based financial institutions need to finalise their authorisations and fully establish EU-based operations. Associated management capacity, including appropriate risk management capabilities, should be in place in the EU, and must be commensurate to the magnitude, scope and complexity of activities and the risks generated in EU operations. Booking arrangements need to be clearly articulated. The EBA's outsourcing guidelines must be met and activities cannot be outsourced to such an extent that they operate as empty shell companies;
- any eIDAS certificate issued to UK-based third-party providers under the revised Payment Services Directive will no longer meet the legal requirements of Article 34 of Commission Delegated Regulation (EU) 2018/389. Qualified trust service providers that have issued eIDAS certificates to the UK-based account information service providers (AISPs) and payment initiation service providers (PISPs) should revoke the certificates;
- transfers of funds to or from the UK will be subject to requirements in Regulation (EU) 2015/847 on information accompanying transfers of funds (WTR) on payments from outside the EU. In particular, payment service providers will need to provide more detailed information on the payer and payee; and
- customers should be informed in a timely way about preparations for the end of the transition period. Information on the cessation of services to EU-based customers should

explain the impact of the cessation on the provision of services and the way to exercise customer rights, in order to avoid any detrimental effects for customers.

### **DMD evaluation: European Commission staff working document**

The European Commission has published a [cover note](#) attaching the European Commission's staff working document on its evaluation of the Distance Marketing Directive (DMD). The staff working document presents the results of the REFIT evaluation of the DMD, which was carried out in 2019 and finalised in 2020. (The aim of the Commission's REFIT programme is to simplify existing legislation.)

The evaluation assessed whether the original objectives of the DMD have been achieved, and how it works together with other legislation in the fields of retail financial services, consumer protection and data protection. It also considered what its costs and benefits per stakeholder type (consumers, businesses and authorities) are, and whether it has potential for burden reduction and simplification.

The findings of the evaluation will feed into the review of the DMD.

### **CMU: European Court of Auditors report**

The European Court of Auditors (ECA) has published a [report](#) on the Capital Markets Union (CMU). The ECA's overall conclusion is that results of the actions taken to establish the CMU are still to come. Among other things, the ECA comments that the objectives for the CMU set by the European Commission were in many cases vague and the Commission's communications raised expectations that were higher than what it could achieve with its own actions. The ECA also found that the Commission's monitoring was limited to progress with legislative measures and that it has not regularly and consistently monitored if it is progressing in accomplishing the main CMU objectives.

The ECA sets out specific recommendations for the Commission relating to:

- facilitating SME access to capital markets;
- fostering deeper and better integrated local capital markets;
- addressing key cross-border barriers to investment; and
- developing specific objectives, critical measures and the monitoring of the CMU.

The report includes the Commission's response to the ECA's findings, with details of those recommendations that it has accepted. In particular, it sets out details of those initiatives it has undertaken that address the ECA's recommendations, primarily in its September 2020 action plan on the CMU.

### **Outsourcing and third-party relationships: FSB discussion paper**

The Financial Stability Board (FSB) has published a [discussion paper](#) on regulatory and supervisory issues relating to outsourcing and third-party relationships. The paper is based on findings from a survey conducted among FSB members (an overview of responses is in the annex to the paper). To facilitate the discussion further, the FSB is asking the following questions:

- What are the key challenges in identifying, managing and mitigating the risks relating to outsourcing and third-party relationships, including risks in sub-contractors and the broader supply chain?
- What are possible ways to address these challenges and mitigate related risks? Are there any concerns with potential approaches that might increase risks, complexity or costs?

- What are possible ways in which financial institutions, third-party service providers and supervisory authorities could collaborate to address these challenges on a cross-border basis?
- What lessons have been learned from the COVID-19 pandemic regarding managing and mitigating risks relating to outsourcing and third-party relationships, including risks arising in sub-contractors and the broader supply chain?

Comments can be made on the paper until 8 January 2021.

# Banking and Finance

## COVID-19: FCA updates statement on CBILS and BBLS

On 10 November 2020, the UK Financial Conduct Authority (FCA) published an [updated version](#) of its statement on the regulation of firms in relation to the UK Coronavirus Business Interruption Loan Scheme (CBILS) and the Bounce Back Loan Scheme (BBLS). The FCA has updated its information on managing financial crime following an amendment to the BBLS which took effect on 10 November 2020. The updates state:

- when distributing any top-up loans, the FCA would expect firms to have assessed and addressed any specific flags (suggesting a customer poses a higher risk of, for example, fraud, money laundering or terrorist financing) that they became aware of at the time of, or subsequent to, the original loan issue; and
- for both top-up loans and new loans, firms should also consider the risk of fraud and, in particular, risks posed by new customers seeking access to the BBLS. In such cases, firms should ensure that robust customer due diligence processes are applied in accordance with requirements set out under the BBLS rules and the Money Laundering Regulations.

## Review of BRRD, SRM Regulation and DGSD: European Commission inception impact assessment

The European Commission has [published](#) a combined evaluation roadmap and inception impact assessment concerning its review of the Bank Recovery and Resolution Directive (BRRD), the Regulation for the Single Resolution Mechanism (SRM Regulation) and the Deposit Guarantee Schemes Directive (DGSD).

The Commission intends to undertake a targeted evaluation of the BRRD, SRM Regulation and the DGSD. This evaluation will focus on areas such as measures on preparing for and preventing bank failures, as well as those applicable once a bank has been declared failing or likely to fail, such as the overall incentive set-up in bank crisis management, the availability of specific tools and the level of depositor protection.

Comments can be made on the assessment until 8 December 2020. The Commission intends to publish a consultation on the review in November 2020 which will focus on fundamental issues and design principles. It intends to adopt legislative proposals for a Regulation and a Directive in the third quarter of 2021.

## CRR: European Commission adopts Delegated Regulation on prudential treatment of software assets

The European Commission has adopted a [Delegated Regulation](#) amending Delegated Regulation (EU) 241/2014 as regards the deduction of software assets from Common Equity Tier 1 items. The Delegated Regulation specifies the application of the deductions of software assets that are classified as intangible assets for accounting purposes for the purposes of Article 36(1)(b) of the Capital Requirements Regulation (CRR). The EBA published a final report on the draft RTS in October 2020.

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 to the Delegated Regulation, it will be published in the Official Journal of the EU and will enter into force on the day after its publication. This reflects the accelerated application for the Article 36(1)(b)

exemption from deductions of prudently valued software assets made by the COVID-19 CRR Amending Regulation ((EU) 2020/873), which specifies that the exemption would apply on the date of entry into force of the RTS required under Article 36(4).

### **G-SIBs: FSB updates list for 2020**

The Financial Stability Board (FSB) has updated its [list](#) of banks identified as global systemically important banks (G-SIBs) based on end-2019 data. The banking groups identified as G-SIBs have remained the same, although there have been changes in the allocation of banking groups to buckets reflecting the effects of changes in the underlying activity of the banks.

The BCBS has published the following information relating to the 2020 G-SIB assessment:

- an updated list of [denominators](#) of each of the 12 high-level indicators used to calculate the banks' scores;
- the [12 high-level indicators](#) for each bank in the sample used to calculate the denominators;
- the [cut-off score and bucket thresholds](#). The cut-off score is used to identify the G-SIBs in the updated list and the thresholds are used to allocate G-SIBs to buckets for the purpose of calculating the specific higher loss absorbency requirements; and
- the [reporting instructions](#) used by the BCBS for the G-SIB assessment exercise.

# Consumer Finance

## COVID-19: Consumer Credit (Enforcement, Default and Termination Notices) (Coronavirus) (Amendment) Regulations 2020

On 11 November 2020, the Consumer Credit (Enforcement, Default and Termination Notices) (Coronavirus) (Amendment) Regulations 2020 ([SI 2020/1248](#)) were published, together with an [explanatory memorandum](#). The Regulations amend the Consumer Credit (Enforcement, Default and Termination Notices) Regulations 1983 (SI 1983/1561) (1983 Regulations) which prescribe the form of the notices which have to be given under sections 76, 87 and 98 of the Consumer Credit Act 1974 by a creditor or owner before taking certain action to enforce or terminate a regulated agreement.

This legislation forms part of the government's effort to help to people struggling with their finances and their mental health. The amendments aim to reduce any adverse impacts of the notices. Among other things, the Regulations amend SI 1983/1561 by:

- banning the use of block capitals to aid prominence;
- removing technical legal language and, where this is not possible, to provide simple explanations; and
- altering the wording and ordering of notices to improve consumers' understanding of them.

The Regulations enter into force on 2 December 2020. They provide for a six-month transitional period.

# Securities and Markets

## EMIR: ESMA report on post-trade risk reduction services

The European Securities and Markets Authority (ESMA) has published a [report](#) on post-trade risk reduction (PTRR) services under the European Market Infrastructure Regulation (EMIR).

In the report, ESMA considers the different types of PTRR services being offered, their purpose and whether there is a need for the new trades that these may generate to be exempted from the clearing obligation, and if an exemption could lead to the risk of some counterparties circumventing the clearing obligation.

ESMA concludes that the benefits of allowing certain PTRR transactions to be exempted from the clearing obligation would reduce risk in the market, allow for legacy trades to be compressed, increase participation in PTRR services and overall reduce complexity in the market. Its view is that those positive effects outweigh the increased operational burden on market participants and regulators and the increase in gross risk in the non-cleared netting sets (in case of portfolio rebalancing). However, any such exemption should be limited and subject to certain requirements, to reduce any risk of circumvention of the clearing obligation.

ESMA has submitted this final report to the European Commission. The European Commission is mandated under EMIR to prepare a report assessing whether any trades that directly result from post-trade risk reduction services should be exempted from the clearing obligation.

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

ESMA has updated its [Q&As](#) on investor protection and intermediaries under the Markets in Financial Instruments Directive (MiFID) and the Markets in Financial Instruments Regulation (MiFIR). The Q&As have been updated to include three new Q&As relating to product governance.

## MiFIR: updated guidance on Annex to ESMA opinion determining third-country trading venues for purpose of transparency

ESMA has updated its [guidance](#) on the Annex to its opinion determining third-country trading venues for the purpose of transparency under MiFIR. It has been updated to refer to cases where market identifier codes are not populated.

## MiFIR assessments of third country trading venues: ESMA decision

ESMA has published a [decision](#) of its board of supervisors on the delegation to the ESMA chair of the assessment of third country trading venues (TCTVs) for the purposes of Articles 20 and 21 of MiFIR. This decision repeals and replaces ESMA's October 2018 decision on the assessment. The replacement decision reflects ESMA's updated opinion determining TCTVs for the purpose of transparency under MiFIR that was published in June 2020.

In the decision, the board of supervisors delegates responsibility for non-controversial assessments of TCTVs for these purposes to the ESMA chair. The decisions specify the criteria that the chair will use when assessing whether to consider a third-country entity as a trading venue for the purposes of Articles 20 and 21 of MiFIR. The board of supervisors retains its powers to perform controversial assessments of TCVCs.

## MiFID and MiFIR: ESMA consults on draft guidelines on market data obligations

ESMA has published a [consultation paper](#) on draft guidelines on obligations relating to market data under MiFID and MiFIR. The guidelines are intended to ensure the common and consistent application of the provisions in Articles 13, 15(1) and 18(8) of MiFIR and Articles 64(1) and 65(1) and (2) of MiFID.

The guidelines aim to provide financial market participants with a uniform understanding of the requirements to provide market data on a reasonable commercial basis (RCB), including the disclosure requirements, as well as the requirement to provide the market data 15 minutes after publication (delayed data) free of charge. They also aim to ensure that national competent authorities have a common understanding and develop consistent supervisory practices when assessing the completeness, comprehensibility and consistency of the RCB and delayed data provisions.

The draft guidelines cover:

- provision of market data on the basis of cost;
- obligation to provide market data on a non-discriminatory basis;
- per user fees;
- obligation to keep data unbundled;
- transparency obligations; and
- obligation to make market data available free of charge 15 minutes after publication.

The consultation closes on 11 January 2021. ESMA will consider the feedback received and expects to publish the final report and guidelines by Q2 2021.

## Brexit: ESMA updates statements on reporting and operation of ESMA databases and IT systems

ESMA has updated the following public statements which address the impact on reporting under EMIR and the Regulation on reporting and transparency of securities financing transactions (SFTR), and on the operation of ESMA databases and IT systems under MiFID and MiFIR after 31 December 2020:

- [statement](#) on issues affecting reporting under EMIR and the SFTR. This covers issues affecting reporting, record-keeping, reconciliation, data access, portability and aggregation of derivatives under Article 9 of EMIR and of securities financing transactions reported under Article 4 of the SFTR;
- [statement](#) on the use of UK data in ESMA databases and performance of MiFID II calculations. This covers publications made under MiFID and MiFIR, which are performed by the various ESMA databases, as well as the annual ancillary activity calculations; and
- [statement](#) on ESMA's data operational plan. This covers actions related to the Financial Instruments Reference Data System (FIRDS), the Financial Instrument Transparency System (FITRS), the Double Volume Cap System (DVCAP), transaction reporting systems, and ESMA's registers and data.

## BMR: ESMA updates Q&As

ESMA has updated its [Q&As](#) on the Benchmarks Regulation (BMR). The Q&As have been updated to provide clarification on transitional provisions of the BMR relating to critical benchmarks.

## **CRA: ESMA speech on key challenges**

ESMA has published a [speech](#) by Verena Ross, ESMA Executive Director, in which she considers the key challenges in the credit ratings industry and explains what ESMA is doing to try and meet these challenges.

# Insurance

## COVID-19: FCA update on business interruption insurance test case

On 11 November 2020, the UK Financial Conduct Authority (FCA) updated the [webpage](#) on its business interruption insurance test case. The FCA has given links to:

- the [live-stream](#) of the Supreme Court appeal hearing. The Supreme Court will sit between 11.00 am and 4.00 pm on 16 November 2020 and between 10.30 am and 4.00 pm on 19 November 2020;
- the written cases for the appeals in the Supreme Court of the [FCA](#), [Arch Insurance \(UK\) Ltd](#), [Argenta Syndicate Management Ltd](#), [MS Amlin Underwriting Ltd](#), [Hiscox Insurance Company Ltd](#), [QBE UK Ltd](#), [Royal & Sun Alliance Insurance plc](#) and [Hiscox Action Group](#);
- the written cases responding to the above appeals of the [FCA](#), [Arch Insurance \(UK\) Ltd](#), [Argenta Syndicate Management Ltd](#), [MS Amlin Underwriting Ltd](#), [Hiscox Insurance Company Ltd](#), [QBE UK Ltd](#), [Royal & Sun Alliance Insurance plc](#), [Zurich Insurance plc](#) and [Hiscox Action Group](#);
- the [order of the Supreme Court](#) granting permission to appeal;
- the [agreed Statement of Facts and Issues](#), which sets out the history of COVID-19 and the government response, the background to the proceedings, and the issues being appealed; and
- the [directions](#) agreed between the parties to the appeal regarding steps leading up to the appeal hearing and other procedural matters.

## IDD: EIOPA survey

The European Insurance and Occupational Pensions Authority (EIOPA) has published a [survey](#) on the application of the Insurance Distribution Directive (IDD). The survey is the first step in EIOPA's preparation of a report assessing the application of the IDD that it is required to prepare under Article 41(4) of the IDD.

Responses to the survey are requested by 1 February 2021. EIOPA may launch a second survey at a later stage.

## Comparable outcomes, liquidity metrics and resolution: IAIS consultations

The International Association of Insurance Supervisors (IAIS) has published the following three documents for consultation:

- [Draft definition of comparable outcomes and high-level principles to inform the criteria that will be used to assess whether the AM provides comparable outcomes to the Insurance Capital Standard \(ICS\)](#): consultation closes on 22 January 2021;
- [Development of Liquidity Metrics: Phase I – Exposure Approach](#): consultation closes on 7 February 2021; and
- [Application Paper on Resolution Powers and Planning](#): consultation closes on 5 February 2021.

# Funds and Asset Management

## Performance fees in UCITS and certain types of AIFs: ESMA guidelines

The European Securities and Markets Authority (ESMA) has published the [official translations](#) for guidelines on performance fees in UCITS and certain types of alternative investment funds. The guidelines, which apply to fund managers and national competent authorities (NCAs), aim to promote convergence in the way that NCAs supervise performance fee structures and the circumstances in which performance fees can be paid.

The guidelines state that they apply from two months after the date of their publication on ESMA's website in all EU official languages (that is, 5 January 2021).

NCAs must notify ESMA whether they comply, or intend to comply, with the guidelines within this two-month period.

## COVID-19: ESMA report on ESRB recommendation on liquidity risk in investment funds

On 12 November 2020, ESMA published a [report](#) in response to the European Systemic Risk Board's (ESRB) recommendation on liquidity risks in investment funds.

In May 2020, the ESRB published a [recommendation](#) on liquidity risks in investment funds that ESMA should coordinate with NCAs to undertake a focused piece of supervisory work with investment funds that have significant exposures to corporate debt and real estate assets to assess the preparedness of these two segments to potential future adverse shocks. The ESRB concluded that the sharp fall in asset prices observed at the onset of the COVID-19 pandemic was accompanied by significant redemptions from certain investment funds and a significant deterioration in financial market liquidity.

In its report, ESMA identifies five priority areas for action that would enhance the preparedness of these fund categories:

- ongoing supervision of the alignment of the funds' investment strategy, liquidity profile and redemption policy;
- ongoing supervision of liquidity risk assessment;
- the establishment and reporting of fund liquidity profiles;
- an increase of the availability and use of liquidity management tools; and
- the supervision of valuation processes in a context of valuation uncertainty.

ESMA will follow up with NCAs on the first, second and fifth of these policy areas to foster supervisory convergence amongst NCAs in how they supervise firms' compliance with their obligations in this area. However, ESMA considers that the increase of the availability of liquidity management tools in EU member states and further convergence in the establishment of liquidity profiles under the Alternative Investment Fund Managers Directive (AIFMD) are more fit to be taken forward in the context of the Commission's review of the AIFMD. More generally ESMA supports further initiatives to develop a macro-prudential toolkit for investment funds that could be developed by the ESRB in conjunction with ESMA and NCAs.

## **UCITS Directive and AIFMD: ESMA annual reports on penalties**

ESMA has published its third [annual report](#) on penalties and measures issued under the UCITS Directive in 2019, and its first [annual report](#) on penalties and measures issued under the AIFMD in 2018 and 2019.

ESMA will continue its work to foster supervisory convergence in the application of the UCITS Directive and the AIFMD, and plans to issue reports on an annual basis for future reporting periods.

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