FIG Bulletin

Recent developments

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Hogan Lovells

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General

Draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2020

A draft version of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2020 has been published, together with a draft explanatory memorandum. The draft Order, which has been laid before Parliament, will amend the regulatory framework for providers of pre-paid funeral plan contracts, bringing plan providers and intermediaries within the FCA's remit and requiring providers of funeral plan contracts to obtain authorisation under the Financial Services and Markets Act 2000 (FSMA) when entering into, or carrying out, such contracts. The Order also makes amendments relating to the intermediation and financial promotion of funeral plan contracts and expands the permitted business of appointed representatives to allow them to intermediate the sale of funeral plan contracts as either an arranger or an agent.

If made, the draft Order will amend the:

- FSMA (Regulated Activities) Order 2001 (SI 2001/544) (RAO);
- FSMA (Collective Investment Schemes) Order 2001 (SI 2001/1062);
- FSMA (Appointed Representatives) Regulations 2001 (SI 2001/1217); and
- FSMA (Financial Promotion) Order 2005 (SI 2005/1529).

The draft Order also makes transitional modifications to the ombudsman scheme established under FSMA, to allow complaints made on or after the date on which the Order comes fully into force relating to acts or omissions that occurred before that date to be dealt with by the Financial Ombudsman Service (FOS).

The FCA has published a statement welcoming the draft Order and confirming that it expects to take responsibility for the regulation of the sector in summer 2022. The FCA will publish more detailed information in the coming weeks to help firms get ready. It will consult in spring 2021 on plans for regulating the sector, including its proposed rules and approach to authorising firms, and expects to finalise the rules later in 2021. Firms wishing to carry out regulated funeral plan activities must be authorised by the time the FCA takes responsibility for regulation. Firms not intending to seek authorisation should start planning now for how to wind down their business in an orderly way before FCA regulation comes into force.

Investment in productive finance: HM Treasury, BoE and FCA working group

HM Treasury, the Bank of England (BoE) and the Financial Conduct Authority (FCA) have announced that they will convene a working group to facilitate investment in productive finance. Investment in productive finance refers to investment that expands productive capacity, furthers sustainable growth and can make an important contribution to the real economy. Examples include plant and equipment, research and development, technologies, infrastructure and unlisted equities related to these sectors.

The working group will build upon work already undertaken to investigate the challenges and potential barriers to investment in productive finance assets in the UK, including the Treasury's Patient Capital Review in 2016 and the Asset Management Taskforce's UK Funds Regime Working Group's Long-Term Asset Fund (LTAF) proposal in 2019.

The working group will:

- propose solutions for barriers to investment to be implemented by industry participants. This includes considering potential fund structures, such as an LTAF, to invest viably in long-term assets and that meet the demands of a wide range of investors, including defined contribution pension funds; and
- propose a roadmap, timetable and set of actions to implement those solutions.

The working group will be co-sponsored by the Economic Secretary to the Treasury, the BoE Governor and the FCA Chief Executive. Its membership will be drawn from market participants including banks, asset management firms, pension funds and insurance companies, corporates, infrastructure firms, wealth managers, investment platforms and trade associations representing relevant sectors and markets. Further details relating to the membership of the working group, which will be by invitation from HM Treasury, the BoE and the FCA, will be announced in the coming weeks.

EU financial services reform: House of Commons EU Scrutiny Committee report

The House of Commons European Scrutiny Committee has published its 29th report of the 2019-21 session. Section 4 of the report considers, in particular, the EU's reform agenda set out in the European Commission's second Capital Markets Union Action Plan and its Communication on a Digital Finance Strategy. It also provides an overview of important pending and upcoming EU financial services proposals in the Annex to the report.

The Committee intends to continue monitoring changes in EU financial services policy closely and will engage with the Treasury where necessary to discuss the potential implications of specific European proposals for the UK.

Socio-economic diversity in financial and professional services sectors: new Taskforce

HM Treasury has published a letter, sent to Catherine McGuinness, City of London Corporation Policy Chair, setting out the commission for a new Taskforce to boost socio-economic diversity at senior levels in the financial and professional services sectors.

The taskforce will be chaired by Catherine McGuinness, Chair of the Policy and Resources Committee, City of London Corporation and three Co-Chairs: Alderman Vincent Keaveny (Senior Alderman, City of London Corporation), Sandra Wallace (Interim Chair of Social Mobility Commission), and Andy Haldane (Chief Economist, Bank of England).

The taskforce is launched alongside a research report commissioned by the City of London Corporation and authored by the Bridge Group. The research finds that almost nine in ten senior roles in financial services are held by people from higher socio-economic backgrounds. This compares with a third of the UK working population as a whole.

The Taskforce will have three workstreams:

1. leading an industry consultation on how government, regulators and sector bodies can incentivise employer action on socio-economic diversity;
2. creating a membership body or peer network for financial services, to increase employer engagement and accountability in delivering socio-economic diversity at senior levels; and
3. producing a productivity analysis, to build the business case for increasing socio-economic diversity at senior levels in financial and professional services.

Workstreams 1 and 3 will make recommendations for industry, regulators, sector bodies and policy makers, which will be presented to the government for consideration. Workstream 2 will set up a membership body or peer network, which will launch and be functioning during the 2021/22 City of London mayoralty.

The Taskforce will meet four times before the end of November 2022, with the first meeting due to take place in May 2021. The CLC is expected to report back on the impact and findings of the Taskforce by November 2022.

LIBOR transition: FCA updates Q&As on conduct risk

The FCA has updated its Q&As about conduct risk during LIBOR transition. Two new Q&As are added:

- Given that the spread between LIBOR and SONIA will vary, how can firms address this fairly when actively transitioning customers from LIBOR to alternative rates?
- Can LIBOR contracts can be converted on LIBOR cessation or loss of representativeness to Bank Rate plus an appropriate spread, rather than SONIA plus an appropriate spread?

COVID-19: FCA and FOS correspondence on firms' handling of complaints

On 20 November 2020, the FCA published correspondence with the FOS reconfirming the FOS' approach to assessing complaints arising from firms' acts or omissions during the COVID-19 pandemic. The correspondence follows the publication of updated and additional guidance by the FCA to enhance the support for mortgage and consumer credit borrowers facing payment difficulties due to COVID-19.

In a letter Sheldon Mills, FCA Interim Executive Director of Strategy and Competition asks Caroline Wayman, FOS Chief Ombudsman and Chief Executive to confirm that, in determining what is fair and reasonable in all the circumstances of the individual case, the FOS will continue to take account of the operational challenges faced by firms during this period, and the FCA's revised expectations of what constitutes compliance with its rules, guidance and standards, as well as good industry practice at the time. In particular, he refers to FCA guidance or statements of regulatory forbearance that give firms additional flexibility to help them deal with difficult conditions.

In her response, Ms Wayman confirms the FOS' approach to complaints. She is confident that the FOS continues to provide an appropriate framework, which should give financial businesses the certainty that complaints will be dealt with fairly. Ms Wayman explains that in deciding what is fair and reasonable in the circumstances of an individual complaint, the FOS must take account of relevant law, regulators' rules, guidance and standards, codes of practice and what the ombudsman considers to have been good industry practice at the time. The FOS does not make decisions with the benefit of hindsight. Ms Wayman clarifies that the FOS will continue to take account of the FCA's revised expectations of what constitutes compliance with the requirements and material referred to by Mr Mills. The FOS will continue to engage with firms directly on the issues affecting them.

FCA digital sandbox update

The FCA has updated its webpage on the digital sandbox pilot which aims to provide enhanced support to innovative firms and organisations looking to tackle challenges relating to, or exacerbated by, the COVID-19 pandemic. The FCA explains that 30 organisations will take part

in the pilot. It received 94 applications across the three use cases of fraud and scams, vulnerability and SME lending.

A key feature of the pilot is the building of a community of interested stakeholders to interact with the teams and solutions as they are being developed in the testing environment, sharing knowledge, experience and expertise. Firms or individuals that do not have a proposition to test in the digital sandbox, but who want to observe or potentially be involved with a team, can register an account on the digital sandbox pilot website.

FCA RegData platform: FCA announces benefits

The FCA has published a press release in which it sets out the benefits of RegData, its new data collection platform which will replace Gabriel. The FCA is moving firms and their individual users to RegData in groups to minimise the impact. Firms' moving dates are determined by their reporting requirements. The first firms moved from Gabriel to RegData over the weekend of 17 and 18 October 2020. The press release contains links to videos describing what firms can expect from the move and from RegData.

The FCA has also updated the registration process information on its RegData webpage. All users must register for RegData before their move by logging into Gabriel and completing the one-time registration when prompted. Until they are moved, firms should continue reporting through Gabriel, using their existing Gabriel login details.

Financial Services Register: FCA directory persons data now live

The FCA has updated its webpage on the Financial Services Register to confirm that the directory persons data submitted by dual-regulated firms under the Senior Managers and Certification Regime is now live.

The FCA also reminds solo-regulated firms that they must submit their directory persons data via Connect by 31 March 2021 using the single-entry submission form. Earlier dates apply if solo-regulated firms wish to use the multiple entry submission form, or if they wish their data to appear from earlier dates starting in December 2020. Further details are on the FCA's directory persons webpage. The FCA will begin to incrementally display data from solo-regulated firms as it is submitted, starting from 14 December 2020.

Business of social purpose: FCA speech

The FCA has published a speech by Jonathan Davidson, FCA Executive Director of Supervision – Retail and Authorisations, on the business of social purpose. Highlights flagged in the speech include:

- culture remains a key area of focus for the FCA;
- during the coronavirus crisis, financial services firms have supported consumers (being part of the solution rather than the problem), providing an opportunity to rebuild trust in financial services moving forwards;
- while coronavirus might be the most immediate challenge firms are facing, it isn't the only one – the need to break barriers around diversity and inclusion, and climate change and sustainability are key challenges that also require urgent attention;
- firms with healthy cultures that are purposeful, safe, and support environments that are diverse and inclusive, will be better placed to tackle these challenges; and
- the financial services industry has the opportunity to make real progress, driven by social purpose.

Building trust in sustainable investments: FCA speech

The FCA has published a speech by Richard Monks, FCA Director of Strategy, on building trust in sustainable investments. Mr Monks discusses sustainable investments, data and information, measuring impact and, building these, he explains that the FCA is considering whether it would be helpful to articulate a set of guiding principles to help firms with environmental, social and governance product design and disclosure to tackle some of the FCA's concerns and ensure consumers are protected from greenwashing.

FSCS levy position: FSCS Outlook newsletter

The Financial Services Compensation Scheme (FSCS) has published the latest edition of its Outlook newsletter, which provides an overview of its levy position at the mid-point of the 2020/21 financial year.

Given the current high levels of uncertainty, the levy figures the FSCS has announced are its best estimates and are subject to change. It expects to confirm any additional levies, along with its forecast 2021/22 annual levy figures, in its plan and budget, which will be published in January 2021. Invoices will be issued to firms shortly after that date.

The FSCS calls on the financial services industry to take collective action to tackle the root cause of the rising levy by reducing the number of poor consumer outcomes.

UK's future international regulatory cooperation strategy: FMLC response

The Financial Markets Law Committee (FMLC) has published its response to the call for evidence issued in September 2020 by the Department for Business, Energy and Industrial Strategy (BEIS) on the UK government's future international regulatory cooperation (IRC) strategy. The FMLC notes that divergent national approaches and differences present a serious challenge to effective cross-border regulation. Particularly considering Brexit, among other things, the FMLC urges the UK government to prioritise coordination with authorities around the world.

Green and sustainable finance: ECB interview

The European Central Bank (ECB) has published the transcript of an interview given by Yves Mersch, ECB Executive Board Member and Vice-Chair of Supervisory Board, on green and sustainable finance.

Among other things, Mr Mersch made the following points:

- there is a risk that green finance degenerates into a pure marketing tool. Investors need to know how their investments contribute to more sustainability. However, there is a risk of informational market failures if information on the sustainability of businesses and financial products is inconsistent, largely not comparable and at times unreliable or even completely unavailable. Definitions of what constitutes a sustainable investment are often subjective and inconsistent;
- the Taxonomy Regulation is important. However, the taxonomy was designed with green bonds in mind. Its application to other financial products may not be as straightforward and the overall design might need to be adjusted. The system is also very complex. Mr Mersch sees a gap between its envisaged objective and its practical usability. Plans are under way for widely applicable industry standards;

- however useful the taxonomy may be for green investment decisions, it will not help in the risk assessment of economic activities exposed to climate risk;
- financial institutions, including banks, need to ensure they can identify at an early stage, and deal with, the risks emerging from climate change and a rapid transition to a carbon-neutral economy. Only when these prerequisites are met will sustainable finance have a tangible impact on the real economy. Otherwise, there remains a risk of "greenwashing" and of an unsustainable "green bubble" detached from fundamental data; and
- although disclosure of climate-related risks has improved, the information is generally not detailed enough and is not always supported by quantitative data. The ECB will publish a guide on climate-related and environmental risks, which will set out how, in its view, institutions should take climate and environmental risks into consideration. The ECB will also publish a report on banks' disclosure of environmental risks, having reviewed disclosures for last year from a sample of banks. More than half did not meet the minimum requirements set out in the guide.

Taxonomy Regulation: European Commission consults on Delegated Regulation on climate change mitigation and adaptation

The European Commission is consulting on the text of Commission Delegated Regulation supplementing the Taxonomy Regulation relating to climate change mitigation and adaptation. It has also updated its webpage on the EU taxonomy for sustainable activities.

The purpose of the Delegated Regulation, which reflects a mandate in Articles 10(3) and 11(3) of the Taxonomy Regulation, is to specify technical screening criteria for determining the conditions under which a specific economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation, respectively, and to establish, for each relevant environmental objective laid down in Article 9 of the Taxonomy Regulation, technical screening criteria for determining whether that economic activity causes no significant harm to one or more of those environmental objectives.

The consultation closes on 18 December 2020.

PEPP Regulation: European Commission consults on draft Delegated Regulations

The European Commission has published for consultation the following two draft Delegated Regulations supplementing the Regulation on a pan-European personal pension product PEPP Regulation:

- Commission Delegated Regulation (EU) supplementing the PEPP Regulation with regard to additional information for the purposes of the convergence of supervisory reporting; and
- Commission Delegated Regulation (EU) supplementing the PEPP Regulation with regard to product intervention.

The consultations close on 18 December 2020.

Financial stability: FSB report on implications of climate change

The Financial Stability Board (FSB) has published a report on the implications of climate change for financial stability. The report investigates channels through which climate-related risks might impact the financial system. It also examines potential mechanisms within the financial system that might amplify the effects of climate-related risk as well as the cross-border transmission of risks.

G20 communique

The G20 has published a communique setting out the G20 leaders' declaration following its summit held on 21 and 22 November 2020. Relevant to financial services, the G20 states that it:

- commits to the FSB principles underpinning the national and international responses to COVID-19, including the need to act consistently with international standards. The FSB is asked to continue monitoring financial sector vulnerabilities, working on procyclicality and credit worthiness, and coordinating regulatory and supervisory measures. The G20 welcomes the FSB's holistic review of the March 2020 turmoil, and its forward work plan to improve resilience of the non-bank financial sector;
- recognises that COVID-19 has reaffirmed the need to enhance global cross-border payment arrangements to facilitate cheaper, faster, more inclusive and more transparent payment transactions, including for remittances. The G20 endorses its Roadmap to Enhance Cross-Border Payments. It asks the FSB, in co-ordination with international organisations and standard-setting bodies, to annually report to the G20 on progress in this area;
- looks forward to the FSB completing its evaluation of the effects of the "too-big-to-fail" reforms in 2021;
- reaffirms the importance of orderly transition away from LIBOR to alternative reference rates before the end of 2021;
- recognises that mobilising sustainable finance is important for global growth and stability. The FSB is continuing to examine the financial stability implications of climate change. The G20 welcomes growing private sector participation and transparency in this area;
- is closely monitoring developments in technological innovations and remains vigilant to existing and emerging risks. Among other things, the G20 considers that no so-called "global stablecoins" should commence operation until all relevant legal, regulatory and oversight requirements are adequately addressed through appropriate design and by complying with applicable standards. It welcomes the reports in this area produced by the FSB, the Financial Action Task Force (FATF) and the International Monetary Fund. The G20 looks forward to standard-setting bodies reviewing the existing standards in the light of these reports and making necessary adjustments; and
- supports the policy responses set out in the FATF's paper on COVID-19 and reiterates its commitment to tackle all money laundering and terrorist financing threats. The G20 also calls for the full, effective and swift implementation of the FATF standards worldwide, and welcomes the strengthening of the FATF's standards to enhance global efforts to counter proliferation financing.

Governance, risk management and financial inclusion IFSB standards: FAQs

The Islamic Finance Standards Board (IFSB) has published the following sets of FAQs relating to four of its standards:

- Guiding principles on corporate governance for institutions offering only Islamic financial services;
- Guiding principles on governance for Islamic collective investment schemes;
- Standard on risk management for takāful undertakings; and
- Technical note on financial inclusion and Islamic finance.

The FAQs aim to enhance the implementation of the four IFSB standards among the member jurisdictions through presenting clarifications and explanative directions on the issued standards.

Banking and Finance

Submission of statistical data: BoE Green Notice 2020/02

The Bank of England (BoE) has published a Green Notice 2020/02 announcing future changes to the submission of statistical data to its Data and Statistics Division (DSD).

Any financial institution with permission from the PRA to accept deposits must provide the BoE with statistical data. Currently, statistical data is submitted through the BoE's online statistical collection application (OSCA). The notice states that DSD is planning to move the collection of statistical data to the BoE's online electronic data submission (BEEDS) application. In addition to completing and submitting data online through BEEDS, firms can view the information held about them by the BoE and keep it up to date. The BoE also intends to move the reporting format from XML to XBRL.

The BoE has started conversations with software houses and plans to release the draft XBRL taxonomy and data point model to them, as soon as possible. Firms that do not use a software house to help them send statistical data to the BoE are asked to contact the OSCA helpdesk.

The BoE intends to move away from OSCA by the end of October 2022. Migration to BEEDS will take place over an extended period and the BoE will run a pilot of early adopters. It will release more information in statistical notices in due course.

Market risk: PRA PS23/20 and updated SS13/13

Following its October 2020 consultation, the Prudential Regulation Authority (PRA) has published a policy statement, PS23/20, on market risk, the calculation of risks not in value at risk (RNIV), and stressed value at risk (sVaR). As well as setting out its final policy, the PRA gives feedback on its consultation in PS23/20. It has also updated its supervisory statement, SS13/13, on market risk.

On measurement of RNIV, respondents generally agreed with the benefits of expecting RNIV own funds to be calculated as an average RNIV measure across the preceding twelve-week period. However, all respondents argued for a less-frequently than weekly calculation of the RNIV measure, at least for certain RNIVs. On the meaning of "period of significant financial stress relevant to the institution's portfolio" for sVaR calculation, the majority of respondents expressing a view agreed with the PRA's proposed expectations.

Having considered the consultation responses, the PRA has changed its draft policy to:

- expect that RNIV own funds requirements should be calculated as the average across the preceding three-month period of an RNIV measure calculated at least monthly (rather than weekly, as proposed);
- set an additional expectation that firms should still consider whether more frequent calculation than monthly may be appropriate for more material, or more variable, RNIV positions; and
- set an expectation that the relevant RNIV measure for at least 90% of RNIV own funds requirements should be calculated at least monthly. This means that the RNIV measure for up to 10% of RNIV's own funds requirements may be calculated less frequently than monthly.

The updated version of SS13/13 is effective immediately on publication of PS23/20. However, the PRA appreciates that, particularly for the measurement of RNIV, firms may not be able to

immediately comply with its new expectations. Firms should contact their PRA supervisor to agree their plans and a reasonable timeframe for complying with the new expectations.

Brexit: ECB interview comments on preparations

The European Central Bank (ECB) has the transcript of an interview given by Yves Mersch, ECB Executive Board Member and Supervisory Board Vice-Chair. Among other things, Mr Mersch answered a question in the interview on whether the financial services sector is doing enough to prepare for the end of the Brexit transition period. In response, he explains that a lot has been achieved but more could still be done. The ECB is continuing to push some firms to implement their Brexit plans.

Mr Mersch does not underestimate the large number of contracts that require repapering or novation. This work is still ongoing. Banks are telling the ECB that it is their customers who are causing problems in this area. He notes that there are some contracts relating to certain instruments, like uncleared derivatives, where there seem to be more problems than with other contracts.

Mr Mersch believes that there may still be a risk for UK firms where, for instance, if on 1 January 2021 there is no post-Brexit transition period agreement between the EU and the UK, they would be acting on the continent without the proper authorisation or licence to provide services to EU clients. Extensive use of third country national regimes could also pose risks to the level playing field and could undermine the integrity of supervision. He explains that banks and investment firms may unduly use these regimes, and other national exemptions, to avoid EU banking supervision. The ECB will be monitoring the situation.

Mr Mersch explains that the ECB's message is clear: EU products and transactions with EU clients should be booked in the EU, and risk management capabilities related to these products should also be located in the EU.

CRR: EBA report on significant risk transfer in securitisation transactions

The European Banking Authority (EBA) has published a report on significant risk transfer (SRT) in securitisation transactions under Articles 244(6) and 245(6) of the Capital Requirements Regulation (CRR). The report includes a set of detailed recommendations to the European Commission on the harmonisation of practices and processes applicable to the SRT assessment. The EBA proposals aim to enhance the efficiency, consistency and predictability of the supervisory SRT assessment within the current securitisation framework.

The recommendations focus on three key areas where inconsistencies have been found:

- assessment of structural features of securitisation transactions;
- application of SRT quantitative tests; and
- supervisory process for assessing SRT in individual transactions.

The EBA states that the recommendations on supervisory process are aimed at facilitating and speeding up supervisory decision-making on SRT, without compromising the quality and thoroughness of the assessment. It says that the clear classification of complex structural features between those ineligible for SRT, and those that need to comply with a set of safeguards for a fast-track assessment, will provide clarity to market participants and support an effective supervisory assessment.

In addition, the EBA has identified shortcomings in certain CRR provisions currently in force that are significantly detrimental to the effectiveness of the supervisory assessment of

SRT. Accordingly, the EBA sets out several recommendations on desirable amendments to the CRR that could correct those shortcomings and improve the SRT framework.

The report will inform the delegated acts that the Commission may adopt to harmonise the substantive aspects of the EU supervisory SRT framework.

Securitisations on non-performing loans: BCBS technical amendment concerning capital treatment

The Basel Committee on Banking Supervision (BCBS) has published a technical amendment concerning the capital treatment of securitisations on non-performing loans (NPLs). The amendment closes a gap in the Basel framework by setting out prudent and risk-sensitive capital requirements for NPL securitisations which are subject to different risk drivers compared to securitisations of performing assets.

Payments

Global Payments Newsletter: November 2020

Our latest Global Payments Newsletter is now published. Key developments of interest over the last month reported in this edition include:

- Europe: The CJEU has found that: (i) PSD2 does not restrict the type of terms that can be changed by tacit consent, but where the payment service user is a consumer the UCTD applies; and (ii) contactless functionality is a separate payment instrument;
- France: Ministry of the Economy and Finance has published a revised charter on banking inclusion and over-indebtedness prevention; and
- Hong Kong: Securities and Futures Commission has announced a new crypto regulatory regime for virtual asset exchanges.

EPC 2021 SEPA scheme rulebooks and guidelines

The European Payments Council (EPC) has published the following updated and enhanced rulebooks (version 1.0), which came into effect on 21 November 2021:

- SEPA Credit Transfer (SCT): Scheme Rulebook;
- SEPA Instant Credit Transfer (SCT Inst): Scheme Rulebook;
- SEPA Direct Debit (SDD) Core Scheme Rulebook; and
- SDD Business-To-Business (B2B) Scheme Rulebook.

In each case, Annex IV of the rulebook lists all changes compared to version 1.2 of the 2019 rulebooks. A related press release also highlights the changes made to each of the rulebooks.

The EPC has also published an updated version of the document Maximum amount for instructions under the SCT Inst Scheme Rulebook which sets the maximum amount per instruction that can be processed under the SCT Inst scheme outside the regular payment scheme rulebook release management cycle, as defined in the SEPA Payment Scheme Management Rules of the SCT Inst rulebook.

In addition, the EPC has published guidelines that set out the rules for implementing the 2021 rulebooks and related documentation:

- SCT Scheme Inter-PSP Implementation Guidelines 2021;
- SCT Inst Scheme Customer-to-PSP Implementation Guidelines 2021;
- SCT Inst Scheme Inter-PSP Implementation Guidelines 2021;
- SDD Core Scheme Customer-to-PSP Implementation Guidelines 2021;
- SDD Core Scheme Inter-PSP Implementation Guidelines 2021;
- SDD Core Scheme E-Mandate Service Implementation Guidelines 2021;
- SDD B2B Scheme Customer-to-PSP Implementation Guidelines 2021;
- SDD B2B Scheme Inter-PSP Implementation Guidelines 2021; and
- SDD B2B Scheme E-Mandate Service Implementation Guidelines 2021.

Finally, the EPC has published updated versions of the following clarification papers that provide guidance and, where possible, recommendations to scheme participants on how to handle situations that are not described in the rulebooks:

- Clarification paper on SDD Core and SDD Business-to-Business rulebooks (version 1.3); and

- Clarification paper on SCT and SCT Inst scheme rulebooks (version 1.6.).

Securities and Markets

UK EMIR: FCA statement on reporting and UK validation rules

The UK Financial Conduct Authority (FCA) has published a statement on reporting derivatives under the retained EU law version of the European Market Infrastructure Regulation (UK EMIR) after the Brexit transition period. It has also published the UK EMIR validation rules which should be used by UK reporting counterparties and UK trade repositories (TRs) when submitting derivative transactions entered into from 11.00 pm on 31 December 2020 onwards. It points out that the rules include references to future amendments, which will apply from 8 March 2021.

Among other things, the statement also includes information relating to:

- the UK's approach to onshoring EMIR, and changes for UK counterparties and TRs;
- the temporary transitional power (TTP): exception for EMIR reporting and TR requirements;
- reporting new and outstanding trades under the UK EMIR reporting regime by UK counterparties;
- intragroup exemptions from the reporting obligation under UK EMIR;
- mandatory delegated reporting under UK EMIR;
- historic EMIR data;
- inter-TR reconciliation under UK EMIR;
- publication of TR data and data access for authorities; and
- list of third country regulated markets under UK EMIR.

The FCA notes that the statement is not exhaustive in detailing the circumstances in which actions will be needed. It reminds firms that they are best placed to understand their own compliance with UK EMIR requirements and that they must consider the actions they need to take in the light of their specific business model.

The FCA has updated its dedicated webpage on the EMIR reporting obligation to link to the statement and validation rules.

UK SFTR: FCA statement on reporting and UK SFTR validation rules

The FCA has published a statement on reporting securities financing transactions (SFTs) under the retained EU law version of the Regulation on reporting and transparency of securities financing transactions (UK SFTR) at the end of the Brexit transition period. The FCA has also published the UK SFTR validation rules which should be used by UK reporting counterparties and UK TRs when submitting SFTs entered into, or amended, from the end of the transition period.

Among other things, the statement includes information relating to:

- the UK's approach to onshoring the SFTR.
- the temporary transitional power (TTP): exception for SFTR reporting and TR requirements;
- reporting new and outstanding trades under the SFTR reporting regime by UK counterparties;
- historic SFTR data;
- inter-TR reconciliation under the UK SFTR; and

- publication of TR data.

The FCA notes that the statement is not exhaustive in detailing the circumstances in which action will be needed. It reminds firms that they are best placed to understand their own compliance with UK STFR requirements and that they must consider the actions they need to take in the light of their specific business model.

The FCA has updated its dedicated webpage on the SFTR reporting obligation to link to the statement and validation rules.

UK STS notification templates: FCA update

The FCA has updated its webpage on reporting simple, transparent and standardised (STS) securitisations with UK STS notification templates and related instructions.

To qualify as UK STS, the originators and sponsor of a securitisation (or in the case of asset-backed commercial paper programmes and transactions, the sponsor) must be established in the UK and must notify the FCA, using the onshored UK STS notification templates. These are for either new securitisations that meet the UK STS criteria under the onshored regulation, or UK securitisations previously notified to the European Securities and Markets Authority (ESMA) as EU STS that meet the UK STS criteria and want to be considered as such. The FCA has now published the onshored UK STS notification templates and related instructions for:

- public securitisations;
- private full securitisations; and
- private anonymised securitisations.

All STS notifications must be submitted to the FCA via its Connect portal which is now open. The FCA has published a guide to assist firms.

UK securitisations previously notified to ESMA that meet the UK STS criteria and want to be considered as such must be notified to the FCA before 11 pm on 31 December 2020, when the UK STS framework comes into effect. Securitisations that have been duly notified to the FCA will be published on the STS list on its website on 31 December 2020.

EURIBOR fallbacks: Working Group on Euro Risk-Free Rates' consultations

The Working Group on Euro Risk-Free Rates has published two public consultations on fallback rates to EURIBOR. In one consultation, stakeholders are invited to provide their views on fallback rates based on the euro short-term rate (€STR) and spread adjustment methodologies in order to produce the most suitable EURIBOR fallback measures per asset class. In the other consultation, stakeholders are invited to give their views on potential events that could trigger such fallback measures.

The consultations close on 15 January 2021. The working group expects to issue final recommendations relating to the topics covered by the consultations in the first quarter of 2021.

CRAs and CISPs: FCA portfolio letter on supervisory strategy

The FCA has published a portfolio letter on its supervisory strategy addressed to the board of directors of firms within its credit reference agencies (CRAs) and credit information service providers (CISPs) portfolio. The FCA outlines its key areas of focus and expectations of these firms.

The FCA focuses on areas that it considers are the key drivers of potential harm. For CRAs and CISPs they include the loss or misuse of personal data, poorly designed CRA products, ineffective product governance and poor data quality, technology resilience, disorderly firm failure leading to disruption in access to credit, and complaints handling, and credit broking fee disclosure. The FCA also makes it clear that it expects firms to have in place contingency plans in place to deal with major events, such as the COVID-19 pandemic. The FCA draws attention to its March 2020 statement on COVID-19.

In the immediate term, the FCA will focus on large CRA firms to address the key risk of harms identified in the portfolio, having already engaged with some firms on several of these issues. It will also select a sample of firms to assess the steps they have taken as a result of this letter and the impact of these actions.

Where it sees CRAs and CISPs creating harm in the market, the FCA will use the Senior Managers and Certification Regime (SMCR) to hold appropriate individuals to account. Firms should consider what action they need to take to comply with the SMCR and review and improve their firm's organisational standards of conduct.

The strategy outlined in the letter covers the period to October 2021. However, the FCA intends to review its portfolio strategy to identify any revisions that may be appropriate when it publishes the interim findings of the credit information market study, which has been delayed to 2021 due to COVID. The FCA will write to firms again in 2021 with its updated view on the key risks posed by the firms in this sector and its updated supervisory plans.

Brexit: Commission Implementing Decision on temporary equivalence of UK regulatory framework for CSDs

Commission Implementing Decision (EU) 2020/1766 on the temporary equivalence of the UK's regulatory framework for central securities depositories (CSDs) under the Central Securities Depositories Regulation (CSDR) has been published in the Official Journal of the EU (OJ).

From 1 January 2021, UK CSDs will be considered third country CSDs within the meaning of the CSDR. EU CSDs are in the process of developing services in relation to Irish corporate securities and exchange traded funds (ETFs), while EU issuers are migrating their positions to EU CSDs. However, this work will not be fully finalised on 31 December 2020. The Commission considers it is therefore necessary, and in the interest of the EU and its member states, that the legal and supervisory arrangements governing UK CSDs are determined as equivalent for a period of six months.

The Commission adds that potential future divergence regarding the legal and supervisory arrangements applicable to UK CSDs means that market participants should prepare for a situation where there is no further equivalence decision in this area.

The Implementing Decision enters into force on 26 November 2020. It applies from 1 January 2021 and expires on 30 June 2021.

Securitisation Regulation: Delegated Regulation on fees for securitisation repositories

Commission Delegated Regulation (EU) 2020/1732, which supplements the Securitisation Regulation on fees charged by ESMA to securitisation repositories, has been published in the OJ. The Delegated Regulation, which was adopted on 18 September 2020, sets out provisions on:

- the level of the registration fees payable by applicants, including extension-of-registration fees payable by entities that are already registered as trade repositories;
- the definition of the applicable turnover on the basis of which annual supervisory fees are to be charged;
- the level of the annual supervisory fees; and
- the process for paying registration and annual supervisory fees.

The Delegated Regulation will enter into force on 10 December 2020.

EMIR: ESAs' final report on RTS on amendments to bilateral margin requirements and novations from UK to EU counterparties

The Joint Committee of the European Supervisory Authorities (ESAs) has published a third version of its final report on regulatory technical standards (RTS) under EMIR on various amendments to the bilateral margin requirements in view of the international framework and novations from UK to EU counterparties. The ESAs have developed the draft RTS under Article 11(15) of EMIR. They are set out in Annex 3.2 to the report, in the form of a draft Commission Delegated Regulation, which amends Commission Delegated Regulation (EU) 2016/2251, setting out the detailed bilateral margin requirements.

The draft RTS introduce several amendments in view of the changes and current level of implementation of the international framework agreed by the Basel Committee on Banking Supervision (BCBS) and the International Organisation of Securities Commissions (IOSCO). The draft RTS extend the temporary exemption for single-stock equity options or index options for three years, to avoid undue costs and an unlevel playing field situation for EU counterparties.

In the context of the withdrawal of the UK from the EU, the ESAs and other EU authorities and institutions have highlighted the importance for market participants to be prepared for the end of the transition period. The draft RTS reintroduce a regulatory solution to support these preparations. They allow UK counterparties to be replaced with EU counterparties without triggering the bilateral margin requirements under certain conditions and within a 12-month timeframe. This ensures a level playing field between EU counterparties and the preservation of the regulatory and economic conditions under which the contracts were originally entered into. The ESAs advise that counterparties should start negotiating as soon as possible the novation of their transactions that are within the scope of the draft RTS.

The final report replaces the version the ESAs submitted to the European Commission in May 2020.

EMIR: ESMA final report on RTS on clearing obligation regarding intragroup transactions and novations from UK to EU counterparties

ESMA has published a final report on EMIR RTS on the clearing obligation regarding intragroup transactions as well as novations from UK to EU counterparties. ESMA developed the draft RTS under Article 5(2) of EMIR. They are set out in Annex 3.2 to the report, in the form of a draft Commission Delegated Regulation, which amends the three Commission Delegated Regulations on the EMIR clearing obligation ((EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178) (the Clearing Delegated Regulations).

The amendments included in the draft RTS extend the deferred application date of the clearing obligation for 18 months for intragroup transactions satisfying certain conditions and where one of the counterparties is established in a third country.

ESMA also considers it appropriate to preserve the characteristics of contracts for which clearing was not required, and which contracts are subsequently novated from one counterparty established in the UK to another counterparty established in a member state, to address the situation where the original UK counterparty may no longer be able to provide certain services across the EU after the end of the transition period. The draft RTS amend the Clearing Delegated Regulations to facilitate certain Brexit-related novations of OTC derivative contracts to EU counterparties during a 12-month timeframe.

In addition, ESMA is taking the opportunity to update the Clearing Delegated Regulations in line with the changes introduced by the EMIR Refit Regulation. Specifically, the draft RTS include amendments to remove the minimum remaining maturities' requirements from the Clearing Delegated Regulations.

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

ESMA expects competent authorities to apply the EU framework regarding the clearing obligation and the treatment of intragroup OTC derivative contracts and OTC derivative contracts novated from the UK to the EU in a risk-based and proportionate manner until the draft RTS are finalised and enter into force.

Brexit: ESMA statement on MiFIR derivatives trading obligation

ESMA has published a public statement on the impact of the end of the Brexit transition period on the derivatives trading obligation (DTO) under Article 28 of the Markets in Financial Instruments Regulation (MiFIR). In the statement, ESMA clarifies the application of the DTO following the end of the transition period on 31 December 2020. It explains that the DTO will continue applying without changes. ESMA considers that the continued application of the DTO after the transition period would not create risks to the stability of the financial system.

ESMA notes that most UK trading venues that offer trading in derivatives subject to the DTO have established new trading venues in the EU. While trading activity on these venues is currently limited, the venues have onboarded members and participants, including the major liquidity providers, which will allow EU investment firms to comply with the DTO by trading the relevant derivatives in those trading venues after the end of the transition period.

ESMA acknowledges that this approach creates challenges for some EU counterparties, particularly UK branches of EU investment firms who (without an equivalence decision from the European Commission) are likely to be subject to the DTO in both the EU and the UK. However, it considers that EU counterparties can meet their obligations under the DTO by trading on EU trading venues or eligible trading venues in third countries, and this situation is primarily a consequence of the way the UK has chosen to implement the DTO.

ESMA will continue to closely monitor the situation to assess whether markets would be sufficiently liquid to allow EU market participants to execute transactions in derivatives subject to the DTO on eligible trading venues after the end of the transition period.

Data reporting services providers: ESMA consults on advice on criteria and fees

ESMA is consulting on technical advice on criteria for identifying data reporting services providers (DRSPs) and on fees for DRSPs.

Regulation (EU) 2019/2175 amended MiFIR to transfer authorisation and supervisory powers relating to DRSPs from national competent authorities (NCAs) to ESMA from 1 January 2022,

except for those DRSPs benefiting from a derogation. Article 2(3) of MiFIR gives the European Commission the power to adopt a delegated regulation specifying criteria to identify those authorised reporting mechanisms (ARMs) and approved publications arrangements (APAs) that should fall within this derogation on account of their limited relevance for the internal market and so be subject to authorisation and supervision by an NCA.

In the first consultation, ESMA seeks views on issues relating to these criteria. In the second consultation, ESMA (under its power in Article 38n of MiFIR) sets out a proposed framework for application fees and annual supervisory fees for DRSPs, drawing on its existing fee frameworks for trade repositories and securitisation repositories.

Both consultations close on 4 January 2021. ESMA intends to publish final reports and to submit the technical advice to the European Commission in Q1 2021.

IOSCO annual meeting summary

The International Organization of Securities Commissions (IOSCO) has published a press release summarising issues discussed at its 45th annual meeting. Matters considered include:

- two additional priority themes for 2021: financial stability and systemic risks in non-bank financial intermediation; and remote working, misconduct risks, fraud and scams, and operational resilience, in the context of the COVID-19 pandemic;
- sustainable finance;
- the Financial Stability Engagement Group;
- the Retail Market Conduct Task Force; and
- the Board agreed to undertake further work on areas including the impact of COVID-19 on secondary trading market micro-structure mechanisms, the operations of trading venues and business continuity planning.

Annex I to the press release lists the new signatories to the IOSCO Multilateral Memorandum of Understanding on cooperation and exchange of information (MMoU) and the Enhanced MMoU.

MMF: IOSCO thematic review report on implementation of policy recommendations

IOSCO has published a final report setting out the findings of a thematic review on consistency in the implementation of money market funds (MMFs) reforms. IOSCO has also published a diagnostic report, which focuses on the effects of the market dislocations related to the impact of the COVID-19 pandemic on MMFs and seeks to characterise the behaviour of MMFs of varying types and of currencies across the main MMF jurisdictions.

REMIT: ACER updates guidance

The Agency for the Co-operation of Energy Regulators (ACER) has published the 5th edition of its guidance on the application of the Regulation on wholesale energy market integrity and transparency (REMIT).

Insurance

Brexit: FCA update for UK life insurers

The UK Financial Conduct Authority (FCA) has updated its webpage on "Brexit: information for life insurers in the UK about pensions and retirement income" with additional guidance relating to after the transition period. Among other things, when servicing customers from the European Economic Area (EEA) after the end of the Brexit transition period, the FCA expects firms to act in accordance with local laws and local regulators' expectations. At the same time, firms need to make sure decisions are guided by obtaining appropriate customer outcomes. The FCA recognises that this may involve different considerations in different circumstances. It states that it would clearly be a bad outcome for a consumer not to receive the payment of a valid claim or any other payments they are entitled to.

The FCA explains that if a firm chooses to remove a right or option in a contract due to local member state laws, then as long as their primary cover is still in place, it may be possible to make up for the limitation through other steps. The firm would be expected to review its contractual obligations, as well as the ongoing fairness and value of the product. If appropriate, firms should consider offering the customer compensation or a refund for the loss of optionality.

For open market options, if the customer is unable to shop around due to local law restrictions, firms must consider what potential harms may arise for that customer. They should also consider any appropriate mitigation, including, for example, offering rates that would otherwise have been available to the customer.

The FCA explains that the underlying principle in these examples is the need for firms to consider customers' circumstances and take an approach that gives the customer an appropriate outcome. It is important to ensure that the customer does not lose out.

For customers who purchase a product after the end of the transition period, the FCA expects firms to set out the limitations of the contract at the point of sale. They should make it clear to customers that moving to the EEA may affect their ability to continue to benefit fully from their cover (although it may vary according to the particular EEA state). More broadly, the FCA explains that firms need to make sure they pay due regard to customers' information needs and be ready to answer customers' queries accurately and fairly.

Brexit: FCA update for UK general insurers and intermediaries

The FCA has updated its webpage on "Brexit: information for general insurers and intermediaries in the UK" with additional information on servicing EEA customers. The FCA expects firms to act in accordance with local laws and local regulators' expectations. They should ensure that decisions are guided by obtaining appropriate outcomes for their customers. The FCA states that it would clearly be a bad outcome for a customer not to receive the payment of a valid claim or any other payments they're entitled to.

The FCA recognises that this may involve different considerations in different circumstances. It advises that there is more guidance on its expectations in relation to long-term contracts with rights and options (see above).

COVID-19: FCA update on business interruption insurance test case

The FCA has updated its webpage on its business interruption insurance test case with links to the final transcripts for each day of the appeal hearing before the Supreme Court:

- day 1 of the Supreme Court appeal hearing;
- day 2 of the Supreme Court appeal hearing;
- day 3 of the Supreme Court appeal hearing; and
- day 4 of the Supreme Court appeal hearing.

Lloyd's and London market insurers: FCA Dear CEO letter

The FCA has published a Dear CEO letter it has sent to Lloyd's and London market insurers, re-insurers, protection and indemnity (P&I) clubs and run-off firms (collectively, LLM). In the letter, the FCA sets out its view of the key risks of harm to customers or the markets firms operate in, which are posed by firms in the FCA's LLM portfolio. It also outlines the FCA's expectations, including how firms should mitigate the key risks. Firms are expected to consider the contents of the letter and explain what they have done in response.

Among other things, the FCA details expectations under the headings of governance and oversight; culture and non-financial misconduct; the general insurance distribution chain; employers liability insurance tracing procedures; cyber risk and operational resilience; hardening market; and EU withdrawal.

Solvency II: EIOPA consults on supervisory statement relating to SCR breach

EIOPA has published a consultation paper on a statement on supervisory practices and expectations in case of breach of the solvency capital requirement (SCR) under the Solvency II Directive.

The aim of the statement is to promote supervisory convergence in the application of the "supervisory ladder", in particular, in the way that insurers' recovery plans are developed, assessed and approved. EIOPA explains that the supervisory practices addressing the supervisory ladder are necessarily flexible and should consider each insurer's specific situation. However, it is important that when certain triggers are reached (such as non-compliance with the SCR), a minimum convergent approach is applied to ensure a similar level of policyholder and beneficiary protection across the EU.

EIOPA advises that this has always been an extremely important area, however, during the last four years there have only been a few SCR breaches. 12 insurers from six member states have breached the SCR for a period of two consecutive days. This represents less than 0.5% of all insurers subject to the Solvency II Directive.

EIOPA recognises that the ongoing uncertainty relating to COVID-19 could potentially lead to more frequent breaches of the SCR in future. It notes that EU insurers have, so far, demonstrated resilience. However, the current environment amplifies the risk of non-compliance. Therefore, EIOPA believes that supervisory convergence in this area is timely. The statement is drafted so it is applicable at any time. However, one specific paragraph has been included addressing supervisory expectations on the development of recovery plans in the course of the COVID-19 pandemic.

The consultation closes on 17 February 2021. EIOPA will consider the feedback received and publish a final report on the consultation. It will also submit the final version of the supervisory statement for adoption by its Board of Supervisors.

Funds and Asset Management

Bearer Certificates (Collective Investment Schemes) Regulations 2020

The Bearer Certificates (Collective Investment Schemes) Regulations 2020 (SI 2020/1346) have been published, together with an explanatory memorandum. The Regulations were made on 24 November 2020 and come into force on 1 January 2021.

Abolishing bearer certificates, also known as share warrants to bearer, or otherwise implementing measures to prevent their misuse, is required under international standards on anti-money laundering and tax transparency. SI 2020/1346 closes a technical loophole which still allowed two types of investment vehicle to issue bearer certificates. All collective investment schemes, including UK OEICs incorporated before 26 June 2017 and all UUTS, will be prohibited from issuing bearer certificates. The explanatory memorandum indicates that this will have minimal impact on businesses, as there is no evidence that bearer certificates have in fact been issued. However, it will ensure that the UK is meeting its international obligations, following a recommendation from the Global Forum on Transparency and Exchange of Information for Tax Purposes (part of the OECD).

Integrating stewardship into investment process: Asset Management Taskforce report

The Investment Association (IA) has published a report, "Investing with Purpose: placing stewardship at the heart of sustainable growth", produced by the Asset Management Taskforce, a group of the UK's leading investment managers, stakeholders and regulators, led by HM Treasury and supported by the IA. The report provides a blueprint for integrating stewardship into the investment process and seeks to cement the UK as a global centre of excellence in stewardship practice.

Future challenges for fund managers: ESMA speech

The European Securities and Markets Authority (ESMA) has published a speech by Verena Ross, ESMA Executive Director, on future challenges for fund managers. Among other things, Ms Ross discusses events in the sector relating to COVID-19, delegation in the light of the end of the Brexit transition period (referring to ESMA's letter to the European Commission on the review of the Alternative Investment Fund Managers Directive and the Commission's related consultation) and sustainable finance. Among other things, Ms Ross notes that the European Supervisory Authorities intend to launch a consultation paper in January 2021 on additional taxonomy-related product disclosures, stemming from empowerment given to them by the Taxonomy Regulation.

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