



FIG Bulletin

Recent developments
19 April 2021

Hogan
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General

Financial Guidance and Claims Act 2018 (Commencement No 7) Regulations 2021

The Financial Guidance and Claims Act 2018 (Commencement No. 7) (Dissolution of the Consumer Financial Education Body) Regulations 2021 ([SI 2021/433](#)) have been published. The Regulations bring into force, on 6 April 2021, various paragraphs of Schedule 3 to the Financial Guidance and Claims Act 2018 (FGCA), which make minor and consequential amendments to the Financial Services and Markets Act 2000 (FSMA), the Financial Services Act 2010 and the Financial Services Act 2012.

The effect of amendments is the dissolution of the consumer financial education body, the functions of which have been transferred to the single financial guidance body (the Money and Pensions Service) established under section 1(1) of the FGCA.

Holding company approvals: PRA webpage

The Prudential Regulation Authority (PRA) has published a new [webpage](#) on holding company approvals.

The PRA explains that Part 12B of FSMA requires certain parent financial holding companies (FHCs) and parent mixed financial holding companies established in the UK to apply to the PRA for approval or exemption from the new requirement to be approved. The new webpage is aimed at these holding companies. It includes limited information on submitting an approval or exemption application. The webpage links to a [draft version](#) of the application form, together with a [draft version](#) of the related notes. Companies applying will have to pay a £2,500 fee. The PRA also explains that it will carry out an assessment of each application consistent with Part 12B, and in making its decision, it will consult with the Financial Conduct Authority (FCA).

HM Treasury introduced Part 12B into FSMA as part of the UK implementation of the Capital Requirements Directive V. It fully entered into force on 29 December 2020.

2021/22 regulated fees and levies: PRA CP8/21

The PRA has published a consultation paper, [CP8/21](#), on its regulated fees and levies for 2021/22. In its consultation, the PRA sets out proposals relating to:

- the annual funding requirement;
- fees for firms in the Temporary Permissions Regime and the Financial Services Contract Regime;
- changes to new firm authorisation fees and variation of permission regulatory transaction fees; and
- the distribution of retained penalties for 2020/21.

The deadline for responses to CP8/21 is 20 May 2021. The PRA indicates that it will publish a policy statement with final rules on 6 July 2021, with the rules themselves entering into force on 8 July 2021.

ESMA - UK FCA cooperation

The European Securities and Markets Authority (ESMA) has published a [summary of conclusions](#) of the meeting of its Board of Supervisors on 23 February 2021, which includes a

brief note of a meeting with Nikhil Rathi, FCA CEO, in the context of cooperation between the FCA and ESMA. Items discussed included:

- the importance of international standards and their consistent application;
- the EU and the UK's commitment to promoting sustainable finance, in particular the concept of materiality;
- the status of the amendments to the EU Packaged Retail and Insurance-based Investment Products Regulation and its implementing acts; and
- the Swiss franc London Inter-Bank Offered Rate (LIBOR).

It was agreed that a similar dialogue would take place twice a year.

COVID-19: FCA extends guidance on cancellations and refunds

On 1 April 2021, the FCA published [finalised guidance](#) on cancellations and refunds aimed at credit and debit card firms and insurance providers in the context of COVID-19. It extended the guidance that was published in October 2020, due to expire on 2 April 2021. The new guidance came into effect from 2 April 2021 and will remain in force until varied or revoked.

The FCA will keep the guidance under review as the wider situation relating to COVID-19 develops and will consider whether it should make the guidance permanent, either in its current form or with some changes to it. Any permanent guidance will be subject to a full consultation.

Regulating the UK as global financial centre: FCA speech

The FCA has published a [speech](#) by Nausicaa Delfas, FCA Executive Director of International, on the FCA's approach to regulating the UK as a global financial centre. Points of interest in Ms Delfas' speech include:

- post-Brexit, in the wholesale market the FCA is already acting to better tailor its rules and practices. The intention is to take measures that are proportionate, to meet real needs and concerns, and to give extra flexibility to market participants, without compromising the protections the FCA considers necessary for both markets and consumers;
- over the longer term, several important areas must be addressed, including sustainable finance. For the first time, alongside other regulators, the FCA has been asked by HM Treasury to formally integrate into the way it regulates the goal of moving to a net zero economy in the UK by 2050. The FCA intends to consult by mid-2021 on proposals for disclosures aligned with the recommendations of the Financial Stability Board's (FSB) Task Force on Climate-related Financial Disclosures (TCFD) by asset managers, life insurers and FCA-regulated pension providers. It also acts as co-chair of an issuer disclosures workstream of the International Organization of Securities Commissions' (IOSCO) Sustainable Finance Taskforce;
- a central element of adapting the UK's regulatory and legislative framework post-Brexit is the proposed transfer of responsibility to the regulators for maintaining the firm-facing requirements that currently lie on the statute book. This transfer is an essential piece of work;
- the standards the FCA applies to international firms seeking authorisation will be the same as those it applies in its ongoing supervision of firms. In this context, the FCA continues to monitor very closely the implementation of firms' restructuring plans, assessing their implications for the integrity of UK markets, the outcomes for clients and the ongoing "supervisability" of firms' UK activities. In practical terms, the specific approach the FCA takes to international firms will depend both on how strong the level of

cooperation is with individual jurisdictions, as well as consistency of regulatory outcomes; and

- the FCA is closely involved in the negotiations for a mutual recognition agreement with Switzerland, and other bilateral work. It has also been working closely with US counterparts to ensure UK firms' access to US markets continues and is strengthened, where possible. The FCA will support the government in its ongoing Free Trade Agreement negotiations with the US.

Purposeful AML controls: FCA speech

The FCA has published a [speech](#) by Mark Steward, FCA Executive Director of Enforcement and Market Oversight, on the importance of purposeful anti-money laundering (AML) controls. Points of interest in Mr Steward's speech include:

- systems and controls that are purposeful, efficient and courageous in identifying suspicious activity are vitally important. Systems and control failures provide an invisible, illicit cover for criminals and criminal activity that affects the whole community, not only in the UK, and can erode confidence in the financial system;
- two of the FCA's biggest sanctions in the last 12 months relate to failures to address financial crime and AML risks. Both cases highlight inadequate systems and controls and illustrate how failures in London can have consequences outside the UK;
- there is an inherent risk that complex systems lose a sense of their purpose, where the management challenge to maintain the system becomes an end in itself, rather than the system or control acting to identify and manage the actual risks facing firms. AML systems and controls must therefore be focused explicitly on their activating purpose and function, to ensure they are neither simply a bureaucratic process nor easily manipulated;
- the FCA currently has 42 investigations ongoing into firms and individuals, involving, for example, systems and controls over politically exposed persons, customers with significant cash intensive operations, correspondent banking and trade finance, and transaction monitoring. AML investigations are often complex because they are rarely transactional and require a systemic understanding of how a firm operates, its governance controls, its cultural habits, and the inner workings of sometimes opaque systems;
- the FCA has increased its surveillance of online investment promotions targeting offers from unauthorised firms, potential investment scams and other "too good to be true" promotions, including lead generation sites. A number of these sites are under investigation or have become the subject of proceedings. The FCA has also issued alerts on its Warning List; and
- the FCA became the AML supervisor of cryptocurrency firms in January 2021. It has developed the Unregistered Cryptocurrency Businesses List. Cryptocurrency firms appearing on the list should serve as a warning for FCA authorised firms (including banks that may be providing banking services), as well as consumers.

Non-compliant financial promotions: FCA quarterly data

The FCA has published a new [webpage](#) showing the number of financial promotions that have been amended or withdrawn by firms due to non-compliance with its rules. The FCA explains that, when it identifies an advert that breaches its rules, the FCA asks the firm that has communicated or approved it to withdraw the advert or change it so that it is compliant. Firms may also be asked to consider whether any customers may have acted on a non-compliant promotion and to take appropriate action to remedy any harm consumers may have suffered as a

result. To improve transparency, the FCA is now publishing quarterly data on the outcomes of non-compliant financial promotions from 2021.

FCA Financial Services Register Extract Service

The FCA has updated its [website](#) to announce the launch of a new version of its Financial Services Register Extract Service (RES). It has also published a revised version of the [Subscribers' Handbook](#) for the RES.

The RES forms part of the FCA's publication scheme, which has been compiled in line with its obligations under the Freedom of Information Act 2000. It provides files containing a subset of FS Register data records (as opposed to the Financial Services Register which displays a single record at a time). The RES enables firms and consumers to subscribe to either firms' data or firms' and individuals' data on a regular or one-off basis. Records not included in the RES relate to money laundering regulations, exempt professional firms, directory for certified persons information and information regarding waivers and discretion or disciplinary procedures.

The Subscribers' Handbook provides an overview of the RES, including the information that is available, format and frequency, and explains how to become a subscriber. It also explains the structure and content of the files that comprise the RES, associated charges and provides answers to FAQs. The Handbook replaces the previous version that was published in July 2016.

The new version of the RES has been introduced as part of the FCA's Transformation Programme and Data Strategy.

FCA policy development update

The FCA has updated its policy development update [webpage](#) for April 2021, setting out information on recent and future FCA publications.

G20 communique: financial services aspects

The G20 has published a [communique](#) following a virtual meeting of finance ministers and central bank governors on 7 April 2021. On financial sector-related reforms, the communique states that the G20, among other things:

- asks the FSB to work on evaluating the availability of data and data gaps on climate-related financial stability risks, and on ways to improve climate-related financial disclosures, and to report on these subjects in July 2021;
- reiterates its commitment to the FSB's principles agreed in April 2020 underpinning the national and international responses to COVID-19;
- calls on the FSB to continue to support international coordination on COVID-19 response measures in relation to financial stability, including through information sharing and through monitoring consistency with the agreed international standards;
- commits to a timely and effective implementation of the G20 roadmap to enhance cross-border payments; and
- commits to further strengthening the Financial Action Task Force (FATF) global network of regional bodies in order to reinforce the effective implementation of the FATF standards.

COVID-19: FSB update on support measures and roadmap addressing climate-related financial risks

The FSB has published a [letter](#) sent to G20 leaders ahead of their April 2021 summit. The letter covers, among other things, a new roadmap for understanding and addressing climate-related financial risks. It has also published a [report](#) on policy considerations relating to the unwinding of its COVID-19 support measures.

UK implementation of remuneration standards: FSB peer review report

The FSB has published a [report](#) setting out the findings of a peer review of how the UK has implemented its Principles and Implementation Standards of Sound Compensation Practices. As well as assessing how the UK authorities have implemented the Principles and Implementation Standards, the FSB assessed the effectiveness of financial sector compensation reforms in the UK. It also briefly considered compensation-related developments relating to the COVID-19 pandemic and Brexit.

Although the FSB considers that some of the UK authorities' approaches can serve as examples of good practice for other jurisdictions, it believes the UK can take additional steps to further strengthen the financial sector compensation framework in a few areas. Recommendations are set out in the report. They include reviewing the interaction between the UK's remuneration regimes and the senior managers and certification regime (SM&CR) and providing additional guidance to the insurance sector on the UK Solvency II remuneration requirements.

The PRA and FCA have responded to the FSB, [noting](#) the FSB's recommendations to further strengthen the UK's remuneration framework. The authorities advise that they will work together to take these forward. In all cases, the timings for taking the recommendations forward will be balanced against other regulatory priorities. They also advise that the FCA plans to consult on a new remuneration regime for investment firms shortly, as part of the new Investment Firms Prudential Regime.

Sustainable finance market dynamics: NGFS report

The Network for Greening the Financial System (NGFS) has published a [report](#) on sustainable finance market dynamics. This report presents an overview of the market dynamics for mobilising green and sustainable finance. It identifies three main channels through which financial markets can help steer the necessary transformation of the real economy towards higher levels of sustainability: disclosure; risk management; and mobilisation of capital. These three channels are considered in separate sections in the report. The report also provides examples of policies, regulations and guidance addressed to market participants on these three topics.

In addition, the NGFS sets out in the report a series of key takeaways for further consideration by policymakers and market participants, including:

- financial authorities must support global disclosure frameworks and efforts to establish a comprehensive corporate disclosure standard aligned with the FSB's TCFD recommendations, and the development of a global set of sustainability reporting standards;
- multinational financial institutions need to adopt and promote global voluntary sustainability standards and disclosure frameworks in the different jurisdictions in which they operate;

- credit, as well as environmental, social and governance, rating providers must enhance transparency surrounding their methodologies, disclosing the criteria they use to assess the materiality of climate and sustainability factors, the manner in which these are measured and incorporated into ratings, and the weights they assign to them; and
- regulators should require financial institutions to consider material climate and sustainability factors as financial factors. Financially material climate and sustainability factors should be part of the fiduciary duty of asset managers.

In the report's concluding remarks, the NGFS states that, ultimately, the goal of society, regulators, and international organisations should be for financial markets to foster the transformation of the global economy towards net zero emissions.

Banking and Finance

COVID-19: BoE statement on regulatory treatment of Recovery Loan Scheme

The Bank of England (BoE) has published a [statement](#) on the regulatory treatment of the UK Recovery Loan Scheme (RLS), which has been [launched](#) as part of the government's COVID-19 support for UK businesses. The statement sets out the Prudential Regulation Authority's (PRA's) observations on whether the guarantees provided by the Secretary of State for Business, Energy and Industrial Strategy under the RLS are eligible for recognition as unfunded credit risk mitigation (CRM) under the UK Capital Requirements Regulation (UK CRR).

The PRA stresses that its statement is not definitive and encourages firms to review relevant articles of the UK CRR and any relevant PRA rules and guidance (including expectations set out in the PRA's Supervisory Statement on credit risk mitigation, [SS17/13](#)). For example, the PRA expects firms to fully understand the duties and standards of care imposed on participating firms and have appropriate systems and controls to ensure they can comply with the terms of the RLS. The PRA also states that, where necessary, firms should seek independent advice to confirm that all the applicable requirements and expectations have been satisfied.

PRA approach to new and growing banks: PS8/21

Following its July 2020 consultation in CP9/20, the PRA has published a policy statement, [PS8/21](#), on "Non-systemic UK banks: The PRA's approach to new and growing banks". PS8/21 contains feedback to responses to CP9/20 and contains the PRA's final policy, as follows:

- a final supervisory statement, SS3/21: Non-systemic UK banks: The PRA's approach to new and growing banks;
- an updated SS31/15: The Internal Capital Adequacy Assessment Process (ICAAP) and the Supervisory Review and Evaluation Process (SREP), containing a reference to SS3/21 in paragraph 5.25; and
- an updated Statement of Policy (SoP): The PRA's methodologies for setting Pillar 2 capital, containing a reference to SS3/21 in paragraph 9.45.

The PRA made some changes to the draft policy as a result of the responses, details of which are set out in Chapter 2.

The PRA's final policy came into effect on 15 April 2021.

Obtaining deposits through deposit aggregators: Joint PRA and FCA Dear CEO letter

The Financial Conduct Authority (FCA) has published a joint [Dear CEO letter](#) sent by it and the PRA highlighting the risks associated with the increasing volumes of deposits that are placed with banks and building societies through deposit aggregators.

In the letter, the regulators explain that the core activity of a deposit aggregator may not be regulated, and they expect firms to carry out appropriate due diligence on deposit aggregators with whom they have relationships. The regulators continue to detail expectations on firms in their letter.

The regulators warn firms that in future they may wish to discuss this matter with them and want them to be prepared to explain any actions taken in response to their letter.

UK CRR: PRA CP7/21 on credit risk and economic downturns

The PRA has published a consultation paper, [CP7/21](#), on credit risk and the identification of the nature, severity and duration of an economic downturn for the purposes of calibrating downturn loss given default (LGD) and exposure at default (EAD) under internal ratings based (IRB) models.

Articles 181(1)(b) and 182(1)(b) of the UK Capital Requirements Regulation (UK CRR) require firms to use LGD and conversion factor (CF) estimates that are appropriate for an economic downturn if those are more conservative than the respective long-run average. The European Banking Authority (EBA) has produced draft regulatory technical standards (RTS) required under Articles 181(3)(a) and Article 182(4)(a) of the EU CRR specifying the economic downturn conditions according to which firms must estimate the downturn LGDs and CFs. These technical standards did not apply in the EU before the end of the Brexit transition period and consequently were not onshored into UK law.

The PRA intends to introduce requirements for identifying an economic downturn intended to ensure that downturn estimates of LGD and EAD reflect consistent and sufficiently severe downturn scenarios, and that the selected downturn period is of sufficient duration to adequately capture the economic impact of a particular downturn event. Its proposals are based on the version of the EBA RTS published in an [EBA opinion](#) in August 2020.

The deadline for responses is 7 July 2021. The PRA intends for the new technical standards and the amendments to SS11/13 to come into force on 1 January 2022.

CRR: Delegated Regulation on specialised lending exposures

[Commission Delegated Regulation \(EU\) 2021/598](#) in respect of RTS for assigning risk weights to specialised lending exposures under Article 153(9) of the EU CRR has been published in the Official Journal of the European Union (OJ). The Delegated Regulation specifies how institutions should take into account the factors of financial strength, political and legal environment, transaction and asset characteristics, strength of the sponsor and developer, and security package when assigning risk weights to specialised lending exposures in respect of which an institution is not able to estimate probabilities of default (PDs) or the institutions' PD estimates do not meet the requirements set out in Section 6 of Chapter 3 (IRB Approach) of Title II of Part Three of the CRR.

The Delegated Regulation will enter into force on 4 May 2021. It will apply from 14 April 2022.

CRR: EBA consults on draft RTS on emerging markets and advanced economies under market risk framework

The EBA has published a [consultation paper](#) on draft RTS on emerging markets and advanced economies under Article 325ap(3) of the EU CRR, as amended by CRR II which implemented the market risk reforms made by the Basel Committee on Banking Supervision (BCBS) following on from its Fundamental Review of the Trading Book (FRTB). These include the introduction of the sensitivities-based method under the alternative standardised approach for market risk (FRTB-SA). For firms to be able to calculate own funds requirements under the sensitivities-based method, Article 325ap(3) of the CRR mandates the EBA to specify the "advanced" economies that should attract lower risk weights for equity risk under the FRTB-SA.

The EBA is seeking views on whether its draft list of advanced economies is comprehensive. The consultation closes on 2 July 2021.

Cross-border law enforcement access to bank account registries: European Commission roadmap

The European Commission has published a [roadmap](#) on an initiative relating to cross-border investigations and law enforcement access to interconnected bank account registries. Among other things, this initiative will satisfy requirements under the Fourth Money Laundering Directive (MLD4) and Directive (EU) 2019/1153 on the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences.

Comments can be made on the roadmap until 28 April 2021.

Systemically important banks: FSB final report on evaluation of too-big-to-fail reforms

The Financial Stability Board (FSB) has published its [final report](#) on the evaluation of the effects of the too-big-to-fail reforms for systemically important banks, together with an [addendum](#) to the final report's technical appendix.

The FSB has also published an [overview of responses](#) to its earlier consultation, noting that respondents generally welcomed the evaluation, commenting on the importance of the post-crisis reforms and their relevance during the COVID-19 pandemic. The overview document summarises the comments raised and sets out the main changes made to the final report to address them.

The FSB's next evaluation will be on the effects of the G20 financial reforms on bond market liquidity. It will launch the evaluation in mid-2021 and complete it in 2022.

Operational resilience and operational risk: BCBS principles

The BCBS has published [principles for operational resilience](#) which aim to increase banks' capacity to withstand disruptions due to potentially severe adverse events.

The operational resilience principles focus on governance, operational risk management, business continuity planning and testing, mapping interconnections and interdependencies, third-party dependency management, incident management and resilient cyber security, and information and communication technology (ICT). They are largely derived and adapted from existing guidance on outsourcing, business continuity and risk management-related guidance issued by the BCBS or national supervisors over a number of years. They also build on the BCBS principles for the sound management of operational risk (PSMOR).

Alongside the operational resilience principles, the BCBS has published a [revised version](#) of the PSMOR. It has made a limited number of technical revisions to:

- align the PSMOR with the recently finalised Basel III operational risk framework;
- update the guidance where needed in the areas of change management and ICT; and
- improve the overall clarity of the principles document.

Climate-related risks: BCBS report

The BCBS has published the following two reports on climate-related risks:

- [Climate-related risk drivers and their transmission channels](#): in this report, the BCBS considers how climate-related financial risks can arise and impact both banks and the banking system. It illustrates how physical and transition climate risk drivers affect

banks' financial risks via micro- and macroeconomic transmission channels. It also explores various factors that may determine the likelihood or size of the impact from climate-related risk drivers. Among other things, the BCBS explains that the economic and financial market impacts of climate-related risks can vary according to geography, sector and economic and financial system development; and

- [Climate-related financial risks: measurement methodologies](#): in this report, the BCBS provides an overview of conceptual issues related to climate-related financial risk measurement. It also describes banks' and supervisors' current and emerging practices in this area. Among other things, the BCBS explains that climate-related financial risks entail unique features, which means that sufficiently granular data and forward-looking measurement methodologies are needed to address them. To date, measurement of climate-related financial risks has centred on mapping near-term transition risk drivers into bank exposures. Credit risk measurement has attracted the most effort, with a lesser focus on other risk categories. Initial scenario analyses and stress tests have, in many cases, focused on selected portfolios or exposures for transition risks, and selected hazards for physical risks.

Taking the reports together, the BCBS concludes that climate-related risk drivers can be captured in traditional financial risk categories. However, additional work is needed to connect climate-related risk drivers to banks' exposures, and to reliably estimate these risks. While a range of methodologies is currently in use or being developed, the BCBS recognises that challenges remain in the estimation process, including data gaps and uncertainty associated with the long-term nature and unpredictability of climate change. It notes that, as these challenges are addressed, the ability to estimate and effectively mitigate climate-related financial risks will improve.

Building on this work, the BCBS will investigate the extent to which climate-related financial risks can be addressed within the existing Basel Framework, identify potential gaps in the Framework and consider possible measures to address them. It will undertake further work in three broad strands: simultaneously spanning regulatory, supervisory and disclosure-related elements for the banking system.

Consumer Finance

Consumer credit forms: FCA statement on post-Brexit changes

The UK Financial Conduct Authority (FCA) has published a [statement](#) and accompanying [webpage](#) relating to changes certain consumer credit firms will have to make to pre-contract consumer credit information forms from 1 June 2021. The FCA warns firms that, if the changes are not made, the credit agreement may only be enforceable against the debtor on an order of the court under the Consumer Credit Act 1974.

The changes relate to firms subject to regulations 8, 10 and 11 of the Consumer Credit (Disclosure of Information) Regulations 2010 (SI 2010/1013) (Disclosure Regulations) and the relevant rules in the FCA Handbook. From 1 June 2021 firms subject to:

- regulation 8 of the Disclosure Regulations must only use the new (post-Brexit) pre-contract credit information form; and
- regulations 10 and 11 of the Disclosure Regulations and CONC 2.7.2R(4)(a) of the FCA Handbook must only use the new pre-contract consumer credit information (overdrafts) form.

LSB Standards of Lending Practice for personal customers updated

The Lending Standards Board (LSB) has [announced](#) the publication of an [updated version](#) of its Standards of Lending Practice for personal customers. The standards outline the way registered firms are expected to deal with their customers throughout the entire product life cycle. The revised standards become effective on 1 July 2021 and recognise that customers are increasingly accessing credit and communicating with their lenders through a variety of digital channels.

Alongside changes to the existing standards, the LSB introduces a new standard on product and service design. It states that this will ensure that registered firms consider the needs of those customers who are at risk of exclusion, those who may be vulnerable or those who might at some point experience financial difficulty.

Brokers' failure to disclose amount of commission: Court of Appeal decision

In [Wood v Commercial First Business Ltd](#) [2021] EWCA Civ 471, the Court of Appeal upheld two High Court rulings that a borrower was entitled to rescind a loan agreement where the broker through whom the loan was arranged had received an undisclosed commission from the lender.

Payments

Omnibus accounts for payment systems operators and prefunding accounts: BoE update

The Bank of England (BoE) has updated its [webpage](#) on payment and settlement to add the following new sections to the information provided in relation to accessing and using accounts in the BoE's real-time gross settlement (RTGS) to hold funds and settle payments:

- **Omnibus accounts for payment systems operators:** omnibus accounts can be used by a recognised payment system operator to pool participant funds. This allows the operator to fully fund wholesale settlement, on their platform, with central bank money and to mitigate credit and settlement risk. The BoE explains that the funds in the account can be held both during and outside of RTGS operating hours. Balances are remunerated at Bank Rate. To directly participate in the relevant payment system using an omnibus account, an organisation must hold a reserves account. The BoE has published an [access policy](#) for BoE omnibus accounts, explaining the eligibility requirements in detail.

The BoE adds that a payment system operator must be recognised under the Banking Act 2009 to be eligible to hold an omnibus account. Organisations interested in applying for an omnibus account should contact the BoE. Payment system operators that are not recognised should discuss recognition with HM Treasury.

- **Prefunding accounts:** the BoE has created special accounts for direct settlement participants to hold funds to cover the maximum possible net debit positions they could reach in certain retail payment systems. For organisations holding a reserves account, these balances form part of their overall reserves balance and are remunerated at the same rate. Prefunding accounts are also available to settlement account holders including non-bank payment service providers. If a participant defaults, the cash set aside can be used to complete settlement. This eliminates credit risk between direct participants. These accounts are provided to direct settlement participants in Bacs and Faster Payments and the Image Clearing System for cheques.

The BoE explains it is not possible to apply directly to it for a prefunding account. Applications must be via Pay.UK, as the operator of Bacs, Faster Payments and the Image Clearing System.

APP fraud: LSB blog

The Lending Standards Board (LSB) has published a [blog](#) on the power of prevention in the fight against authorised push payment (APP) fraud. The LSB explains that APP fraud has reached unprecedented levels in the UK as criminal organisations have adapted to, and capitalised on, the impact of COVID-19 over the last year.

Customers of firms signed up to the Contingent Reimbursement Model Code (CRM Code) that have fallen victim to an APP scam (through no fault of their own) should expect to be reimbursed in full and should also receive supportive aftercare to help prevent them falling victim again. However, customers should expect to be protected against APP fraud in the first place. While reimbursement levels are an important metric, the LSB considers that it is critical the industry considers prevention and detection measures as well. It elaborates on these in the blog.

Securities and Markets

UK SFTR: FCA update on reporting LEIs

The Financial Conduct Authority (FCA) has updated its [webpage](#) on the retained EU law version of the Regulation on reporting and transparency of securities financing transactions (SFT) (UK SFTR) in relation to reporting legal entity identifiers (LEIs) of non-EEA third country issuers under the UK SFTR.

Under Article 4 of the UK SFTR, reporting counterparties must use LEIs to identify entities when submitting transaction reports under the UK SFTR. In January 2020, the European Securities and Markets Authority (ESMA) granted 12 months of forbearance from the entry into force of EU SFTR reporting requirements in relation to the reporting of LEIs of non-EEA third country issuers under the reporting technical standard. Although the industry has made progress in encouraging more widespread LEI coverage among non-EEA third country issuers, the FCA recognises that there are still many non-EEA third country issuers without an LEI.

To reduce market disruption, the FCA is extending the period during which reports under the UK SFTR without the LEI of a non-EEA third country issuer will be accepted until at least 13 April 2022. In the meantime, it expects reporting counterparties to continue engaging with non-EEA third country issuers to acquire an LEI. The FCA also expects reporting counterparties to report an LEI for non-EEA third country issuers where available.

SFTR: ESMA update on reporting LEIs

The ESMA has published an [updated statement](#) on the implementation of LEI requirements for third-country issuers under the reporting regime set out in the EU SFTR. In the updated statement, ESMA notes that the start of SFTR reporting was delayed by three months to 13 July 2020 due to the COVID-19 pandemic. ESMA has been monitoring the evolution of the reporting of LEI issuer details. It has concluded that, currently, less than 16% of all open SFTs miss an issuer LEI, compared to 26% in September 2020. However, from an individual securities perspective, more than 75% lack an LEI of the third-country issuer in the SFT reports.

Given the still unsatisfactory level of LEI coverage on a global scale, ESMA acknowledges the potential reporting implementation issue regarding SFTs entered into by EU investors for securities of third-country issuers. ESMA expects competent authorities to continue to not prioritise their supervisory actions in relation to reporting of LEIs of third-country issuers. It has issued the updated statement to ensure coordinated supervisory actions are taken in response to the issues concerning the application of the SFTR, particularly the requirements regarding third-country issuer LEI reporting.

On third-country issuer LEI reporting, ESMA extends the position set out in the January 2020 version of the statement until 10 October 2022 at the latest. During this period, ESMA expects that:

- trade repositories will not reject SFT reports of securities without a third-country issuer LEI that are lent, borrowed or provided as collateral in an SFT; and
- counterparties and other entities participating in SFTs, such as agent lenders and tri-party agents, that lend, borrow or use as collateral securities issued by third-country entities that do not have an LEI will liaise with third-country issuers to ensure they are aware of the requirements under the SFTR.

ESMA will continue to engage with third-country competent authorities to make them aware of the SFTR LEI reporting requirement and solicit a broader coverage of LEIs in third countries. It will give advance notice to market participants before 10 October 2022 regarding its position on third-country issuer LEI reporting.

SFTR: ESMA updates Q&As on data reporting

ESMA has updated its [Q&As](#) on complying with reporting requirements under the SFTR. The Q&As have been updated to simplify reporting of SFTs when an external portfolio manager is used (section 2, question 9).

EMIR and SFTR: ESMA final report and guidelines on TRs' reporting obligations

ESMA has published its [final report](#) and [guidelines](#) on the reporting of periodic information and material changes by trade repositories (TRs) to ESMA. The guidelines aim to increase the transparency of TRs supervised by ESMA under the EU Regulation on OTC derivatives, central counterparties (CCPs) and trade repositories (EMIR) and the SFTR. In particular, they clarify the format and frequency of the different categories of information which ESMA expects to receive. The guidelines will also streamline TR processes and ensure the accuracy of information used for the calculation of TR supervisory fees.

The guidelines will apply from 30 June 2021. All periodic information items that have annual frequency and a reporting deadline of 31 January should, in the first year, be submitted by 30 June 2021.

EMIR: European Commission report on possible exemption of post-trade risk reduction services from clearing

The European Commission has published a [report](#) addressed to the European Parliament and the Council of the EU, on whether certain trades should be exempted from the clearing obligation for OTC derivatives under the EMIR. Article 85(3)(c) of EMIR requires the Commission to report on whether trades that directly result from post-trade risk reduction (PTRR) services should be exempt from the clearing obligation referred to in Article 4(1) of EMIR.

The Commission explains that there is no harmonised or widespread definition of PTRR services. However, there are some common features that would allow PTRR services to be described, in a non-exhaustive way, as procedures or mechanisms by which counterparties reduce one or more types of risks of a portfolio, keeping their market exposure neutral and with the intervention of a PTRR service provider as a third party.

The Commission's report takes into account input received from ESMA in a November 2020 report, which focused on the PTRR services of portfolio compression and portfolio rebalancing. The Commission considers that, generally, certain OTC derivatives should only be exempted from the clearing obligation where the risks of granting an exemption are smaller than the risks of keeping the position as it is currently. It notes that ESMA has undertaken an extensive and thorough analysis of PTRR services. However, the Commission believes that important open questions remain. In particular, some of the aspects of the ESMA report require further quantitative assessment and analysis before the Commission can make a more informed decision on any potential proposal for legislative change. The Commission lists the issues that need further consideration, which include considering how different types of PTRR could be defined more concretely, and the materiality of the risk of circumventing the clearing obligation.

The Commission notes that further work on these issues, and more quantitative evidence, would enable a more comprehensive assessment of the issues. It considers that this could feed into the general EMIR assessment report that should be submitted to the Parliament and the Council by 18 June 2024.

EMIR: ESMA final report on RTS relating to changes to CCPs' activities and models

Following an earlier consultation, ESMA has published a [final report](#) on the following draft regulatory technical standards (RTS) relating to CCPs required by EMIR, as amended by EMIR 2.2:

- RTS specifying the conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and therefore require an extension of authorisation, and also specifying the procedure for consulting the college established under Article 18 of EMIR on whether or not those conditions are met (Article 15(3) of EMIR); and
- RTS specifying the conditions under which changes to a CCP's models and parameters are significant and therefore require validation by the relevant national competent authority and ESMA (Article 49(5) of EMIR).

ESMA has submitted the draft RTS to the European Commission. Following their endorsement, they are then subject to non-objection by the European Parliament and the Council of the EU.

MiFID: ESMA review report on functioning of OTFs

ESMA has published a "[MiFID II Review Report](#)" on the functioning of organised trading facilities (OTFs) under Article 90(1)(a) the Markets in Financial Instruments Directive (MiFID). The report contains recommendations and possible amendments to MiFID and the Markets in Financial Instruments Regulation (MiFIR) with a view to reducing the level of complexity for market participants and making the legal framework more effective.

The main focus of the report was to analyse the definition of OTFs taking a specific look at the definition of a multilateral system and the trading venue perimeter. The report also looks at the number of OTFs authorised in the EU and their market share, examines how OTFs apply discretion and reviews their use of matched principal trading (MPT).

While some proposals can be implemented by ESMA directly by publishing ESMA guidance, other recommendations are addressed to the European Commission. In this context, ESMA puts forward a two-step approach aimed at clarifying the trading venue perimeter. More specifically, ESMA proposes to the European Commission to move Article 1(7) from MiFID to MiFIR, and that ESMA publishes an opinion clarifying the boundaries of trading venues' authorisation.

In addition, ESMA recommends that the Commission adds a definition of bulletin boards to MiFID and aligns the provisions regarding the prohibition of the use of MPT among multilateral trading facilities (MTFs) and regulated markets.

The report has been submitted to the European Commission for consideration.

MiFID: ESMA updates Q&As on market structures

ESMA has published updated versions of its [Q&As](#) on market structures under MiFID and MiFIR. The updated Q&As reflect changes introduced by ESMA to a Q&A on tick sizes to reflect

the amendment introduced in Article 49(1) of MiFID that excludes large-in-scale transactions from the mandatory tick size regime (section 4, question 6).

MiFID: ESMA final report on EU SME growth markets

ESMA has published its [final report](#) on the functioning of the regime for SME growth markets under MiFID/MiFIR. The final report contains recommendations and possible amendments to the MiFID framework which are needed to improve the attractiveness of the SME growth markets regime.

The report has been submitted to the European Commission.

EMIR: European Commission Implementing Decision on equivalence of US DCMs

[European Commission Implementing Decision \(EU\) 2021/583](#), which amends the Annex to Implementing Decision (EU) 2016/1073 on the equivalence of US designated contract markets (DCMs) in accordance with EMIR, has been published in the Official Journal of the European Union (OJ).

Implementing Decision (EU) 2016/1073 was published in July 2016. In the Decision, the European Commission determined that the legal and supervisory framework applicable to DCMs in the US under the regulatory oversight of the Commodity Futures Trading Commission (CFTC) ensures that DCMs comply with the legally binding requirements that are equivalent to those that apply to regulated markets as defined in Title III of MiFID.

Since the adoption of Implementing Decision (EU) 2016/1073, a number of additional DCMs established in the US have obtained authorisation from the CFTC to trade in derivatives. Also, some DCMs referred to in the Annex to Implementing Decision (EU) 2016/1073 are no longer authorised or have amended their names. The Annex of Implementing Decision (EU) 2016/1073 is therefore amended accordingly.

Implementing Decision (EU) 2021/583 came into force on 15 April 2021.

EU CCP supervision: ESMA 2020 annual peer review

ESMA has published a [report](#) on the outcome of its 2020 annual peer review of EU CCP supervision, as required under Article 24a(7)(a) of EMIR. The focus of the 2020 peer review was CCPs' compliance with the EMIR requirements on liquidity stress testing. In particular, the review assessed the effectiveness of supervisory practices put in place by NCAs to assess compliance with the provisions of Article 44 of EMIR (liquidity risk controls) and relevant provisions in Commission Delegated Regulation (EU) 153/2013, which contains RTS on requirements for CCPs.

ESMA states that the overall outcome of the peer review is satisfactory. However, it also found that the assessment of some areas of liquidity stress testing were not always performed or being evidenced sufficiently. NCAs should make sure that the settlements of obligations of defaulting clearing members are reflected in full in the liquidity stress testing framework.

The report contains specific best practices that emerged from the review of NCAs' supervisory approaches with respect to the assessment of liquidity stress testing. ESMA also proposes considerations that it believes may enhance supervisory practices in this area.

ESMA intends to follow up on the report's findings to identify, where relevant, the most appropriate tools to further enhance supervisory convergence with respect to the considerations included in the report.

COVID-19: Amendments to Securitisation Regulation and CRR

As part of the European Commission's Capital Markets Recovery Package, the following EU Regulations were published in the OJ on 6 April 2021:

- [Regulation \(EU\) 2021/557](#) amending Securitisation Regulation (EU) (2017/2402) laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised (STS) securitisation to help the recovery from the COVID-19 crisis; and
- [Regulation \(EU\) 2021/558](#) amending the Capital Requirements Regulation (EU) No 575/2013 (CRR) as regards adjustments to the securitisation framework to support the economic recovery in response to the COVID-19 crisis.

Both Regulations came into force 9 April 2021.

STS synthetic securitisation notifications: ESMA interim templates

Following the aforementioned amendment to the Securitisation Regulation, ESMA has published [interim templates](#) which allow originators to notify ESMA of synthetic securitisations that meet the STS criteria.

ESMA explains that, until the date of the application of the RTS specifying the content and the format of STS notifications for synthetic securitisations, originators can make the necessary information available to ESMA in writing during the interim period. The interim STS synthetic notification templates can be used by on a voluntary basis by originators to ensure consistency across all STS notifications.

CRAs: ESMA letter to ESRB on credit ratings

ESMA has published a [letter](#) sent to the European Systemic Risk Board (ESRB) on the procyclical impact of downgraded corporate bonds on markets and entities across the financial system. ESMA's letter responds to a letter (dated 1 October 2020) received by it from the ESRB and follows-up an initial response. In its latest letter, ESMA focuses on the transparency of credit rating agency (CRA) methodologies and contractual references to credit ratings. Among other things, ESMA sets out preliminary observations on the definition of ratings, the rating "through-the-cycle" concept and the timely incorporation of information in credit ratings by CRAs.

Global securities financing data collection and aggregation: FSB FAQs

The Financial Stability Board (FSB) has published [FAQs](#) on global securities financing data collection and aggregation. The FSB will update the FAQs as market practices evolve.

SFTs, such as securities lending and repurchase agreements, play a crucial role in supporting price discovery and secondary market liquidity for a wide variety of securities. However, such transactions can also be used to take on leverage and can lead to maturity and liquidity mismatched exposures. They can therefore pose risks to financial stability. Considering this, the FSB published policy recommendations to address financial stability risks in SFTs in August 2013. In November 2015, it developed standards and processes for collecting and aggregating global data on SFTs (SFT Data Standards). To facilitate national implementation of the SFT Data Standards, the FSB published reporting guidelines in March 2018.

Drawing on the practical experience of FSB member jurisdictions in implementing the SFT Data Standards, as well as of the Bank for International Settlements, the FSB has published the FAQs to promote a common approach and to further help national implementation of the SFT Data Standards.

Continuity of access to FMIs for firms in resolution: FSB survey on questionnaire

The FSB has published an online [survey](#) seeking feedback on stakeholders' experience of using its [questionnaire](#) on the continuity of access to financial market infrastructures (FMIs) for firms in resolution. The FSB published the questionnaire in August 2020 and aims to gather feedback from FMIs, firms subject to a resolution planning requirement and bank resolution authorities.

Responses to the survey will inform the revision of the questionnaire by FSB member authorities. The survey closes on 3 May 2021.

FX Global Code and disclosure templates: GFXC consultation

The Global Foreign Exchange Committee (GFXC) has published a [press release](#) seeking feedback on proposed amendments to the FX Global Code of Conduct and draft disclosure templates. It has also published a [webpage](#) on the request for feedback. Details of the GFXC's proposals are set out in the following documents:

- [Attachment A: anonymous trading](#). The GFXC is proposing guidance on best practice concerning data policies, tag management, credit policies and the identification of code signatories;
- [Attachment B: proposals for enhancing transparency to execution algorithms and supporting transaction cost analysis \(TCA\)](#) and an [example TCA template](#). Among other things, the GFXC is seeking views on proposals for a TCA data analysis template to support analysis by users of algorithms and an FX algo due diligence template to assist in the disclosure of relevant information to users;
- [Attachment C: disclosures](#). Among other things, the GFXC is seeking views on disclosure cover sheets for liquidity providers and FX venues that are intended to help market participants navigate disclosures documents; and
- [Attachment D: FX settlement risk](#). The GFXC's proposals are intended to strengthen the Code's guidance on the management of settlement risk, particularly concerning the use of payment-versus-payment (PVP) settlement mechanisms where they are available.

The GFXC has also published a [cover note](#) to the request for feedback, which groups together all the questions set out in the individual attachments and the proposed amendments to the Code.

The deadline for responses is 7 May 2021. The GFXC intends to finalise the proposals for approval at its June 2021 meeting and to publish an updated version of the Code shortly afterwards.

Insurance

Solvency 2 (Credit Risk Adjustment) Regulations 2021

The Solvency 2 (Credit Risk Adjustment) Regulations 2021 ([SI 463/2021](#)) have been published, together with an [explanatory memorandum](#) and a [de minimis impact assessment](#). The Regulations come into force on 28 May 2021. They amend Article 45 of the retained UK Solvency II Delegated Regulation (2015/35).

The new Regulations set out a new methodology for the credit risk adjustment applied in the calculation of the basic risk-free interest rate term structure used by insurance and reinsurance undertakings to discount their liabilities. Given that the London Interbank Offered Rate (LIBOR) is being phased out, these Regulations allow for an appropriate adjustment for the credit risk of other benchmarks, such as for sterling markets the Sterling Overnight Index Average (SONIA).

The Explanatory Memorandum explains that no impact assessment has been prepared as HM Treasury considers the net impact on firms will be less than £5 million a year. Therefore, a de minimis impact assessment has been carried out.

IDD single rulebook launched by EIOPA

The European Insurance and Occupational Pensions Authority (EIOPA) has [announced](#) that it has launched its Insurance Distribution Directive (IDD) [single rulebook](#). The single rulebook is an online tool which aims to promote the consistent implementation of the Solvency II regulatory framework for insurance supervision. It covers the IDD, Delegated Regulation (EU) 2017/2358, Delegated Regulation (EU) 2017/2359, Delegated Regulation (EU) 2019/1935 and Implementing Regulation (EU) 2017/1469) as well as EIOPA guidelines and Q&As relating to the IDD. EIOPA has also published a [user guide](#) for the rulebook.

Insurance product manufacturers: EIOPA consults on framework to address value for money risk in EU unit-linked market

EIOPA has published a [consultation paper](#) on a framework to address value for money risk in the EU unit-linked market. Comments can be made on the proposals until 16 July 2021.

Unit-linked products are (in gross premium terms) the most predominant insurance-based investment product (IBIP) in the EU. EIOPA estimates that these products account for a significant portion of the total assets under management in the EU. It has published the consultation paper in response to its repeatedly highlighted concerns that, while unit-linked products can and often do offer important benefits for policyholders, costs for some of these products continue to remain too high. These concerns have been heightened by the COVID-19 crisis.

In its consultation paper, EIOPA outlines a proposed framework for insurance product manufacturers that is designed to ensure that value for money aspects are taken into account when product testing activities are performed on unit-linked (and hybrid) products. It provides further guidance on how these firms should assess value for money, and measures to be taken to mitigate risks relating to product complexity.

The framework is a first step towards a broader set of tools to assess value for money. These are expected to include more practical guidance, such as further guidance on how to group products to assess whether costs are due, and models to help with testing to assess whether products offer value for money and provide practical benchmarks.

Solvency II: EIOPA annual report on limitations and exemptions from reporting

EIOPA has published its [annual report](#) on limitations and exemptions from reporting by national competent authorities in different markets, during 2019 year-end and Q1 2020, under the Solvency II Directive. The report highlights differences with regards to last year's report.

Solvency II: EIOPA report on year-end 2019 comparative study on market and credit risk modelling

EIOPA has published a [report](#) setting out the findings from its comparative study on market and credit risk modelling under the Solvency II Directive. The report summarises the key findings from the study undertaken in 2020 based on year-end 2019 data. The study focused on euro-denominated instruments, although it included selected sterling and USD denominated instruments as well as foreign exchange rate indices. It involved 21 participants from eight member states.

The overall results show significant variations in asset model outputs, consistent with past studies, which EIOPA explains could be partly attributable to model and business specificities already known by the relevant national competent authorities, but also indicate a certain need for further supervisory scrutiny. The full results of the study and necessary supervisory actions are set out in section 5 of the report.

According to a related [press release](#), the year-end 2020 survey was launched on 15 January 2021 and the results will be published in early 2022.

EIOPA 2021 EU-wide insurance sector stress test

EIOPA has published a [webpage](#) on the EU-wide insurance sector stress test to be held in 2021. The aim of the stress test is to assess the resilience of the participants to the adverse scenario(s) by a capital and liquidity perspective, to provide supervisors with information on whether these insurers can withstand severe but plausible shocks. Participants are asked to estimate their position under two assumptions: fixed balance sheet and constrained balance sheet. The target sample of participants covers 75% of the EU-wide market based on total assets under the Solvency II Directive.

The 2021 exercise mainly has a microprudential approach and allows EIOPA to make recommendations to the industry, and enables supervisors to ask insurance undertakings to take remedial actions, if necessary, to improve their resilience. The 2021 stress test exercise focuses on a prolonged COVID-19 pandemic scenario in a "lower for longer" interest rate environment.

On its webpage, EIOPA outlines a timeline for the stress test process.

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