



FIG Bulletin

Recent developments
21 May 2021

Hogan
Lovells

Contents

General	3
Climate change: BoE speech on course to net zero	3
Quantifying culture and its implications for bank riskiness: Bank Underground article	3
PRA update CP9/21 - Remuneration: Correction to the definition of "higher paid material risk taker"	3
New Consumer Duty: FCA CP12/13	3
Outsourcing: FCA clarifies its expectations regarding firms' review of legacy outsourcing arrangements	3
Preventing claims management phoenixing by financial services firms: FCA CP21/14	4
Financial Services Culture Board	5
EU Supervisory Data Strategy: European Commission consults on roadmap	5
EU AML and CTF action plan reforms: European Commissioner speech	5
Sustainable finance taxonomies: ICMA overview and recommendations	5
Banking and Finance	7
2022/23 supervisory benchmarking exercise for capital internal models: PRA statement	7
LIBOR transition: Working Group recommends successor rate for fallbacks in bond documents	7
Securitisation requirements: ECB to supervise bank compliance	7
SSM reporting of supervisory financial information: ECB adopts amendments	8
EU crisis management and deposit insurance framework review: SRB blueprint	8
EBA report on reliance on external credit ratings	8
Payments	9
FSCS protection: FCA Dear CEO letter to e-money firms	9
Securities and Markets	10
EU SSR: ESMA proposes permanently lowering reporting threshold of net short positions	10
IBA publishes GBP SONIA Spread-Adjusted ICE Swap Rate beta settings	10
Global perspective on derivatives regulation: IOSCO speech	10
	2

General

Climate change: BoE speech on course to net zero

The Bank of England (BoE) has published a [speech](#) by Sarah Breeden, Executive Director, UK Deposit Takers Supervision in which she talks about how financial services firms in the UK can act as stewards in the move to a "net zero" economy. Ms Breeden considers the important role of climate scenario analysis in helping to plot the best course to net zero, and she shares her experiences of designing climate scenarios and offers some guidance to users of scenarios.

Quantifying culture and its implications for bank riskiness: Bank Underground article

The BoE's Bank Underground has published an [article](#) on "Quantifying culture and its implications for bank riskiness" in which the authors refer to a Staff Working Paper on organisational culture and bank risk. Staff working papers set out research in progress by Bank of England staff, with the aim of encouraging comments and debate.

Among other things, the authors explain that it is often said that a bank's culture is a leading indicator of its risk. While this claim has often been made, it has been far less frequently substantiated. The authors' research provides evidence to support this claim and explains how they quantified the cultural health of the UK banking sector and explore how this links to bank risk.

PRA update CP9/21 - Remuneration: Correction to the definition of "higher paid material risk taker"

The Prudential Regulation Authority (PRA) has published an update to CP9/21 "Remuneration: Correction to the definition of 'higher paid material risk taker'". The PRA has discovered that past responses to this consultation have not been received. The issue with the mailbox has since been resolved, therefore the PRA requests that responses sent before 19 May 2021 are re-sent to the following mailbox: CP9_21@bankofengland.co.uk. This consultation has also been extended until 2 June 2021.

New Consumer Duty: FCA CP12/13

The Financial Conduct Authority (FCA) has published a consultation paper, [CP21/13](#), on a new consumer duty, which would set clearer and higher expectations for firms' standards of care towards consumers. We have published a separate briefing on this: [FCA proposals for a new Consumer Duty](#).

The FCA is holding a [webinar](#) on the proposals on 10 June 2021.

Comments can be made on CP21/13 until 31 July 2021. The FCA expects to consult on the proposed rule changes by 31 December 2021 and will make any new rules by 31 July 2022.

Outsourcing: FCA clarifies its expectations regarding firms' review of legacy outsourcing arrangements

The FCA has updated its webpage on outsourcing and operational resilience to clarify its expectations regarding firms' obligations to review their legacy outsourcing arrangements for the purposes of complying with the European Banking Authority's (EBA) guidelines on outsourcing.

The EBA's guidelines require firms to review their existing critical or important outsourcing arrangements entered into before 30 September 2019 to ensure they are compliant with the guidelines. Where firms have not finalised this review by 31 December 2021, the guidelines require them to inform their competent authority of that fact, including the measures planned to complete the review or the possible exit strategy.

The FCA has updated its webpage to confirm that, while it expects firms to continue to comply with the guidelines following the UK's departure from the EU, it does not expect them to report to it on their progress towards meeting the 31 December 2021 timeline in the guidelines regarding their legacy outsourcing arrangements. It states that firms should aim to review any outstanding critical or important outsourcing arrangement at the first appropriate contract renewal following the first renewal date of each existing outsourcing arrangement or revision point. Where critical or important outsourcing arrangements have not been finalised by 31 March 2022, firms should inform the FCA.

The FCA states that this timeframe is aligned with its own final policy statement on operational resilience ([PS21/3](#)) and its approach to the EBA guidelines is aligned with that of the PRA, as set out in [PRA PS7/21](#).

Preventing claims management phoenixing by financial services firms: FCA CP21/14

The FCA has published a consultation paper, [CP21/14](#), on preventing claims management phoenixing by individuals in financial services (FS) firms.

The FCA explains that claims management phoenixing occurs when an individual connected with a wound-up FS firm reappears in connection with a claims management company (CMC), seeking to benefit from the former FS firm's poor conduct by carrying on claims management activities against it. The FCA states that, of the 250 CMCs it regulates with permission to manage FS claims, at least 18 (7%) have connections to former FS firms which could allow individuals from those firms to benefit from the firms' poor conduct. This is a concern because it could undermine public confidence in the regulatory system and the integrity of the market, potentially incentivise FS firms to act against the interests of their customers, and potentially put other CMCs at a competitive disadvantage.

To stop claims management phoenixing, the FCA proposes to:

- prohibit CMCs from carrying on any regulated claims management activity in respect of a claim or potential claim to the FSCS in circumstances where the CMC has a relevant connection with the claim; and
- require CMCs to notify it of direct and indirect connections they have or had with FS activity and with persons involved in FS activity, and to attest annually to the accuracy of these notifications.

The FCA proposes that both requirements will take effect one month from the date the proposed rules are made. It considers this will strike a reasonable balance between allowing firms to prepare and adjust, and mitigating harm caused by phoenixing activity that is already occurring.

The consultation closes on 21 June 2021.

Financial Services Culture Board

The Banking Standards Board (BSB) has relaunched as the Financial Services Culture Board (FSCB) with an expanded membership scope. The BSB website is no longer available, having been replaced with the [FSCB website](#).

On its "Our history" [webpage](#), the FSCB explains that it took this step given the growing interest in its work from firms outside banking. While the BSB worked primarily with banks, its work and approach was never bank-specific because good organisational culture matters to firms in all industries and in both the private and public sectors. The expansion of membership allows the FSCB to work individually and collectively with a wider range of firms, to the benefit of their customers, clients, employees and other stakeholders.

The FSCB will continue to work with firms and organisations not eligible for membership (that is, firms and organisations operating in other sectors or outside the UK) on a one-to-one basis through its commercial arm. This is explained more fully on the FSCB's "Our work outside membership" [webpage](#).

EU Supervisory Data Strategy: European Commission consults on roadmap

The European Commission is consulting on its [roadmap](#) on a strategy for supervisory data collection in EU financial services (Supervisory Data Strategy). The strategy aims to improve the collection of supervisory data (that is, data reported to EU and national authorities for the supervision of the financial system) and make it fit for the future.

Comments can be made on the roadmap until 15 June 2021. The Commission intends to carry out further work relating to the Supervisory Data Strategy in Q3 2021.

EU AML and CTF action plan reforms: European Commissioner speech

The European Commission has published a [speech](#) by Mairead McGuinness, European Commissioner for Financial Services, Financial Stability, and Capital Markets Union (CMU), in which she outlines elements of the reforms that the Commission intends to present further to its May 2020 anti-money laundering (AML) and counter-terrorist financing (CTF) action plan.

The presentation of a package of legal proposals to deliver the proposed new EU AML and CTF framework was initially planned for Q1 2021. Commissioner McGuinness explains that, due to technical issues and the volume of the package of measures, they will now be presented in July 2021.

In the meantime, Commissioner McGuinness shares some further elements of the Commission's plans, which cover, among other things, the single AML and CTF rulebook and the role of the new AML and CTF authority. Commissioner McGuinness also comments on the non-legislative areas of work covered by the action plan, including the Commission's plans to shortly consult on information exchange and public-private partnerships.

Sustainable finance taxonomies: ICMA overview and recommendations

The International Capital Market Association (ICMA) has published an international overview of official and market-based taxonomies for sustainable finance. It summarises the various approaches that have been taken and the different objectives being pursued. The paper aims to help market participants and stakeholders better understand existing taxonomies and their usage. It is also intended to inform interested parties involved in future developments relating to taxonomy-related initiatives. With this aim, ICMA recommends that taxonomies should be:

- targeted in their purpose and objectives;
- additional in relation to existing international frameworks;
- usable by the market for all intended purposes;
- open and compatible with complementary approaches and initiatives; and
- transition-enabled incorporating trajectories and pathways.

Banking and Finance

2022/23 supervisory benchmarking exercise for capital internal models: PRA statement

The UK Prudential Regulation Authority (PRA) has published a [statement](#) on its expectations concerning the 2022 and 2023 supervisory benchmarking exercise relating to banks' capital internal models. These relate to year-ends 2021 and 2022 respectively. The statement is relevant to those credit institutions that have been in scope of the associated reporting requirements.

As set out in the Benchmarking of Internal Approaches Part of the PRA Rulebook, relevant firms are required to report annually information on their internal approaches to the PRA. The specifications to report this information were included in Commission Implementing Regulations. However, the PRA states that such technical standards are outdated and in relation to market risk are no longer applicable under UK law. Therefore, firms will not be required or expected to submit any data for the 2022 and 2023 benchmarking exercise. This includes credit risk, market risk and IFRS 9 data.

For IFRS 9, it reflects the fact that no requirement to submit this information has been brought into UK law.

Following the end of the UK's participation in the EBA benchmarking exercise, the upcoming changes to credit and market risk models as a result of the EBA internal ratings based roadmap, and the UK's future implementation of the fundamental review of the trading book (FRTB), the PRA intends to review the future direction of the exercise.

The PRA will consult on any future proposals for a benchmarking exercise in due course. It states that firms should expect the market risk benchmarking exercise to resume in line with the UK implementation of FRTB, and the credit risk benchmarking exercise to resume in 2024.

If firms have questions with regard to their planned reporting approach, they should contact their supervisor.

LIBOR transition: Working Group recommends successor rate for fallbacks in bond documents

The Working Group on Sterling Risk-Free Reference Rates has published a statement recommending SONIA compounded in arrear as the successor rate for fallbacks in bond documents that reference GBP LIBOR. The recommendation follows feedback received by the Working Group on its consultation in February 2021.

Securitisation requirements: ECB to supervise bank compliance

The European Central Bank (ECB) has [announced](#) that it will start ensuring that the banks it directly supervises comply with requirements for risk retention, transparency and resecuritisation, which are set out in Articles 6 – 8 of the Securitisation Regulation. The decision follows recent clarifications in amendments to the Securitisation Regulation.

Over the coming months, the ECB will define how it intends to perform these supervisory tasks. It will then communicate further details on its supervisory approach and model, including obligations for banks to notify their supervisor of securitisation-related activities.

SSM reporting of supervisory financial information: ECB adopts amendments

The European Central Bank (ECB) has adopted a Regulation ([ECB/2021/24](#) – "Amending Regulation") amending ECB Regulation (EU) 2015/534 on the reporting of supervisory financial information under the single supervisory mechanism (SSM).

The Financial Reporting Regulation applies to supervised entities and supervised groups in the single supervisory mechanism (SSM). It sets out reporting requirements for credit institutions and rules for the submission of information by national competent authorities to the ECB. It supplements and cross-refers to Commission Implementing Regulation (EU) 680/2014, which contains implementing technical standards on supervisory requirements under the Capital Requirements Regulation (CRR) and provides for the use of templates.

Commission Implementing Regulation (EU) 680/2014 will be repealed and replaced, with effect from 28 June 2021, by Commission Implementing Regulation (EU) 2021/451. The Amending Regulation revises the Financial Reporting Regulation to reflect these changes and to update cross-references to refer to Commission Implementing Regulation (EU) 2021/451.

The Amending Regulation will enter into force on the fifth day following that of its publication in the Official Journal of the European Union (OJ) and apply from 28 June 2021.

EU crisis management and deposit insurance framework review: SRB blueprint

The Single Resolution Board (SRB) has published a blueprint setting out key considerations for the European Commission's review of its crisis management and deposit insurance (CMDI) framework.

The CMDI framework sets out the rules for handling bank failures while protecting depositors. It consists of three EU legislative texts acting together with relevant national legislation: the Bank Recovery and Resolution Directive, the Single Resolution Mechanism Regulation and the Deposit Guarantee Schemes Directive.

EBA report on reliance on external credit ratings

The European Banking Authority (EBA) has published a [report](#), mandated under Article 161(3) of the Capital Requirements Directive (CRD) on member states' reliance on external credit ratings for regulatory purposes. In December 2020, the EBA sent a survey to EU banking supervisors seeking information on this issue, as well as on steps taken by member states to increase the use of internal approaches for calculating own funds requirements and to reduce mechanistic reliance on external credit assessments.

The EBA found that references to external credit ratings were not material in member states law. On that basis, it considers that there is limited value in producing a regular report on this issue and recommends that the mandate in Article 161(3) should be removed. It also notes that changes to member states' laws relating to the use of credit ratings introduced by CRD IV and the securitisation framework in the CRR are already in effect and that the final Basel III reforms will further amend the standardised approach for credit risk to reduce mechanistic reliance on external credit ratings through enhanced due diligence.

Payments

FSCS protection: FCA Dear CEO letter to e-money firms

The UK Financial Conduct Authority (FCA) has published a Dear CEO letter sent to e-money firms, asking them to write to their customers to make it clear how their money is protected. The FCA is concerned that many e-money firms compare their services to traditional bank accounts or hold themselves out as an alternative in their financial promotions, but do not adequately disclose the differences in protections between e-money accounts and bank accounts. In particular, they do not make it clear that the Financial Services Compensation Scheme (FSCS) does not apply. The FCA is also concerned that firms are giving a potentially misleading impression to customers about the extent to which products or services are regulated by the FCA.

The FCA asks e-money firms to:

- write to customers within six weeks of 18 May 2021 to remind them of how their money is protected through safeguarding and that FSCS protection does not apply. This communication must be separate from any other messaging or promotional activity. Firms should consider the appropriate method(s) of communication based on their business model and customer base, including any vulnerable customers;
- review financial promotions in the light of the FCA Handbook rules and guidance in BCOBS 2.3.1AR and BCOBS 2.3.4G. In particular, firms must ensure that promotions give customers enough information and that where any promotion does name the FCA as regulator and refers to matters it does not regulate, it must make it clear that those matters are not regulated by the FCA; and
- bring the Dear CEO letter to the attention of the board. The FCA expects the board to have considered the issues raised in the letter and to have approved the action taken in response to it.

The FCA intends to follow up, with a sample of firms, to assess the action taken.

Securities and Markets

EU SSR: ESMA proposes permanently lowering reporting threshold of net short positions

The European Securities and Markets Authority (ESMA) has published an [opinion](#) in which it recommends that the European Commission permanently lowers the threshold to notify net short positions on shares to national competent authorities (NCAs), under Article 5(2) the Short Selling Regulation, from 0.2% to 0.1%.

ESMA has examined the evidence gathered after its successive emergency decisions, beginning in March 2020, which lowered, for the first time, the notification threshold to 0.1% on a temporary basis. The analysis showed that a substantial amount of additional and essential information became available to NCAs due to the reporting of net short positions at the level of 0.1%. ESMA states that this additional transparency to NCAs improved their ability to conduct market oversight. ESMA therefore considers it essential to lower the reporting threshold to 0.1% on a permanent basis.

Should the European Commission agree, it may adopt a delegated act modifying the notification threshold in Article 5(2) of the SRR.

IBA publishes GBP SONIA Spread-Adjusted ICE Swap Rate beta settings

ICE Benchmark Administration (IBA) has [launched](#) GBP SONIA Spread-Adjusted ICE Swap Rate "beta" settings for an initial testing period. The settings are designed to support the market in transitioning non-linear derivatives, structured products and cash market instruments that currently reference the GBP LIBOR ICE Swap Rate and have been determined in line with the methodology proposed by the Working Group on Sterling Risk-Free Reference Rates in its paper: "[Transition in Sterling Non-Linear Derivatives referencing GBP LIBOR ICE Swap Rate \(ISR\)](#)".

During the initial testing period, the settings are being provided solely for information and illustration purposes in order to enable recipients to evaluate and provide feedback on the GBP SONIA Spread-Adjusted ICE Swap Rate "Beta" settings. IBA emphasises that they are not to be used for any other purpose, including as a reference, index or benchmark in financial instruments, financial contracts, or investment funds.

Global perspective on derivatives regulation: IOSCO speech

The International Organization of Securities Commissions (IOSCO) has published a [speech](#) given by Ashley Alder, its CEO, on global issues relating to derivatives regulation. Points of interest include:

- **Central counterparty (CCP)/margin practices:** IOSCO has joined the Committee on Payments and Market Infrastructures (CPMI) and the Basel Committee on Banking Supervision (BCBS) to examine the dynamics of margin calls in derivatives markets during the market turmoil in spring 2020. They hope to get a clearer picture of transparency, predictability and volatility across different markets, jurisdictions and margining models, including any changes in the amount of margin and the timing of such changes.
- **CCP resolution:** there are unresolved questions about CCP resolution, including whose resources should be used to support CCP resolution, and in what proportion, and whether the CCP rulebooks provide sufficient incentives for all stakeholders to facilitate

an orderly resolution. Mr Alder is working with the chairs of the Financial Stability Board (FSB), CPMI and the FSB Resolution Steering Group to tackle these issues.

- **Archegos and financial stability:** the Archegos incident raises questions about the scope and efficacy of some post-crisis reforms to the derivatives market. For example, would the BCBS-IOSCO margin requirements for non-centrally cleared derivatives, had they already been implemented, have worked to reduce losses arising in this type of incident? IOSCO is carrying out some work in this area.
- **Trade repositories (TRs):** the Archegos incident provides a good opportunity to assess the degree to which TRs are achieving their original objectives. Questions also arise as to the regulators' ability to use information in TRs to quickly detect an untoward build-up of risk before any blow-up. In theory, TRs should provide a good line of sight into a firm's exposures to multiple prime brokers and the associated aggregate leverage and concentration profiles of those exposures. IOSCO is doing more work to ensure that potential red flags are more apparent to regulators ex-ante.

Mr Alder also touches on IOSCO and the FSB's work to address potential resilience shortfalls in non-bank financial intermediation (NBFI). He explains that currently the most advanced workstream is exploring policy options to address potential vulnerabilities in money market funds that could affect financial stability. He states that IOSCO and the FSB plan to consult on NBFI resilience over the next few months.

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

*Our associated offices

Legal Services Center: Berlin

www.hoganlovells.com

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

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

For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

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

©Hogan Lovells 2021. All rights reserved.