



# FIG Bulletin

Recent developments  
25 January 2021

Hogan  
Lovells

# Contents

---

<b>General</b>	<b>4</b>
Financial Services Bill 2019-21	4
Future of UK-EU relations on trade in services: new inquiry launched	4
Regulatory permissions: FCA reminds firms to use or cancel	5
DB pension transfer advice: FCA Assessment Tool and latest data analysis	5
FCA MoU with DWP and MaPS	6
Consumer investments data review 2020: FCA summary	6
CMC charges for financial products and services claims: FCA CP21/1	6
FCA Regulation round-up	7
End of Brexit transition period: impact on JMLSG guidance	7
UK Regulators Network: second publication of performance scorecards	8
EU economic and financial system: European Commission Communication on further steps to foster openness, strength and resilience	8
IFD: EBA final reports on draft RTS on risk takers and variable remuneration	9
FICOD: Joint Committee of ESAs final report on draft ITS on reporting of intragroup transactions and risk concentration	10
SFDR: Joint Committee of ESAs seeks clarification	10
CRD: EBA consults on guidelines on monitoring threshold for establishing intermediate EU parent undertaking	10
FSB 2021 work programme	11
BIS Innovation Hub 2021 annual work programme	11
<b>Banking and Finance</b>	<b>12</b>
Depositor protection identity verification: PRA CP3/21	12
BoE 2021 stress test	12
SRM: European Court of Auditors report on resolution planning	12
<b>Consumer Finance</b>	<b>13</b>
Debt firms: FCA portfolio letter	13

<b>Securities and Markets</b>	<b>14</b>
EMIR: European Commission consults on draft Implementing Decisions on equivalence	14
EMIR: ESMA final report on revised guidelines on written agreements between members of CCP colleges	14
EU CMU: Commission consultation on European single access point	15
End of Brexit transition period: Ofgem documents on REMIT registration	15
REMIT: ACER updates requirements and registrations for registered reporting mechanisms	15
REMIT: ACER updates Q&A	16
REMIT: ACER updates open letter on implications of Brexit on market participants' registration and data collection	16
<b>Insurance</b>	<b>17</b>
COVID-19: Supreme Court judgment in FCA's BI insurance test case	17
How competitive are UK insurance markets? Bank Underground article	17
TCFD recommendations: UNEP FI pilot report and guidance for insurers	17

# General

## Financial Services Bill 2019-21

Having completed its progress through the House of Commons, on 14 January 2021, the [Financial Services Bill 2019-21](#) had its first reading in the House of Lords. A [revised version](#) of the Bill, together with [revised explanatory notes](#), has been published, reflecting amendments that were made at the report stage of the Bill in the House of Commons.

The most significant amendments relate to new clauses 31 and 32 and new Schedule 12, which concern the application of anti-money laundering legislation to e-money and payment institutions.

The second reading in the House of Lords is scheduled for 28 January 2021.

Separately, the Financial Markets Law Committee (FMLC) has published a [letter](#) (dated 13 January 2021), sent to HM Treasury, relating to areas of legal uncertainty arising from provisions in the Bill. The FMLC's comments relate to regulations about financial collateral arrangements and benchmarks, in particular the FCA powers relating to LIBOR transition and the interaction with measures being taken in other jurisdictions.

## Future of UK-EU relations on trade in services: new inquiry launched

The House of Lords EU Services Sub-Committee has [launched](#) a new inquiry on the future of UK-EU relations on trade in services. The inquiry will examine the impact of the provisions set out in the UK-EU Trade and Cooperation Agreement (TCA) on the UK's services sector.

The service sectors of interest to the Committee's inquiry include, but are not limited to: financial services; professional and business services (such as legal services, accountancy, auditing; architecture, engineering, advertising, market research, recruitment services); creative industries (including audio-visual services); research and education; and data and digital services.

The Committee welcomes submissions from anyone with answers to the call for evidence. It is possible to submit evidence until 5 February 2021.

The Committee seeks evidence on the following questions in particular:

- What is the impact of the UK-EU free trade agreement on trade in services?
- What effect may national reservations to the UK-EU TCA have on trade in services with the EU?
- What effect will arrangements on the mobility of professionals have on trade in services between the UK and EU?
- How will the intellectual property provisions set out in the TCA affect UK-EU trade in services?
- How will the arrangements in the TCA shape UK-EU trade in financial services?
- The Joint Declaration on Financial Services Regulatory Cooperation sets out that both sides seek to establish structured regulatory cooperation on financial services. What form should this dialogue take?
- Given the plans to delegate more powers to financial regulators, what form of Parliamentary oversight of these regulators would be appropriate?
- How will the new UK-EU framework for the mutual recognition of professional qualifications affect professionals and service sector businesses?

- What will be the impact of the TCA's provisions on the cross-border supply of services and rights of establishment, such as commitments on local presence and economic needs tests?
- Under the future relationship agreement, the UK will become an associate member of Horizon Europe but will not associate with the Erasmus+ programme. What impact will this have on the UK's research and education sector and students?
- How will the provisions in the TCA affect the creative industries sector?
- The EU has granted the UK a six-month data adequacy "bridge" to allow the free flow of personal data until the EU determines whether to grant a data adequacy decision to the UK. How would the absence of a data adequacy decision at the end of this bridging period affect trade in services?
- What impact will the arrangements agreed have on digital trade and trade in digital services between the UK and EU?

### **Regulatory permissions: FCA reminds firms to use or cancel**

The UK Financial Conduct Authority (FCA) has published a [statement](#) reminding firms of their obligation to regularly review their regulatory permissions under Part 4A of the Financial Services and Markets Act 2000 (FSMA) to ensure that they are up to date and removed where they are not needed.

The FCA expects firms to notify it of material changes and apply to make any necessary changes to permissions in a timely way. The FCA reminds firms that it has the power to cancel a firm's Part 4A permission if it has not carried on a regulated activity for at least 12 months.

The FCA notes that firms should be reviewing their permissions and maintaining only those needed to assure firms that they will continue to meet the threshold conditions, are demonstrating effective oversight of their business, meet obligations under the Senior Managers Regime and are providing accurate information to consumers. In addition, it ensures that firms are not paying unnecessary fees for unused permissions. Firms are required to provide the FCA with an annual attestation that the information held on the Financial Services Register is accurate.

The FCA is reminding firms now, as new powers in the Financial Services Bill 2019-21 mean it will be able to act more quickly where it considers firms are no longer carrying out regulated activities. With the new powers, where the FCA believes that a firm is not carrying on a regulated activity, it will be able to serve notice on the firm, asking for a written response within 14 days. If the firm does not respond, the FCA will be able to publish a second, public notice, explaining that it appears the firm is not carrying on a regulated activity. It can then vary or cancel the firm's permissions after one month.

### **DB pension transfer advice: FCA Assessment Tool and latest data analysis**

The FCA has [announced](#) that it has launched a Defined Benefit Advice Assessment Tool (DBAAT) which helps the market understand how the FCA assesses the suitability of defined benefit (DB) pension transfer advice.

The DBAAT is used to assess advice given before October 2020. An updated tool that incorporates rule changes that came into force on 1 October 2020 will be published in the coming months, alongside finalised guidance following its June 2020 guidance consultation on advising on pension transfers (GC20/1).

Separately, the FCA has also published its second set of ad hoc [data](#) on the DB transfers market, which reveals a significant fall in conversion rates. According to the FCA, this indicates that advice firms are starting to act more in line with its expectations that, in most cases, advice to transfer out of a DB scheme is not in the client's best interest. The data also showed a significant reduction in insistent clients proceeding to transfer against advice.

The data also shows a reduction in the number of firms offering DB advice (from 3,042 to 1,521 as of January 2021). In some cases, this will be as a result of not having adequate professional indemnity insurance (PII) for DB transfer advice, other firms have given up the permission as they had not used it for an extended period. The FCA emphasises that it expects all firms providing DB transfer advice to have appropriate PII cover in place, in line with FCA rules. If they don't, they must not carry out DB transfer advice.

The FCA notes that, from April 2021, all firms with the DB transfer permission must report the required data to the FCA on a six-monthly basis.

### **FCA MoU with DWP and MaPS**

The FCA has published a [Memorandum of Understanding](#) (MoU) it has entered into with the Department for Work and Pensions (DWP) and the Money and Pensions Service (MaPS). The MoU covers arrangements among the parties in carrying out their respective roles and responsibilities under the Financial Guidance and Claims Act 2018, FSMA and other relevant legislation. The MoU will be reviewed annually and updated in the light of new issues and priorities.

### **Consumer investments data review 2020: FCA summary**

The FCA has published a detailed [summary](#) of its work to tackle consumer harm in the investment market between 1 January and 31 October 2020. The FCA states that it is the first publication in a regular, half-yearly series. The FCA considers its work under the following headings:

- preventing firms and individuals entering the perimeter;
- regulatory oversight of the market;
- acting against firms and individuals who cause consumers harm;
- stopping scams through behaviour change campaigns;
- analysis of consumer complaints and redress paid by firms; and
- protecting consumers and improving the mass market.

### **CMC charges for financial products and services claims: FCA CP21/1**

The FCA has published a consultation paper, [CP21/1](#), in which it sets out its proposals to introduce a price cap on the fees claims management companies (CMCs) charge their customers in relation to claims for financial products and services other than payment protection insurance (PPI) claims.

PPI claims are already subject to a cap under the Financial Guidance and Claims Act 2018 (FGCA) of 20% of the redress paid to a customer. Due to the period of change the PPI market is undergoing, the FCA is not proposing to change the PPI cap at this time.

The FCA explains that some customers currently pay fees of more than 40% of the redress they receive. It wants to see consumers who use CMCs charged at a level that reflects the value of the service being provided. The proposed price cap means that CMCs would not be able to charge



more than 15% to 30%, depending on how much redress a customer is due. The FCA estimates that the proposed cap could save consumers around £9.6 million a year.

As part of the proposals, CMCs will be required to disclose key information to consumers before they enter into a contract, to help them make better-informed decisions about using CMC services.

The FCA also proposes minor changes to several existing CMC rules, which relate to issues that have arisen since it began regulating the sector in April 2019.

The consultation ends on 21 April 2021 and the FCA expects to publish a policy statement in autumn 2021. It proposes that the new rules would come into force three months from the date they are made, for both new contracts and existing contracts that were entered into before the rules were made, but where charges are imposed after the rules come into force.

## **FCA Regulation round-up**

The FCA has published its Regulation round-up for January 2021 in which it summarises several its publications over the past month. Items of additional interest cover:

- competition law compliance: the FCA notes that it recently uncovered evidence that suggested a potential competition law infringement by two trading venues. This related to a suggested/potential joint approach to commercialise market data. The FCA issued formal "on notice" letters to these firms. It reminds all firms to ensure they comply with competition law and of their duty to notify the FCA if they have or believe they may have committed a significant infringement of competition law. It also encourages firms and individuals to use its whistleblowing regime;
- the ISDA IBOR Fallbacks Protocol: the FCA notes that ISDA has published its [IBOR Fallbacks Protocol](#) for adherence, which comes into effect on 25 January 2021. In light of the [announcements](#) made by IBA, LIBOR's administrator, the FCA reminds firms that the Protocol is an important tool in facilitating transition for legacy derivative contracts to alternative rates when LIBOR ceases or is no longer representative. The FCA, Bank of England and [Risk Free Rate Working Group](#) strongly support and encourage early adoption of the Protocol among market participants, where appropriate;
- a reminder of the Competition and Markets Authority (CMA) compliance report that private motor insurers and brokers are required to submit annually;
- possible harms arising from motor finance broker-dealers issuing "side agreements" to customers and a reminder that such firms must comply with consumer credit legislation and the FCA principles and rules;
- livestreaming between 8-10 February 2021 of a series of showcase sessions during which the Digital Sandbox participants will present the solutions they have developed;
- concern about lenders relying solely on static FCA Register extract data to decide whether to deal with claims management companies when they should be checking the live status; and
- the FCA flags that it has recently updated its webpage on [information about Brexit from EEA regulators](#) to include temporary measures for UK firms providing financial services in the EEA, where these exist.

## **End of Brexit transition period: impact on JMLSG guidance**

The Joint Money Laundering Steering Group (JMLSG) has [signposted](#) areas within the JMLSG anti-money laundering (AML) and counter-terrorist financing (CTF) guidance that are impacted

by the end of the Brexit transition period on 31 December 2020. The following provisions are no longer appropriate and will be amended in due course:

- the definition of a "third country" has become a country other than the UK, as opposed to outside the EEA. EEA entities are therefore third country entities for the purposes of AML;
- Part III Section 1: the same level of information is to be provided by UK Payment Service Providers (PSPs), regardless of whether funds are being transferred to/from EEA countries or any other third country. UK PSPs should consider relevant legislative changes, including The Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2019, when ensuring that complete Payer and Payee information accompanies all outbound wire transfers and when detecting non-compliant incoming wire transfers;
- specific references to observing European Supervisory Authority (ESA) guidelines within the Guidance are no longer appropriate; and
- regarding correspondent relationships involving the execution of payments, firms should take cognisance of the effectiveness of the AML/CTF regime of any third country when determining the extent of the EDD measures to apply to respondents in that country.

### **UK Regulators Network: second publication of performance scorecards**

The UK Regulators Network (UKRN), which includes the FCA, has published a document [Moving Forward Together - Scorecards II](#), as part of the performance scorecards initiative, which provides insight into how effectively companies in water, energy, telecoms and essential financial services are delivering for their consumers.

Following the publication of a first set of performance scorecards in January 2020, the UKRN, with the FCA, Ofcom, Ofgem, Ofwat and Consumer Council for Water (CCW), have continued to work together to further develop a set of performance scorecards to measure the customer experience including on service quality/ satisfaction and value for money. These performance scorecards are intended to help regulators and regulated companies determine where to focus action, increase the incentives for suppliers to improve performance and to provide regulators and policymakers with indicators that will help identify and address any common challenges across sectors. In addition, the information provided in the scorecards may also help consumers to make informed decisions when choosing a service provider.

### **EU economic and financial system: European Commission Communication on further steps to foster openness, strength and resilience**

The European Commission has published a [Communication](#) proposing a new strategy to foster the openness, strength and resilience of Europe's economic and financial system, together with [FAQs](#) and a factsheet on "[What is the capital markets union?](#)". The Communication is addressed to the European Parliament, the Council of the EU, the European Central Bank (ECB), the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR).

The Commission recognises that the global economy is increasingly multipolar, and the short-term pursuit of unilateral interests by specific actors can undermine effective multilateral cooperation. More recently, the COVID-19 pandemic has highlighted the need to strengthen the EU's economic and financial system. The pandemic has boosted the EU's resolve to work with partners for a truly global recovery.

In this context, the Commission considers that the EU has a vital role in shaping the system of global economic governance and developing mutually beneficial bilateral relations, while



protecting itself from unfair and abusive practices. The Communication sets out a new strategy for the EU, outlining how the Commission intends to achieve this goal. This goes together with the EU's commitment to a more resilient and open global economy, well-functioning international financial markets and the rules-based multilateral system.

The proposed approach outlined in the Communication is based on three mutually reinforcing pillars:

- a stronger international role of the euro, which includes supporting the development of euro denominated instruments and benchmarks and fostering its status as an international reference currency in the energy and commodities sectors.
- further developed and more resilient EU financial market infrastructures, including to any extra-territorial application of sanctions to third countries; and
- further enhanced uniform implementation and enforcement of the EU's own sanctions.

The Commission explains that its actions under the pillars will be taken against the backdrop of its continued work on completing the Banking Union and building a Capital Markets Union, which will strengthen the EU economically and financially.

The Commission will monitor the actions outlined in the Communication on an ongoing basis. It will review the state of implementation in 2023.

### **IFD: EBA final reports on draft RTS on risk takers and variable remuneration**

The European Banking Authority (EBA) has published the following final reports on draft regulatory technical standards (RTS) under Articles 30(4) and 32(8) of the Investment Firms Directive (IFD):

- [final report](#) on draft RTS on the classes of instruments that adequately reflect the credit quality of an investment firm as a going concern and possible alternative arrangements that are appropriate to be used for the purposes of variable remuneration. These draft RTS introduce requirements for investment firms regarding Additional Tier 1, Tier 2 and other instruments used for the purposes of variable remuneration, to ensure that they appropriately reflect the credit quality of the investment firm and to specify possible alternative arrangements for the pay-out of variable remuneration where investment firms do not issue any of the instruments referred to in Article 32 of the IFD. The provisions in these draft RTS are aligned with Commission Delegated Regulation 527/2014 on classes of instruments that are appropriate to be used for the purposes of variable remuneration under the Capital Requirements Directive. This is to ensure that groups of credit institutions and investment firms can use a common set of instruments for remuneration purposes; and
- [final report](#) on draft RTS on criteria to identify categories of staff whose professional activities have a material impact on an investment firm's risk profile or assets it manages ("risk takers"). Risk takers will be identified based on a combination of qualitative and quantitative criteria specified in the RTS. To ensure that all risk takers are identified, members of staff are identified as having a material impact on the institution's risk profile as soon as they meet at least one of the qualitative or quantitative criteria in the RTS or (where necessary because of the specificities of their business model) additional internal criteria. Following the feedback received during the consultation, the qualitative criteria have been revised to enhance the application of proportionality. The final draft RTS also clarify how the criteria should be applied on a consolidated and individual basis.

The final reports have been submitted to the European Commission.

## **FICOD: Joint Committee of ESAs final report on draft ITS on reporting of intragroup transactions and risk concentration**

The Joint Committee of the European Supervisory Authorities (ESAs) has published a [final report](#) on draft implementing technical standards (ITS) on the reporting of intragroup transactions and risk concentration under the Financial Conglomerates Directive (FICOD). It has published separately the proposed [annexes](#) to the ITS.

Articles 7 and 8 of FICOD require financial conglomerates to monitor intra-group transactions and risk concentrations and to report to coordinator supervisors, at least annually, all significant intra-group transactions and any significant risk concentration at the conglomerate level. Articles 21a(2b) and (2c) of FICOD give the ESAs the power to develop ITS on the reports made under Articles 7 and 8. They are intended to supplement the regulatory technical standards (RTS) on risk concentration and intra-group transactions set out in Commission Delegated Regulation (EU) 2015/2303.

The Joint Committee intends for the ITS to apply from 1 January 2022.

## **SFDR: Joint Committee of ESAs seeks clarification**

The European Securities and Markets Authority (ESMA) has published a [letter](#) from Steven Maijor, Chair of the Joint Committee of the ESAs, to John Berrigan, Director General for Financial Stability, Financial Services and Capital Markets Union at the European Commission, on priority issues relating to the application of the Sustainable Finance Disclosure Regulation (SFDR). In the letter, Mr Maijor explains that the ESAs have encountered several important areas of uncertainty in the interpretation of the SFDR as part of the consultation process relating to draft RTS under it. Mr Maijor states that the following areas (summarised in more detail in the Annex to the letter) would benefit from urgent clarification to facilitate the orderly application of the SFDR from 10 March 2021:

- the application of the SFDR to non-EU alternative investment fund managers (AIFMs) and registered AIFMs;
- the application of the 500-employee threshold for principal adverse impact reporting on parent undertakings of a large group;
- the meaning of "promotion" in the context of products promoting environmental or social characteristics;
- the application of Article 9 of the SFDR (transparency of sustainable investments in pre-contractual disclosures); and
- the application of SFDR product rules to portfolios and dedicated funds.

## **CRD: EBA consults on guidelines on monitoring threshold for establishing intermediate EU parent undertaking**

The EBA has published a [consultation paper](#) on guidelines on the monitoring of the threshold and other procedural aspects for establishing an intermediate EU parent undertaking (IPU) under Article 21b of the CRD.

Article 21b of the CRD introduced a requirement for institutions belonging to third-country groups to have an IPU established in the EU where the total value of assets in the EU of the third-country group is equal to or greater than EUR 40 billion. The proposed guidelines specify the methodology to calculate the total value of assets in the EU of the third-country groups and clarify how to monitor this value in order to meet the IPU requirement. The guidelines specify that the total value of assets in the EU of the third-country group should be calculated as an

average over the last four quarters. This value should be monitored on a quarterly basis and communicated to relevant competent authorities.

In order to meet the IPU requirement in a timely manner it is necessary that institutions belonging to third-country groups apply a forward-looking approach. The guidelines therefore specify that they should assess at least annually whether the threshold is expected to be breached within the three-year horizon, based on the strategic planning of the third-country group and the projections of assets. For the purpose of both the quarterly assessments and the annual forward-looking monitoring, institutions and branches belonging to a third-country group should exchange between each other all necessary information.

In addition, the guidelines specify certain procedural aspects relating to the monitoring of the threshold by competent authorities and the establishment of the IPU where necessary.

The consultation closes on 15 March 2021.

### **FSB 2021 work programme**

The Financial Stability Board (FSB) has published its [work programme](#) for 2021, together with an indicative timeline of FSB publications planned for 2021 (annexed). The work programme reflects a strategic shift in priorities in the COVID-19 environment. The FSB will reinforce its forward-looking monitoring of developments to identify, assess and address new and emerging risks to global financial stability, and continue to assess the functioning of the regulatory framework put in place after the 2008 global financial crisis. Significant areas of the FSB's work during 2021 include:

- non-bank financial intermediation;
- central counterparty resilience, recovery and resolvability;
- cross-border payments;
- climate change and sustainable finance;
- interest rate benchmarks; and
- cyber and operational resilience.

In addition, the FSB will continue to promote financial stability during market stress related to COVID-19.

### **BIS Innovation Hub 2021 annual work programme**

The Bank for International Settlements' (BIS) Innovation Hub has set out its annual [work programme](#) for 2021, focussing on six key areas as it fosters international collaboration among central banks on innovative financial technology. The thematic priorities are:

- SupTech and RegTech;
- next-generation financial market infrastructures;
- central bank digital currencies;
- open finance;
- cyber security; and
- green finance.

These priorities will be supported by the BIS Innovation Network, a network of experts drawn from BIS's 63 member central banks, which was launched on 19 January 2021.

# Banking and Finance

## Depositor protection identity verification: PRA CP3/21

The UK Prudential Regulation Authority (PRA) has published a consultation paper, [CP3/21](#), on depositor protection identity verification.

In CP3/21, the PRA sets out proposed rules on the timing of identity verification required for eligibility of depositor protection under the Financial Services Compensation Scheme (FSCS). It also proposes amendments to its expectations set out in Supervisory Statement (SS) 18/15, Depositor and dormant account protection, including a new expectation that insolvency practitioners (IPs) should carry out identity verification checks in the event that a firm has failed to do so by the compensation date.

The PRA proposes that the implementation date for the changes would be 24 March 2021.

The consultation closes on 17 February 2021.

## BoE 2021 stress test

The Bank of England (BoE) has published a new [webpage](#) on the [key elements](#) of the 2021 stress test. The 2021 solvency stress test will assess the major UK banks and building societies against a UK and global scenario that reflects a severe path for the current macro-economic outlook. The aim of the 2021 solvency stress test will be to update and refine the FPC's assessment conducted in August 2020 based on an analysis in a "reverse stress test" exercise. It will cover a five-year horizon and, unless otherwise agreed, the reference date will be 31 December 2020.

The PRA has also published a [webpage](#), together with a [document](#) setting out variable paths, providing guidance on the 2021 stress test for participants conducting their own analysis. The templates used for collecting data have been provided to participating banks.

The timetable for the 2021 solvency stress test will be staggered. Participating banks will submit projections for credit impairments and credit risk-weighted assets in April, rather than June. The additional stressed projections will be submitted in June, with bank-specific results published in Q4 2021. To help facilitate the changes to the usual timetable, and in recognition of ongoing operational challenges within participating banks, banks will not be requested to submit baseline projections and the ring-fenced subgroups of stress-test participants will not be included in the 2021 test. In addition, although the qualitative review will continue to be an important component of the 2021 stress test, the scope of the 2021 exercise will be adapted accordingly.

## SRM: European Court of Auditors report on resolution planning

The European Court of Auditors (ECA) has published a [report](#) about resolution planning in the Single Resolution Mechanism (SRM). The ECA's overall conclusion is that the SRM has made progress over the last years, but some key elements are missing and further steps are needed in resolution planning for banks.

- The ECA's recommendations include that the SRB:
- improves its set of policies that guide the SRM's resolution planning;
- ensures timely adoption and full compliance of resolution plans with legal requirements;
- improves the organisational set-up of the SRM; and
- together with the European Commission, invites the legislators to set up objective and quantified criteria for timely supervisory action.

# Consumer Finance

## Debt firms: FCA portfolio letter

The UK Financial Conduct Authority (FCA) has published a [portfolio letter](#) it has sent to debt purchasers, debt collectors and debt administrators (collectively debt firms) setting out the key risks that debt firms may pose to consumers or the markets in which they operate. The FCA also outlines the FCA's expectations of these firms, including how they should mitigate the key risks. The FCA also describes the its supervisory strategy and programme of work to ensure that firms are meeting its expectations and harms are being remedied.

The FCA's letter looks at the following three themes under which there may be risks and the FCA's expectations of firms in this regard:

- customer treatment;
- litigation and unenforceable debt; and
- firms' prudential resources.

The FCA expects debt firms to reflect on the issues highlighted in the letter to challenge how they operate to minimise any consumer harm they may cause.

# Securities and Markets

## EMIR: European Commission consults on draft Implementing Decisions on equivalence

The European Commission has published for consultation the following draft Implementing Decisions on equivalence made under Article 13(2) of the European Market Infrastructure Regulation (EMIR):

- [Commission Implementing Decision](#) on the recognition of the legal, supervisory and enforcement arrangements of Brazil for derivatives transactions entered into by Brazilian institutions under the regulation of the Central Bank of Brazil as equivalent to certain requirements of Article 11 of EMIR;
- [Commission Implementing Decision](#) on the recognition of the legal, supervisory and enforcement arrangements of Australia for derivatives transactions supervised by the Australian Prudential Regulation Authority as equivalent to certain requirements of Article 11 of EMIR;
- [Commission Implementing Decision](#) on the recognition of the legal, supervisory and enforcement arrangements of Hong Kong for derivatives transactions supervised by the Hong Kong Monetary Authority as equivalent to certain requirements of Article 11 of EMIR;
- [Commission Implementing Decision](#) on the recognition of the legal, supervisory and enforcement arrangements of Singapore for derivatives transactions supervised by the Monetary Authority of Singapore as equivalent to certain requirements of Article 11 of EMIR;
- [Commission Implementing Decision](#) on the recognition of the legal, supervisory and enforcement arrangements of Canada for derivatives transactions supervised by the Office of the Superintendent of Financial Institutions as equivalent to certain requirements of Article 11 of EMIR; and
- [Commission Implementing Decision](#) on the recognition of the legal, supervisory and enforcement arrangements of the United States of America for derivatives transactions supervised by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the Federal Housing Finance Agency as equivalent to certain requirements of Article 11 of EMIR.

Comments can be made on the drafts until 17 February 2021. The drafts state that they will enter into force 20 days following publication in the Official Journal of the EU.

## EMIR: ESMA final report on revised guidelines on written agreements between members of CCP colleges

ESMA has published the [final report](#) on its revised guidelines on written agreements between members of central counterparty (CCP) colleges under EMIR. The revised guidelines take into account changes to composition, functioning and management of CCP colleges, which were introduced by amendments to the regulatory technical standards (RTS) on CCP colleges, and by EMIR 2.2. Section III of the final report provides an overview of the changes to the standard written agreement initially proposed.

The guidelines will be translated into the official EU languages and will then be published on ESMA's website, at which point they will apply. Publication of the translations in the official EU



languages will trigger a two-month period during which national competent authorities must notify ESMA whether they already comply, or intend to comply, with the guidelines.

The revised guidelines replace the original version of the guidelines adopted on 4 June 2013.

### **EU CMU: Commission consultation on European single access point**

The European Commission has published a [consultation](#) on establishing a European single access point (ESAP) for companies' financial and sustainable investment-related information that must be made public pursuant to EU legislation. The establishment of the ESAP is the first action in the Commission's new action plan on the capital markets union (CMU).

The consultation, which is in the form of an online questionnaire, seeks views on:

- the scope of information that should be included in the ESAP;
- the format(s) in which the information in the ESAP should be made available;
- the preferred technical solution(s) to establish the architecture of the ESAP; and
- whether companies, other than those with securities listed on EU regulated markets (for example, unlisted companies and those listed on an SME growth market), should be allowed to disclose information on the ESAP on a voluntary basis.

The deadline for responding is 3 March 2021.

### **End of Brexit transition period: Ofgem documents on REMIT registration**

The Office of Gas and Electricity Markets (Ofgem) has published various documents relating to registration under Regulation 1227/2011 on wholesale energy market integrity and transparency (REMIT) following the end of the UK-EU transition period.

Market participants (MPs) based in GB, trading wholesale energy products deliverable in GB, are required to register with Ofgem. However, Ofgem has published a [Direction](#) providing that, until further notice, MPs trading wholesale energy products deliverable in GB that are already registered with the national regulatory authority (NRA) of an EU member state, or with the Northern Ireland Authority, do not need to register with Ofgem. This is intended to minimise potential disruption to GB wholesale energy markets, and to ensure that registration obligations on MPs can be met in the least burdensome way.

Following the end of the transition period, Ofgem will no longer use ACER's Central European Register of MPs to administer registration requests and MPs may not use it to register with Ofgem. Ofgem has set up its own registration system. Ofgem has published a new version of its [REMIT Registration User Guide](#), updated to reflect the UK's departure from the EU. The guide provides clear definitions on the information needed to register in GB and instructions on how to register.

Ofgem has also published the [REMIT Registration Form](#) to be completed by market participants required to register with Ofgem under REMIT as amended, or by market participants already registered with Ofgem who need to amend their registration details. It has also published a [REMIT Registration Privacy Notice](#) and a public version of the [GB Registration database](#).

### **REMIT: ACER updates requirements and registrations for registered reporting mechanisms**

The Agency for the Cooperation of Energy Regulators (ACER) has [announced](#) that it has updated its [requirements](#) for registered reporting mechanisms (RRMs) to reflect a December 2020

decision from the European Commission on fees under REMIT and will resume the registration of RRM s under REMIT. ACER had suspended the processing of pending RRM applications because of resource limitations. However, ACER has now resumed the registration of RRM s and will start to process pending and new applications. ACER will inform stakeholders about its schedules in future communications. An updated RRM [application form](#) has also been made available.

### **REMIT: ACER updates Q&A**

ACER has published an updated version of its [Q&A](#) on REMIT. The updated Q&A include four new Q&As providing additional information on transaction reporting (questions III.3.46 and III.3.47) and inside information (questions III.7.22 and III.7.23).

### **REMIT: ACER updates open letter on implications of Brexit on market participants' registration and data collection**

ACER updated its [open letter](#) on the implications of Brexit on the registration of market participants and data collection under REMIT. The letter covers the re-registration of market participants currently registered in the UK and data collection.

# Insurance

## COVID-19: Supreme Court judgment in FCA's BI insurance test case

On 15 January 2021, the Supreme Court handed down [judgment](#) in FCA v Arch Insurance (UK) Ltd and others [2021] UKSC 1 on the issues on appeal from the High Court in the test case brought by the FCA seeking legal clarity on the meaning and effect of certain non-damage business interruption (BI) insurance policy wordings. The FCA has published a [press release](#) and updated its dedicated [webpage](#) on the test case to summarise the key aspects of the judgment and outline the next steps.

In our separate briefing, [The UK Supreme Court decides on COVID-19 business interruption coverage](#), we take a look at some key practical and legal considerations for the insurance market, including issues to watch going forwards.

## How competitive are UK insurance markets? Bank Underground article

The Bank of England's Bank Underground has published an [article](#) on "How competitive are UK insurance markets?" in which the authors take an exploratory approach to address the question, applying benchmarks used in competition research to a unique set of reporting data across multiple UK insurance regulatory regimes, with the hope of stimulating further work. The authors find that competition generally works well in UK life and non-life insurance markets, despite increases in life market concentration over the past 25 years. However, competition regulators have found practices in specific markets that harm consumers.

## TCFD recommendations: UNEP FI pilot report and guidance for insurers

A group of 22 insurers and reinsurers convened by the United Nations Environment Programme Finance Initiative (UNEP FI) under its Principles for Sustainable Insurance Initiative (PSI) has issued [guidance](#) for insurers to identify, assess and disclose the impact of climate change on their businesses.

The group of insurers piloted methodologies that insurers can use to implement the recommendations of the Financial Stability Board's Task Force on Climate-related Financial Disclosure (TCFD). Disclosing climate risks and opportunities in insurance underwriting portfolios in line with the guidance will help insurers to understand how their business will be challenged by the climate change crisis and how to respond.

Potential climate change-related risks and opportunities that insurers could face are classified into three categories:

- physical risks related to changes in weather patterns, temperature and hydrological conditions;
- transition risks as the world moves towards a net-zero emissions economy and related fundamental changes in, for example, energy, food and transport systems; and
- potential litigation risks pertaining to climate change and breach of underlying legal frameworks on both the business and corporate levels.

The report serves as the final report of the PSI-TCFD pilot project. It discusses the overall climate change risk assessment approach, outlines key findings across various lines of insurance business, provides insights on an integrated insurance risk framework for climate-related disclosures, and suggests additional actions to further enhance climate risk management and disclosures in the insurance industry.

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

\*Our associated offices

Legal Services Center: Berlin

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

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

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

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

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

©Hogan Lovells 2021. All rights reserved.