SLAUGHTER AND MAY/

23 MAY 2024

ISSUE 1255

FINANCIAL REGULATION WEEKLY BULLETIN

Major UK and European regulatory developments of interest to banks insurers and reinsurers, asset managers and other market participants

QUICK LINKS

Selected Headlines
General
Banking and Finance
Securities and Markets
Insurance
Financial Crime
Enforcement

SELECTED HEADLINES //

If you have any comments or questions, please contact: Selmin Hakki.

Slaughter and May also produces a periodical Insurance Newsletter. If you would like to go on the distribution list, please contact: Beth Dobson.

Selected Headlines
General
Banking and Finance
Securities and Markets
Insurance
Financial Crime
Enforcement

Financial Crime

Enforcement

Selected Headlines
General
Banking and Finance
Securities and Markets
Insurance
Financial Crime
Enforcement

GENERAL //

1 HM TREASURY AND OTHERS

1.1 **SDR implementation - HM Treasury, DESNZ and Defra publish update** – *16 May 2024* – HM Treasury, the Department for Energy Security and Net Zero (DESNZ) and the Department for Environment, Food and Rural Affairs (Defra) have published an implementation update on the government's plan for economy-wide sustainability disclosure requirements (SDR). The document explains how the SDR fit together across the financial services sector and wider economy, and provide stakeholders with clear information, timeframes and milestones for each of the core elements.

Sustainability Disclosure Requirements: Implementation Update 2024

Webpage

2 BANK OF ENGLAND

2.1 **Balancing the productivity opportunities and potential risks posed by AI - Bank of England publishes speech** – *21 May 2024* – The Bank of England (the Bank) has published a speech given by Randall Kroszner, external member of the Financial Policy Committee, on how recent developments in artificial intelligence (AI) provide huge potential for productivity growth while also creating new financial stability risks.

Among other things, Mr Kroszner highlights the potential for neural networks to be trained to respect a 'constitution' or a set of regulatory rules that would reduce the risk of harmful behaviour, in combination with a sandbox as a way of shepherding innovation in a way that supports financial stability. This 'constitutional' approach must, however, continue to allow for competition and alternatives to avoid an unintended consequence of generating greater correlation and herding, which could challenge financial stability.

Bank of England speech: Balancing the productivity opportunities of financial technology and AI against the potential risks

BANKING AND FINANCE //

3 EUROPEAN COMMISSION

3.1 **Macroprudential policies for non-bank financial intermediation - European Commission launches consultation** – *22 May 2024* – The European Commission has published a consultation paper assessing the adequacy of macroprudential policies for non-bank financial intermediation (NBFI). The paper identifies the following key vulnerabilities stemming from NBFI: unmitigated liquidity mismatches; the build-up of excessive leverage; and interconnectedness among NBFI sectors and between NBFI business models and banks. It further provides an overview of the existing macroprudential tools and supervisory architecture in EU legislation, and proposes areas for further improvement. The deadline for responses is 22 November 2024.

European Commission consultation paper: Assessing the adequacy of macroprudential policies for non-bank financial intermediation (NBFI)

Press release

4 ALL-PARTY PARLIAMENTARY GROUP ON FAIR BUSINESS BANKING

4.1 **SME finance - APPG publishes manifesto** – *20 May 2024* – The All-Party Parliamentary Group (APPG) on Fair Business Banking has published a manifesto containing a series of policy recommendations for the next Parliament aimed at improving access to finance for SMEs. These include:

- extending the regulatory perimeter to bring commercial lending to SMEs within the Financial Services and Markets Act 2000 as "*a necessary step to protect borrowers*" given "*the fundamental imbalance of power and resources between banks and their customers*";
- ensuring that implementation of reforms under Basel 3.1 does not reduce lending to SMEs, as "*this would be catastrophic for the economy*";
- creating a Financial Services Tribunal to provide a permanent route for resolving larger and more complex cases that is an alternative to going to court;
- extending the Financial Ombudsman Service threshold to allow more companies (in particular, larger SMEs) to refer complaints; and
- increasing the Financial Services Compensation Scheme insurance limit on credit balances (which remains unchanged since 2010, despite SME deposits more than doubling) from £85,000 to £250,000.

APPG for Fair Business Banking: Securing the foundations for growth and trust - The SME Manifesto 2024

Webpage

5 FINANCIAL CONDUCT AUTHORITY

5.1 **Credit information – Principles for industry remedy development published by FCA** - *20 May 2024* – The FCA has published a set of principles to support industry stakeholders in the credit information sector to develop industry-led remedies that respond to the FCA's Credit Information Market Study (CIMS) Final Report, published in December 2023 (MS19/1.3). The FCA is providing this support pending the formation of the new Credit Reporting Governance Body, announced in the CIMS Final Report, that will make the final decisions and implement industry-led remedies once it is established.

FCA: Principles for industry remedy development

6 PAYMENT SYSTEMS REGULATOR

6.1 **Market review into card schemes and processing fees - PSR publishes interim report for consultation (MS22/1.9)** – The Payment Systems Regulator (PSR) has published an interim report (MS22/1.9) for consultation as part of its ongoing card scheme and processing fees market review.

The PSR's provisional findings indicate that Mastercard and Visa (the two largest card payment system operators in the UK) do not face effective competition constraints when dealing with merchants and acquirers in respect of core scheme and processing services. The PSR further observes that the overall fee levels charged to acquirers by Mastercard and Visa over the past five years have increased by more than 30% in real terms, with little evidence that the quality of service has improved at the same rate.

The PSR is consulting on several potential remedies aimed at increasing transparency around Mastercard and Visa's pricing structures, including regulatory financial reporting in respect of the card schemes' UK activities and measures that would require the card schemes to set out the reasoning and evidence justifying any price increases. The deadline for responses is 30 July 2024.

PSR interim report/consultation paper: Market review of card scheme and processing fees (MS22/1.9)

Press release

SECURITIES AND MARKETS //

7 BANK OF ENGLAND

7.1 **Bank of England publishes policy statement on approach to statutory notice decisions for use of its FMI requirement powers** – *23 May 2024* – The Bank of England (the Bank) has published a policy statement on its approach to statutory notice decisions for use of its powers to issue requirements to recognised UK central securities depositories (CSDs), recognised UK central counterparties (CCPs) and systemic third-country CCPs, collectively referred to as financial market infrastructure (FMI) entities. This new power was given to the Bank by the Financial Services and Markets Act 2000 as amended by the Financial Services and Markets Act 2023, in its role as the UK's regulator for CSDs and CCPs.

The policy statement includes clarifications as to when FMIs will have the opportunity to make representations. The statement of policy has effect from 23 May 2024.

Policy statement: The Bank of England's approach to statutory notice decisions for use of its requirements powers

Selected Headlines
General
Banking and Finance
Securities and Markets
Insurance
Financial Crime
Enforcement

INSURANCE //

8 HM TREASURY

8.1 **The Insurance and Reinsurance Undertakings (Prudential Requirements) (Amendment and Miscellaneous Provisions) Regulations 2024 - HM Treasury publishes draft statutory instrument and explanatory memorandum** – *21 May 2024* - HM Treasury has published a draft version of the Insurance and Reinsurance Undertakings (Prudential Requirements) (Amendment and Miscellaneous Provisions) Regulations 2024 (the Regulations) alongside an accompanying explanatory memorandum.

The Regulations make a series of technical amendments to legislation to ensure that the UK's insurance regulatory regime functions as intended following implementation of the Solvency II reforms and the revocation of assimilated EU law at the end of 2024. This includes restatement with modification of assimilated EU law on the risk margin; making saving provision for Gibraltar groups and undertakings; and amending provisions in the Financial Services and Markets Act 2000.

The Regulations have been laid before this Parliament. Once made, they are expected to come into force on 31 December 2024, subject to limited exceptions.

The Insurance and Reinsurance Undertakings (Prudential Requirements) (Amendment and Miscellaneous Provisions) Regulations 2024

Explanatory memorandum

9 PRUDENTIAL REGULATION AUTHORITY

9.1 **PRA publishes policy statement on approach to authorisation and supervision of insurance branches** – *4 October 2023* – The PRA has published a policy statement (PS8/24) setting out its final policy on its proposals to consolidate and formalise existing PRA policy on overseas insurers that write business in the UK through the establishment of a third-country branch. These proposals were contained in a PRA consultation paper (CP21/23) published in October 2023.

A new statement of policy (SoP) outlining the PRA's approach to the authorisation and supervision of third-country insurance branches is appended, which includes the PRA's approach to determining when a subsidiary would be more appropriate than a branch. The SoP is relevant to all third-country insurance branches and to any insurance undertaking not headquartered in the UK or Gibraltar looking to operate in the UK in future, but does not apply to Swiss general insurers.

Responding to feedback to CP21/23, the PRA acknowledged that there could be some small impacts on its secondary objective as a result of setting out its approach to assessing reinsurance arrangements. In particular, authorised third-country branches may choose to apply to cancel permissions and exit the UK, if the PRA's assessment of reinsurance arrangements made a branch model unviable and a subsidiary model was also unviable for other reasons. However, the PRA indicated that, in practice, it has not had significant experience of this happening.

PRA policy statement: The PRA's approach to the authorisation and supervision of insurance branches (PS8/24)

FINANCIAL CRIME //

10 HOUSE OF COMMONS TREASURY SELECT COMMITTEE

10.1 **APP fraud - Treasury Select Committee publishes update letter from PSR** – *22 May 2024* – The House of Commons Treasury Select Committee has published a letter (dated 15 May 2024) from the Payment Systems Regulator (PSR) providing an update on its implementation of measures to prevent authorised push payment (APP) fraud.

The letter focuses on the PSR's new reimbursement requirement for firms, which will introduce consistent minimum standards for firms to reimburse victims of APP scams from 7 October 2024. For the first time, the cost of reimbursing victims will be shared equally between sending and receiving firms to incentivise both firms to detect and prevent fraud. The PSR outlines a number of steps that need to be taken by firms ahead of this date, which include reassessing their fraud risk management to make sure it is fit for purpose and reassessing transaction limits to ensure they remain within their risk appetite.

PSR letter

ENFORCEMENT //

11 HM TREASURY AND FINANCIAL OMBUDSMAN SERVICE

11.1 **Charging CMCs and legal professionals for bringing FOS cases - HM Treasury publishes draft statutory instrument and FOS launches consultation** – *21 and 23 May 2024* - HM Treasury has published a draft version of the Financial Services and Markets Act 2000 (Ombudsman Scheme) (Fees) Regulations 2024 (the Regulations) alongside an accompanying explanatory memorandum. The Regulations allow the Financial Ombudsman Service (FOS) to charge case fees to claims management companies (CMCs) and legal professionals bringing cases to the FOS on behalf of consumer complainants. CMCs and legal professionals cannot currently be charged for bringing cases to the FOS, despite gaining an economic benefit from doing so. While many professional representatives act responsibly, the FOS has informed HM Treasury that it sees a mixed picture of good and poor behaviour from CMCs and legal professionals.

The explanatory memorandum emphasises that the FOS being a cost-free service for consumers is fundamental to its purpose. Therefore, the FOS will remain unable to charge fees to consumers or charities. The Regulations have been laid before this parliament and will come into force the day after they are made.

In tandem, the FOS has published a consultation paper outlining its proposals for its new powers under the Regulations. These would allow the first three cases for a CMC or legal representative to be free (as is presently the case for financial services firms). Beyond this, the FOS proposes to charge CMCs and legal representatives £250 to lodge a case, reduced to £75 if the case outcome is in favour of their client. The deadline for responses to the FOS consultation is 4 July 2024.

The Financial Services and Markets Act 2000 (Ombudsman Scheme) (Fees) Regulations 2024

Explanatory memorandum

FOS consultation paper: Charging Claims Management Companies and other professional representatives

Press release

12 PRUDENTIAL REGULATION AUTHORITY AND FINANCIAL CONDUCT AUTHORITY

12.1 **Trading systems and controls failures - PRA and FCA publish Final Notices and impose financial penalties on firm** – *22 May 2024* – The PRA and FCA have published Final Notices (dated 17 May 2024) in respect of separate investigations run in parallel into Citigroup Global Markets Limited (the Firm), fining it close to £33.9 million and £27.8 million respectively for failures in its trading systems and controls. The Firm agreed to resolve this matter and qualified for a 30% discount under the PRA and FCA's executive settlement procedures.

PRA Final Notice

Press release

FCA Final Notice

Press release

13 FINANCIAL CONDUCT AUTHORITY

13.1 **Treatment of customers in financial difficulty - FCA publishes Final Notice and imposes financial penalty on HSBC** – *23 May 2024* – The FCA has published a Final Notice addressed to HSBC UK Bank plc, HSBC Bank plc and Marks and Spencer Financial Services plc (together HSBC), fining it close to £6.3 million for failures in its treatment of customers who were in arrears or experiencing financial difficulty.

Between June 2017 and October 2018, the FCA found that HSBC failed to properly consider customers' circumstances when they had missed payments and to always conduct the right affordability assessments when entering arrangements to reduce or clear customers' arrears. Sometimes, HSBC took disproportionate action when customers fell behind with payments, which risked causing customers greater difficulty.

The failings were caused by deficiencies in HSBC's policies and procedures and the training of their staff, as well as inadequate measures to identify and address instances of unfair customer treatment. This was in breach of Principles 3 and 6 of the FCA's Principles for Businesses.

HSBC agreed to resolve this matter and qualified for a 30% discount under the FCA's executive settlement procedure. In 2018, HSBC identified that there were issues with its handling of customers in financial difficulty and notified the FCA. HSBC invested £94 million in identifying the issues and putting them right. HSBC also made redress payments totalling £185 million to over 1.5 million customers.

Final Notice: HSBC UK Bank plc, HSBC Bank plc and Marks and Spencer Financial Services plc

Press release

This Bulletin is prepared by the Financial Regulation Group of Slaughter and May in London.
The Group comprises a team of lawyers with expertise and experience across all sectors in which financial institutions operate.

We advise on regulatory issues affecting firms across the financial services sector, including banks, investment firms, insurers and reinsurers, brokers, asset managers and funds, non-bank lenders, payment service providers, e-money issuers, exchanges and clearing systems. We also advise non-regulated businesses involved in financial regulatory matters. In addition, our leading financial regulatory investigations practice is regularly instructed by financial institutions requiring specialist knowledge of financial services regulation together with experience in high profile and complex investigations and contentious regulatory matters.

Most of the projects that we advise on have an extensive international or cross-border element. We work in seamless integrated teams with leading independent law firms which offer many of the most highly regarded financial institutions lawyers in Europe, the US and Asia, as well as strong and constructive relationships with local regulators.

Our Financial Regulation Group also produces occasional briefing papers and other client publications. The five most recent issues of this Bulletin and our most recent briefing papers and client publications appear on the Slaughter and May website **here**.

If you would like to find out more about our Financial Regulation Group or require advice on a financial regulation matter, please contact one of the following or your usual Slaughter and May contact:

Jan Putnis	jan.putnis@slaughterandmay.com
Nick Bonsall	nick.bonsall@slaughterandmay.com
David Shone	david.shone@slaughterandmay.com
Kristina Locmele	kristina.locmele@slaughterandmay.com
Sabine Dittrich	sabine.dittrich@slaughterandmay.com

London
T +44 (0)20 7600 1200
F +44 (0)20 7090 5000

Brussels
T +32 (0)2 737 94 00
F +32 (0)2 737 94 01

Hong Kong
T +852 2521 0551
F +852 2845 2125

Beijing
T +86 10 5965 0600
F +86 10 5965 0650