



FIG Bulletin

Recent developments

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General

US-UK financial regulatory working group joint statement

HM Treasury has published a [joint statement](#) by the US-UK Financial Regulatory Working Group following its fourth meeting, which was held virtually on 20 May 2021. The Working Group meeting focused on seven themes: (1) international and bilateral cooperation; (2) sustainable finance; (3) updates on domestic initiatives and priorities; (4) benchmark transition; (5) cross-border regimes; (6) operational resilience; and (7) banking and insurance.

Participants reflected on the US-UK financial regulatory relationship and recognised the continued role of the working group in supporting and deepening this relationship. Participants will continue to engage bilaterally on the topics discussed and other topics of mutual interest before the next working group meeting, which is expected to take place in autumn 2021.

Bridging climate-related data gaps: NGFS progress report

The Network for Greening the Financial System (NGFS) has published a [progress report](#) on bridging climate-related data gaps. In the report, the NGFS notes that reliable and comparable climate-related data is crucial for financial sector stakeholders to assess financial stability risks, properly price and manage climate-related risks and take advantage of the opportunities arising from the transition to a low-carbon economy. However, persistent gaps in climate-related data impede the achievement of these objectives.

The report sets out the issues that need to be considered going forward and lays the groundwork for a comprehensive assessment of climate-related data needs and gaps. It states that, to ensure the availability of reliable and comparable climate-related data, a mix of policy interventions is needed to catalyse progress. Three building blocks are paramount: (i) rapid convergence towards a common and consistent set of global disclosure standards; (ii) efforts towards a minimally accepted global taxonomy; and (iii) the development and transparent use of well-defined and decision-useful metrics, certification labels and methodological standards.

Identification of material risk takers: PRA statement

The UK Prudential Regulation Authority (PRA) has published a [statement](#) on its approach to updating requirements on the identification of "material risk takers" (MRTs) and its position concerning applications for exclusion of MRTs in the current performance year. It should be read in conjunction with Chapter 3 of the Remuneration Part of the PRA Rulebook and Supervisory Statement, SS2/17, on Remuneration.

There is a discrepancy between Commission Delegated Regulation (EU) 604/2014 (RTS), which continues to apply in UK law, and a revised draft of the MRT regulatory technical standards (draft RTS), which applies in determining the application of the Remuneration Part of the PRA Rulebook (as explained in PS26.20). The PRA intends to consult on updating this position later this year.

However, during the intervening period, the PRA is of the view that the current position is as follows:

- the RTS continue to apply and are binding in their entirety (together with technical changes made as part of the onshoring process);
- firms must also apply the revised draft RTS when determining the individuals to which the requirements of the Remuneration Part of the PRA Rulebook apply;

- in general, the application of the draft RTS will result in the identification of a broader scope of individuals, implying compliance with the RTS also;
- however, in cases where the RTS require firms to identify individuals who do not meet any of the criteria under the revised draft RTS, the PRA considers that firms do not need to apply the requirements of the Remuneration Part of the PRA Rulebook to those individuals solely on the basis that they meet the criteria of the RTS if the firm does not consider that the professional activities of said individuals have a material impact on the firm's risk profile;
- the revised draft MRT RTS are a minimum standard. Firms need to assess whether an individual's professional activities have a material impact on the firm's risk profile, even if they do not fall within any of the mandatory criteria;
- firms with a fiscal year end of 31 December may require additional time to submit remuneration policy statement tables. For the 2021/22 remuneration round, firms can submit them by 30 September 2021.

The PRA plans to consult on this issue later in 2021. The statement also explains the PRA is reviewing the templates that firms can use to communicate MRT information to the PRA. Amended templates will start to be published in summer 2021. The PRA will also provide more information on how firms can apply to the PRA for a waiver if they want to exclude an MRT.

PRA 2021/22 business plan

The PRA has published its [business plan](#) for 2021/22, which sets out its strategy and work plan for each of its strategic goals for the coming year, together with an overview of the PRA's budget for the period 1 March 2021 to 28 February 2022. It also details some of the PRA's highest-level actions to mitigate the impact of COVID-19 on PRA-regulated firms and on the UK economy.

The PRA explains how it intends to deliver its strategic goals for 2021/22 under the following headings:

- robust prudential standards and supervision;
- adapting to market changes and horizon scanning;
- financial and operational resilience;
- recovery and resolution;
- competition;
- EU withdrawal; and
- efficiency and effectiveness.

Countering cyber risks: PRA speech

The PRA has published a [speech](#) by Lyndon Nelson, PRA Deputy CEO and BoE Executive Director, Regulatory Operations and Supervisory Risk Specialists, on cyber risk. In the speech, Mr Lyndon considers the role of simulation exercises, penetration testing, and international collaboration, as well as setting out details of the PRA's future plans relating to cyber risk.

PRA's 2019/20 firm feedback survey results

The PRA has published the [aggregated results](#) of its 2019/20 firm feedback survey. The purpose of the survey is to assess the effectiveness and quality of the PRA's supervisory framework and approach. On its [supervision webpage](#), the PRA has set out a summary of new issues raised in 2020 and the details of policy decisions it has taken in response to feedback, including:

- senior managers and certification regime (SMCR) approvals: firms raised the issue of the length of timescales of approvals for the SMCR. The PRA states that a large increase in the number of applications received by the FCA has contributed to the delays and that the FCA has increased resourcing to address the issue. The PRA is considering ways of helping firms improve the quality of their applications, such as engaging with larger firms and trade bodies.
- PRA information requests: the PRA acknowledges that it has increased demand for data during the COVID-19 pandemic. However, it has taken steps to increase notice and to reduce the volume of requests where possible. The PRA also intends to develop more consistent data to be used in times of stress, so that firms can be better placed to respond and, in the longer term, it intends to invest in better data capability to reduce the burden on firms.
- PRA website: the PRA has enhanced the search function on its website and used reference numbers for papers to generate more streamlined results. The PRA intends to introduce a "mega-menu" to improve navigation and is considering additional methods to upgrade usability. It is also considering ways in which to enhance the PRA Rulebook.

The PRA notes that, as a consequence of the pandemic, it has suspended the follow-up meeting it usually holds with large firms and the roundtable discussions with small firms.

Change of firm's legal status: FCA new process

The FCA has updated its [webpage](#) for firms applying to change their legal status. The FCA explains that, from 1 June 2021, it will no longer accept change of legal status applications. Instead, a firm wishing to change its legal status must submit either a new authorisation application (and cancel the previous entity's permissions) or a SUP 15 notification, depending on the legal structure of the previous entity and the new entity. A table on the updated webpage indicates when a new authorisation application is required to be submitted and when a SUP 15 notification will suffice.

The FCA states that it is making these changes because submissions for a change in legal status application are often incomplete, causing delays in the assessment process. The FCA therefore intends to improve the process for firms changing their legal status, minimising any delays to the assessment process.

When submitting an application for the new legal entity, the firm must sign a [deed poll declaration](#). This requires the firm to deal with any complaints from existing customers in the same way it would deal with complaints from customers of the new legal entity. This requirement is imposed to prevent firms leaving behind their customer obligations by changing their legal entity.

A firm that has any ongoing contractual agreements with their customers must contact them and agree either to amend their existing contracts or to agree new contracts to take into account the change in the firm's legal entity. Where this is not the case, the firm should inform customers about the change in the legal entity as and when it next deals with them.

Operational resilience and the switch to digital phone lines: FCA Regulation round-up

The FCA published its [Regulation round-up](#) for May 2021. Among other things, the FCA highlights that the current analogue phone network will be switched off across the UK at the end of 2025, transferring to a digital phone network delivered through Voice over IP. This is a major change to the UK's telecoms networks and will affect anything that currently plugs into existing

analogue telephone wall sockets. In the context of operational resilience, the FCA advises that firms should be making plans to ensure there is no disruption to the services they provide.

FOS annual complaints data and insight 2020/21

The Financial Ombudsman Service (FOS) has published its [annual complaints data](#) for 2020/21, together with an article analysing the data.

In its analysis, the FOS highlights some of the key issues in the complaints it saw during 2020/21, how it resolved them fairly, and how they might have been prevented. It notes that, while the COVID-19 pandemic is unlike anything businesses and their customers have previously encountered, it is clear the fundamentals of customer service matter more than ever. Many complaints could have been avoided with better communication as managing customers' expectations effectively can help generate goodwill and pragmatism, rather than distrust and frustration. Attention to individual circumstances is also essential and even more vital in view of the potential for detriment generated by COVID-19.

Digital finance: ESMA call for evidence

The European Securities and Markets Authority (ESMA) has published a [call for evidence](#) on digital finance. The call for evidence aims to gather relevant information on issues including value chains, platforms and groups' provision of financial and non-financial services. ESMA is requesting information on three topics:

- more fragmented or non-integrated value chains, arising as a result of financial firms increasingly relying on third parties for the delivery of their services and of technology companies entering financial services;
- digital platforms and bundling of financial services; and
- mixed activity groups providing both financial and non-financial services.

The call for evidence is likely to be of interest to financial firms who rely on third parties to fulfil critical or important functions, technology firms, digital platforms, and mixed activity groups.

The call for evidence closes on 1 August 2021 and the feedback received will contribute to ESMA's technical advice to the European Commission which is due by 31 January 2022.

Functioning of ESAs: ESMA responds to European Commission consultation

ESMA has published a [letter](#) it has sent to the European Commission setting out its response to the Commission's targeted consultation on the functioning of the European Supervisory Authorities (ESAs). The annex to the letter sets out ESMA's general recommendations, which it believes merit further consideration by the Commission in the context of the consultation. These recommendations focus on:

- reinforcing ESMA's approach to supervisory convergence;
- considering the merits of EU-level direct supervision;
- building ESMA's data capabilities;
- ensuring the single rulebook remains fit for purpose; and
- alleviating funding issues.

Banking and Finance

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

The FCA has published a [statement](#) on the regulatory treatment of the UK Recovery Loan Scheme (RLS), which was launched on 6 April 2021 as part of the government's COVID-19 financial support for UK businesses. While the RLS has different terms and eligibility criteria, it has replaced the government's [Bounce Back Loan Scheme \(BBLs\)](#) and [Coronavirus Business Interruption Loan Scheme \(CBILs\)](#), which have now closed to new applications.

The FCA confirms that most of the lending available as part of the RLS will not be a regulated activity and therefore most lending applications will be outside its regulatory perimeter. However, the FCA's rules will apply as usual to regulated lending under the scheme, which in this case is regulated asset finance. This includes the rules on creditworthiness assessments in CONC 5.2A.

The FCA also highlights that the relevant requirements under the Money Laundering Regulations 2017 will continue to apply and that lenders should undertake appropriate anti-money laundering and fraud checks on RLS applications.

The necessity of using supervisory technology: ECB speech

The European Central Bank (ECB) has published a [speech](#) by Petti Hakkarainen, ECB Supervisory Board Member, on the necessity of using supervisory technology. Ms Hakkarainen explains that ECB Banking Supervision not only makes use of modern technology but also aims to become a "supotech" pioneer. She then goes on to explain how the ECB intends to do this, based on four building blocks: an effective innovation model, a digital culture, an innovation ecosystem and successful delivery of business-related use cases.

EU banking package: SRB updates MREL policy

The Single Resolution Board (SRB) has published an updated version of its [policy](#) for the minimum requirement for own funds and eligible liabilities (MREL) under the EU banking package. MREL is one of the key tools in resolvability, ensuring that banks maintain a minimum amount of equity and debt to support an effective resolution.

In particular, the updated policy introduces:

- the MREL maximum distributable amount (MDA), which allows the SRB to restrict banks' earnings distribution if there are MREL breaches;
- policy criteria to identify systemic subsidiaries for which granting an internal MREL waiver would raise financial stability concerns (based on the absolute asset size and relative contribution to resolution group);
- the approach to MREL-eligibility of UK instruments without bail-in clauses.

The updated policy also refines:

- the methodology to estimate the Pillar 2 requirements (P2R) post-resolution (that is, one of the components used for MREL calibration);
- the MREL calibration on preferred versus variant resolution strategy, confirming that the SRB computes MREL in line with the preferred strategy; and

- the MREL calibration methodology for liquidation entities, where the SRB clarifies that the loss absorption amount may increase beyond the default adjustment in proportion to financial stability concerns.

The SRB has also published its [MREL dashboard](#) covering the reporting period Q4 2020.

BRRD: EBA report on application of early intervention framework

The European Banking Authority (EBA) has published a [report](#) on the application of the early intervention framework under Articles 27 to 29 of the Bank Recovery and Resolution Directive (BRRD).

The BRRD introduced early intervention measures (EIMs) to expand the existing set of powers available to supervisors when institutions are experiencing difficulties. The EBA monitored the application of EIMs in 2015 to 2018 and observed their limited use across the EU. It found that instead of resorting to EIMs, competent authorities often preferred to apply other pre-BRRD supervisory powers available to them. The EBA investigated the reasons for these supervisory practices and published a discussion paper in June 2020. The report includes the content from the discussion paper and also provides an overview of the feedback received from consultations, as well as the EBA's conclusions.

CRR: EBA final report and draft RTS on own funds and eligible liabilities

The EBA has published its [final report](#) on revisions to Commission Delegated Regulation (EU) 241/2014, which contains regulatory technical standards (RTS) on own funds requirements, supplementing the Capital Requirements Regulation (CRR) to reflect new mandates introduced by CRR II.

The EBA will submit the final draft RTS to the European Commission for adoption. The RTS will enter into force on the day following that of its publication in the Official Journal of the European Union.

Mapping climate risk: EBA report on pilot exercise

The EBA has published a [report](#) setting out the main findings from an EU-wide pilot exercise on mapping climate risk. The EBA undertook the pilot exercise in 2020, using a sample of 29 banks which provided data on non-SME corporate exposures to EU member states. The EBA explains that, as the EU taxonomy and climate risk stress test frameworks are still developing, this pilot was designed as a learning exercise to investigate how existing and newly developed climate risk assessment and classification tools perform, and to test banks' readiness to deal with related data and methodological challenges.

The EBA intends for its findings to form the basis of a wider discussion on the design of a climate risk stress test for the EU banking sector. It considers that further interaction with industry will be key to exploring possible solutions and identifying key challenges for developing methodologies and data requirements that would be suitable for this purpose.

Conduct risks in leveraged loans and collateralised loan obligations: IOSCO survey

The International Organization of Securities Commissions (IOSCO) has [announced](#) that it is issuing four surveys for industry participants on conduct risks in leveraged loans (LLs) and collateralised loan obligations (CLOs). The surveys are for:

- [bank lenders](#);
- [CLO investors](#);
- [CLO managers](#); and
- [LL sponsors](#).

The surveys are being launched to help IOSCO's committees understand the potential conflicts of interest and conduct issues which may exist in the LL and CLO markets, and how they are managed by market participants. IOSCO will consider the survey responses when formulating any report regarding LLs and CLOs.

The submission deadline is 30 June 2021.

Consumer Finance

FCA consumer credit information sheets updated

The UK Financial Conduct Authority (FCA) has updated its [webpage](#) on consumer credit information sheets to announce the publication of revised information sheets relating to:

- [arrears](#);
- [default](#);
- [high-cost short-term loans](#);
- [high-cost short-terms loans, peer-to-peer lenders](#); and
- [arrears, peer-to-peer lending](#).

Under section 86A of the Consumer Credit Act 1974, lenders are required to include a copy of the relevant information sheet when notifying a consumer that they are in arrears or default. The FCA has updated these sheets to provide more targeted and useful help to customers, particularly those with mental wellbeing issues.

Firms must use the new versions of the information sheets from 25 October 2021, in line with the requirement in section 86A(7) that new versions of these sheets take effect three months after publication. Until then, current versions of the information sheets, which were published in 2018, must be used – these are available on the same [webpage](#).

Payments

Hogan Lovells Global Payments Newsletter

We have published our [Global Payments Newsletter](#) for May 2021 which reports on key developments of interest to the payments industry over the last month, including:

- United Kingdom: Financial Services Act 2021 becomes law.
- Turkey: Central bank prohibits use of cryptoassets for payments for goods and services.
- United Kingdom: Bank of England and HM Treasury establish CBDC Taskforce and external engagement groups.

PSRs 2017: FCA deadline extension for implementing SCA

The UK Financial Conduct Authority (FCA) has [announced](#) that it is providing firms with a further six months to implement strong customer authentication (SCA) for e-commerce under the Payment Services Regulations 2017 (PSRs 2017) as it recognises ongoing challenges facing the industry to be ready by the previous 14 September 2021 deadline. The new 14 March 2022 deadline is the latest the FCA expects full SCA compliance for e-commerce transactions. The FCA had already granted a previous six-month extension due to COVID-19.

The FCA emphasises that it still expects firms to continue to take robust action to reduce the risk of fraud.

Confirmation of payee: PSR call for views on phase 2

The Payment Systems Regulator (PSR) has published a consultation paper, [CP21/6](#), calling for views on phase 2 of the introduction of confirmation of payee (CoP). This follows phase 1 of CoP when the PSR issued specific direction 10 (SD10) and the UK's six largest banking groups (SD10 banks) introduced CoP for faster payments and CHAPS transactions.

In the paper, the PSR sets out the findings of its analysis of the impact of phase 1 of CoP and the feedback received on phase 2. It welcomes views on:

- the progress, dependencies and expected costs and benefits of phase 2;
- whether certain types of accounts with secondary reference data (SRD) should be excluded from the scope of phase 2, and whether alternative solutions are more appropriate for SRD accounts overall; and
- how CoP messaging works and how it could be enhanced.

The PSR also outlines a number of policy responses that it could implement for CoP, including options such as issuing a further direction mandating PSP actions to enable phase 2, bringing about improvements to the CoP service, and the future of SD10.

The consultation closes on 30 June 2021. The PSR envisages that it will consult on next steps in July or August 2021 and publish a policy statement with direction(s) if appropriate in September or October 2021.

Securities and Markets

UK EMIR: BoE consults on modifications to DTO to reflect interest rate benchmark reform

The Bank of England (BoE) has published a [consultation paper](#) setting out its proposal to modify the scope of contracts that are subject to the derivatives clearing obligation (DTO) under the retained EU law version of the European Market Infrastructure Regulation (UK EMIR) to reflect the ongoing reforms to interest rate benchmarks.

In brief, as a consequence of the anticipated changes in market activity resulting from interest rate benchmark reform, the BoE intends to remove contracts that reference benchmarks that are being discontinued and to replace them with Overnight Index Swaps (OIS), with the same range of maturities, which reference the replacement near risk-free reference rate (RFR) benchmarks selected for each currency.

The proposals would result in changes to the onshored version of Commission Delegated Regulation (EU) 2015/2205 supplementing EMIR with regard to regulatory technical standards on the clearing obligation (Binding Technical Standards (BTS) 2015/2205). The [Appendix](#) to the consultation contains a draft version of the Technical Standards (Clearing Obligation) Instrument 2021, which amends BTS 2015/2205.

The consultation closes to responses on 14 July 2021. Following consideration of any responses, the BoE will submit the proposed technical standards to HM Treasury for approval. Following approval, the BoE intends to make and publish the final version of the amending technical standards instrument in autumn 2021.

The BoE will keep the scope of the clearing obligation under review, including by monitoring developments in ongoing transitions in the JPY and USD interest rate derivatives markets.

UK BMR: FCA consults on use of new powers to support orderly wind down of critical benchmarks

The Financial Conduct Authority (FCA) has published a consultation paper, [CP21/15](#), on its proposed policy framework for exercising two of its new powers under the UK Benchmarks Regulation (UK BMR) which will be introduced by the Financial Services Act 2021. These powers relate to the use of critical benchmarks that are being wound down, such as LIBOR. The two powers on which the FCA is consulting in CP21/15 are:

- legacy use power (under new Article 23C(2) of the UK BMR): this power enables the FCA to permit some or all "legacy" use of a critical benchmark that has been designated as an "Article 23A benchmark" because it has become permanently unrepresentative of the market it is intended to measure; and
- new use restriction power (under new Article 21A of the UK BMR): this power gives the FCA the ability to prohibit some or all new use of a critical benchmark when it has been notified by its administrator that it will cease to be provided.

CP21/15 closes to responses on 17 June 2021. Having considered the feedback received, the FCA will publish a policy statement and feedback statement in Q3 2021.

Alongside CP21/15, the FCA has published an updated version of its [overview document](#) on the UK BMR and amendments under the Financial Services Act 2021.

Cryptoassets and DLT: TheCityUK report

TheCityUK has published a report, [Cryptoassets: Shaping UK regulation for innovation and global leadership](#), in which it aims to provide an overview of existing types of cryptoassets, how they are categorised in the UK, the key policy issues which should be considered when designing the regulatory perimeter in relation to cryptoassets and distributed ledger technology (DLT), and a proposed policy approach for the UK government.

UK SFTR: Trade associations' information statement

The Association for Financial Markets in Europe, the International Capital Market Association, the International Swaps and Derivatives Association, the International Securities Lending Association and the Futures Industry Association have published an [information statement](#) to assist market participants in complying with article 15 of the UK version of the Regulation on reporting and transparency of securities financing transactions (UK SFTR).

Before counterparties to securities financing transactions are permitted to reuse or rehypothecate assets, article 15 of the UK SFTR requires a counterparty to disclose the risks of granting consent to a right of use of collateral and of concluding a title transfer collateral arrangement.

The information statement aims to help users to fulfil this requirement by informing counterparties of the risks and consequences that may be involved in consenting to a right of use of collateral provided under a security collateral arrangement or of concluding a title transfer collateral arrangement.

EMIR and SFTR: Delegated Regulation on fees charged to TRs in 2021

[Commission Delegated Regulation \(EU\) 2021/822](#), which amends Delegated Regulations (EU) 1003/2013 and (EU) 2019/360 as regards the annual supervisory fees charged by the European Securities and Markets Authority (ESMA) to trade repositories (TRs) for 2021, has been published in the Official Journal of the EU and enters into force on 26 May 2021.

Delegated Regulations (EU) 1003/2013 and (EU) 2019/360 set out the methodology for the fees paid to ESMA by TRs for the purposes of Article 72(3) of EMIR and Article 11(2) of the EU Regulation on reporting and transparency of securities financing transactions (SFTR) respectively.

The amendments to these Regulations reflect the effect of two UK TRs transferring part of their services and activities to the EU to be able to continue providing services and activities to counterparties established in the EU. As the new EU TRs effectively started their activity in the EU in January 2021, their level of activity in 2020 was almost non-existent and consequently their annual supervisory fee for 2021 would be negligible, although their activities are likely to be significant.

The Delegated Regulation (EU) 2021/822 changes the reference period for the calculation of the applicable turnover of TRs from 2020 to January to June 2021. This will have the effect of ensuring that the annual supervisory fees for 2021 for these TRs will be calculated on the basis of their applicable turnover during the first half of 2021.

EMIR and SFTR: ESMA consultations on data transfer guidelines

ESMA is [consulting](#) on amendments to its current guidelines on data transfer between TRs under EMIR, and on new guidelines establishing a framework for data transfer of SFTs between TRs under the SFTR. Both the new Data Transfer Guidelines under SFTR and the proposed changes to those under EMIR aim to:

- enhance the quality of data available to authorities, including the aggregations carried out by TRs, even when the TR participant changes the TR to which it reports and irrespective of the reason for such a change;
- ensure that the competitive multiple-TR environment is guaranteed, and that TR participants can benefit from competing offers; and
- safeguard a consistent and harmonised way to transfer records from one TR to another supporting the continuity of reporting and reconciliation in all cases including the withdrawal of a TR registration.

The consultation closes on 27 August 2021. ESMA will consider the responses to this consultation and aims to publish a final report by Q1 2022.

EMIR and SFTR: ESMA final report and guidelines on calculating positions in SFTs by TRs

ESMA has published its [final report](#) giving feedback on its prior consultation and final guidelines on the calculating positions in securities financing transactions (SFTs) by TRs under the SFTR. The purpose of the guidelines is to ensure that a uniform methodology is used under EMIR and the SFTR, while considering the specificities of SFT reporting. In particular, the guidelines clarify how to comply with:

- Article 12(2) of the SFTR, which requires TRs to collect and maintain details of SFTs;
- Article 80(4) of EMIR, as referred to in 5(2) of SFTR, which sets out a general requirement for TRs to calculate positions; and
- Article 5 of RTS on data aggregation, which specifically requires TRs to calculate positions in SFTs in a harmonised and consistent manner.

The guidelines will apply from 31 January 2022.

MiFID II recovery package: ESMA consults on commodity derivatives technical standards

ESMA is [consulting](#) on draft technical standards for commodity derivatives as part of the post-COVID-19 Markets in Financial Instruments Directive (MiFID) II recovery package. The consultation paper seeks stakeholders' views on the regulatory technical standards (RTS) that ESMA is required to develop under the MiFID II Amending Directive ((EU) 2021/338).

The MiFID II Amending Directive introduces significant changes to the MiFID II commodity framework, including to the position limit regime. ESMA's proposals relating to the application of position limits to commodity derivatives focus on:

- developing procedures for financial entities undertaking hedging activities and for liquidity providers to apply for an exemption from position limits; and
- suggesting other technical adjustments to improve the application of the position limit regime in practice.

In addition, the consultation paper also contains ESMA's proposals for technical standards on position management controls.

The consultation closes on 23 July 2021. ESMA intends to finalise the draft technical standards and submit a final report to the European Commission for endorsement by November 2021.

CRA Regulation: ESMA consults on guidelines on disclosure requirements for initial reviews and preliminary ratings

ESMA has published a [consultation paper](#) on guidelines on disclosure requirements for initial reviews and preliminary ratings under the Credit Rating Agencies Regulation (CRA Regulation).

The CRA Regulation includes a number of provisions that are designed to provide greater clarity to market participants as to whether entities or debt instruments have been subject to an initial review or a preliminary rating by CRAs before receiving a credit rating. The aim of these provisions is to mitigate against the effects of "ratings shopping".

ESMA has engaged with CRAs over a number of years to assess current market practices around initial reviews and preliminary ratings with the aim of identifying possible inconsistencies in CRAs' practices and defining necessary steps to address these inconsistencies.

This consultation proposes guidance to address the existing inconsistencies in the interpretation of the relevant provisions and, by extension, reduce (to the extent possible under the existing CRA Regulation provisions) the risks posed by rating shopping.

The proposed guidelines have three sections which aim to clarify ESMA's views on:

- how the term "initial review and preliminary rating" should be understood for the purposes of the CRA Regulation's public disclosure requirements;
- the content and timing of CRAs' public disclosures for interactions that meet the standard of "initial review and preliminary rating"; and
- the steps to ensure these public disclosures are more accessible for investors and the market.

The consultation closes on 4 August 2021. ESMA will consider the responses it receives in Q3 2021 and expects to publish a final report by the end of Q4 2021. The draft guidelines are stated to apply from 1 July 2022.

Insurance

Civil Liability Act 2018 (Financial Conduct Authority) (Whiplash) Regulations 2021

The Civil Liability Act 2018 (Financial Conduct Authority) (Whiplash) Regulations 2021 ([SI 2021/594](#)) have been published, together with an [explanatory memorandum](#). The Regulations give powers to the UK Financial Conduct Authority (FCA) to enforce the ban on the making and requesting of offers to settle road traffic accident whiplash-related injury claims without a medical report, as set out in sections 6 and 8 of the Civil Liability Act 2018.

The Regulations apply in England and Wales and come into force on 31 May 2021.

In its latest edition of [Regulation Round-up](#), the FCA notes that the whiplash reforms programme takes effect from 31 May 2021 and includes key changes to the claims process for low value road traffic accident claims. An [information and FAQ document](#) is available. The FCA states that firms considering representing claimants at the new Official Injury Claims Service portal should ensure they are not carrying out a regulated activity without the required permissions. They also need to carefully check the legislation and the FCA Handbook. The FCA encourages firms unsure of their position to seek independent legal advice.

Insolvency arrangements for insurers: HM Treasury consults on amendments

HM Treasury is [consulting](#) on proposed amendments to the insolvency arrangements for insurers that apply under the Financial Services and Markets Act 2000 (FSMA). It states that the government, working with the Bank of England, the Prudential Regulation Authority (PRA) and the FCA, has identified areas in which reform can make the UK's insolvency arrangements for insurers more robust, in order to better protect policyholders and reduce costs to industry and the wider financial sector. Therefore, the government is proposing a series of targeted amendments to the current insurer insolvency arrangements to enable the UK authorities to better manage insurer distress in an orderly manner.

The proposals include:

- enhancements to the court's existing power under section 377 of FSMA to order a reduction ("write-down") of the value of an insurer's contracts;
- the creation of a new court-appointed "write-down manager" to oversee and implement a court-ordered write-down under amended section 377;
- the introduction of a moratorium on the termination or suspension of financial contracts and service contracts on the application to the court for (and, as applicable, during) an administration, write-down under section 377 or winding up;
- for life insurance policies only, a stay on policyholder surrender rights on the application to the court for (and, as applicable, during) an administration, write-down under section 377 or winding up; and
- a change to the operation of the Financial Services Compensation Scheme (FSCS) in the event of a write-down under section 377 to ensure protected policyholders are not financially worse.

The deadline for responses to the paper is 13 August 2021.

Responsible openness in the insurance sector: PRA speech

The PRA has published a [speech](#) by Anna Sweeney, PRA Executive Director, Insurance, on responsible openness in the insurance sector. In her speech, Ms Sweeney talks about how the

PRA will regulate insurance services following the UK's departure from the EU, facilitating competition, and the UK's role in setting international standards on issues such as climate change.

BI insurance policyholder claims communications: FCA update

In its latest edition of [Regulation Round-up](#), the FCA includes an update for insurers and intermediaries on policyholder claims communications relating the business interruption (BI) insurance test case.

The FCA notes that, in accordance with its [Business Interruption Insurance Test Case: Finalised Guidance for Firms](#), insurers should have updated all policyholders with potentially affected claims or complaints after the conclusion of the test case. The FCA states that insurance intermediaries acting for policyholders should seek to support them, as appropriate, to progress their claims quickly with their insurer. They should also consider whether it is fair, and in the policyholders' best interests, to notify the policyholder if the intermediary reasonably considers that they may have a claim under their policy. This is irrespective of any separate commercial relationship between the intermediary and the insurer.

Supervision of climate-related risks in insurance sector: IAIS application paper

The International Association of Insurance Supervisors (IAIS) has published an [application paper](#) on the supervision of climate-related risks in the insurance sector. The paper aims to support regulators in their work to integrate climate risk considerations into the supervision of the insurance sector. It sets out recommendations and examples of good practice, which are consistent with the IAIS Insurance Core Principles.

Funds and Asset Management

EU cross-border distribution of funds: ESMA guidelines on marketing communications

Following its consultation in November 2020, the European Securities and Markets Authority (ESMA) has published a [final report](#) on guidelines for funds' marketing communications under Article 4 of the Regulation on the cross-border distribution of collective investment undertakings. The final report also gives an overview of the feedback received through the public consultation and explains how ESMA took this feedback into account.

The aim of the guidelines is to specify the requirements for marketing communications sent to investors to promote UCITS and alternative investment funds (AIFs), including European social entrepreneurship funds (EuSEFs), European venture capital funds (EuVECAs) and European long-term investment funds (ELTIFs). Among other things, marketing communications must be identifiable as such and contain clear, fair and not misleading information, taking into account the on-line aspects of marketing communications.

The guidelines are set out in Annex IV of the final report. They will be translated into the official EU languages and published on the ESMA website. The publication of the translations will trigger a two-month period during which national competent authorities must notify ESMA whether they comply or intend to comply with the guidelines. The guidelines will apply six months after the date of the publication of the translations of the guidelines on ESMA's website.

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