FIG Bulletin

Recent developments

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Contents

General

Queen's Speech 2021 and Dormant Assets Bill

On 11 May 2021, the Queen's Speech set out the government's legislative priorities for the next parliamentary session. The government has also published a background briefing relating to the Queen's Speech, providing a summary of the content and legislation to be brought forward by the government. The measures announced included the Dormant Assets Bill which was introduced to, and had its first reading in, the House of Lords on 12 May 2020. Explanatory notes have been published and HM Treasury has published two factsheets on the Bill: Bill overview and Policy context and background. The UK Parliament has published the text of the Bill.

The UK Dormant Assets Scheme was established by the Dormant Bank and Building Society Accounts Act 2008 and is administered by Reclaim Fund Ltd (RFL) (recently established as an HM Treasury non-departmental public body). The scheme enables unclaimed funds to be reinvested for the benefit of social or environmental purposes while protecting the rights of the individual customer.

In summary, the Bill:

- makes the necessary amendments to the 2008 Act to expand the existing scheme so that a wider range of dormant assets, including assets in the insurance and pensions, investment, wealth management and securities sectors, can be transferred into the scheme;
- enables the RFL to accept transfers of certain unwanted assets and improves the operation of the scheme;
- confers power on the Secretary of State or HM Treasury to make regulations further expanding the scope of the scheme in the future to broaden the pool of eligible dormant assets. It also introduces a new power for HMT to establish other reclaim funds in the future as appropriate, either in addition to RFL or as a replacement; and
- amends the approach for distributing dormant assets funding in England, aligning it with the model used for Scotland, Wales and Northern Ireland, enabling the social and environmental focus of the English portion of funds to be set through secondary legislation.

Second reading of the Bill is yet to be scheduled.

Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill 2021-22

The Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill 2021-22 has been introduced to Parliament. The text of the Bill has been published, together with Explanatory notes, and the Bill has had its first reading in the House of Commons.

The purpose of the Bill is to:

- enable the establishment of the compensation scheme for London Capital & Finance (LC&F) bondholders. HM Treasury intends to require the Financial Services Compensation Scheme (FSCS) to administer the compensation scheme on its behalf. The Bill will permit HM Treasury to incur expenditure in relation to compensation to LC&F customers of LC&F and ensure that the FSCS' current rules can be applied to the scheme without the need for the UK Financial Conduct Authority (FCA) to undertake a full public consultation and impact assessment; and

- amend the Pensions Act 2004 to allow the Secretary of State to make a loan to the Board of the Pension Protection Fund and for that loan to form a part of the funds of the Fraud Compensation Fund (FCF). This follows the decision in *Board of the Pension Protection Fund v Dalriada Trustees Ltd [2020] EWHC 2960 (Ch)*, in which the High Court confirmed that members of certain types of scam pension schemes relating to pensions liberation are eligible for compensation from the FCF.

The date for second reading in the House of Commons has not yet been announced.

Supporting the wind-down of critical benchmarks: HM Treasury response to consultation

HM Treasury has published details of the outcome of its February 2021 consultation on supporting the wind-down of critical benchmarks.

The Financial Services Act 2021 will amend the UK Benchmarks Regulation (UK BMR), to provide the FCA with new and enhanced powers to oversee the orderly wind-down of critical benchmarks, such as LIBOR. These powers will enable the FCA to manage a situation in which a critical benchmark has become, or is at risk of becoming, unrepresentative and it may be impractical or undesirable to restore its representativeness. In February 2021, HM Treasury consulted on whether there was a case for introducing legislation to incorporate a supplementary legal "safe harbour" for relevant legacy contracts.

Following consultation, HM Treasury indicates that it intends to bring forward further legislation, when the Parliamentary time allows, to address issues identified in the consultation. However, HM Treasury remains of the view that, wherever possible, parties should seek to transition contracts away from LIBOR before the end of 2021. It has also published a letter sent to the Working Group on Sterling Risk-Free Reference Rates (RFRWG) confirming this approach.

Life after LIBOR: BoE speech

The Bank of England (BoE) has published a speech by Andrew Bailey, BoE Governor, on life after LIBOR, in which he focuses on the important role benchmarks play in the financial system and why financial firms and borrowers would do well to choose the most robust alternative reference rates that meet their use case.

UK Economic Crime Plan: Statement of Progress

HM Government has published Economic Crime Plan: Statement of Progress, which covers the period from July 2019 to February 2021. This follows the 2019 launch of the Economic Crime Plan, a program of work that aims to tackle fraud and money laundering and sets out how the UK's public and private sectors would work together to improve the response to economic crime.

Treasury Committee Greensill Capital inquiry: FCA response highlights appointed representative work

The House of Commons Treasury Committee has published responses, including ones from the FCA and Bank of England (BoE), relating to its inquiry into Greensill Capital.

Among other things, in the FCA's response, the FCA explains that there are several areas that have been under consideration for regulatory or perimeter change and the collapse of Greensill has drawn further attention to these issues. These include the appointed representatives regime,

investigation and penalty powers in the event of firm failure or deregistration, the criteria for fitness and propriety under the Money Laundering Regulations, access to UK investors through listing securities on overseas markets that are not recognised overseas investment exchanges or regulated markets (for example, in the EU) and employer salary advance schemes. In addition, the FCA notes that commercial lending is largely unregulated in the UK and any changes to this would be a matter for HM Government and Parliament.

The FCA outlines its work programme relating to appointed representatives. This includes:

- greater engagement with, and scrutiny of, firms as they appoint appointed representatives;
- using a data-led approach, undertaking proactive supervision of principal firms that may pose a higher risk of harm;
- carrying out a range of targeted supervision activity in sectors, or portfolios, where the FCA considers that the appointed representative regime is a particular driver of harm; and
- undertaking analysis to determine whether policy interventions are required, including recommendations to HM Treasury for changes in the legislative regime.

Notes of meetings that the FCA had relating to Greensill Capital are included as an annex to its response.

Productive Finance Working Group: BoE statement on progress

The BoE has published a statement on the progress made by the Productive Finance Working Group (PFWG), which was created in November 2020 and is co-chaired by the BoE with HM Treasury and the FCA. The statement explains that the PFWG met recently to discuss progress on:

- the work done to develop a commercially, operationally and legally viable authorised open-ended fund structure for long-term investments (the LTAF);
- the analysis undertaken to understand and begin to address operational barriers to investing in long-term assets, for example, barriers associated with investing in non-daily dealing funds;
- possible initiatives to support pension schemes in keeping costs low while at the same time securing overall long-term value for their members.

The PFWG also considered how public authorities and the private sector can take concrete steps to support its objectives.

The statement highlights the FCA's publication of its consultation paper on the LTAF (CP21/12) as the first concrete step. It explains that the next phase of the PFWG will be focussed on developing the other concrete steps that market participants and the public sector can take to remove barriers to finance supporting investment in less liquid assets. It will set out its proposed solutions and timelines later in 2021.

Operational resilience: BoE speech

The BoE has published a speech given by Lyndon Nelson, PRA Deputy CEO and BoE Executive Director, Regulatory Operations and Supervisory Risk Specialists, on operational resilience and outcomes in practice. In the speech, Mr Nelson considers the publication in March 2021 of the UK regulators' final rules on the new operational resilience framework. Issues addressed in the speech include:

- despite differences in languages and definitions in the PRA and FCA rules on operational resilience, the regulators intend to operate the same regime, with no differences in implementation. Consequently, work done for one regulator can and should be leveraged to meet the requirements of the other;
- the PRA's approach to operational resilience is intended to implement the principles on operational resilience finalised by the Basel Committee on Banking Supervision in April 2021;
- the regulators have not yet determined their final approaches to impact tolerances. Mr Nelson sets out details of the approach the PRA is likely to take depending on where the Financial Policy Committee and the FCA decide to set their tolerances;
- while firms' boards and senior management cannot outsource their ultimate accountability and responsibility, firms can sometimes find it challenging to oversee effectively cloud service providers. Mr Nelson suggests that firms' operational resilience policies will help with this issue. Firms' work to identify important business services, to determine the maximum tolerance for disruption to those services and to implement measures to remain within those tolerances under plausible scenarios should provide the right level of focus on cloud services and where substitutability is important.

Financial Services Regulatory Initiatives Grid updated

The Financial Services Regulatory Initiatives Forum has updated the Regulatory Initiatives Grid which sets out details of regulatory initiatives relevant to the financial services sector which are currently in the pipeline. The Forum aims to publish the Grid at least twice a year to help firms manage the operational impact of implementing initiatives. For each of the initiatives, the Forum provides details of the lead authority, key milestones, the indicative impact and the likely timetable for key developments. Where appropriate, the Grid also specifies where the timings of the initiative have changed since the previous edition and where a new initiative has been added.

The Forum has also for the first time published the Grid in the form of an interactive dashboard and an Excel spreadsheet.

COVID-19: FCA statement on firms' complaint handling no longer in force

On 12 May 2021, the FCA announced that, with effect from 1 May 2021, its statement on firms' handling of complaints during the COVID-19 pandemic was no longer in force. When it last updated the statement in October 2020, the FCA committed to reviewing the statement again by the end of April 2021.

COVID-19: FCA update on changes to regulatory reporting

On 11 May 2021, the FCA updated its webpage on changes to regulatory reporting during the COVID-19 pandemic. Due to the challenges faced by firms and their auditors preparing audited financial statements during coronavirus, the FCA states that it will allow flexibility in the submission deadline for FIN-A (annual report and accounts). For this return only, firms will have an automatic 2-month extension to the deadline for submissions up to and including 31 July 2021.

The FCA advises that this flexibility is intended to cover the situation where the impacts of COVID-19 have made it impractical to finalise audited financial statements. If firms are able to submit FIN-A on time, then they should do so. In any event, firms should submit FIN-A as soon as they are reasonably able to, and no later than 30 September 2021.

Guidance for insolvency practitioners on how to approach regulated firms: FCA FG21/4

The FCA has published finalised guidance, FG21/4, for insolvency practitioners on how to approach regulated firms. FG21/4 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 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 consulted on its proposals in a guidance consultation, GC20/5, published in December 2020. Alongside FG21/4, the FCA has published a Feedback Statement in which it states that, overall, respondents supported the proposed guidance and it is implementing it as consulted on in GC20/5, subject to minor changes.

UK regulatory landscape post-Brexit and beyond: FCA speech

The FCA has published a speech given by Nikhil Rather, FCA Chief Executive, on the UK regulatory landscape post-Brexit and beyond. Among other things, Mr Rathi discusses regulation and competition in UK markets. He states that the FCA's regulation of overseas firms is aimed at achieving the same outcomes as its regulation of domestic firms, as well as at ensuring a level playing field. Therefore, the rules and threshold conditions will remain the same for everyone, and the FCA will apply the same standards to international firms seeking authorisation while taking into account the different risks that international firms can pose in assessing what it asks of them. International firms that pose more risk to consumers, clients and markets can expect proportionately closer scrutiny and higher expectations from the FCA, and they will need to have structural arrangements that enable the FCA to supervise them effectively. In particular, the FCA expects firms seeking authorisation to have an active place of business in the UK. For EU firms currently accessing UK markets via the Temporary Permissions Regime (TPR), there will be a rigorous review of all firms seeking UK authorisation.

Mr Rathi also recognises that international cooperation with other supervisors and global standard-setting bodies is vital and notes the significant progress the FCA is making in this area.

The FCA recognises the increased flexibility that is available to the UK following exit from the EU. It intends to use its autonomy to regulate for the benefit of UK financial markets and consumers: "*while the likely effect of any changes to the UK's regulatory regime on equivalence with the EU should and will be considered, it's not consistent with the FCA's objectives to target equivalence at any cost, including the opportunity cost of failing to make our markets work better*".

FCA Handbook Notice 87

The FCA has published Handbook Notice 87, which sets out changes to the FCA Handbook made by the FCA board on 25 March and 29 April 2021. The Handbook Notice reflects changes made to the Handbook by the following instruments (all of which are now in force):

- Supervision Manual (Financial Crime Report) (Amendment No 2) Instrument 2021 (FCA 2021/13). The FCA has also published accompanying directions under regulation 74A of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;
- Operational Resilience Instrument 2021 (FCA 2021/14);
- UK Emission Trading Scheme Instrument 2021 (FCA 2021/15);

- Technical Standards (Market Abuse Regulation) (UK Emissions Trading Scheme) Instrument 2021 (FCA 2021/16); and
- Collective Investment Schemes Sourcebook (Bearer Certificates) Instrument 2021 (FCA 2021/17).

FCA policy development update

The FCA has updated its policy development update webpage for May 2021, setting out information on recent and future FCA publications.

Outcomes-focused regulation: FCA speech

The FCA has published a speech given by Charles Randell, FCA Chair, on outcomes-focused regulation. Among other things, Mr Randell discusses how focusing on the best consumer outcomes is the right thing to do, although this focus is not yet fully embedded in everything that the FCA and financial services firms do.

Nudging consumers to pensions guidance: FCA CP21/11

The FCA has published a consultation paper, CP21/11, on new rules requiring pension providers to "nudge" consumers to Pension Wise, in order to benefit from guidance before accessing their defined contribution pension savings. This includes booking an appointment with Pension Wise if the consumer wishes. The new rules would implement provisions of the Financial Guidance and Claims Act 2018 (FGCA).

Under section 18 of the FGCA, the FCA is required to make rules for pension providers to ensure consumers have either received or opted out of receiving Pension Wise guidance when they apply to access or transfer their pension savings.

Comments can be made on CP21/11 until 29 June 2021. The FCA intends to publish a policy statement and final rules in Q4 2021.

Although Parliament has chosen not to make Pension Wise appointments mandatory, there is a desire to increase take-up. The FCA is therefore also interested in hearing other ideas about how to increase the take-up of Pension Wise beyond the proposed rules in CP21/11.

FCA Gabriel replaced by RegData

The FCA has confirmed that RegData, its new data collection platform for gathering regulatory data from firms, has now fully replaced the previous system, Gabriel.

Keydata complaints: Complaints Commissioner recommends FCA action

The Office of the Complaints Commissioner has published final reports *FCA00814*, *FCA00816*, *FCA00818* and *FCA00844*, which concern complaints relating to the Financial Services Authority (FSA) and the FCA's oversight, supervision and regulation of Keydata Investment Services Ltd and related matters. The Complaints Commissioner has upheld some elements of the complaints and, in the light of this, made recommendations including the following:

- the chair of the FCA board should offer an apology for the elements of the complaints upheld. That is, the acknowledged inadequacy in the FSA's supervision of Keydata and the consequent delay in commencing effective supervisory and enforcement action, as well as the failings identified in the FCA's complaints handling function;

- the FCA should develop a system to ensure that it records whether or not it has received a response to a letter setting out its understanding of a complaint and states in its decision letter whether or not a response has been received and, where it has, states what account has been taken of it and any subsequent changes made to the complaint.
- the FCA should provide the Commissioner's final reports on the complaint and the other Keydata complaints to the FCA board and to the chairs of its audit and risk committees.
- the FCA should ensure that there is robust monitoring of and timely implementation of its transformation programme, which should include and reflect the conclusions reached about Keydata in the final reports. The FCA provided an update on its transformation programme on 20 April 2021; and
- the FCA should review the function, purpose and adequacy of its deferrals policy to ensure that the complaints team maintains adequate records of complaints made and keeps itself and complainants properly informed about the progress of any regulatory action. It should also ensure that the complaints team is made aware of any immediate or subsequent lessons learned or other reviews and how their conclusions are being implemented during the period that complaints remain deferred.

The FCA has published responses to FCA00814, FCA00816, FCA00818 and FCA00844. In the responses, among other things, the FCA fully accepts the general criticisms of its complaints handling and investigation and its suggested process improvements, as well as agreeing to the above recommendations.

FOS Ombudsman News issue 160

The Financial Ombudsman Service (FOS) has published issue 160 of ombudsman news. In issue 160, among other things, the FOS highlights a new webpage on complaints involving economic and domestic abuse.

FSCS Outlook newsletter

The FSCS has published the latest edition of its Outlook newsletter, which confirms its updated levy forecast for 2021/22. Based on the latest data available, the FSCS has revised its levy forecast from £1.04 billion to £833 million.

Pensions Dashboards Programme: Progress Update Report

The Pensions Dashboards Programme (PDP) has released its third Progress Update Report, including further detail on its timeline for the next six months and the expected timing of key milestones within later programme phases. It intends for this progress report to help data providers to prepare for the staged compulsory connection to the dashboard ecosystem. The latest progress report confirms:

- the procurement contract process for the principal digital architecture of the dashboard system is underway and is likely to be awarded in the next six months. A separate exercise for identity verification procurement will be undertaken shortly;
- at the end of May 2021, a staging "Call for Input" will be issued setting out proposals for the staged compulsory connection of pension providers to the dashboard ecosystem. The proposals have been developed with the Department for Work and Pensions (DWP), the FCA and the Pensions Regulator; and
- the PDP will continue to work with the DWP, the FCA and the Regulator to "support progress on secondary legislation, following the passing of the Pension Schemes Act 2021".

Digital assets: Law Commission call for evidence

The Law Commission has published a call for evidence on digital assets. The call for evidence seeks views about, and evidence of, the ways in which digital assets are being used, treated and dealt with by market participants. It also seeks views on the potential consequences of digital assets being "possessable".

The call for evidence closes on 30 July 2021. The Commission will use responses to inform its proposals for law reform which it will put forward in its consultation paper on digital assets.

EU reviews of Settlement Finality Directive and Financial Collateral Directive: FMLC responses

The Financial Markets Law Committee (FMLC) has published its responses to the European Commission's consultations on reviews of the Settlement Finality Directive and the Financial Collateral Directive, highlighting legal uncertainties.

The Commission's findings from the reviews will feed into reports to the European Parliament and the Council of the EU.

EU Taxonomy Regulation: European Commission consults on draft Delegated Regulation containing disclosure obligations

Following its July 2020 consultation, the European Commission has published for consultation a draft Delegated Regulation supplementing Article 8 of the Taxonomy Regulation specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of the Non-Financial Reporting Directive (NFRD), concerning environmentally sustainable economic activities and the methodology to comply with that disclosure obligation.

Article 8 of the Taxonomy Regulation requires large corporates to include in their non-financial statement's information on how and to what extent their activities are associated with environmentally sustainable economic activities. The draft Delegated Regulation:

- specifies the content and presentation of information to be disclosed by non-financial undertakings, asset managers, credit institutions, investment firms, and insurance and reinsurance undertakings; and
- sets out common rules relating to key performance indicators.

A set of FAQs explain that Commission adoption is planned by the end of June 2021 and the Delegated Regulation should apply from 1 January 2022.

Details of responses to the Commission's July 2020 consultation on the legislation are set out in the Commission's draft document. The Commission also highlights its plans to expand the scope of NFRD requirements through the proposed Corporate Sustainability Reporting Directive.

EU strategy for retail investors: European Commission consultation

The European Commission has published a consultation paper on a retail investment strategy for the EU. The aim of the consultation is to gather views and evidence to help the Commission develop its policies to improve the EU's existing retail investor protection framework. In particular, the Commission is seeking views on:

- the limited comparability of similar investment products that are regulated by different legislation and are therefore subject to different disclosure requirements, which prevents

individual investors from making informed investment choices. For example, currently, requirements are set out in legislation including the Markets in Financial Instruments Directive, the Insurance Distribution Directive, the PRIIPs Regulation and the UCITS Directive;
- how to ensure access to fair advice in the light of current inducement practices;
- how to address the fact that many citizens lack sufficient financial literacy to make good decisions about personal finances;
- the impact of the increased digitalisation of financial services; and
- sustainable investing.

Other issues covered by the consultation include reviewing the framework for investor categorisation, suitability and appropriateness assessments, consumer redress and views on the PRIIPs Regulation.

Comments can be made on the consultation paper until 3 August 2021.

EU AML and CFT central database: EBA consultation

The European Banking Authority (EBA) has published a consultation paper on draft regulatory technical standards (RTS) to establish an anti-money laundering (AML) and countering financing of terrorism (CFT) central database. It has also published a summary of the draft data protection impact assessment on the database.

The draft RTS specify the materiality of weaknesses, the type of information collected, the practical implementation of the information collection and the analysis and dissemination of that information. They also set out rules to ensure the effectiveness of the database, the confidentiality of the data contained in the database, as well as how the database will interact with other notifications that competent authorities are required to provide to the EBA and provisions to ensure the protection of personal data.

The EBA is required under Article 9a(1) and (3) of the EBA Regulation to develop two RTS, for establishing and maintaining the database, however due to the complementary nature of those RTS, it has drafted them as a single instrument.

In parallel to this consultation, the EBA is seeking the view of the European Data Protection Supervisor on the draft RTS, in accordance with Article 42(1) of the EU Institutions' Data Protection Regulation.

The consultation closes on 17 June 2021.

EBA 2020 report on convergence of supervisory practices and 2021 convergence plan

The EBA has published a report on the convergence of supervisory practices across the EU in 2020. In the report, the EBA summarises its observations on the convergence of supervisory practices in 2020 and the main activities undertaken by the EBA to enhance convergence in 2020 and beyond. The EBA's 2020 convergence plan was set out alongside its 2019 report.

Overall, the report finds that supervisors converged in using the key topics of the EBA 2020 convergence plan in their supervisory work in 2020. However, implementation of the plan was impacted by COVID-19 related reprioritisation of supervisory activities resulting in the key topics receiving different degrees of supervisory attention. Chapter 8 of the report sets out the four key topics identified for the 2021 convergence plan, which were primarily driven by the implications

of the COVID-19 pandemic. Specifically, the EBA will review the approach followed by authorities relating to:

- asset quality and credit risk management;
- ICT and security risk, and operational resilience;
- profitability and business model; and
- capital and liability management.

Chapter 9 of the report sets out the key tasks for supervisory colleges for 2021.

Banking and Finance

Collections function: PRA Dear Chief Risk Officer letter

The UK Prudential Regulation Authority (PRA) has published a letter to Chief Risk Officers (CROs) of non-systemic UK deposit takers, from Melanie Beaman, PRA Director, UK Deposit Takers, which summarises the PRA's findings following an internal audit review of collections functions.

The PRA asked, in November 2019, the Internal Audit function (IA) of a sample of non-systemic banks and building societies to undertake a review of the Collections function to provide assurance to their boards and to the PRA over the effectiveness of controls in three specific areas of interest:

- collection processes and control environment;
- governance and oversight; and
- regulatory reporting.

The PRA's main observations are set out briefly in the letter and Annex 1 contains more details against the specific areas of interest.

The PRA is assured from the IA findings that the processes and controls in place for collection operations, from a prudential perspective, are largely adequate and effective across the majority of firms. However, its observations reinforce the need for some firms to continue to enhance their collections operations and develop the right level of control and governance to ensure its effectiveness. Also, some firms need to review the adequacy of resources, more efficiently manage the processes and ensure adequate oversight at board level.

The PRA is aware that collection controls and processes are under review for many firms, in particular in the light of the increase in collections activity due to the COVID-19 pandemic. It states that firms should find the letter a helpful reference when considering their collection operations and potential areas that might need strengthening.

The PRA intends to continue to monitor firms' Collections functions in the light of the impact of the COVID-19 pandemic on arrears and forbearance levels.

Future regulation of building societies: PRA speech

The Bank of England (BoE) has published a speech given by Sam Woods, BoE Deputy Governor for Prudential Regulation and PRA CEO, on current PRA initiatives relating to the regulation of building societies. Mr Woods sets out how the PRA plans to regulate building societies in the future. He explains the PRA's proposals for a new "strong and simple" regime for small building societies. Then he covers the link between two ongoing reviews that are relevant for large building societies. The first is the review of the leverage ratio. The second is the review of minimum requirements for own funds and eligible liabilities (MRELs). Mr Woods also considers mortgage risk-weights. He concludes by saying that the PRA is moving into a new phase of making regulatory rules now the UK has left the EU. It will mean even more opportunities for engagement with stakeholders on key issues.

Access to cash: FCA and PSR statement

The UK Financial Conduct Authority (FCA) and the Payment Systems Regulator (PSR) have published a statement providing an update on their joint approach on access to cash. The regulators are committed to ensuring that cash, and the infrastructure that supports it, remains available for those who need it. They state that this challenge requires industry, government and regulators to act.

The FCA and PSR are monitoring trends and supervising firms to make sure access is available and will use the tools at their disposal to ensure this happens. They welcome industry's proposals to work together and develop solutions while ensuring they comply with competition law.

The regulators expect individual firms play their part in protecting the ability of customers to access cash and wider banking services in ways that meet their needs, particularly vulnerable customers and SMEs. Individual firms are responsible for making sure that when they close a branch or ATM in a local area, there are alternatives available to provide services at a standard of service that meets the needs of the customers using that branch or ATM. Firms will need to consider the ability to withdraw and deposit cash, safety, accessibility and opening times.

To meet their responsibilities, over the short term firms are likely to rely on the current alternatives to branches to a large extent, such as Post Office and LINK services. The regulators believe there can be significant benefits from making the most of, and where necessary enhancing, the existing services and policies. Over the longer term there will be further scope for firms to use other alternatives and innovations.

Following on from the regulators' work with the University of Bristol on assessing cash access across the UK in 2020, they intend to publish an updated assessment of the UK's cash infrastructure in summer 2021, alongside the FCA's recent consumer research into cash use. In addition, the PSR will shortly publish its review of specific direction 8 (SD8), which relates to free-to-use ATMs.

The FCA has also published a speech by Sheldon Mills, FCA Executive Director, Consumers and Competition, on protecting access to cash and banking services.

Access to cash: HM Treasury speech

HM Treasury has published a speech by John Glen, Economic Secretary to HM Treasury, on the government's commitment to protect access to cash. Among other things, in the speech, Mr Glen announces that HM Treasury will launch a consultation on legislative proposals to protect access to cash in summer 2021.

Cessation of GBP LIBOR ICE Swap Rate: IBA consultation

ICE Benchmark Administration has published a consultation on its intention to cease the publication of GBP LIBOR ICE Swap Rate settings for all tenors immediately after publication on 31 December 2021. It stresses that the consultation is not an announcement that it will either cease or continue the publication of GBP LIBOR ICE Swap Rate after December 2021.

The consultation closes on 4 June 2021. IBA expects to consult on the potential cessation of USD LIBOR ICE Swap Rate in due course.

EURIBOR fallbacks: Working Group on Euro Risk-Free Rates recommendations

Following its earlier consultation, the Working Group on Euro Risk-Free Rates has published recommendations on EURIBOR fallbacks, covering events that could trigger fallbacks in EURIBOR-linked contracts and the rates that could be used if a fallback is triggered. The recommendations include an €STR-based EURIBOR fallback rate for specific use cases, including corporate lending, debt securities, securitisations and trade finance and

There is currently no plan to discontinue EURIBOR, but the Working Group considers that the development of more robust fallback language addresses the risk of a potential permanent discontinuation, enhances legal certainty and is in line with the EU Benchmarks Regulation.

Liquidity and funding in resolution: SRB guidance

The Single Resolution Board (SRB) has published operational guidance for 2021 on liquidity and funding in resolution. The guidance focuses on the estimation of liquidity needs and aims to enhance banks' resolvability and preparedness for a potential resolution. Banks will be assessed on this element in the 2021 resolution planning cycle and are invited to leverage on any capability already developed for supervisory purposes (for example, recovery planning).

Disclosure and reporting of MREL and TLAC: Commission Implementing Regulation on ITS

Commission Implementing Regulation (EU) 2021/763, which contains implementing technical standards (ITS) on disclosure and reporting of the minimum requirement for own funds and eligible liabilities (MREL) and the total loss absorbency requirement (TLAC), has been published in the Official Journal of the European Union. The ITS reflect a mandate set out in Articles 430(7) and 434a of the Capital Requirements Regulation (CRR), as amended by CRR II, and Articles 45i(5) and (6) of the Bank Recovery and Resolution Directive (BRRD), as amended by BRRD II.

The Implementing Regulation enters into force on 1 June 2021. Different application dates apply for the supervisory reporting and public disclosure requirements:

- the supervisory reporting requirements will apply from 28 June 2021; and
- the public disclosure requirements will apply from 1 June 2021 in respect of disclosures made in accordance with Article 437a and point (h) of Article 447(h) of the CRR (that is, disclosures relating to TLAC). They will apply from 1 January 2024 (or from any later compliance deadline set by the applicable resolution authority) in respect of disclosures made in accordance with Article 45i(3) of the BRRD.

Review of NPL transaction data templates: EBA discussion paper

The European Banking Authority (EBA) has published a discussion paper on a review of its standardised data templates for non-performing loan (NPL) transactions.

The EBA's NPL transaction data templates, which were originally published in December 2017, are intended to support NPL transactions and enhance the functioning of the secondary markets in the EU. In December 2020, in its COVID-19 action plan on NPLs, the European Commission stated that the templates were not yet widely used by market participants due to their voluntary nature and complexity, and invited the EBA to conduct a review of the templates in 2021.

In the discussion paper, the EBA sets out its proposals. It has published Annex I and Annex III to the discussion paper separately. Annexes II and IV are set out in the discussion paper itself.

The consultation ends on 31 August 2021. By December 2021, the EBA will publish a revised version of the templates based on feedback to the discussion paper.

The EBA also states that it will await the final version of the proposed Directive on credit servicers and credit purchasers. If this Directive mandates the EBA to develop implementing technical standards (ITS) specifying data templates for the provision of information from NPL sellers to purchasers, the EBA will publish a consultation paper on the draft ITS, based on the revised templates developed following the discussion paper.

Financial inclusion and financial health target setting for banks: UNEP FI guidance

The United Nations Environment Programme Finance Initiative (UNEP FI) has published guidance on financial inclusion and financial health target setting for banks. The guidance supports signatory banks in their efforts to set targets for financial inclusion and financial health, in line with the requirements of the UNEP FI Principles for Responsible Banking. It outlines the key steps for setting targets to drive increasing economic and social inclusion and provides two illustrative examples of how banks can set targets in financial inclusion and financial health.

Using the guidance, banks can understand how to align their core business with the sustainable development goals (SDGs), including SDG 1 (No poverty), SDG 5 (Gender equality), SDG 8 (Decent work and economic growth), SDG 9 (Industry, innovation and infrastructure), SDG 10 (Reduced inequalities) and SDG 17 (Partnerships for the goals).

The guidance has been developed by parties including a working group of banking signatories to the Principles for Responsible Banking and the UNEP FI secretariat.

Consumer Finance

FCA credit broking survey

The UK Financial Conduct Authority (FCA) has announced that it plans to send a survey to 300 credit broking firms on 20 May 2021 asking them to update the information the FCA holds on how the firms are using their credit broking permission. The FCA will send the survey to the remaining firms holding a credit broking permission in July 2021.

The FCA states that it will use the data provided, alongside existing data, to support its ongoing work to mitigate risks of harm to consumers.

Firms will have 15 working days to submit their responses to the survey and it should take up to 30 minutes to complete.

While the FCA is not seeking this information under its formal information gathering powers, it expects firms to complete the survey. The FCA reminds firms that they are required under Principle 11 of the Principles for Businesses to deal with their regulators in an open and cooperative way. Where firms do not complete the survey, it may contact them to understand the reasons for this.

The FCA directs firms to its survey FAQs if they have any questions. Firms can also contact its Supervision Hub on 0300 500 0597 from the UK or +44 207 066 100 from abroad, or via email at firm.queries@fca.org.uk.

MCD: European Commission review report

The European Commission has published a report to the European Parliament and Council of the EU on the review of the Mortgage Credit Directive (MCD), as required under Article 44. The report covers the MCD's impact on consumer protection and its impact on the single market. The annex to the report sets out data relating to the role of credit intermediaries in mortgage lending.

The report will feed into the next phase of the review of the MCD, where the Commission will carry out an evaluation based on additional evidence gathered through a consultation and impact assessment. This will be with a view to deciding on future initiatives (legislative or not) concerning the MCD.

In line with Article 45 of the MCD, and reviewing the need to supervise credit registers, the Commission will submit a comprehensive report assessing the wider challenges of private over-indebtedness directly linked to credit activity at a later stage. This will consider the impact of the COVID-19 pandemic on consumers.

NCAs' mystery-shopping activities: EBA report

The EBA has published a report on the mystery-shopping activities of national competent authorities (NCAs). For the purposes of the report, mystery shopping is an undercover research approach used by NCAs to measure quality of customer service or to gather information about financial products and services and the conduct of financial institutions towards consumers. The report covers initiatives relating to retail banking products and services (that is, mortgages, deposits, payment accounts, payment services and electronic money).

In the report, the EBA summarises the most common approaches to mystery shopping taken by the NCAs. It reviews the objective, subject matter and product scope of these activities, the

methodologies used by NCAs and follow-up actions taken by NCAs following the mystery shopping. The EBA also sets out lessons learned and good practices identified by the NCAs from the most relevant initiatives.

The EBA found that NCAs consider that mystery shopping allows them to obtain faster results and encourages financial institutions to take corrective actions where regulatory shortcomings are identified. However, some challenges remain regarding the collection of information or evidence that differs from one country to another. The good practices identified by NCAs mostly concerned common methodology aspects such as organising the training of inspection agents, identifying target customer profiles and defining agreed "rules" of consumer behaviour.

Payments

Systemically important payment systems: ECB Regulation and Decisions

European Central Bank (ECB) Regulation (EU) 2021/728, which amends the Regulation on oversight requirements for systemically important payment systems (SIPS) (the SIPS Regulation), has been published in the Official Journal of the European Union, together with two related ECB Decisions, (EU) 2021/729 and (EU) 2021/730.

The Amending Regulation will revise the SIPS Regulation to:

- allow for both the ECB and a national central bank to be designated as competent authorities in exceptional circumstances where a pan-European payment system has been overseen by the national central bank for five years or more before becoming a SIPS;
- introduce an additional methodology that allows the ECB Governing Council to identify certain payment systems as SIPSs that fall outside the criteria currently set out in the SIPS Regulation;
- require the ECB to follow process procedures concerning the identification of SIPSs, which include issuing a written notice when initiating the identification process and stating the reasons for its decision to identify a payment system as a SIPS; and
- clarify the circumstances in which the ECB will consider that a payment system should no longer be identified as a SIPS.

ECB Decision (EU) 2021/729 and ECB Decision (EU) 2021/730 make consequential amendments to, respectively, ECB Decision (EU) 2017/2098 on procedural aspects concerning the imposition of corrective measures for non-compliance with the SIPS Regulation, and ECB Decision (EU) 2019/1349 on the procedure and conditions for exercise by a competent authority of certain powers in relation to oversight of SIPS.

The ECB has updated its webpage on its preceding consultation to provide clarifications on certain issues that arose in feedback to the consultation.

Securities and Markets

Draft Financial Markets and Insolvency (Transitional Provision) (EU Exit) (Amendment) Regulations 2021

A draft version of the Financial Markets and Insolvency (Transitional Provision) (EU Exit) (Amendment) Regulations 2021 (2021 Regulations) have been laid before Parliament, together with a draft explanatory memorandum. The purpose of the 2021 Regulations is to amend a temporary designation regime (TDR) created by the Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (SI 2019/341), which relates to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (SI 1999/2979).

The amendment relates to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (SI 1999/2979) (SFRs). Temporary designation is being extended by a further two years in a case where a system operator notified the designating authority before IP completion day but does not make an application under section 3(1) of the SFRs within the six month period that began on IP completion day.

Instead of immediately losing settlement finality protections under the TDR, systems will retain protections for a period of 30 months following the end of the transition period. This ensures that UK firms using EEA systems, but who fail to apply for designation under the UK SFRs, will have sufficient time to find alternative providers should those systems choose to stop providing services to UK firms.

The 2021 Regulations will come into force on the day after the day on which they are made.

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

The Capital Requirements Regulation (Amendment) (EU Exit) Regulations 2021 (SI 2021/558) have been published, together with an explanatory memorandum. These Regulations amend the UK Capital Requirements Regulation (UK CRR) to provide that exemptions for commodities dealers will continue to apply until 1 January 2022.

The Regulations will come into force on 1 June 2021.

Greenhouse Gas Emissions Trading Scheme Auctioning (Amendment) Regulations 2021

The Greenhouse Gas Emissions Trading Scheme Auctioning (Amendment) Regulations 2021 (SI 2021/561) (Amending Regulations) have been published, together with an explanatory memorandum. The Regulations amend the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 (SI 2021/484) (Auctioning Regulations), which provide for the auctioning of allowances created for the purposes of the UK Emissions Trading Scheme. The Amending Regulations clarify the criteria applicable to representatives of those eligible to apply to bid for allowances under the Auctioning Regulations and to correct a number of other minor errors.

The Amending Regulations were made on 10 May 2021 and come into force on 19 May 2021.

UK ETS: Government publishes guidance on supply of allowances

The Department for Business, Energy and Industrial Strategy (BEIS) has published guidance on the supply of allowances in the UK Emissions Trading Scheme (UK ETS). The UK ETS was launched on 1 January 2021 to replace the UK's participation in the EU Emissions Trading System (EU ETS), following the post-Brexit transition period.

UK MiFIR: HM Treasury to remove open access regime for ETDs

HM Treasury has updated its webpage on the open access regime for exchange traded derivatives (ETDs) to announce the outcome of its review of the regime to assess its suitability for the UK markets at the end of the Brexit transition period.

HM Treasury has concluded that the regime, which was originally designed to improve cross-border capital markets in the EU, is not suitable in a UK-only context. The Government therefore intends to remove the regime permanently when parliamentary time allows. The Treasury states that the decision has no bearing on the UK's continued support for the open access regimes in equity and OTC derivatives markets, which will continue to operate as normal.

LIBOR transition: FCA and BoE encourage switch to SONIA in sterling exchange traded derivatives market

The UK Financial Conduct Authority (FCA) and the Bank of England (BoE) have published a joint statement announcing that they encourage market users and liquidity providers in the sterling exchange traded derivatives market to switch the default traded instrument to SONIA instead of LIBOR from 17 June 2021. This is to facilitate a further shift in market liquidity towards SONIA.

UK MiFIR: FCA annual transparency calculations for non-equity instruments for 2021/22

The FCA has updated its Statement on the operation of the MiFID markets regime webpage announcing that it has made available its annual transparency calculations for UK non-equity instruments which will apply from 1 June 2021. The FCA has also published updated data relating to:

- large in scale (LIS) and size specific to the instrument (SSTI) thresholds for all bond types (except exchange traded commodities (ETCs) and exchange traded notes (ETNs)); and
- liquidity assessment and the LIS and SSTI thresholds for the liquid classes of non-equity instruments other than bonds.

These results cover the 2021 annual bonds threshold assessment, the May 2021 quarterly bonds liquidity determination and the 2021 annual derivatives threshold and liquidity assessment. The calculations are available through the FCA's Financial Instrument Transparency Reference System (FCA FITRS).

Special purpose acquisition vehicles: FCA CP21/10

The FCA has published a consultation paper, CP21/10, on proposed changes to the Listing Rules for certain special purpose acquisition companies (SPAC). Briefly, the FCA proposes to remove the presumption that it will suspend the listing of a SPAC when the SPAC identifies a potential acquisition target, where the SPAC is able to demonstrate the higher levels of investor protection

that have been developed in certain overseas jurisdictions. The FCA seeks feedback on these criteria.

The short consultation ends on 28 May 2021. The FCA intends to introduce amendments by summer 2021.

For more information, read our separate briefing: FCA consults on SPACs.

MiFID: ESMA updated opinion on calculating market size of ancillary activity

The European Securities and Markets Authority (ESMA) has published an updated opinion on ancillary activity calculations under the Markets in Financial Instruments Directive (MiFID).

Article 2(1)(j) of the MiFID II Directive provides an exemption from its scope for persons dealing on own account or providing investment services in specific cases, including where their activity is an ancillary activity to their main business (provided certain conditions are met). Commission Delegated Regulation (EU) 2017/592 further specifies the criteria for establishing when an activity is to be considered as ancillary for this purpose. In particular, it lays down rules for calculating the overall market trading activity, which ultimately determines whether an activity is ancillary and, consequently, whether a market participant falls within the scope of MiFID.

In the updated opinion, ESMA provides the estimation of the market size of various commodity derivatives, including metals, oil and coal, as well as emission allowances for 2020. ESMA has prepared the estimations based on data collected from trading venues and data reported to trade repositories under the European Market Infrastructure Regulation (EMIR).

MiFIR RTS 2: ESMA consultation

ESMA is consulting on its annual review of the regulatory technical standards (RTS) supplementing MiFIR set out in Commission Delegated Regulation (EU) 2017/583 (RTS 2).

The phasing-in of the MiFIR transparency regime for non-equity instruments is being undertaken in four stages, set out Article 17 of RTS 2. This phasing-in relates to both the determination of the liquidity status of bonds (based on the average daily number of trades) and the level of the pre-trade size specific to the instrument (SSTI) threshold for bonds and most derivatives (based on trade percentiles). Article 17(4) of RTS 2 requires ESMA to submit to the European Commission an annual assessment of the operation of the thresholds for the liquidity determination of bonds and the trade percentiles determining the pre-trade SSTI-threshold until the final stage of the phase-in has been reached. In its first annual assessment, published in September 2020, ESMA concluded that the move to stage 2 for the pre-trade SSTI threshold for bonds was appropriate but that a move to stage 2 would be premature for non-equity instruments other than bonds.

In the consultation paper, ESMA seeks views on proposals:

- to move to stage 3 for the determination of the liquidity assessment of bonds;
- not to move to stage 2 for the determination of the pre-trade SSTI thresholds for all non-equity instruments except bonds; and
- to move to stage 3 for the determination of the pre-trade SSTI thresholds for bonds, except for exchange traded commodities and exchange traded notes.

Annex 3 to the consultation paper sets out the text of a draft Delegated Regulation containing amendments to RTS 2 reflecting these proposals.

The consultation period ends on 11 June 2021. ESMA expects to publish a final report and submit, if necessary, draft technical standards to the Commission for endorsement in July 2021.

EMIR: Delegated Regulation on procedure for penalties imposed on trade repositories

Commission Delegated Regulation (EU) 2021/732 has been published in the Official Journal of the European Union (OJ). The Delegated Regulation amends 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. Delegated Regulation (EU) 2021/732 amends Delegated Regulation 667/2014 to adapt the existing rules of procedure to take account of changes introduced by the EMIR Refit Regulation.

The Delegated Regulation entered into force and applied from 7 May 2021.

EMIR: Delegated Regulation on rules of procedure for penalties imposed on third-country CCPs

Delegated Regulation (EU) 2021/731 has been published in the OJ. The Delegated Regulation supplements EMIR with regard to rules of procedure for penalties imposed by ESMA on third-country central counterparties (CCPs) or related third parties.

Article 25i(7) of EMIR empowers the European Commission to adopt delegated acts to specify further the rules of procedures for the power of ESMA 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.

The Delegated Regulation entered into force and applied from 7 May 2021.

BMR: European Commission adopts draft RTS on benchmark methodology, mandatory administration and changes to compliance statement

The European Commission has adopted the following three draft Delegated Regulations supplementing the Benchmarks Regulation (BMR), as amended by the European System of Financial Supervision (ESFS) Omnibus Regulation:

- Draft Delegated Regulation, which supplements the BMR with regard to RTS specifying the conditions to ensure that the methodology for determining a benchmark complies with the quality requirements (that is, it is robust and reliable). Article 12(4) of the BMR empowers the Commission to further specify the conditions to ensure that the benchmark methodology preserves the integrity of the benchmark itself;
- Draft Delegated Regulation, which supplements the BMR with regard to RTS specifying the criteria for the competent authorities' compliance assessment regarding the mandatory administration of a critical benchmark. Article 21(5) of the BMR empowers the Commission to further specify the criteria for assessing the mandatory administration or suspension of a critical benchmark;
- Draft Delegated Regulation, which supplements the BMR with regard to RTS specifying the criteria under which competent authorities may require changes to the compliance statement of non-significant benchmarks. Article 26(6) of the BMR empowers the

Commission to further specify the criteria on which competent authorities may require changes to the compliance statement published and maintained by an administrator of a non-significant benchmark.

The Council of the EU and the European Parliament will now scrutinise the draft Delegated Regulations. The Delegated Regulations will enter into force on the twentieth day following the date of their publication in the OJ and they will apply from 1 January 2022.

BMR: European Commission adopts draft RTS on benchmark manipulation and administrator governance arrangements

The European Commission has adopted the following two draft Delegated Regulations supplementing the BMR:

- Draft Delegated Regulation, which supplements the BMR with regard to RTS specifying the characteristics of the systems and controls for identifying and reporting any conduct that may involve manipulation or attempted manipulation of a benchmark; and
- Draft Delegated Regulation, which supplements the BMR with regard to RTS specifying the requirements to ensure that an administrator's governance arrangements are sufficiently robust.

The Council of the EU and the European Parliament will now scrutinise the draft Delegated Regulations. The Delegated Regulations will enter into force on the twentieth day following that of its publication in the OJ and they will apply from 1 January 2022.

Business continuity plans for trading venues and intermediaries: IOSCO thematic review report

The International Organization of Securities Commissions (IOSCO) has published a final report on its thematic review of business continuity plans (BCPs) for trading venues and intermediaries.

IOSCO published two reports in 2015 highlighting the importance of BCPs for trading venues and market intermediaries. These set out (respectively) two recommendations and two standards (Recommendations and Standards) for securities regulators. It has now completed a thematic review on the extent to which participating IOSCO member jurisdictions have implemented regulatory measures consistent with those recommendations and standards. The final report sets out the findings from that review.

IOSCO found that 13 participating jurisdictions were fully consistent with the Recommendations and Standards. However, there were some gaps or shortcomings of different degrees of materiality in the other 20 participating jurisdictions for one or more of the recommendations or standards.

The two Recommendations state that regulators should require trading venues to have mechanisms to help ensure the resiliency, reliability and integrity (including security) of critical systems and to establish, maintain and implement a BCP. The two Standards state that regulators should require intermediaries to create and maintain a written BCP that identifies procedures for an emergency or significant business disruption and to update their BCP if there is any material change to operations, structure, business or location. They should also carry out an annual review of their BCP to check if any modifications are needed.

IOSCO found that regulatory frameworks of some jurisdictions did not ensure that relevant provisions for critical systems extend to outsourced functions. It also found that regulations in

some participating jurisdictions did not require intermediaries to conduct a regular review of BCP arrangements or update BCPs in response to material business changes.

IOSCO recommends that members include in their regulatory frameworks the necessary powers for regulators to:

- set and enforce requirements for trading venues and intermediaries when they establish, maintain and update BCPs;
- ensure the regulatory frameworks require enterprise-wide BCPs and not only disaster recovery or contingency measures for IT systems; and
- provide sufficient clarity on governance and accountability for boards or senior management in respect of critical systems.

IOSCO states that it will be looking separately at operational risk as part of its work to examine risks exacerbated by the COVID-19 pandemic relating to remote working and operational resilience.

FICC markets: FMSB standard for executing large trades

The FICC Markets Standards Board (FMSB) has published a standard setting out the expected behaviours for participants executing large trades (as defined in the standard) in the wholesale fixed income, commodity and currency (FICC) markets. The standard, which contains ten core principles, is intended, among other things, to reduce information asymmetries between dealers and clients in relation to the execution of large trades and to enhance the understanding of clients as to the method of execution and potential impact of large trades on the market and the price the client receives. It also clarifies and codifies the principles governing the pre-hedging of large trades, building on the FX Global Code (FXGC) and extending principles compatible with the FXGC to the fixed income and commodities markets.

The standard applies to all participants in the wholesale FICC markets in Europe, subject to any applicable local regulatory restrictions. The application of the core principles differs depending on whether a market participant is acting as an agent or a principal.

FX Global Code: GFXC consults on guidance papers on use of pre-hedging and last look

The Global Foreign Exchange Committee (GFXC) has published a "request for feedback" on draft guidance papers for the use of "pre-hedging" and "last look" within foreign exchange markets. It has also published a webpage on the request for feedback. The GFXC is seeking feedback on whether the guidance and recommendations within the draft papers appropriately cover the issues relevant to Principles 11 (pre-hedging) and 17 (last look) of the Foreign Exchange (FX) Global Code. When finalised, the guidance papers will not become part of the FX Global Code but are intended to be read alongside it.

The deadline for comments is 31 May 2021.

REMIT: ACER updates guidance

The Agency for the Co-operation of Energy Regulators (ACER) has published an updated 5th edition of its guidance on the application of the Regulation on wholesale energy market integrity and transparency (REMIT). The updated version clarifies some elements in the description of the behaviour of capacity withholding.

REMIT: ACER updates transaction reporting guidance and FAQs

ACER has updated the following guidance and FAQs relating to transaction reporting and data reporting under the REMIT:

- Annex II to the Transaction Reporting User Manual (TRUM);
- Manual of Procedures on transaction data, fundamental data and inside information reporting (v.7) (MoP on Data Reporting);
- FAQs on REMIT transaction reporting (12th edition); and
- FAQs on REMIT fundamental data and inside information (7th edition).

Harmonisation of critical OTC derivatives data elements: LEI ROC consults on changes to technical guidance

The Legal Entity Identifier Regulatory Oversight Committee (LEI ROC) has published a consultative document on revisions to the technical guidance on the harmonisation of critical OTC derivatives data elements. The changes are not intended to change the substance of the data elements in the guidance and LEI ROC's proposals are highlighted in track-changes in the consultation, with the titles of revised data elements highlighted in yellow in the table of contents.

The deadline for responses is 26 May 2021.

Insurance

PRA supervision of annuity providers: BoE speech

The Bank of England (BoE) has published a speech (and accompanying appendix), given by Charlotte Gerken, Prudential Regulation Authority (PRA) Executive Director, Insurance Supervision, on developments in the PRA's supervision of annuity providers. Ms Gerken focuses on three areas of the PRA's supervisory risk analysis. In her speech, she:

- takes stock of market developments since 2019, including the continued growth in the bulk annuity market;
- discusses the implications of those developments for the PRA's supervision of the matching adjustment (MA), putting it in context, setting out the rationale behind it, and discussing asset eligibility matters; and
- shares some thoughts from the PRA's supervisory analysis on the size of the MA, how the current fundamental spread approach has been implemented and the risk sensitivity of the FS.

Ms Gerken concludes that close supervision of the MA contributes to securing an adequate degree of protection for policyholders and that the PRA will continue to develop its analysis both to improve its supervision and to inform policy development. She explains that HM Treasury's call for evidence on the review of the Solvency II regime has drawn a wide range of views on the nature of the MA and the PRA is committed to working with industry and HM Treasury to deliver meaningful and progressive reform to Solvency II, in line with HM Treasury's objectives for the review.

Ms Gerken also stresses that annuity writers will continue to receive significant supervisory challenge from the PRA. This reflects the nature and importance of the annuity product, the significant judgements and assumptions that underpin the MA benefit available to firms, and the impact of annuity providers on the PRA's policyholder protection objective.

Firms offering buildings insurance for leasehold properties: FCA expectations

The UK Financial Conduct Authority (FCA) has published a new webpage setting out its expectations of regulated firms when arranging and providing fair value buildings insurance for leasehold apartment buildings. The FCA explains that the webpage does not provide an exhaustive description of what firms need to consider. Rather, it highlights some important elements firms need to consider as part of their overall approach.

The FCA notes that, in recent years, the cost of buildings insurance has increased significantly for some apartment buildings, especially if the building's exterior is clad with potentially combustible materials. This has led to a rise in charges for some leaseholders. Insurers and insurance intermediaries should consider the value of these insurance products for customers (including any policyholders who could bring a claim under the policy). This will include considering whether all relevant aspects of the policy, such as the total price, coverage and the effects of distribution arrangements (and associated remuneration), would mean the product offers fair value.

Where intermediaries propose a policy to a property managing agent as their customer, the FCA expects firms to consider any of the property managing agent's wider obligations to leaseholders, which are likely to inform the assessment of their demands and needs.

Depending on the contract of insurance and the circumstances, firms may owe some obligations directly to leaseholders. For example, if a leaseholder has direct rights to bring a claim under the policy, firms would need to consider whether they are arranging insurance that is consistent with their obligation to act honestly, fairly and professionally, in the best interests of the leaseholders as well as the property owner (this is the "customer's best interests" rule in the Insurance: Conduct of Business sourcebook (ICOBS 2.5.-1R)).

There are many different arrangements through which buildings insurance can be taken out by a property owner or property managing agent. The FCA expects regulated firms to ensure they are meeting all of its applicable rules and take account of any wider legal obligations (for example, under landlord and tenant legislation) that are relevant to taking out insurance cover. This includes property managing agents that are directly regulated by the FCA, or those that act as appointed representatives of FCA-regulated firms in relation to arranging buildings insurance (and any other regulated activities they provide).

Regulated insurance intermediaries, who receive remuneration for their work distributing buildings insurance policies, must also ensure the remuneration is consistent with the customer's best interests rule.

Solvency II: Implementing Regulation on technical information for calculating technical provisions and basic own funds for Q2 2021 reporting

Commission Implementing Regulation (EU) 2021/744, which lays down technical information for the calculation of technical provisions and basic own funds for reporting under the Solvency II Directive has been published in the Official Journal of the EU. The Implementing Regulation, made under Article 77e(2) of the Solvency II Directive, sets out the technical information for reinsurers and insurers to use when calculating technical provisions and basic own funds for reporting with reference dates between 31 March 2021 and 29 June 2021.

The Implementing Regulation entered into force on 8 May 2021 and applies from 31 March 2021.

EIOPA launches 2021 EU-wide insurance sector stress test

The European Insurance and Occupational Pensions Authority (EIOPA) has announced the launch of the 2021 EU-wide stress test for the insurance sector. EIOPA explains that the 2021 stress test focuses on a prolonged COVID-19 scenario in a "lower for longer" interest rate environment. The scenario, developed in cooperation with the European Systemic Risk Board (ESRB), will assess the impact of the economic consequences of the COVID-19 pandemic, which affect confidence worldwide and prolong the economic contraction. The stress test will evaluate both the impact on the capital and the liquidity position of the undertakings in scope.

The objectives of the 2021 stress test are to:

- assess the resilience of participants to adverse scenarios from a capital and liquidity perspective to provide supervisors with information on whether the insurers are able to withstand severe but plausible shocks;
- consider possible recommendations to the industry and allow supervisors to engage with insurers on potential remedial actions; and
- complement the micro-prudential assessment with the estimation of potential spill-over from the insurance sector triggered by widespread reactions to the prescribed shocks.

The 2021 exercise includes 44 European (re)insurance undertakings. The companies were selected based on size, EU-wide market coverage, business lines conducted (life and non-life business), number of represented jurisdictions and local market coverage. In total, the target sample, defined in cooperation with the national competent authorities, covers 75% of the EEA based on total assets under the Solvency II Directive.

EIOPA states that it is now carrying out a questions and answers process to provide further clarifications to participants. It plans to publish the stress test results in December 2021.

IBOR transitions and issues information request: EIOPA consultation

EIOPA has published a consultation paper on Interbank Offered Rates (IBOR) transitions.

The consultation considers adjustments to EIOPA's risk-free rate (RFR) methodology and production in light of the EU Benchmark Regulation (EU BMR), which requires financial benchmarks to be transparent and to measure the underlying economic reality in a representative way. EIOPA aims to adopt a common approach for all currencies on the transition to the new rates to continue producing consistent RFR term structures.

The proposed approach takes into consideration recent market developments and responses received to EIOPA's discussion paper, which was published in January 2020.

The consultation closes on 23 July 2021.

Alongside the consultation, EIOPA has issued an information request from national supervisory authorities (NSAs) on the impact of IBOR transitions. Insurance and reinsurance undertakings from the EEA, who are subject to the Solvency II Directive, are asked to provide information on the impact of IBOR transitions on the solvency position of undertakings with reference date 31 March 2021. NSAs will contact a representative sample of undertakings to participate in the information request. Insurance and reinsurance undertakings should submit the completed reporting template to the respective NSA by 25 June 2021. The template should be filled according to the instructions in the technical specifications and taking into account the technical information.

EIOPA plans to disclose results from the information request, together with its consultation on the IBOR transitions, in September 2021.

Comparable outcomes and high-level principles: IAIS consultation responses

The International Association of Insurance Supervisors (IAIS) has published a document setting out the main comments received on its consultation on comparable outcomes and high-level principles.

In November 2020, the IAIS consulted on a draft definition and high-level principles to inform the criteria that will be used to assess whether the aggregation method (AM) provides comparable outcomes to the insurance capital standard (ICS). The document sets out details of the feedback received to the consultation and IAIS' policy decisions taken in response to feedback.

The IAIS states that it has decided to retain without changes the draft definition of comparable outcomes and high-level principles. It also notes that many of the comments on the consultation requested clarification of the terminology used. It intends to address the issue of clarity of interpretation as part of the development of the criteria.

IAIS intends to consult on the draft criteria in Q4 2021.

Funds and Asset Management

Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2021

The Financial Services and Markets Act 2000 (Collective Investment Schemes) (Amendment) Order 2021 (SI 2021/566) has been published, together with an Explanatory memorandum.

The Order clarifies that a firm that takes over lending agreements operated via a peer-to-peer lending platform, specifically because the original firm is being wound up, is not a collective investment scheme (CIS) and is, therefore, exempt from being authorised by the UK Financial Conduct Authority (FCA) for this particular activity.

The Order does this by amending the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (SI 2001/1062), which sets out the kinds of arrangement that do not amount to a CIS as defined in section 235 of the Financial Services and Markets Act 2000.

The Order comes into force on 18 June 2021.

Making money market funds more resilient: BoE Governor speech

The Bank of England (BoE) has published a speech by Andrew Bailey, BoE Governor, on the reforms needed to make money market funds (MMFs) more resilient. Mr Bailey explains that, as MMFs played a role in amplifying the stress seen in the global financial crisis, the "dash for cash" at the start of the COVID-19 pandemic is the second time they have proved to be insufficiently resilient. It is, therefore, right that a large amount of effort is going towards tackling these issues.

He identifies five principles that could shape a framework for reforms and explains that three big-picture changes flow from these principles and should form the basis of the reforms. These three changes are:

- the removal of the adverse incentives introduced by the liquidity thresholds related to the use of suspensions, gates and redemption fees;
- the simplification of the landscape to make clearer the critical distinction between cash-like funds and investment funds; and
- the more explicit definition of what constitutes cash-like.

Mr Bailey emphasises that no single reform will solve things on its own and states that there needs to be a coherent package of reforms to address the current vulnerabilities in the MMF sector. He identifies three broad approaches that illustrate the potential options available:

- at one extreme, asset holdings could be limited to government instruments. Given the low risk and liquid nature of these instruments, this would materially reduce run risk;
- at the other extreme, the liquidity mismatch could be removed by making funds non-daily dealing (that is, not cash on demand), which would require a term notice period; or
- a combination of measures could be used to reduce the risks to a sufficiently low level. For example, a limit could be introduced on the percentage of assets an MMF could hold in non-government instruments, to reduce the holding of less liquid assets. This could be combined with making sure funds are structured as variable net asset value, although with this asset mix the variability of the value in the fund should be

lessened. Also, there should be no regulatory cliff-edges, so that funds could be more confident to release their cash buffers in times of stress to meet withdrawals.

Mr Bailey notes that the Financial Stability Board (FSB) will be consulting shortly on what reforms would be most appropriate and states that the BoE remains very supportive of the FSB's work.

Authorised fund regime for investing in long-term assets: FCA CP21/12

The FCA has published a consultation paper, CP21/12, on a new authorised fund regime for investing in long-term assets. These assets are sometimes called productive finance and include venture capital, private equity, private debt, real estate and infrastructure.

The FCA proposes to create a new category of fund called a long-term asset fund (LTAF). A new chapter 15 of the Collective Investment Schemes (COLL) sourcebook will contain rules for LTAFs. Authorised fund managers will also need to comply with rules in other sourcebooks, including PRIN, FUND, COBS and SYSC.

LTAFs will be alternative investment funds (AIFs). They will make investments in assets that may be complex and risky, which means that their managers will need to have appropriate resources as well as good systems and controls. Therefore, the FCA proposes to require that only firms that are authorised as full-scope UK alternative investment fund managers (AIFMs) can manage LTAFs.

The FCA's proposed framework for the LTAF is principles-based and it does not propose to set detailed or prescriptive rules in many areas. It has designed a regime that it considers will secure an appropriate degree of protection investors for whom the products might be appropriate. LTAFs will facilitate investment through a UK-authorised fund, in assets that are less liquid, and potentially higher risk, than assets that are available for mainstream retail funds.

Pending feedback, the FCA proposes to initially restrict the distribution of LTAFs to professional investors and sophisticated retail investors (based on the distribution rules for qualified investor schemes (QIS)). It has designed the rules to enable wider distribution if it subsequently decides that this would be appropriate.

The FCA plans to enable LTAFs to invest in a range of long-term illiquid assets, with few restrictions on eligible investments. Since the types of investment held within an LTAF could have diverse risk characteristics and return profiles, it proposes to require additional disclosures to help potential investors understand how the fund will be managed and explain important features.

The FCA is also proposing to amend the permitted links rules in COBS 21.3 to allow defined contribution (DC) pension schemes to invest in LTAFs.

The consultation closes on 25 June 2021. The FCA intends to publish a policy statement and final rules later in 2021.

Liquidity mismatch in authorised open-ended property funds: FCA FS21/8

The FCA has published a feedback statement, FS21/8, setting out the feedback it received to its August 2020 consultation paper on liquidity mismatch in authorised open-ended property funds (CP20/15).

The FCA reports that respondents expressed a range of views, though many defended the utility of open-ended property funds as a component of an investment portfolio. Only a small number

of respondents agreed with the proposal that property funds operate a notice period (of between 90 and 180 days) before processing investor redemption requests, as consulted on. However, just over half of respondents, who expressed a clear position, supported the proposals "in principle" but subject to the following important conditions:

- the wider "ecosystem" that supports and distributes investment funds (including platforms' and advisers' systems) being able operationally to support notice periods; and
- investments in funds with notice periods continuing to be eligible assets for ISA purposes.

The FCA states that it is carefully considering its next steps in view of the feedback received. It also plans to consider feedback to its separate consultation paper on LTAFs (see above), and wider progress on LTAFs, before finalising its policy on notice periods for property funds.

If it proceeds with introducing mandatory notice periods for property funds, it will allow for a sufficiently long implementation period before the rules come into force, to allow firms to make operational changes. It notes feedback that 18 months to two years would be an appropriate period.

Alongside FS21/8, the FCA also published a statement on its work in this area. In this, it commits to continue to work with industry stakeholders, including through the Productive Finance Working Group set up by the FCA, Bank of England and HM Treasury to overcome the operational barriers identified.

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