



FIG Bulletin

Recent developments
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Hogan
Lovells

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General

Financial Services Act 2021 receives Royal Assent

The Financial Services Bill 2019-21 has received Royal Assent. Among other things, the [Financial Services Act 2021](#):

- amends the Financial Services and Markets Act 2000 (FSMA) to establish the legislative framework for the Investment Firms Prudential Regime and for the UK implementation of the final Basel III standards;
- amends FSMA to establish the legislative framework for the Overseas Funds Regime and the Gibraltar Authorisation Regime;
- amends the UK Benchmarks Regulation (UK BMR) to provide the FCA with additional powers to manage an orderly wind-down of a critical benchmark, such as LIBOR, and extend the transitional period for third country benchmarks under the UK BMR;
- amends the Criminal Justice Act 1993 and the Financial Services Act 2012 to increase the maximum sentence for criminal market abuse;
- gives HM Treasury the power to bring interest-free buy-now pay-later products into the scope of FCA regulation; and
- amends the Payment Services Regulations to make it easier for retailers of all sizes to offer cashback without a purchase.

The House of Commons rejected the House of Lords' amendment requiring the Financial Conduct Authority (FCA) to make rules introducing a duty of care by 6 April 2022. Instead, the Act requires the FCA to carry out a public consultation about whether it should make general rules providing that authorised persons owe a duty of care to consumers, and to publish its analysis by 1 January 2022 and any rules as it considers appropriate by 1 August 2022. The FCA [intends](#) to consult on the duty of care in May 2021.

The House of Commons [debate](#) and [record](#) of the proceedings have been published. Details of the rejected clauses and the substituted clause on duty of care are set out in a House of Lords [document](#).

Except for certain provisions detailed in section 49, the commencement dates for the provisions of the Act will be specified by HM Treasury in regulations.

Tackling financial exclusion: House of Lords Liaison Committee follow-up report

The House of Lords Liaison Committee has published a [follow-up report](#) on financial exclusion. The report examines the progress made by the government in the implementation of the recommendations made by the Select Committee on Financial Exclusion in its report [Tackling Financial Exclusion: A country that works for everyone?](#), which was published in March 2017, as well as analysing the evidence received and making further recommendations to the government and the FCA.

Safe harbour provisions to support the wind-down of critical benchmarks: RFRWG letter

The Working Group on Sterling Risk-Free Reference Rates has published a [letter](#) it has sent to HM Treasury relating to the wind-down of critical benchmarks and the possible safe harbour HM Treasury has consulted on to reduce the risk of contractual uncertainty and disputes that may arise from the transition of tough legacy contracts.

Among other things, the Working Group welcomed HM Treasury's recent consultation on whether there is a case for incorporating a supplementary legal "safe harbour" provision. Written before the Financial Services Bill received Royal Assent, the Working Group explained that it understands that the safe harbour protections outlined in the consultation are unlikely to be included in the Financial Services Bill. While its understanding is that this does not represent a substantive decision on the merits of introducing such protections, the Working Group is keen to receive an update from the government on whether it intends to introduce safe harbour protections and, if so, how and when.

Net zero and the future of green finance: Treasury Committee report

The House of Commons Treasury Committee has published its [Thirteenth Report of Session 2019-21](#) on net zero and the future of green finance. In the report, the committee makes a series of recommendations for how the government can achieve net zero by 2050, including:

- financial products should be clearly labelled to allow consumers to assess their relative climate impacts and to make choices accordingly. HM Treasury and the FCA should consult on making green labels mandatory, including how they could encourage innovation and be widely understood by retail consumers;
- greenwashing may be an issue, with the potential to mislead consumers. HM Treasury must ensure the FCA has the appropriate remit, powers and priorities to prevent the greenwashing of financial products available to consumers;
- the FCA should consider undertaking further FinTech challenges to encourage innovation and set out how it will tackle remaining regulatory barriers that discourage innovative green financial products from coming to market;
- the overall cost of achieving net zero is uncertain. The government should set out the principles on which the UK will fund its transition to net zero. It should also set out its own cost assessments of achieving net-zero by 2050, its methodology, and highlight where the uncertainties lie;
- with the first issuance of a UK green sovereign bond expected in summer 2021, the UK is lagging behind other countries. The government should set out its tolerance for them to be more expensive than other forms of government debt; and
- many pension savers in defined contribution (DC) pension schemes are invested in their pension's default fund. HM Treasury will not require default funds to move to greener alternatives but maintains consumers should not have to switch out to invest sustainably. The government should resolve this apparent contradiction. It should also report on the proportion of pension holders in DC pension schemes who remain in the default fund and the extent to which those default funds are aligned with a path to net zero.

UK Future Regulatory Framework Review: BoE speech on PRA policymaking

The Bank of England (BoE) has published a [speech](#) by Victoria Saporta, BoE Executive Director of Prudential Policy, in which she discusses the Prudential Regulation Authority's (PRA's) changing approach to policymaking and its "strong and simple" prudential framework for small, non-systemic banks and building societies, the [discussion paper](#) for which was published on the same day (see Banking and finance regulatory news in our Related materials links).

Dr Saporta explains that, under the government's proposals for the new financial services regulatory framework, the PRA is expected to move from rule taker to rule maker for most areas of prudential policy within its remit. To guide its overall approach, it has a vision to be an accountable, responsive and accessible policymaker. Ms Saporta then elaborates on what this means. Dr Saporta observes that realising this vision will take years of coordinated work,

including new legislation setting out the regulatory framework and the transfer of rules from the statute book to the Rulebook.

UK MiFID research and best execution reporting requirements: FCA CP21/9

The FCA has published a consultation paper, [CP21/9](#), on changes to conduct and organisational requirements laid down in UK laws and regulations implementing the EU Markets in Financial Instruments Directive (MiFID). The FCA states that the proposals are the first output of the FCA and HM Treasury work on capital markets reform to ensure the UK regime it is adapted to the structures of UK markets and maintain the highest regulatory standards.

The proposals relate to:

- the inducements rules relating to research to broaden the list of what are considered minor non-monetary benefits. The FCA proposes to include research on SMEs with a market cap below £200m, fixed income, currencies and commodities (FICC) research, openly available research and research provided by independent research providers; and
- the removal of best execution reporting obligations (RTS 27 and RTS 28 reports) on execution venues and investment firms.

The consultation closes on 23 June 2021.

Strengthening financial promotion rules for high-risk investments and firms approving financial promotions: FCA DP21/1

The FCA has published a discussion paper, [DP21/1](#), on strengthening its financial promotion rules for high-risk investments and firms approving financial promotions. In its discussion paper, the FCA seeks views on three areas where changes could be made to protect consumers from harm:

- the classification of high-risk investments;
- the segmentation of the high-risk investment market; and
- the responsibilities of firms which approve financial promotions.

Comments can be made on DP21/1 until 1 July 2021. The FCA will also be testing ideas informed by behavioural research to get better insight on how effective they might be and this, together with feedback to DP21/1, will help shape the changes the FCA intends to consult on later in 2021.

Compliance, culture and evolving regulatory expectations: FCA speech

The FCA has published a [speech](#) by Mark Steward, FCA Executive Director of Enforcement and Market Oversight, on compliance, culture and evolving regulatory expectations. In his speech, Mr Steward's talks about:

- raising senior manager standards through the senior managers and certification regime;
- the five conduct questions "journey". Mr Steward notes that the FCA is currently considering a sixth conduct question in its future work which will interrogate firms on diversity and inclusion;
- two examples of enforcement cases, both relating to insider dealing; and
- embedding behavioural change.

Improving effective regulation: FCA speech

The FCA has published a [speech](#) given by Charles Randell, FCA chair, in which he highlights five things that the FCA needs to do differently for it to be as effective as possible in the new ways of living and working with COVID-19 and increased digitisation:

- making sure that firms with FCA authorised status are "good enough" and using their authorisations or they should lose them;
- with 60,000 authorised firms to monitor, the FCA must focus on the basics. It will continue to focus on its four priorities for basic consumer protection: safe and accessible payments; sustainable credit; clear and safe investment choices; and fair product terms;
- focus on outcomes and ensure that firms do the same;
- reshape regulation. Financial services legislation and financial regulation are full of complex detail, which can produce loopholes and opportunities for regulatory arbitrage. The FCA must be more agile and confident in using its Principles for Businesses, in particular the Principle that firms should treat their customers fairly, to take action against firms that are not doing the right thing. Mr Randell also notes that the FCA has been considering a "New Consumer Duty" (or duty of care) and states that the FCA will make further announcements about this shortly; and
- reshape the FCA, for example, with recent new appointments.

Why black inclusion matters: FCA speech

The FCA has published a [speech](#) by Sheldon Mills, FCA Executive Director, Consumers and Competition, on why black inclusion matters. Mr Mills was speaking at a New Financial event at which its [research report](#) on accelerating black inclusion was launched. The report's qualitative analysis focuses on the progression of black colleagues into leadership positions across the UK financial services industry. Highlights from Mr Mills' speech include:

- there is a lack of black people across senior roles in financial services, and there is a strong business case for improving diversity and inclusion at senior levels, with black inclusion being an important part of that;
- the racism that many black people face in the workplace is not overt, but subtle and insidious, and it adds obstacles for black people to succeed;
- black inclusion is important to the FCA as a regulator. The FCA wants firms to consider how they can accelerate black inclusion at all levels as part of their diversity and inclusion agendas. Data plays an important role in driving transparency and action; and
- The FCA has recognised its own challenges as an employer and it is taking action as an employer to improve black, Asian and minority ethnic representation and inclusion.

Climate change and sustainable finance: FCA webpage

The FCA has published a new [webpage](#) detailing its work relating to climate change and sustainable finance. The FCA explains it is working to broaden and deepen its sustainable finance strategy, which is based on the themes of transparency, trust, and tools, as set out in an October 218 feedback statement, [FS19/9](#).

Digital sandbox pilot: FCA evaluation

The FCA has published an [evaluation report](#) of its digital sandbox pilot. The report sets out the findings of the pilot, including how it accelerated the development of innovative products and solutions within financial services, as well as key lessons learned from the pilot phase. Although it is too early to assess the long-term outcomes for participating firms, the FCA's on-going

evaluation and feedback from participants has indicated a range of benefits. These include accelerated product development, validating and improving artificial intelligence and machine learning models, refining business plans, and networking within the pilot ecosystem.

Key lessons learnt from the pilot include significant industry demand, particularly from early-stage firms and start-ups, for a digital testing environment, future cohorts should have a narrower focus and participants would benefit from a more structured journey through the cohort, rather than the digital sandbox being a "self-service" platform.

The Kalifa Review of UK FinTech recommended that a permanent digital sandbox be created to encourage further collaboration within UK financial services. To support this recommendation, the FCA will:

- run a second cohort of the digital sandbox in late 2021;
- further iterate and improve the digital sandbox testing environment by incorporating the lessons learned from the initial pilot and making the suggested improvements to the platform;
- expand on the use of the digital sandbox testing environment to highlight the opportunities and value it contributes to the financial services ecosystem;
- focus the efforts of the second cohort around the theme of sustainability and climate change to support the UK's green finance ambitions; and
- explore, with industry and other stakeholders throughout the summer, viable sustainable operating models for a future, permanent version of the digital sandbox.

Cyber threats: FCA insights from 2020 Cyber Coordination Groups

The FCA has published its third annual [insights publication](#) giving a broad overview and insight into the discussions held at its quarterly Cyber Coordination Group (CCG) meetings, with the aim of sharing key insights from those meetings with the wider financial sector. Insights include:

- some of the major cyber threats and risks that CCG member firms have faced include: ransomware attacks, denial of service attacks, cloud security, insider threats and inadequate supply chain oversight and security;
- CCG firms have identified Zero Trust Security models and artificial intelligence as some of the emerging fields within cyber-security;
- the change to remote working has put additional strain on cyber-security teams and systems, requiring the need to re-evaluate existing cyber risks and controls. The changed ways of working have also exacerbated the challenges caused by ransomware, supply chain security and insider threats; and
- there are several common good practices that can be used to mitigate supply chain risks. CCG members identified fourth-party supply chain and Cloud Service Provider risks as unique challenges in this space and shared potential mitigation strategies. CCG members also identified shared assurance models as potentially promising improvements to the way firms assess supply chain risk.

FCA complaints data for second half of 2020

The FCA has published [complaints data](#) relating to the second half of 2020 (H2 2020). The FCA explains that it publishes two different types of data every six months: firm specific data for individual firms; and aggregate (or total) figures for the industry. The webpage summarises the FCA's latest findings and contains links to:

- a new [webpage](#) providing firm specific complaints data for H2 2020; and

- a new [webpage](#) providing aggregate complaints data for H2 2020 and including all the complaints that financial services firms reported to the FCA during this period. The data is contained in a sortable table. Additional new webpages related to this webpage focus on opened complaints, closed complaints, complaints upheld and redress paid.

The FCA has also published new webpages on [redress paid](#), [complaints upheld](#), [closed complaints](#), [opened complaints](#), [firm specific complaints data](#) and updated its webpage on [previous complaints data](#).

Sustainable finance standards: FMLC concerns about UK-EU divergence

The Financial Markets Law Committee (FMLC) has published a [letter](#) sent to HM Treasury on the International Platform on Sustainable Finance (IPSF). Among other things, in its letter, the FMLC draws attention to the risk of uncertainty due to divergence, which may arise between sustainable finance standards adopted in the UK and EU, particularly in relation to the Sustainable Finance Disclosure Regulation, the Non-Financial Reporting Directive and the Taxonomy Regulation.

CMA annual concurrency report 2021

The Competition and Markets Authority (CMA) has published its 2021 [annual concurrency report](#). This is the seventh such report. It reviews how the concurrency arrangements between the CMA and the sectoral regulators – which include the FCA and the Payments Systems Regulator – have worked over the year from 1 April 2020 to 31 March 2021 and assesses progress since the last annual report. The report has sections on competition enforcement, market studies and market investigations, general and multilateral cooperation, and the impact of the UK's withdrawal from the EU and COVID-19.

RAO: High Court considers "carried on by way of business"

In [Jackson v Ayles and another](#) [2021] EWHC 995 (Ch), the High Court held that a loan was unenforceable under section 26(1) of the Financial Services and Markets Act 2000 (FSMA) as the lender was not authorised. Among other things, the court considered whether entering into a loan was an activity "carried on by way of business" within section 22(1) of FSMA. It held that it was. Chief ICC Judge stated:

"34. I find, on the balance of probabilities that Mr Pumphrey's lending was carried on by way of business for the following reasons:

34.1. The relationship between Mr and Mrs Ayles and Mr Pumphrey arose out of commercial dealings and not a prior friendship...;

34.2. On his evidence he had sought advice from a lecturer of law at Kingston University about "private lending";

34.3. He had obtained a charge template for the purpose of securing his lending to "ensure I got my money back";

34.4. The lending to Mr and Mrs Ayles was "not built on trust";

34.5. The Weymouth Loan did not constitute an isolated lending occasion. Mr Pumphrey made several loans to Mr and Mrs Ayles over many years;

34.6. Since 2005 he has lent more than £3.5m (albeit not at the same time) to 14 different individuals and companies. None of the loans were soft;

34.7. He accepted that he wanted a return on his money; and

34.8. All loans made entitled him to the receipt of interest in excess of market rates.

35. For the sake of completeness I do not find that lending money was his only business. It formed a part, likely to be a small part, of his overall enterprise..."

CRR: European Commission consults on extending transition period relating to treatment of exposures to third-country CCPs

The European Commission has [published](#) for consultation a draft Implementing Regulation extending the transitional period during which EU institutions can treat exposures to a third-country central counterparty (CCP) that has not been recognised in accordance with the European Market Infrastructure Regulation (EMIR) as if they were exposures to a recognised (or qualifying) CCP.

Article 497(1) of the Capital Requirements Regulation (CRR) (as amended by CRR II) established a transitional period during which institutions may treat exposures to those third-country CCPs as exposures to qualifying CCPs. However, for third-country CCPs that submitted their application for recognition under Article 25(6) of EMIR before 27 June 2019, and are still awaiting recognition by the European Securities and Markets Authority (ESMA), this transitional period will expire on 28 June 2021.

The Commission will not be able to adopt by 28 June 2021 decisions in accordance with Article 25(6) of EMIR for some of the jurisdictions in which those third-country CCPs are established (which is a prerequisite for ESMA to recognise third-country CCPs), and so ESMA will not be able to complete by that date the recognition procedures for the third-country CCPs awaiting recognition. This means that EU institutions that have exposures to those third-country CCPs would be required to significantly increase their own funds for those exposures.

The extension of the transitional period would give the Commission time to finalise its equivalence assessments under Article 25(6) of EMIR and to adopt the relevant equivalence decisions where the required conditions are met. It would also give ESMA time to recognise the third-country CCPs concerned.

The draft Implementing Regulation extends the transitional period by 12 months until 28 June 2022.

The consultation closes on 26 May 2021.

Climate risk: ECB speech banking supervision

The European Central Bank (ECB) has published a [speech](#) by Frank Elderson, ECB Supervisory Board Vice-Chair and Executive Board Member, which includes discussion on how the ECB banking supervision is tackling climate risk. This includes, for example, the publication of the ECB Guide on climate-related and environmental risks, incorporating climate-related risks into ongoing supervision and stress testing, and promoting international cooperation on joint solutions for climate change.

Global Anti-Corruption Sanctions Regulations 2021 and guidance

The [Global Anti-Corruption Sanctions Regulations 2021 \(SI 2021/488\)](#) entered into force at noon on 26 April 2021. The Regulations were made under the Sanctions and Anti-Money Laundering Act 2018 (SAML) to establish a sanctions regime with the purpose of preventing and combatting serious corruption. Among other things, the Regulations give a power to the Secretary of State to designate persons who are, or have been, involved in serious corruption. Such designated persons may be excluded from the UK and may also be made subject to financial sanctions, including having their funds or economic resources frozen.

Alongside the Regulations, the Secretary of State for Foreign, Commonwealth and Development Affairs (FCDO) has provided [guidance](#) to assist in the implementation of, and compliance with,

the Regulations. This guidance also provides best practice for compliance. The current guidance should be read together with the more detailed sanctions guidance published by the Office of Financial Sanctions Implementation (OFSI). The Secretary of State has also published related [guidance](#) for non-government organisations with the aim of supporting the understanding of the regime for those who may wish to submit information to the FCDO concerning specific designations.

Banking and Finance

BoE stress testing: 2021 Climate Biennial Exploratory Scenario update

The Bank of England (BoE) has updated its [webpage](#) on stress testing with information on its Climate Biennial Exploratory Scenario (CBES). The CBES will cover risks to the UK financial sector from climate change and will be launched in June 2021. Participating firms should use:

- [CEBS data templates](#), which includes all reporting templates participating firms should use to make their quantitative submissions;
- [CEBS data dictionary](#), which includes all relevant reporting information for the CBES templates including definitions, enumerations, patterns and reconciliations;
- [CEBS qualitative questionnaire](#), which includes all qualitative queries for firms to respond to; and
- [notes](#) to accompany the Structured Data Templates and the Qualitative Questionnaire

COVID-19: PRA update on disclosure of exposures subject to COVID-19 response measures

On 27 April 2021, the Prudential Regulation Authority (PRA) published [updated guidance](#) to UK banks and building societies on the disclosure of exposures subject to measures applied in response to COVID-19.

The PRA explains that it continues to see the benefits to the disclosure of information on the effects of the measures that UK firms have taken in response to COVID-19. Therefore, firms should continue to use the templates published in the PRA's [statement of 28 July 2020](#) for semi-annual disclosure reference dates up to, and including, 31 December 2021.

Firms may continue to disclose on a semi-annual basis as at 30 June 2021 and 31 December 2021. Firms may also disclose at the half-year and year-end dates for their financial year, if they have an accounting reference date other than 31 December 2021.

Prudential framework for non-systemic banks and building societies: PRA DP1/21

The PRA has published a discussion paper, [DP1/21](#), on exploring the options for developing a "strong and simple" prudential framework for non-systemic banks and building societies. The aim of the framework is to maintain the resilience of those entities and of the UK financial sector while using simplified prudential regulation. The PRA refers to it as the "strong and simple" prudential framework.

The PRA notes that any changes to simplify prudential regulation for smaller firms should be balanced against the risk those changes may create barriers to growth, which could discourage or prevent smaller firms from becoming large enough to provide effective competitive challenge to larger firms. Its intention is to develop a framework that is fully consistent with the Basel Core Principles for Effective Banking Supervision, but simpler than the Basel standards that apply to large and internationally active banks.

Comments can be made on DP1/21 until 9 July 2021 and the PRA intends to publish a summary of the (anonymised) responses to stimulate further debate. The next step will be to publish a consultation paper, which sets out the proposed prudential rules for defining whether a firm is in scope of the simpler regime and the proposed requirements under the regime. The PRA states that design and implementation is likely to take several years to complete.

"Higher paid material risk taker": PRA CP9/21 on correcting definition

The PRA has published a consultation paper, [CP9/21](#), to correct an error in the definition of "higher paid material risk taker" in the PRA Rulebook. The aim of CP9/21 is to align the definition with the PRA's intention of continuing the approach outlined in its supervisory statement, SS2/17 "Remuneration". CP9/21 follows the PRA's [statement](#) of 25 February 2021 which explained its position in relation to the definition of "higher paid material risk taker".

The proposals in CP9/21 would result in changes to the Remuneration Part of the PRA Rulebook.

The PRA proposes that the implementation for the changes would take effect on publication of the final policy. To avoid retroactivity, the PRA proposes that firms would not be required to apply the corrected definition to remuneration that has been paid, vested, or is subject to an obligation to pay or vest created before that date in respect of the first performance year beginning on or after 29 December 2020.

Comments can be made on CP9/21 until 26 May 2021. The PRA intends to publish its final policy in Q2 2021.

Remuneration benchmarking and remuneration high earners reporting templates: PRA statement

The PRA has published a [statement](#) on its reporting templates for Remuneration Benchmarking and Remuneration High Earners. The statement advises that the PRA is aware of an issue related to these templates.

As part of the European Banking Authority's (EBA's) Taxonomy 2.10, the Remuneration module became reportable for the first time in XBRL format from 31 December 2020. The XBRL reportable templates for remuneration benchmarking and high earners were designated COR014 and COR015 respectively, to replace REP004 and REP005 XML reporting templates for PRA-authorized firms in-scope.

The PRA became aware of issues with the EBA's XBRL remuneration reporting templates, for which the EBA released a patch on 18 March 2021 to address this issue. The PRA and Financial Conduct Authority (FCA) have worked together to assess the amount of change required in the Gabriel and RegData system and the impact on firms of implementing the proposed patch.

The PRA and FCA have decided not to implement the EBA's patch at this time, to minimise the burden on firms. Instead, they have decided to revert to the XML-based REP004 and REP005 reporting templates for submission of 2020 data on Gabriel and RegData. Firms migrated onto the RegData platform should submit their remuneration data on RegData.

Firms will be notified as soon as the reporting schedules on Gabriel and RegData have been amended to reflect this reversion. The PRA recognises that firms with a 31 December year-end will be unable to meet the submission deadlines specified in rules 17.4 and 18.3 of the Remuneration Part of the PRA Rulebook. As a result, the PRA expects such firms to submit REP004 and REP005 reporting templates for 2020 data by 1 June 2021.

The PRA expects that firms with a non-31 December year-end should be able to comply with the submission date. However, if firms anticipate a problem with meeting their usual submission date due to the issues identified, they should contact their usual supervisor.

The PRA will provide further detail on its expectations regarding reporting of remuneration data for 2021 and beyond in due course.

BRRD: European Commission adopts Delegated Regulation on contractual recognition of stay powers

The European Commission has adopted a [Delegated Regulation](#) on regulatory technical standards (RTS) determining the content of the contractual terms on recognition of resolution stay powers under the Bank Recovery and Resolution Directive (BRRD).

Article 71a(1) of the BRRD (inserted by BRRD II), requires institutions and entities to include in any financial contract governed by the laws of a third country a contractual term by which the parties recognise that the financial contract may be subject to the exercise of powers to suspend or restrict rights and obligations by the exercise of those powers by a member state resolution authority.

Article 71a(5) of the BRRD empowers the Commission to adopt delegated acts specifying the content of the terms required in Article 71a(1), taking into account institutions' and entities' different business models. The RTS sets out a list of mandatory components that must be present in the contractual terms required in the financial contracts.

The Council of the EU and the European Parliament will now scrutinise the draft Delegated Regulation. If neither object, the Delegated Regulation will enter into force 20 days after its publication in the Official Journal of the European Union (OJ).

CRR: EBA consults on draft ITS on supervisory reporting relating to additional liquidity monitoring metrics

The EBA is [consulting](#) on implementing technical standards (ITS) on supervisory reporting with regard to additional liquidity monitoring metrics (ALMM) reporting requirements. The draft ITS have been developed under Article 415(3a) of the Capital Requirements Regulation (CRR), which mandates the EBA to draft ITS to specify which ALMM should apply to small and non-complex institutions. Also, Article 430(7) of the CRR mandates the EBA to develop uniform formats, definitions, frequencies, reference and remittance dates, and IT solutions.

The EBA proposes to introduce some proportionality considerations in ALMM reporting for small and non-complex institutions. It includes additional amendments in the reporting templates designed to streamline reporting requirements, fill in data gaps and further clarify the reporting instructions.

The EBA has published the following amended annexes alongside its consultation: [Annex 18 \(AMM\) \(XLS\)](#), [Annex 19 \(AMM\) \(PDF\)](#), [Annex 20 \(AMM - Counterbalancing capacity\) \(XLS\)](#), [Annex 21 \(AMM - Counterbalancing capacity\) \(PDF\)](#), [Annex 22 \(AMM - Maturity ladder\) \(XLS\)](#), [Annex 23 \(AMM - Maturity ladder\) \(PDF\)](#), together with a [tracked changes](#) version (ZIP file).

The consultation closes on 28 June 2021 and there will be a public meeting on 28 May 2021. The EBA expects to submit the draft RTS to the European Commission in December 2021. The application of the revised requirements would be for 31 December 2022 reporting reference date.

CRR: EBA consults on draft RTS specifying factors and conditions to be considered when assessing appropriateness of risk weights and minimum LGD values for mortgage exposures

The EBA is [consulting](#) on draft RTS specifying the types of factors to be considered to assess the appropriateness of risk weights and the conditions to be taken into account to assess the

appropriateness of minimum loss given default (LGD) values under Articles 124(4) and 164(8) of the CRR (as amended by CRR II).

The mandates deal with the assessments of the appropriateness of risk weights for institutions applying the standardised approach (SA) or minimum LGD values for institutions applying the internal ratings-based (IRB) approach. The paper also addresses other major changes made by CRR II.

The EBA will hold a public hearing on 30 June ahead of the deadline for responses of 29 July 2021. It plans to finalise the RTS and submit them to the European Commission by 31 October 2021.

DGSD: EBA consults on draft guidelines on delineation and reporting of available financial means of deposit guarantee schemes

The EBA has published a [consultation paper](#) on draft guidelines on the delineation and reporting of available financial means (AFM) of deposit guarantee schemes (DGS) under the Deposit Guarantee Schemes Directive (DGSD). The guidelines are intended to ensure that only funds that credit institutions contributed, or that stem indirectly from such contributions such as recoveries or investment income, will count towards reaching the target level of the DGS fund. Also, funds that stem directly or indirectly from borrowed resources should not count towards the target level. The clarification aims to avoid the situation where a DGS could meet the target level by taking out a loan.

In drafting the guidelines, the EBA takes into account its January 2020 opinion on DSG funding, in which it identified that there were differences across member states in relation to the interpretation of the concept of AFM and stated that this shows that the current text of the DGSD may not be sufficiently clear. However, since review of the DGSD is several years away from being finalised, the draft guidelines are designed to provide clarification in the meantime.

The deadline for comments on the consultation paper is 28 July 2021. The EBA will hold a public hearing on its proposals on 28 June 2021.

Payments

Draft Payment and Electronic Money Institution Insolvency Regulations

The [draft Payment and Electronic Money Institution Insolvency Regulations](#) have been laid before Parliament. The draft Regulations, if made, will create a new special administration regime for payment and electronic money institutions.

A [draft explanatory memorandum](#) states that this new regime will give insolvency practitioners administering the insolvencies of payment or electronic money institutions an expanded toolkit. This will allow the insolvency practitioner to keep an insolvent institution operational with the aim of ensuring continuity for consumers and prioritising the return of their funds.

The draft Regulations will also extend the full suite of Financial Services and Markets Act 2000 Part 24 provisions to all payment and electronic money institutions entering the standard insolvency process. This will provide the Financial Conduct Authority (FCA) with specific powers to participate and protect consumers in the event of an insolvency of a payment or electronic money institution as it does for other FCA supervised firms.

The draft Regulations follow HM Treasury's consultation on the insolvency of payment institutions and electronic money institutions in December 2020. The Treasury has published a [response](#) to its consultation.

Interchange Fee Regulation: PSR consults on updating guidance

The Payment Systems Regulator (PSR) has published a consultation paper, [CP21/5](#), on necessary amendments to its Guidance on the Interchange Fee Regulation (EU IFR) following the UK's withdrawal from the EU and changes to the regulatory framework.

A marked-up draft of the amended guidance is set out in [Annex 2](#) to CP21/5, which has been published separately.

Comments can be made on the proposals until 21 May 2021. The PSR will assess the responses from May to July 2021. It plans to publish the final version of the updated guidance later in 2021.

Securities and Markets

LIBOR transition and fallbacks in uncleared derivatives: Sterling Working Group statement and paper

The Working Group on Sterling Risk-Free Reference Rates has published a [statement](#) recommending that participants across the bond, loan and derivatives markets actively transition legacy sterling LIBOR contracts to SONIA as soon as possible, to ensure contractual certainty ahead of LIBOR cessation. For derivatives markets participants, the Sterling Working Group also published a [paper](#) outlining key considerations for counterparties that are preparing for the operation of IBOR fallbacks in non-cleared sterling LIBOR derivatives.

UK ETS auctioning regulations

The Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 ([SI 2021/484](#)) were made on 21 April 2021 and came into force on 22 April 2021 (Auctioning Regulations). They are accompanied by an [explanatory memorandum](#). The Auctioning Regulations govern the auctioning of UK emissions allowances (UKAs) and the provision of a secondary market under the UK Emissions Trading Scheme (UK ETS) which commenced on 1 January 2021.

The Auctioning Regulations are related to the Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021 ([SI 2021/494](#)), which were also made on 21 April 2021 and which amend UK financial services law to reflect the creation of the UK ETS and, among other things, establish an oversight role for the Financial Conduct Authority.

Insurance

Blockchain and smart contracts in insurance: EIOPA discussion paper

The European Insurance and Occupational Pensions Authority (EIOPA) has published a [discussion paper](#) on blockchain and smart contracts in insurance. The aim of the paper is to provide a high level overview of risks and benefits of blockchain and smart contracts in insurance from a supervisory perspective, and to gather feedback from stakeholders. It also gives an overview of the feedback EIOPA received through a survey on blockchain and smart contracts which it conducted with national competent authorities in Q2 2020.

EIOPA's survey is open for comment until 29 July 2021.

EIOPA will assess the feedback to the paper to better understand blockchain developments in the insurance sector as well as the risks and benefits related to them. This could also help to provide informed input for the upcoming legislative initiatives foreseen in the European Commission's Digital Finance Strategy. It could also supplement EIOPA's overall work on digitalisation, including in areas such as the (re)insurance value chain and new business models arising from digitalisation, insurance platforms and ecosystems, open insurance, digital ethics, and RegTech/SupTech.

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