



FIG Bulletin

Recent developments
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The next edition of the FIG Bulletin will be on 21 June 2021

Hogan
Lovells

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General

SMCR: PRA PS11/21 and FCA Handbook Notice 88 on temporary, long-term absences

The UK Prudential Regulation Authority (PRA) has published a policy statement, [PS11/21](#), which confirms its final policy relating to temporary, long-term absences by senior managers under the Senior Managers and Certification Regime (SMCR). PS11/21 gives feedback to responses received to Chapter 2 of the Financial Conduct Authority's (FCA) Quarterly Consultation Paper No. 30, CP20/23, in which the FCA and the PRA jointly proposed their expectations regarding temporary, long-term absences for senior management functions (SMFs). It also sets out the PRA's final policy as follows:

- consequential amendments to the following parts of the PRA Rulebook:
 - Senior Managers Regime – Applications and Notifications;
 - Insurance - Senior Managers Regime – Applications and Notifications;
 - Large Non-Solvency II Firms - Senior Managers Regime – Applications and Notifications; and
 - Non-Solvency II Firms - Senior Managers Regime – Applications and Notifications.
- an updated supervisory statement, (SS), [SS28/15](#): Strengthening individual accountability in banking;
- an updated [SS35/15](#): Strengthening individual accountability in insurance; and
- an updated [Form D](#) - Changes to personal information/application details and conduct breaches/disciplinary action related to conduct.

The changes in PS11/21 took effect from 2 June 2021.

The FCA confirmed equivalent rule and guidance changes to the FCA Handbook on 28 May 2021 in [FCA Handbook Notice 88](#). It makes changes to the following parts of the FCA Handbook:

- SYSC 25.4;
- FIT 1.3;
- SUP 10A.14, 10C.9, 10C.10, 10C.11, 10C.14, 10C Annex; and
- 2G and 10C Annex 6R Form D.

Cryptoasset businesses: FCA extends temporary registration regime

The FCA has [announced](#) that it has extended the temporary registration regime (TRR) for certain existing cryptoasset businesses that have applied to it for registration under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692) (MLRs 2017). The TRR for these businesses was due to expire on 9 July 2021. It has now been extended to 31 March 2022.

The FCA explains that a significantly high number of businesses are not meeting the required standards under the MLRs 2017, which has resulted in an unprecedented number of businesses withdrawing their applications. The extension is designed to enable cryptoasset firms to continue to carry on business while the FCA proceeds with its assessments.

The FCA warns that many cryptoassets are highly speculative and can quickly lose value. Even if a firm is registered with it, the FCA has no consumer protection powers for their cryptoasset activities, and it is not responsible for ensuring cryptoasset businesses protect client assets

(among other things). In addition, the FCA explains that it is unlikely that consumers will have access to the Financial Ombudsman Service or the Financial Services Compensation Scheme.

Publication of workplace personal pension costs and charges data: FCA statement

The FCA has published a [statement](#) setting out its expectations for the first publication by workplace pension providers of costs and charges data required under the new rules published in [PS20/2](#).

Independent governance committees (IGCs) are required to publish and disclose to members of workplace pension schemes certain administration charges and transaction costs information. This information must be published for the first time by 31 July 2021, when IGCs are expected to publish their annual reports.

The FCA notes that there are differing stakeholder views on whether the data should be published at the level of the arrangement with each individual employer, or whether it should be published at a higher level, with the data indicating the range of charges paid by members in different employer arrangements in one overarching scheme.

The FCA explains its expectation that the data to be published at the level of the arrangement with each individual employer. It believes that employer-level comparisons could help to improve value for money in workplace pensions.

However, as the FCA's expectation was not explicit in its consultation paper and policy statement, and considering the time remaining until the disclosures will be needed by IGCs, the FCA will not take regulatory action against firms that, for this reporting year:

- disclose each set of costs and charges that they levy (and the number of employer schemes which have these costs and charges); or
- show the distribution of costs and charges by employer arrangement in some other way, for example by dividing the range of charges into deciles (that is, without also disclosing the relevant employer or scheme details against the particular costs and charges).

The FCA will consider if changes to its Handbook are necessary to provide clarity and ensure consistent good outcomes. The FCA also plans to publish a policy statement in relation to CP20/9 in summer 2021, which, it says, will further clarify the FCA's expectations.

More generally, the FCA clarifies that the information does not need to be published in the IGC's annual report but must be available on a publicly accessible website which can be linked to form the report.

The FCA also clarifies the circumstances in which it would generally support an approach to comparisons that aggregates charges at the level of cohorts of similar employer arrangements.

RegTech: FCA Insight articles

A new FCA Insight article has been published on "[The future of RegTech – what do firms really want?](#)". It also refers to a previous Insight article published in 2020, "[RegTech – a watershed moment?](#)".

RegTech – a watershed moment?

This article notes that the COVID-19 pandemic and remote working may prove to be a pivotal moment in the RegTech story and a chance for both firms and regulators to take a leap forward in its development. The authors recognised recent developments in the use of RegTech, identifies some of the remaining challenges, and considers the potential for the FCA's role going forward and opportunities.

The future of RegTech – what do firms really want?

The authors of this article consider what financial services firms think of RegTech and what is the role of the FCA in its future evolution. The article looks at the results of quantitative research among large UK financial services firms, commissioned by the FCA. The authors conclude that customers are very satisfied with what RegTech can provide. However, there is also demand for better communications from the RegTech industry, better technology integration and for standards and certification.

The authors state that "One of the more thought-provoking conclusions and asks from the buyer side is the wish to explore a RegTech certification or accreditation scheme, an issue raised in the recent [Kalifa Review of UK FinTech](#). As demonstrated in other markets, such as cyber security, certifications have been successful at establishing markets and ensuring a certain level of quality of products and services". However, the authors note that the FCA itself is not in a position to act as a certifying body as it could conflict with the regulator's competition remit. They state that "other institutions could 'step-up' and explore whether such a scheme would be feasible and would enable a stronger and more robust RegTech ecosystem".

The authors conclude the article with their belief that "there is a need for a definitive RegTech taxonomy to differentiate it from related fields such as FinTech and SupTech, so that policymakers, industry and academia alike can better understand the needs of the sector, and importantly its undoubted benefits".

UK green taxonomy: IRSG paper on reviewing EU taxonomy for UK application

The International Regulatory Strategy Group (IRSG) has published a [paper](#) setting out recommendations for reviewing the EU taxonomy for application in the UK.

In the paper, while recognising some of the limitations of the EU's approach, the IRSG endorses the approach that the UK Government has set out for the UK to stay aligned to the EU taxonomy in the short-term, and urges the UK government to accelerate progress on this with a view to providing significant clarity to UK issuers and financial market participants in advance of the 2021 United Nations Climate Change Conference (COP26).

The paper considers the purpose and usability of the EU taxonomy as well as practical challenges when implementing a version of the EU taxonomy that reflects the needs and specificities of the UK economy.

UK's G7 presidency: IRSG report on financial services priorities

The International Regulatory Strategy Group has published a [paper](#) setting out recommendations for financial services priorities for the UK's G7 presidency. The IRSG suggests that the UK's G7 presidency can tackle the most pressing challenges for the global economy by focussing on the following areas:

- how global regulatory coherence can aid pandemic recovery, recapitalisation and resolution;
- the importance of leadership on sustainable finance ahead of UK co-hosting COP26 with Italy;
- the need for digital policy continuity, including on digital taxation, to build on the efforts of G7 presidency predecessors; and
- opportunities for cooperation and alignment with the G20 Italian presidency on global policy priorities for financial services.

European financial integration and stability: European Commission speech

The European Commission has published a [speech](#) by Mairead McGuinness, European Commissioner for Financial Services, Financial Stability, and Capital Markets Union (CMU), in which she considers European financial integration and stability. Points of interest in her speech include:

- three main risks to financial stability remain: disruptive repricing of assets, the sustainability of debt and possible stress in the banking sector. The Commission's 2020 financial stability and integration report did not account for the COVID-19 pandemic, which became the defining economic event of the year. Given this, it is vital to be aware of the need to prepare for unexpected events and build up a stronger financial system that is resilient to shocks;
- the massive relocation of capital in the wake of COVID-19 creates new relationships between market participants. It is important to avoid these new linkages creating undue risks to financial stability;
- converging supervision and coordination of national supervisors is vital. The Commission has now concluded its targeted consultation on supervisory convergence and the single rulebook. It received over 100 responses and is assessing them;
- although there are risks to financial stability as a result of COVID-19, it can also work as a catalyst. The big disruption in normal business and working methods due to lockdowns forced financial services providers to use technology. COVID-19 has also shown that sustainability is not sufficiently integrated in EU economies, but the recovery presents an opportunity to support sustainable finance. These green and digital transitions affect all market participants: banks, asset managers, insurers, regulators and retail investors;
- digitalisation will need to be carefully considered in the Commission's retail investment strategy, on which it is currently consulting. Technological changes may pose challenges to retail investors and the existing investor protection rules may no longer be fit for purpose. A framework is therefore required to take advantage of digitalisation while addressing potential emerging risks; and
- the Commission will shortly be presenting its renewed sustainable finance strategy. This strategy will aim to ensure that climate and environmental risks become mainstream in the financial system, which is essential for a stable system that is resilient to the impacts of climate change.

IFR own funds: EBA and ESMA provisional list of instruments and funds for smallest investment firms

The European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) have published a [provisional list](#) of additional instruments and funds that competent authorities may allow some of the smallest investment firms to use as own funds under Article 9(4) of the Investment Firms Regulation (IFR).

The aim of the list is to provide guidance to investment firms and competent authorities ahead of the application of the IFR requirements on 26 June 2021. It is based on information received from national competent authorities (NCAs) across the EU, and includes instruments and funds that NCAs may permit to use as own funds in addition to the instruments included in the Common Equity Tier 1 (CET1) list published by the EBA in accordance with the Capital Requirements Regulation (CRR). Going forward, instruments and funds of investment firms will be allocated either to this list or the existing CET1 list, depending on their nature.

The EBA, together with ESMA, will assess the terms and conditions of all instruments and funds included in the provisional list against regulatory provisions at a later stage, and subsequently, will update, maintain and publish the list on a regular basis.

DMD review: European Commission inception impact assessment

The European Commission has published an [inception impact assessment](#) on its review of the Directive on Distance Marketing of Consumer Financial Services (the Distance Marketing Directive or DMD). The review aims to ensure a framework for the distance marketing of financial services that is future proof, protects consumers in a digital environment, delivers a level playing field and reduces unnecessary burden for financial service providers.

The inception impact assessment summarises the main problems the review aims to tackle (as identified in an earlier Commission evaluation), the policy options and a preliminary assessment of expected impacts.

The deadline for comments on the inception impact assessment is 25 June 2021. The Commission aims to publish the next stage of its review in Q1 2022.

CRD: EBA consults on draft guidelines on cooperation and information exchange between prudential supervisors, AML/CFT supervisors and FIUs

The EBA has published a [consultation paper](#) on draft guidelines on cooperation and information exchange between prudential supervisors, anti-money laundering and countering financing of terrorism (AML / CFT) supervisors and financial intelligence units (FIUs) under the Capital Requirements Directive (CRD) as amended by CRD V.

Comments can be made until 27 August 2021. The EBA will finalise the guidelines once it has considered the responses.

The draft guidelines complement the Joint Committee of the European Supervisory Authorities' AML/CFT guidelines, which were published in December 2019, and form part of the EBA's wider work to strengthen the link between prudential and AML/CFT supervision.

LIBOR transition: FSB statements

The Financial Stability Board (FSB) has published the following statements to support a smooth and timely transition away from LIBOR by the end of 2021:

- an updated [global transition roadmap](#) that, drawing on national working group recommendations, summarises the high-level steps financial and non-financial firms will need to take now and over the course of 2021 to complete their transition;
- a [paper](#) reviewing overnight risk-free rates and term rates, building on the concept that the tools necessary to complete the transition are currently available. The FSB cautions market participants against waiting for the development of additional tools, in particular forward-looking term risk-free rates;

- a [statement](#) on the use of the ISDA spread adjustments in cash products to support transition, particularly in loan markets, which remains an area of concern with much new lending still linked to LIBOR; and
- a [statement](#) encouraging authorities to set globally consistent expectations that regulated entities should cease the new use of LIBOR in line with the relevant timelines for that currency, regardless of where those trades are booked.

The FSB also welcomes the [statement](#) on benchmarks transition published by the International Organization of Securities Commissions (IOSCO), which reiterates the importance of ensuring a smooth and timely transition away from LIBOR.

In the light of the limited time available until the end of 2021, the FSB strongly urges market participants to act now to complete the steps set out in its global transition roadmap.

The FSB intends to publish a full report on progress in November 2021.

Banking and Finance

Resolution assessments: PRA PS10/21 on amendments to reporting and disclosure dates

Following its consultation in CP19/20, the UK Prudential Regulation Authority (PRA) has published a policy statement, [PS10/21](#), on amendments to reporting and disclosure dates for resolution assessments. PS10/21 is relevant to UK banks and building societies with £50 billion or more in retail deposits on an individual or consolidated basis, as at the date of their most recent annual accounts.

Following CP19/20, the PRA has amended paragraph 2.11 in its supervisory statement, SS4/19: Resolution assessment and publication disclosure by firms, to remove the proposed expectation that firms' assessment in 2021 should also include the progress made towards, and outstanding steps needed, for meeting the revised operational continuity in resolution (OCIR) policy. This change confirms that for their first report in October 2021, firms should assess their compliance against the OCIR policy that came into force on 1 January 2019.

Appendixes to PS10.21 contain:

- [PRA Rulebook: CRR Firms: Resolution Assessment Amendment Instrument 2021 \(PRA2021/6\)](#); and
- an updated version of [SS4/19](#), which comes into effect on 28 May 2021.

The PRA advises firms to also refer to its policy statement, [PS9/21](#), on revisions to its policy on OCIR and the Bank of England's (BoE) [statement of policy](#) (SoP) on its approach to assessing resolvability (see below).

OCIR: PRA PS9/21

Following its consultation in CP20/20, the PRA has published a policy statement, [PS9/21](#), on revisions to its policy on OCIR.

In response to feedback, the PRA has amended the definition of "critical services". The term will now refer to both critical functions and core business lines and the proposed term "essential services" will not be introduced. The PRA has also decided to delay implementing the revised OCIR policy to 1 January 2023, 12 months after the application date of 1 January 2022 proposed in CP20/20.

The Appendixes to PS9/21 set out the final versions of:

- [PRA Rulebook: CRR firms: Operational Continuity Instrument 2021 \(PRA 2021/8\)](#), which makes amendments to the Operational Continuity Part of the PRA Rulebook; and
- [SS4/21: Ensuring operational continuity in resolution](#), which will supersede the existing SS9/16 on ensuring OCIR.

The amendments and SS4/21 come into force on 1 January 2023. The PRA emphasises that the current Operational Continuity Part and SS9/16 will remain in place until that date and that, consequently, firms will continue to be responsible for ensuring that they continue to meet existing OCIR policy while they are working to implement the revised policy.

The BoE has amended some of its statements of policy on the resolution assessment framework to reflect the PRA's revised OCIR policy (see below).

OCIR: BoE updates SoPs on resolvability assessment framework

The BoE has published on its [website](#) updated versions of the following SoPs:

- [Approach to assessing resolvability](#);
- [Restructuring planning](#);
- [Management, governance and communication](#); and
- [Valuation capabilities to support resolvability](#).

The BoE has revised the SoPs to reflect the publication of PRA PS9/21 on updates to its policy on OCIR (see above). The BoE has proceeded with the changes it consulted on in October 2020, as well as making revisions to reflect changes in the PRA's approach to OCIR as set out in PS9/21.

The BoE states that its assessment of firms' resolvability during 2021 and 2022 will focus on the PRA OCIR policy that came into force on 1 January 2019, taking into account the 1 January 2023 effective date for the PRA's revised OCIR policy.

NPL securitisations: PRA CP10/21 on implementation of Basel standards

The PRA has published a consultation paper, [CP10/21](#), setting out its proposed rules relating to the implementation of prudential standards agreed by the Basel Committee on Banking Supervision (BCBS) for non-performing loan (NPL) securitisations. It sets out how the PRA proposes to define non-performing exposure (NPE) securitisations and proposes changes to the associated capital treatment.

The proposals would result in the addition of a new Non-Performing Exposure Securitisation Part of the PRA Rulebook and amendments to SS10/18: Securitisation: General requirements and capital framework.

The consultation closes on 26 July 2021. The PRA proposes that changes resulting from CP10/21 would be implemented on 1 January 2022. It states that the changes would take effect in conjunction with any consequential amendment to the retained EU law version of the Capital Requirements Regulation by HM Treasury.

UK bank ring-fencing legislation: FMLC working group

The Financial Markets Law Committee (FMLC) has published a [letter](#) to Keith Skeoch, Chair of the Ring-fencing and Proprietary Trading Independent Review, outlining the remit and output of its recently established working group on the legal uncertainties relating to the ring-fenced banking regime that arise from the Financial Services (Banking Reform) Act 2013.

The FMLC explains that the working group's work is parallel to the work of the Review, which is largely concerned with policy issues or aspects of the regime that do not involve any question of legal uncertainty. However, the FMLC's work may impinge on some of the Review's questions concerning the appropriateness of aspects of the regime and whether there are any unintended consequences.

The working group will produce a paper identifying and suggesting how the legal uncertainties might be eliminated or ameliorated. It does not expect to complete its work by the deadline for responding to the Review's call for evidence of 13 June 2021 and expects to share the paper with the Review by the end of July 2021. It will also share the paper with HM Treasury in the hope that the FMLC's suggestions can be addressed.

CRD: EBA updates ITS for 2022 benchmarking of internal approaches

The European Banking Authority (EBA) has published a [final report](#) on draft implementing technical standards (ITS) updating Commission Implementing Regulation (EU) 2016/2070 on benchmarking of internal models. Commission Implementing Regulation (EU) 2016/2070 contains ITS specifying the information that firms must report to the EBA and competent authorities in order to enable the assessments of internal approaches for calculating own funds requirements in accordance with Article 78 of the Capital Requirements Directive (CRD) (the benchmarking exercise).

The updated draft ITS contain all benchmarking portfolios and metrics that will be used for the 2022 benchmarking exercise. The exercise covers approved internal approaches used for own funds requirements calculation of credit and market risk, as well as internal models used for IFRS 9. The update also includes changes and clarifications to the draft ITS, which the EBA consulted on in December 2020.

The EBA has separately published [Annexes](#) (scroll down to link at bottom of page) to the draft ITS which replace or are added to the existing set of templates to create a consolidated version of the updated draft ITS package.

It will submit the draft ITS to the European Commission for endorsement. The technical standards will apply 20 days after publication in the Official Journal of the European Union.

CRR: EBA consults on institutions' Pillar 3 disclosure of interest rate risk exposures

The EBA has published a [consultation paper](#) on draft ITS amending Implementing Regulation (EU) No 637/2021 on disclosure of information on exposures to interest rate risk on positions not held in the trading book in accordance with Article 448 of the Capital Requirements Regulation (CRR).

Article 448 of the CRR requires institutions to disclose, from 28 June 2021, quantitative and qualitative information on the risks arising from potential changes in interest rates that affect both the economic value of equity and the net interest income of their non-trading book activities referred to in Article 84 and Article 98(5) of the CRD. To implement this disclosure, the EBA has developed these draft ITS amending Implementing Regulation (EU) 637/2021.

The EBA has separately published templates and instructions in [Annex I](#) and [Annex II](#) to the consultation paper.

The deadline for responses is 30 August 2021. The EBA intends to submit the draft ITS to the European Commission in October 2021.

EBA 2020 annual report

The EBA has published its [2020 annual report](#) which provides a detailed account of all the work the EBA has achieved in the past year and anticipates the key areas of focus in the coming year. These include the review of the stress-testing framework, implementation of the mandates in the domain of anti-money laundering and counter-terrorism financing, financial innovation and sustainable finance.

Resolution framework public interest assessment: SRB revises approach

The Single Resolution Board (SRB) has published an [addendum](#) setting out its revised approach to the public interest assessment in resolution planning.

The SRB's updated approach takes into account that a bank's failure may take place not only under an idiosyncratic scenario, but also under broader financial instability or a system-wide event. The SRB explains that this strengthens the choice of the best resolution strategy to protect EU taxpayers and promote EU financial stability.

Sebastiano Laviola, SRB Director of Resolution Strategy and Policy Co-ordination, explains the new approach, and areas of possible future enhancement, in a [blog](#).

Payments

Proposed codified EU Regulation on cross-border payments: JURI draft report

The European Parliament's Legal Affairs Committee (JURI) has published a [draft report](#) containing a draft European Parliament legislative resolution on the European Commission's legislative proposal for a Regulation on cross-border payments in the EU, to codify and replace the existing Regulation on cross-border payments.

According to the Consultative Working Party of the legal services of the European Parliament, the Council of the EU and the Commission, the proposed Regulation contains a straightforward codification of the existing texts without any change in their substance. The Parliament therefore adopted its position at first reading. The next step is for the draft report to be adopted. The European Parliament's [procedure file](#) for the proposed Regulation indicates that it will be considered in plenary on 23 June 2021.

Enhancing cross-border payments: FSB consults on quantitative targets

The Financial Stability Board (FSB) has published a [consultative document](#) setting out proposals on quantitative targets for addressing the challenges faced by cross-border payments.

The consultation document:

- describes the principles, and key design features underpinning, the targets and target metrics;
- proposes three market segments for which targets be set across the four challenges;
- considers factors in setting the targets; and
- proposes a set of targets that are high-level, simple, small in number and focused on end-users.

Comments can be made on the consultation paper until 16 July 2021. The final recommendations will be delivered for endorsement at the G20 Summit in October 2021.

Securities and Markets

DvP clients: FCA and PRA Dear CRO letter on counterparty credit exposure management and controls

The UK Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) have published a [letter](#) to chief risk officers (CROs) of regulated firms on pre-settlement counterparty credit exposure management and controls for "delivery versus payment" (DvP) clients.

The regulators explain that, in recent years, they have observed a number of incidents involving defaults by clients who transact solely in cash products settled on a DvP only basis. These defaults typically happened during periods of high price volatility, and in some cases, led to material losses at firms. In late February and early March 2020, the highly liquid US Treasuries markets experienced high price volatility leading to implications for counterparty risk management practices. Consequently, the FCA and PRA reviewed the risk controls and arrangements related to DvP clients at a number of UK regulated firms.

The letter shares the regulators' observations on good practices (relevant to all trading activity with DvP clients, including electronic trading platforms) which they encourage firms to incorporate within their control framework, to more effectively monitor and mitigate counterparty credit risks in this area.

The regulators will request an update from firms outlining the steps they have taken on the back of this letter by the end of Q4 2021. They will continue to maintain a strong focus on significant loss events in the market and expect firms to conduct risk management reviews within their own organisations as such events occur.

FCA Market Watch issue 67

The FCA has published [issue 67](#) of Market Watch, its newsletter on market conduct and transaction reporting issues. Issue 67 focuses on how the FCA uses orderbook data to conduct surveillance to identify suspected market manipulation and shares some outcomes resulting from this work.

FMSB annual report 2020

The Fixed Income, Currencies and Commodities (FICC) Markets Standards Board (FMSB) has published its [annual report 2020](#). Among other things, it sets out the FMSB's strategic priorities for 2021.

MiFID: European Commission consults on draft Delegated Regulation on criteria for establishing activity ancillary to main business at group level

The European Commission is [consulting](#) on a draft Delegated Regulation supplementing the Markets in Financial Instruments Directive (MiFID) by specifying the criteria for establishing when an activity can be considered to be ancillary to the main business at group level.

Article 2(1)(j) of the MiFID II Directive exempts a person from the regulated activities of dealing on own account and providing investment services in relation to commodity derivatives provided that those activities are ancillary to that person's (or its group's) main business, and the main business is not the provision of investment services.

The Commission has power under Article 2(4) of the MiFID II Directive to adopt regulatory technical standards (RTS) specifying the criteria for establishing when an activity is to be considered ancillary to the main business of a group.

Directive (EU) 2021/338, which amends MiFID to help the EU's economic recovery from the COVID-19 pandemic (the Amending Directive or "Quick Fix" Directive), revisited the ancillary activity exemption and empowered the Commission to adopt a delegated regulation to replace Delegated Regulation 2017/592 (RTS 20).

Proposed changes to the ancillary activity exemption are the deletion of the overall market size test in Article 2 of RTS 20 and the introduction of the new de-minimis threshold test. The amended text does not change the established calculation methodology of the trading test and capital employed test in RTS 20. The only change to these two tests is the level of the corresponding threshold as set out in the Amending Directive.

The consultation closes on 24 June 2021.

MiFID/MiFIR market data obligations: ESMA final report

The European Securities and Markets Authority (ESMA) has published a [final report](#) on guidelines on the requirements under MiFID and the Markets in Financial Instruments Regulation (MiFIR) to publish market data on a reasonable commercial basis and to make market data available free of charge 15 minutes after publication.

The aim of the guidelines is to ensure better and uniform application of the provisions in Articles 13, 15(1) and 18(8) of MiFIR and Articles 64(1) and 65(1) and (2) of MiFID by providing clarity for market participants. They apply to national competent authorities, trading venues, approved publication arrangements, consolidated tape providers and systematic internalisers.

The guidelines will apply from 1 January 2022 to allow for an adequate period of implementation by market participants. They will be translated into all EU official languages in due course.

MiFID/MiFIR: ESMA updates Q&As on investor protection and intermediaries

ESMA has published an updated version of its [Q&As](#) on investor protection and intermediaries under MiFID and MiFIR. A new Q&A relating to information on costs and charges has been added.

MiFIR: ESMA updates data reporting Q&As

ESMA has updated [Q&As](#) on data reporting under MiFIR. It has added Q&A 18, which relates to reporting reference rates not included in RTS 23 (Supply of financial instruments reference data) and 22 (Reporting of transactions to competent authorities).

EMIR: European Commission adopts Delegated Regulation on FRANDT commercial terms for clearing services

The European Commission has adopted a [Delegated Regulation](#) supplementing the European Market Infrastructure Regulation (EMIR), to specify the conditions under which commercial terms for clearing services for OTC derivatives are to be considered to be fair, reasonable, non-discriminatory and transparent (FRANDT).

The EMIR Refit Regulation introduced an obligation on clearing members and clients providing clearing services, whether directly or indirectly, (clearing service providers) to provide those

services under FRANDT commercial terms. Under the EMIR Refit Regulation, the Commission is empowered to adopt a delegated act specifying the conditions under which commercial terms for clearing services of clearing service providers are to be considered to be FRANDT based on certain requirements. These are set out in an [Annex](#) to the Delegated Regulation.

The Delegated Regulation will now be subject to the scrutiny of the European Parliament and the Council of the EU. It will apply six months from its entry into force in relation to new clients. Commercial terms in contracts with existing clients will have to be brought in line with the requirements laid down in the Delegated Regulation within 12 months of its entry into force.

EMIR: ESMA updates Q&As

ESMA has updated its [Q&As](#) on the implementation of EMIR. It has amended two questions in the trade repositories section relating to access to data by the authorities and reporting of reference rates not included in Commission Implementing Regulation (EU) 2017/105. It has also added a new Q&A on reporting of the field "delivery type" for credit derivatives.

EMIR and SFTR: ESMA consults on draft guidelines on data transfer between TRs

ESMA is [consulting](#) on guidelines for the transfer of data between trade repositories (TRs) under EMIR and the Regulation on reporting and transparency of securities financing transactions (SFTR).

ESMA proposes changes to three of its existing guidelines on data transfer between TRs under EMIR, together with the addition of nine new guidelines to provide additional clarification. It also proposes a set of new guidelines under the SFTR. These build on the existing (and proposed new) EMIR guidelines.

The consultation closes on 27 August 2021. ESMA will assess the feedback provided and plans to publish the final guidelines by the end of 2021.

SFTR: ESMA updates Q&As on data reporting

ESMA has updated its [Q&As](#) on SFTR data reporting by adding a new Q&A 10 relating to reporting changes to the reference rate in a securities financing transaction.

CSDR: ESMA updates Q&As

ESMA has updated its [Q&As](#) on the implementation of the Central Securities Depositories Regulation (CSDR). It has added a Q&A in Part III (Settlement discipline) relating to the scope of cash penalties.

CSDR: ESMA's proposals regarding European Commission review

ESMA has published a [letter](#) it has sent to the European Commission setting out ESMA's proposals regarding the following important topics it considers the Commission should address under its current review of the CSDR:

- the status of TARGET2-Securities (T2S);
- the arrangement for the supervision and oversight of T2S;
- the third country CSD (TC-CSD) recognition regime; and
- the frequency of ESMA reports to the Commission on CSDR implementation.

ESMA notes that it has already provided input to the European Commission through two reports (on [CSD cross border services](#), and on [internalised settlement](#)) published in November 2020. In the coming months, it will provide further input through the publication of two more reports on banking-type ancillary services and on the use of technological innovation by CSDs.

BMR: ESMA supervisory briefing on benchmark administrators' presence in their member states of location and outsourcing

ESMA has published a [supervisory briefing](#) to provide some guidance to national competent authorities (NCAs) in respect of the presence of a benchmark administrator in its member state of location and the outsourcing of functions or any relevant services and activities in the provision of a benchmark under the Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (BMR). The purpose of the supervisory guidance is to ensure a consistent application of the BMR across the EU.

It provides additional guidance on how NCAs should effectively supervise administrators, which are part of a group that may include or have links with non-EU entities, applying for authorisation or registration in their member states of location and on appropriate outsourcing arrangements, in particular where the service provider is located outside the EU.

BMR: ESMA updates Q&As

ESMA has updated its [Q&As](#) on the BMR by including a new section on EU climate transition benchmarks, EU Paris-aligned benchmarks and sustainability-related disclosures for benchmarks.

Securitisation Regulation: ESMA updates Q&As

ESMA has updated its [Q&As](#) on the Securitisation Regulation by updating three existing Q&A and adding two new questions relating to character limitations in template fields and underlying auto exposures – registration date for used cars.

Securitisation Regulation: ESMA consults on STS notifications for synthetic securitisations

ESMA has published a [consultation paper](#) on draft regulatory technical standards (RTS) implementing the amended Securitisation Regulation which requires that certain securitisations meeting pre-defined simple, transparent and standardised (STS) requirements must be reported using standardised templates for STS notification published on ESMA's website.

The consultation paper sets out ESMA's proposed draft RTS and implementing technical standards (ITS) specifying the content and the format of the standardised templates for STS notification of on-balance sheet (synthetic) securitisations. It builds on the existing [technical standards for STS notification of traditional securitisations](#), while taking into account specific features of synthetic securitisations. The proposals also include targeted technical amendments to the STS notification templates for traditional securitisations.

The consultation closes on 20 August 2021. ESMA states that the draft RTS and ITS will be submitted to the European Commission for endorsement by 10 October 2021.

Insurance

GBP transition to SONIA under Solvency II regime: PRA PS12/21

The UK Prudential Regulation Authority (PRA) has published a policy statement, [PS12/21](#), on deep, liquid and transparent (DLT) assessments and GBP transition to the Sterling Overnight Index Average (SONIA), under the Solvency II regime.

PS12/21 gives feedback to the PRA's consultation paper, CP1/21, and contains the PRA's final policy set out in an updated Statement of Policy (SoP): The PRA's approach to the publication of Solvency II technical information, which appears in [Appendix 1](#) to PS12/21.

[Appendix 2](#) to PS12/21 contains the results of the first DLT assessment of the SONIA Overnight Index Swap (OIS) market. The assessment concluded that the Last Liquid Point (LLP) for SONIA OIS should be at 50 years.

As a result of feedback received, the PRA has made some minor changes to its proposed policy. It states the changes aim to make the final policy clearer and do not result in any additional burden on firms compared to the original proposals.

The new policy takes effect on 3 June 2021. Transition to the new GBP risk-free rate (RFR) will take effect on publication of technical information (TI) with reference dates from and including 31 July 2021. The PRA explains that this means that the GBP RFRs that the PRA will use when calculating daily spread figures (for example, for the Long Term Average Spread (LTAS) calculation) will be based on LIBOR swap rates for dates up to and including 30 June 2021, and will switch to being based on SONIA OIS rates for dates from and including 1 July 2021.

General insurance pricing practices: FCA PS21/5

Following its consultation in CP20/19, the UK Financial Conduct Authority (FCA) has published a policy statement, [PS21/5](#), giving feedback to its consultation and final policy to improve competition and protect home and motor insurance customers from loyalty penalties.

The final rules consist of a package of measures including:

- a pricing remedy requiring that when a firm offers a renewal price to a customer, this should be no greater than the equivalent new business price (ENBP) for a new customer;
- changes to the FCA's existing product governance rules to ensure firms have in place processes to provide products that offer fair value to customers;
- rules requiring firms to offer a range of accessible and easy options for consumers who want to cancel auto-renewal on their contracts; and
- reporting requirements to help ongoing supervision of the home and motor insurance markets and to help the FCA monitor firms.

The rules on systems and controls (SYSC), product governance (PROD), premium finance provisions (ICOBS 6A.5) and related glossary changes will come into effect on 1 October 2021. The FCA's finalised guidance, FG19/: Guidance for insurance product manufacturers and distributors will be withdrawn when these come into effect.

The rules on pricing, auto-renewal and reporting will come into effect on 1 January 2022, with a transitional provision until 17 January 2022 for the pricing and auto-renewal disclosure rules.

The FCA has also published a [research paper](#), which contains the results of an experiment it conducted looking at consumer perceptions of and response to discounts and incentives.

Funds and Asset Management

UCITS funds: HM Treasury announces extension of PRIIPs exemption

HM Treasury has [announced](#) that the current exemption for Undertakings for the Collective Investment in Transferable Securities (UCITS) funds from the requirements of the UK retained EU law version of the Packaged Retail Investment and Insurance-based Products (PRIIPs) Regulation (UK PRIIPs Regulation) will be extended by five years to 31 December 2026.

UCITS funds are currently exempted from the requirements of the UK PRIIPs Regulation. This means that, instead of producing a key information document (KID), UCITS funds providers must produce a key investor information document (KIID), as per the requirements of the UCITS Directive. This exemption expires on 31 December 2021.

HM Treasury intends to legislate to extend this exemption to 31 December 2026. This legislation will be made under a power HM Treasury was granted in the Financial Services Act 2021 to extend the current exemption by five years if required.

The announcement is being made now to provide certainty for industry and investors regarding the disclosures UCITS funds providers will have to make to retail investors beyond the end of 2021.

Although the current exemption will be extended by five years, depending on the findings of HM Treasury's review of the UK retail disclosure regime, changes to the UK PRIIPs Regulation may be made, or a successor regulation may be introduced, sooner than 2026. In this scenario, considerations would be made to ensure a smooth transition to the new regime for all retail investment product providers, including those marketing UCITS funds.

AIFMD: ESMA updates Opinion on reporting information

ESMA has updated its [Opinion](#) on the collection of information for the effective monitoring of systemic risk under the first sub-paragraph of Article 24(5) of the Alternative Investment Fund Managers Directive (AIFMD), in the context of AIFMD reporting.

In its opinion, ESMA provides details of a set of additional information that, in its view, national competent authorities (NCAs) could require AIFMs to report on a periodic basis pursuant to Article 24(5) the AIFMD. In particular, ESMA aims to provide clarification on three risk measures (value-at-risk, net FX delta and net commodity delta) which are already included in its Opinion in the section "Information on risk measures". ESMA has amended this section to provide guidance to alternative investment fund managers (AIFMs), with definitions of the aforementioned risk measures and practical examples for the reporting. The remainder of the Opinion that does not relate to these matters is unchanged.

ESMA has complemented the Opinion with three new Q&As which provide clarification on the reporting of three risk measures included in the AIFMD: Net DV01, NET CS01, Net Equity Delta (see below).

AIFMD: ESMA updates Q&As

ESMA has updated its [Q&As](#) on the application of the AIFMD. It has updated Q&As relating to reporting to national competent authorities under Articles 3, 24 and 42 of the AIFMD and its guidelines on performance fees in UCITS and certain types of alternative investment funds (AIFs). It has also added new Q&As relating to:

- the risks measured by NET DVo1, NET CSO1 and Net Equity Delta;
- the guidelines on performance fees in UCITS and certain types of AIFs, which came into force on 5 January 2021; and
- setting performance reference periods.

UCITS Directive: ESMA updates Q&As

ESMA has updated its [Q&As](#) on the application of the UCITS Directive. Two new Q&As have been added relating to the performance reference period for the benchmark model and the performance reference period in case of funds' mergers.

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