

FINANCIAL REGULATION WEEKLY BULLETIN

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

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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](#).

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GENERAL //

1 BANK OF ENGLAND

- 1.1 **AI and financial stability - Bank of England publishes speech - 31 October 2024** - The Bank of England (the Bank) has published a speech delivered by Sarah Breeden, the Bank's Deputy Governor for Financial Stability, on the impact of AI on financial stability and how central banks and regulators should respond. Of particular interest, she suggests that, depending on how the use of AI evolves, the Bank may need to think about the adequacy of the regulatory perimeter and whether it might be necessary to apply some requirements on model providers. This would be the case particularly if AI starts to be used in a material way for trading or core risk assessment.

The importance of governance is also emphasised, as Ms Breeden reveals that only one-third of respondents to the Bank and the FCA's most recent machine learning survey (the full results of which will be published soon) describe themselves as having a complete understanding of the AI they had implemented in their firms.

[Bank of England speech: Engaging with the machine: AI and financial stability](#)

2 PRUDENTIAL REGULATION AUTHORITY AND FINANCIAL CONDUCT AUTHORITY

- 2.1 **UK CRR, UK EMIR and FSCS eligibility - PRA and FCA publish policy statement (PRA PS17/24 and FCA PS24/13) - 31 October 2024** - The PRA and FCA have published a joint policy statement (PRA PS17/24 and FCA PS24/13) containing amendments to the PRA Rulebook and the UK version of Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 (Binding Technical Standards (BTS) 2016/2251). The changes include:

- amendments to references to Article 92b of the UK Capital Requirements Regulation (575/2013) (UK CRR) in the PRA Rulebook following its revocation, which became effective on 1 January 2024;
- adding a new rule to the Policyholder Protection Part of the PRA Rulebook clarifying that individuals who become members of occupational pension schemes (OPS) while they are resident in the UK benefit from FSCS protection even if they move outside the UK before a life policy or pension annuity (linked to that OPS) is purchased following a buy-out; and
- consequential amendments to BTS 2016/2251 to reflect the expected changes to Article 4 and 11 of UK EMIR that will be made in the draft Securitisation (Amendment) Regulations 2024.

Following feedback, only minor amendments have been made to the changes as originally consulted on in April 2024, which do not alter policy. The implementation date for the rules covered in the policy statement is 4 November 2024. The amendments to BTS 2016/2251 will take effect on 1 November 2024 to align with the changes to UK EMIR.

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[PRA and FCA policy statement: Responses to CP6/24 and Joint PRA and FCA Consequential Amendments to BTS 2016/2251 \(PRA PS17/24 and FCA PS24/13\)](#)

[Updated FCA webpage](#)

3 FINANCIAL CONDUCT AUTHORITY

3.1 Non-financial misconduct - FCA publishes findings from wholesale financial services firms survey - 25 October 2024 - The FCA has published the findings of its culture and non-financial misconduct (NFM) survey of over 1,000 investment banks, brokers and wholesale insurance firms in February 2024, which examined how firms detect and handle NFM incidents. Firms were asked about recorded incidents of NFM in 2021, 2022 and 2023, where 'incident' is described as an alleged or confirmed occurrence of NFM that was reported to or identified by the firm, including those that did not meet the FCA's reporting threshold. Key findings include:

- the number of reported NFM incidents increased over the three years surveyed;
- bullying and harassment (26%) and discrimination (23%) were the most reported types of NFM across all sectors. However, the large 'other' group of concerns (41%) indicates how difficult it can be to categorise issues of personal misconduct;
- formal processes such as grievances and whistleblowing were the most prevalent methods of detection;
- the total number of confidentiality and settlement agreements signed by complainants fell over the three years surveyed; and
- in all sectors, action taken following NFM rarely resulted in adjustments to remuneration.

The FCA expects firms to use the survey data to reflect on whether their own processes, procedures and controls provide both robust detection and appropriate outcomes. The FCA then wants firms to discuss NFM at senior management and board level. The FCA intends to use the survey data to inform its own supervisory and policy work, and will not be making new best practice recommendations for firms at this time.

[FCA: Culture and non-financial misconduct survey - findings](#)

[Press release](#)

3.2 CrowdStrike outage and operational resilience - FCA publishes webpage - 31 October 2024 - The FCA has published a webpage outlining its observations and key lessons following the CrowdStrike outage in July 2024. Since the beginning of 2023, the FCA has seen a continued trend of third-party related incidents, and these outages emphasise firms' increasing dependence on unregulated third parties to deliver important business services.

Reflecting on the CrowdStrike outage, the FCA emphasises the importance of its operational resilience rules, highlighting that firms that had mapped their important business services (and

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the sources necessary to deliver these services) were able to prioritise getting key services back online to reduce the overall impact the incident had on their operations. Firms also benefitted from having tested scenarios that were severe but plausible, and having clearly defined and tested communications strategies.

The FCA provides further detailed observations on ensuring the resilience of infrastructure; third party management; and incident response and communications. The FCA encourages all firms, regardless of how they were affected by the CrowdStrike incident, to consider these lessons so that they can improve their ability to respond to and recover from future disruptions.

[Webpage](#)

BEYOND BREXIT //

4 UK PARLIAMENT

4.1 **The Financial Services and Markets Act 2023 (Commencement No. 8) Regulations 2024 - SI made - 28 October 2024** - The Financial Services and Markets Act 2023 (Commencement No. 8) Regulations 2024 (SI 2024/1071) (the Regulations) have been published, bringing into force a number of provisions of the Financial Services and Markets Act 2023 (FSMA 2023). Provisions that come into force on 29 October 2024 include those:

- giving the FCA the power to suspend waivers under UK MiFIR ((EU) No 600/2014);
- giving HM Treasury the power to make regulations about unauthorised co-ownership alternative investment funds; and
- commencing the revocation of the assimilated law under which the London Interbank Offered Rate (LIBOR) is recognised as a critical benchmark for the purposes of the UK Benchmarks Regulation ((EU) 2016/1011).

Looking forward, the Regulations commence the revocation of a number of equivalence decisions made under the Solvency II Directive (2009/138/EC) on 31 December 2024, which will be restated on that same day. They further commence, on 31 March 2025, amendments to UK MiFIR to remove the requirements for trading venues, approved publication arrangements and consolidated tape providers to provide information for determining whether an investment firm is a systematic internaliser.

[Statutory instrument](#)

BANKING AND FINANCE //

5 OFFICIAL JOURNAL OF EUROPEAN UNION

5.1 **CRR - Delegated Regulation postponing the implementation of FRTB standards published in Official Journal - 31 October 2024** - A Delegated Regulation ((EU) 2024/2795) amending the

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Capital Requirements Regulation (575/2013) (CRR) with regard to the date of application of the fundamental review of the trading book (FRTB) standards for calculation of own funds requirements for market risk has been published in the Official Journal of the EU. The Delegated Regulation defers the application of the FRTB standards by one year, from 1 January 2025 to 1 January 2026. The Delegated Regulation will enter into force on 1 November 2024, and will apply from 1 January 2025.

[Commission Delegated Regulation \(EU\) 2024/2795 of 24 July 2024 amending the CRR with regard to the date of application of the own funds requirements for market risk](#)

6 HM TREASURY

6.1 **Post-implementation reviews of secondary legislation on SME credit information and finance platforms published by HM Treasury - 30 October 2024** - HM Treasury has published post-implementation reviews on the following secondary legislation as part of the Autumn 2024 budget:

- the Small and Medium Sized Business (Credit Information) Regulations 2015 (SI 2015/1945) which established the commercial credit data sharing (CCDS) scheme, requiring designated banks to share all their credit data on in-scope SME customers with designated credit reference agencies (CRAs), who are in turn broadly required to provide this information to other lenders; and
- the Small and Medium Sized Business (Finance Platforms) Regulations 2015 (SI 2015/1946), which established the bank referral scheme (BRS) requiring designated banks to refer SME customers that they reject for finance, with the SME's permission, to platforms that can match the SME with alternative finance providers.

HM Treasury concludes that both CCDS and the BRS have generally met their stated policy objectives and have enhanced competition in the SME lending market. There are, however, opportunities for reducing the burden on businesses. For instance, feedback suggests that the CCDS may not be sufficiently flexible in responding to market changes such as the introduction of new products. HM Treasury intends to consult on possible enhancements to both regulations in spring 2025.

[Post-implementation review: The Small and Medium Sized Business \(Credit Information\) Regulations 2015](#)

[Post-implementation review: The Small and Medium Sized Business \(Finance Platforms\) Regulations 2015](#)

7 FINANCIAL CONDUCT AUTHORITY

7.1 **FCA strategy for non-bank mortgage lenders and mortgage third party administrators, lifetime mortgage providers, retail banks and building societies in 2025 - FCA publishes portfolio letters - 25 October 2024** - The FCA has published a series of portfolio letters sent to

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CEOs of non-bank mortgage lenders (NBMLs) and mortgage third party administrators (MTPAs), lifetime mortgage providers (LMPs), retail banks and building societies setting out its key concerns and priorities in 2025. In these letters, the FCA communicates its specific priority areas for each portfolio, which include the consumer duty, operational resilience and sustainable finance.

Of particular note, in its letter to LMPs the FCA highlights concerns that consumers who are facing financial stress may be more susceptible to the purchase of unsuitable later life products, and emphasises that LMPs must give appropriate consideration to the design and introduction of new products such as ‘hybrid’ style lifetime products. In its letters to retail banks and building societies, the FCA flags the growing provision and use of ‘banking as a service’ and ‘embedded finance’, which will present novel challenges around practical allocation of responsibilities or liabilities, and the design and day-to-day exercise of controls over conduct and other risks.

In each case, the FCA expects firms to consider the letter at board level and to prepare to show and explain the actions they have taken in response.

[Portfolio letter: non-bank mortgage lenders and mortgage third party administrators](#)

[Portfolio letter: lifetime mortgage providers](#)

[Portfolio letter: retail banks](#)

[Portfolio letter: building societies](#)

8 RECENT CASES

8.1 *Breeze and others v TSB Bank plc* [2024] EWHC 2427 (Ch), 25 September 2024

The Chancery Division of the High Court (the Court) has handed down its judgment determining two preliminary issues in *Breeze and other v TSB Bank plc* relating to the so-called “mortgage prisoners” litigation against TSB Bank plc (TSB). The case concerns a number of former Northern Rock mortgage customers (the Claimants) whose mortgages and/or unsecured loans were (or were alleged to have been) transferred to TSB under its Whistletree brand in July 2016, and who were charged interest rates based on a standard variable rate (SVR) which TSB describes as the ‘Whistletree SVR’. TSB also maintains and applies other SVRs to different categories of variable-rate mortgages, including its ‘Standard Variable Mortgage Rate’ (TSB’s SVMR) which it applies to a portfolio of variable rate residential mortgages that were applied for before 1 June 2010.

The Court found that TSB had not breached the express terms of the Claimants’ mortgage contracts by charging them interest rates based on the Whistletree SVR and not on the TSB SVMR. The Whistletree SVR should be regarded as the continuation of the original SVR originally operated by Northern Rock, and not as a new rate.

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The Court further examined whether the Claimants were precluded from bringing themselves within the unfair relationship provisions in sections 140A to 140C of the Consumer Credit Act 1974 (CCA) and held that it would breach s.140A(5) CCA if the Court made an order to repay amounts paid under a regulated mortgage which was linked to an unsecured loan that had been offered alongside (and linked to) the mortgage. When it determines whether there is an unfair relationship, the Court may, however, have regard to the terms and conduct of such a regulated mortgage contract, and loss or damage arising under its terms, where it relates to another credit agreement that gives rise to a relationship between the borrower and a lender.

[Breeze and others v TSB Bank plc \[2024\] EWHC 2427 \(Ch\)](#)

8.2 *Marcus Gervase Johnson v FirstRand Bank Limited (London Branch) t/a Motonovo Finance [2024] EWCA Civ 1282*, 25 October 2024

The Court of Appeal (the Court) has handed down its judgment in *Marcus Gervase Johnson v FirstRand Bank Limited (London Branch) t/a Motonovo Finance [2024] EWCA Civ 1282*, which was heard together with *Andrew Wrench v FirstRand Bank Limited (London Branch) t/a Motonovo Finance* and *Amy Louise Hopcraft and Carl Hopcraft v Close Brothers Limited*, allowing all three appeals. The appeals concerned claims made by motor customers who accessed motor finance through a car dealer, where the commission paid by the lender to the dealer for arranging the finance was not made clear or never disclosed.

The Court ruled that it was unlawful for car dealers to receive a commission from a lender providing motor finance to a customer unless it was disclosed to the customer and they gave informed consent to the payment. In coming to this conclusion, the Court found that, in all three cases, there was a disinterested duty owed by the dealers as credit brokers to the claimants which was sufficient to give rise to a primary liability in the cases of *Hopcraft* and *Wrench*, which were secret commission cases. In all three cases there was also a parallel fiduciary duty which was sufficient to found a claim against the lender for accessory liability in the *Johnson* case, and would have been sufficient in *Wrench* had it been a partial disclosure case. The Court further found that the relationship between Mr Johnson and FirstRand was unfair for the purposes of sections 140A-C of the Consumer Credit Act 1974 (CCA) on its facts, but stated that a relationship will not necessarily be unfair for the purposes of the CCA simply because a broker receives a commission from the lender and the borrower is not actually aware of that fact.

In a separate press release, the FCA stated that it is “*carefully considering*” the Court’s decision. The FCA has been in close contact with the firms involved, and emphasises the need for clarity on whether this is the courts’ final word on the issue given that the two lenders intend to appeal. The FCA is also considering expanding its pause to the time firms have to provide a final response to customers about motor finance complaints involving a discretionary commission arrangement, currently in place until 4 December 2025, stating that it understands the industry’s desire for time to take stock.

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[Marcus Gervase Johnson v FirstRand Bank Limited \(London Branch\) t/a Motonovo Finance \[2024\] EWCA Civ 1282](#)

[Press release](#)

SECURITIES AND MARKETS //

9 EUROPEAN SECURITIES AND MARKETS AUTHORITY

- 9.1 [MiFID research regime - ESMA launches consultation on amendments - 28 October 2024](#) - The European Securities and Markets Authority (ESMA) has published a consultation paper on amendments to the research provisions in the Markets in Financial Instruments Directive II (MiFID II) Delegated Directive ((EU) 2017/593).

The proposed amendments reflect changes introduced by the Listing Act (not yet published in the Official Journal of the European Union), which enable joint payments for execution services and research for all issuers, irrespective of the market capitalisation of the issuers covered by the research. ESMA proposes to amend Article 13 of the MiFID II Delegated Directive to align it with the new payment option offered. The deadline for responses is 28 January 2025.

[ESMA consultation paper: Draft technical Advice to the European Commission on the amendments to the research provisions in the MiFID II Delegated Directive in the context of the Listing Act \(ESMA35-335435667-5979\)](#)

[Press release](#)

10 UK PARLIAMENT

- 10.1 [Draft Financial Services and Markets Act 2023 \(Addition of Relevant Enactments\) Regulations 2024 published - 31 October 2024](#) - A draft version of the Financial Services and Markets Act 2023 (Addition of Relevant Enactments) Regulations 2024 (the Regulations) have been published, together with an explanatory memorandum.

The Regulations will bring a number of pieces of legislation (such as the UK Prospectus Regulation ((EU) 2017/1129)) within the scope of HM Treasury's Financial Market Infrastructure (FMI) Sandbox powers, which were recently established under section 13 of the Financial Services and Market Act 2023. The consequence of this will be that HM Treasury will be able to apply, disapply or modify the effect of these pieces of legislation by way of negative statutory instrument when establishing new FMI sandboxes or modifying existing ones.

[Draft statutory instrument](#)

[Explanatory memorandum](#)

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ASSET MANAGEMENT //

11 HOUSE OF LORDS FINANCIAL SERVICES REGULATION COMMITTEE

- 11.1 UK-listed investment company cost disclosures - response to FCA statements published - 31 October 2024** - The House of Lords Financial Services Regulation Committee (the Committee) has published a letter sent to the Committee from Baroness Altmann concerning cost disclosure obligations imposed on London-listed closed-ended investment companies (LCICs).

The letter, which was produced in conjunction with industry experts and legal advisers, responds to (and strongly contests) FCA statements made in May 2024 regarding the nature and characteristics of LCICs in the context of their cost disclosure obligations. It further presents a legal argument setting out the basis for re-interpreting the existing UK version of Commission Delegated Regulation (EU) 2017/565 (the MiFID Delegated Regulation), so far as cost disclosure in respect of LCICs is concerned, and de facto forbearance allowing investors to stop including costs/expenses of LCICs in their own reportable costs.

[Letter](#)

12 HM TREASURY

- 12.1 Autumn Budget 2024 - introduction of reserved investor funds confirmed by HM Treasury - 30 October 2024** - HM Treasury has confirmed as part of the Autumn 2024 Budget that it is proceeding with the introduction of the Reserved Investor Fund (Contractual Scheme), a new type of UK-based investment fund. Secondary legislation will be brought forward before the end of the tax year 2024-25.

[Autumn Budget 2024](#)

13 FINANCIAL CONDUCT AUTHORITY

- 13.1 Growth of private markets - FCA publishes speech - 29 October 2024** - The FCA has published a speech given by Nikhil Rathi, FCA Chief Executive, on the growth of private markets. Among other things, Mr Rathi observed that the FCA is open to ideas to make its new disclosure regime for consumer composite investments (on which consultation will open soon) more flexible and proportionate than the inherited EU packaged retail investment and insurance products (PRIIPs) regime. On the “*thorny question of value and fees*”, he states that the FCA has shown that it is open to a holistic discussion of what assessment of value really means through its consultation on the value for money framework for defined contribution pension funds (CP24/16). The FCA wants sufficient incentives to support investment in higher risk/higher long-term return products that could secure better outcomes.

[FCA speech: Rising to the occasion on private markets](#)

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INSURANCE //

14 UK PARLIAMENT

14.1 The Insurance and Reinsurance Undertakings (Prudential Requirements) (Amendment and Miscellaneous Provisions) Regulations 2024 published - 31 October 2024 - The Insurance and Reinsurance Undertakings (Prudential Requirements) (Amendment and Miscellaneous Provisions) Regulations 2024 (SI 2024/1083) (the Regulations) have been published, together with an 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.

[Statutory instrument](#)[Explanatory memorandum](#)

FINANCIAL CRIME //

15 FINANCIAL ACTION TASK FORCE

15.1 AML/CTF and financial inclusion - FATF launches consultation - 28 October 2024 - The Financial Action Task Force (FATF) has published for consultation proposed revisions to its Recommendations regarding anti-money laundering and counter-terrorist financing (AML/CTF) measures to better align them with measures to promote financial inclusion. This is part of FATF's programme of work to address the unintended consequences of AML/CFT measures, and the proposals seek to promote financial inclusion through increased focus on proportionality and simplified measures in the risk-based approach, and to give countries, supervisors, and financial institutions greater confidence and assurance when implementing simplified measures. The deadline for responses is 6 December 2024.

[FATF consultation: AML/CFT and Financial Inclusion - proposed changes to FATF Standards](#)[Press release](#)

ENFORCEMENT //

16 FINANCIAL CONDUCT AUTHORITY

16.1 Financial promotions - FCA publishes quarterly data for Q3 2024 - 25 October 2024 - The FCA has published quarterly data generated between 1 July 2024 and 30 September 2024 from actions it has taken against firms breaching the financial promotions rules, and referrals and investigations into unregulated activity. Key messages include that:

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- over the last year, and since the cryptoasset financial promotions regime came into force on 8 October 2023, the FCA has issued 1,702 consumer alerts about illegal crypto promotions, and its actions have resulted in the takedown of over 900 scam crypto websites. The FCA is continuing to work with social media companies to remove and block illegal content on their platforms; and
- the FCA is actively engaging with firms who appear to be providing and advertising unauthorised debt advice and debt solutions to consumers via online promotions. The FCA continues to observe trends of aggressive sponsored promotions placed by unauthorised firms, including through TikTok.

[Financial promotions quarterly data 2024 Q3](#)

- 16.2 Failure to notify FCA of significant tax issues - FCA publishes final notice and fines CEO - 28 October 2024** - The FCA has published a final notice (dated 27 October 2024) issued to Kristo Käärman, CEO of Wise plc and senior manager of Wise Assets UK Ltd, fining him £350,000 for breaching Senior Manager Conduct Rule 4 (SMCR 4), requiring individuals to disclose appropriately any information of which the FCA would reasonably expect notice. Between February 2021 and September 2021, Mr Käärman failed to notify the FCA that he had paid a fine to HM Revenue & Customs (HMRC) of £365,651 for failing to notify HMRC of a capital gains tax liability, and in September 2021, HMRC subsequently added Mr Käärman to their public tax defaulters list. Mr Käärman agreed to resolve this matter and qualified for a 30% discount under the FCA's executive settlement procedure.

[Final notice: Kristo Käärman](#)[Press release](#)

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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](#).

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