

Financial Regulation Weekly Bulletin

30 April 2020 / Issue 1057

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

Quick Links

[Selected Headlines](#)
[General](#)
[Brexit](#)
[Banking and Finance](#)
[Securities and Markets](#)
[Insurance](#)
[Financial Crime](#)
[Enforcement](#)

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

COVID-19 - Treasury Committee publishes Terms of Reference for next stage of inquiry [1.1](#)

COVID-19 - FCA publishes details of delayed activities and planned regulatory changes [2.1](#)

Brexit

UK SFTR - HM Treasury publishes guidance on TR registration arrangements post-Brexit [3.1](#)

Temporary transitional power - Bank of England and PRA publish statement on use at the end of the transition period [4.1](#)

Temporary transitional power - FCA publishes statement on use at the end of the transition period [5.1](#)

Banking and Finance

COVID-19 - European Commission publishes Communication on the application of prudential and accounting frameworks to facilitate bank lending [8.1](#)

COVID-19 - PRA publishes statement on the regulatory treatment of guarantees provided under CBILS and CLBILS [10.1](#)

COVID-19 - FCA Feedback Statement FS20/4: Temporary financial relief for consumers impacted by COVID-19 [11.1](#)

COVID-19 - FCA publishes statement outlining its approach to the regulation of firms participating under the CBILS and BBLS [11.2](#)

Consumer credit firms - FCA publishes guidance on authorisation [11.4](#)

Securities and Markets

COVID-19 - FCA publishes 'Dear CEO' letter on the fair treatment of corporate customers preparing to raise equity finance [17.1](#)

LIBOR transition - FCA publishes further statement on the impact of COVID-19 [17.2](#)

Insurance

EIOPA's response to the Coronavirus crisis - speech by Gabriel Bernardino, Chair of EIOPA [18.1](#)

Selected Headlines
Securities and Markets

General
Insurance

Brexit
Financial Crime

Banking and Finance
Enforcement

PRA Policy Statement PS10/20 - Solvency II: Group availability of subordinated liabilities and preference share 19.1

Financial Crime

COVID-19 - FATF extends its mutual evaluation assessment and follow-up deadlines 22.1

Enforcement

Unauthorised investment advisors - FCA commences civil proceedings 23.1

General

1. Treasury Committee

- 1.1 COVID-19 - Treasury Committee publishes Terms of Reference for next stage of inquiry - 24 April 2020** - The House of Commons Treasury Committee has published its Terms of Reference for the next stage of its inquiry into the economic effects of the COVID-19 pandemic. The inquiry was launched on 18 March 2020. The next stage of the inquiry will examine the operational effectiveness, cost and sustainability of the Government and Bank of England financial support packages. This will include consideration of: (i) how, and to what extent, the financial services sector is supporting and helping businesses to access advice on available grants and loans; and (ii) what financial regulators and the financial sector are doing to reduce the risk of fraud.

Although there is no specific deadline for the submission of evidence, comments should ideally be made by the end of May 2020.

[Press release: Treasury Committee publishes Terms of Reference for next stage of its inquiry into the economic effects of COVID-19](#)

[Call for evidence](#)

[Webpage](#)

2. Financial Conduct Authority

- 2.1 COVID-19 - FCA publishes details of delayed activities and planned regulatory changes - 30 April 2020** - The FCA has published a new webpage detailing its planned activities that will be delayed or postponed in light of the disruption caused by COVID-19. These activities are ones which are not critical to protecting customers and market integrity in the short-term and their delay or postponement will allow firms to focus on supporting customers during this period.

Among other things, the FCA confirms that it is extending the closing dates for all open consultations and calls for input until 1 October 2020 and is rescheduling most other planned work until Q2 and Q3 2020. The FCA also states that it has scaled back its routine business interactions to cover only business-critical requests and responses on COVID-19-related issues.

The FCA intends to continue with a small number of regulatory changes that support consumers, particularly vulnerable consumers, or where major long-term programmes would otherwise be disrupted.

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

A full list of the affected consultations, calls for input, other publications and rule changes can be found on the FCA website.

[FCA webpage on delayed activities and planned regulatory changes in light of COVID-19](#)

Brexit

3. HM Treasury

- 3.1 UK SFTR - HM Treasury publishes guidance on TR registration arrangements post-Brexit - 30 April 2020** - HM Treasury has published guidance for trade repositories (TRs) and relevant market participants on its proposed TR registration arrangements under the UK Securities Financing Transactions Regulation (UK SFTR), the retained version of the Securities Financing Transactions Regulation (EU) 2015/2365 (SFTR) post-Brexit.

HM Treasury confirms its intention to introduce legislation to enable TRs to register with the FCA or apply in advance to operate in the UK immediately following the end of the Brexit transition period, in relation to functions established by the UK SFTR. HM Treasury states that the legislation will be similar to the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018 (SI 2018/1318) (which were made in December 2018) so that the framework for reporting derivative trades to TRs established by the European Market Infrastructure Regulation (648/2012/EU) (EMIR) operates effectively after Brexit.

The legislation will be brought forward before the end of the Brexit transition period. HM Treasury explains that the FCA will publish further information on registration in due course. The FCA's SFTR library is updated with links to material on the UK SFTR.

[HM Treasury guidance on TR registration arrangements under the UK SFTR](#)

[Webpage on financial services legislation under the European Union \(Withdrawal\) Act 2018](#)

4. Bank of England and Prudential Regulation Authority

- 4.1 Temporary transitional power - Bank of England and PRA publish statement on use at the end of the transition period - 30 April 2020** - The Bank of England and the PRA have published a joint statement welcoming HM Treasury's written ministerial statement, made on 25 March 2020, setting out its intention to retain the UK financial services regulators' temporary transitional power (TTP) so that it is available for use for a two-year period from the end of the transition period. The TTP allows the Bank of England, the PRA and the FCA to phase-in changes to UK regulatory requirements so that firms can adjust to the UK's post-transition period regime in an orderly way.

The Bank and the PRA confirm that they intend to use the TTP to grant general transitional relief to firms on a broad basis for a period of 15 months, until 31 March 2022. Therefore, in all but a few areas, PRA-regulated firms and Bank of England-regulated financial market infrastructures (FMIs) will not need to have completed preparations to implement changes in UK law arising from the end of the transition period by December 2020.

The statement confirms that the draft transitional directions and guidance, published in July 2019, will be updated accordingly.

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

[Bank of England and PRA statement on the use of the TTP post-Brexit](#)

5. Financial Conduct Authority

- 5.1 Temporary transitional power - FCA publishes statement on use at the end of the transition period - 30 April 2020** - The FCA has published a statement, alongside the PRA's and the Bank of England's joint statement, updating its Brexit Policy Statement and Transitional Directions (PS19/5). The statement confirms that the FCA intends to use the regulators' temporary transitional power (TTP) to grant transitional relief to firms on a broad basis until 31 March 2022. The TTP will be available for use by regulators for a two-year period following the end of the Brexit transition period.

The FCA explains that the TTP has the effect that, until 31 March 2022, regulatory obligations on firms will generally remain the same as they were before the end of the transition period and that UK regulated firms will not need to complete preparations to implement changes in UK law arising from the end of the transition period by December 2020.

In specific areas in which the FCA will not grant transitional relief, such as the temporary permissions regime (TPR), it expects firms and other regulated entities to take reasonable steps to comply with the changes to their regulatory obligations by the end of the transition period.

The FCA confirms that it will soon publish updated draft directions and annexes, which will include details on the application of the TTP in relation to new EU legislative requirements that become applicable during the transition period.

[FCA webpage on Brexit Policy Statement and Transitional Directions \(PS19/5\)](#)

6. TheCityUK and Economiesuisse

- 6.1 UK-Swiss financial services relationship - TheCityUK and Economiesuisse propose new trade agreement to enhance market access - April 2020** - TheCityUK and Economiesuisse have published a joint position paper proposing a new trade agreement between the UK and Switzerland in order to deepen financial market access between UK and Swiss financial and other related professional service (FRPS) providers post-Brexit. The paper sets out the key industry priorities in a future bespoke UK-Swiss FRPS agreement and highlights specific areas the UK and Swiss governments should address during bilateral discussions.

The paper explains that, so far, post-Brexit continuity between businesses in the UK and Switzerland has largely been achieved through several bilateral agreements, which have sought to replicate existing EU-Swiss arrangements on several matters including trade and insurance. These bilateral agreements are due to come into effect at the end of the Brexit transition period.

The paper states that the principle of financial services equivalence as applied by the EU would not be suitable for any future bilateral arrangement between Switzerland and the UK, given the comparability of the UK and Swiss approach to financial market regulation and overall supervisory frameworks. It proposes, instead, that market access to allow for the cross-border provision of financial services should be based on the mutual recognition of comparable outcomes, rather than a line-by-line comparison of the respective regulatory and supervisory regimes. This should cover the following areas: (i) banking and investment; (ii) asset management; (iii) insurance; (iv) financial market infrastructure; and (v) data and cyber security.

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

To ensure that markets remain open during the COVID-19 pandemic, the paper calls on the UK and Swiss governments to sign a memorandum of understanding (MoU) committed to deepening institutional, regulatory and supervisory co-operation, strengthening global financial regulatory standards and providing a roadmap towards a bespoke UK-Swiss bilateral agreement.

[TheCityUK and Economiesuisse position paper on a new UK-Swiss trade agreement to enhance market access for FRPS providers post-Brexit](#)

[Press release](#)

Banking and Finance

7. Basel Committee

7.1 Principles for effective risk data aggregation and risk reporting - Basel Committee publishes progress report - April 2020

The Basel Committee on Banking Supervision has published its latest progress report on banks' implementation of its Principles for effective risk data aggregation and risk reporting, published in January 2013. The report is based on the results of a self-assessment survey of authorities with supervisory responsibility for global systemically important banks (G-SIBs) and reviews G-SIBs' progress as at end-2018.

The Principles aim to strengthen banks' risk data aggregation and risk reporting with a view to improving their risk management, decision-making processes and resolvability. Although the report explains that none of the banks are fully compliant with the Principles in terms of building up the necessary data architecture, tangible progress has been made in several areas, including overarching governance, risk data aggregation capabilities and reporting practices.

The Basel Committee reiterates its recommendations that:

- banks should continue to closely monitor their implementation programmes and address weaknesses promptly, including committing the resources needed to complete data architecture and IT infrastructure improvement projects; and
- supervisors should continue to monitor banks' progress in implementing the Principles and take appropriate measures to address delays and ineffective implementation.

[Basel Committee progress report on the adoption of the Principles for effective risk data aggregation and risk reporting](#)

[Webpage](#)

[Press release](#)

8. European Commission

8.1 COVID-19 - European Commission publishes Communication on the application of prudential and accounting frameworks to facilitate bank lending - 28 April 2020

The European Commission has published a Communication on the application of prudential and accounting frameworks to facilitate EU bank lending in response to the economic impact of COVID-19. The Communication confirms how EU rules should be applied by banks and supervisors in a flexible but responsible manner so that they can continue to lend to businesses and households, and sets out its views on

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

the role and responsibility of the banking sector in limiting the economic impact of COVID-19 and promoting a rapid recovery.

The Communication states that the regulatory framework for banks, including the implementation of IFRS 9 and rules concerning the prudential classification of non-performing loans (NPLs), provides ample flexibility for the continued lending to businesses and households affected by the COVID-19 pandemic, while maintaining a prudent approach. The Commission has also:

- adopted a legislative proposal for targeted amendments to the Capital Requirements Regulation (575/2013/EU) (CRR) intended to improve banks' capacity to lend and absorb losses in light of COVID-19; and
- postponed the adoption of its legislative proposal on the implementation of the final Basel III standards. The Commission intends to adopt the proposal in time for their effective implementation in the EU by the revised January 2023 deadline, having previously indicated that it would adopt this proposal in June 2020.

The Commission intends to monitor the impact that such regulatory flexibility has on bank lending. It calls on the European Banking Authority (EBA) to clarify the regulatory treatment of public guarantees for risk mitigation purposes and the European Systemic Risk Board (ESRB) to co-ordinate an EU-wide approach in relation to the use of macro-prudential buffers in the crisis and recovery phase.

[European Commission Communication on the application of prudential and accounting frameworks to facilitate bank lending in response to COVID-19](#)

[Legislative proposal for targeted amendments to the CRR to facilitate bank lending in response to COVID-19](#)

[Speech by Valdis Dombrovskis \(Vice President of the European Commission\) on bank lending in response to COVID-19](#)

[FAQs](#)

[Webpage](#)

[Press release](#)

9. European Central Bank

- 9.1 **Cross-border repercussions of macroprudential policies - ECB publishes framework for assessment** - *April 2020* - The European Central Bank (ECB) has published a report with a framework designed to assess the “*cross-border spillover effects of macroprudential policies*” which may result from regulatory arbitrage and risk management decisions among other things. This should assist national competent authorities (NCAs) in their assessment of the need for reciprocity when implementing macroprudential measures.

[ECB framework to assess cross-border spillover effects of macroprudential policies](#)

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

10. Prudential Regulation Authority

- 10.1 COVID-19 - PRA publishes statement on the regulatory treatment of guarantees provided under CBILS and CLBILS - 27 April 2020** - The PRA has published a statement on the regulatory treatment of guarantees provided under the UK Coronavirus Business Interruption Loan Scheme (CBILS) and the UK Coronavirus Large Business Interruption Loan Scheme (CLBILS) under the CRR. In particular, the statement outlines the PRA's observations on whether the guarantees provided by the government under the CBILS and CLBILS are eligible for recognition as unfunded credit risk mitigation (CRM) under the CRR.

The PRA explains that, provided it meets the conditions under Articles 194 and 213 to 215 of the CRR, a guarantee is one form of unfunded CRM which may allow a firm to adjust risk weights and expected loss amounts. According to the PRA, the terms of the relevant guarantees "*do not contain features that would render them ineligible for recognition as unfunded CRM*" and the effects of these guarantees would appear to justify this treatment.

The statement does not provide an exhaustive description of the prudential requirements that apply to loans extended under the CBILS and the CLBILS, nor is it a comprehensive description of the regime under which CRM techniques impact the calculation of risk-weighted exposure amounts. The PRA encourages firms to review relevant Articles of the CRR and PRA rules and guidance, including its expectations set out in Supervisory Statement SS17/13 'Credit risk mitigation'.

[PRA statement on the regulatory treatment of guarantees under the CBILS and the CLBILS under the CRR](#)

11. Financial Conduct Authority

- 11.1 COVID-19 - FCA Feedback Statement FS20/4: Temporary financial relief for consumers impacted by COVID-19 - 24 April 2020** - The FCA has published a Feedback Statement (FS20/4) and accompanying guidance that confirm the adoption of a series of targeted, temporary financial relief measures for customers in light of the economic impact of COVID-19. The FCA consulted on the measures between 17 and 20 April 2020, as reported previously in this Bulletin. The measures focus on the application of FCA Principle 6 (treating customers fairly) and relate primarily to motor finance, the provision of high-cost short-term credit and pawnbroking agreements.

The proposed measures are largely as consulted on, save for some minor amendments clarifying the scope of application of the guidance. Among other things, they will require:

- motor finance firms to offer a three-month payment freeze to customers that are experiencing temporary difficulties meeting finance or leasing payments due to the pandemic; firms must also agree not to take steps to end agreements or repossess vehicles in such circumstances;
- high-cost short-term credit and payday loan firms to offer a one-month interest-free payment freeze to customers experiencing payment difficulties, with no additional interest charges; and
- firms entering into buy-now pay-later (BNPL), rent-to-own (RTO) or pawnbroking agreements to offer a three-month payment freeze to customers facing temporary payment difficulties.

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

The measures will apply from 27 April 2020.

The FCA recognises that there may be other types of regulated credit agreements that are not specifically covered by this, or previous, COVID-19-related guidance. Firms that enter into such agreements are expected to treat customers fairly through the provision of payment deferrals in line with this guidance. The FCA will work with firms, consumer and debt advice groups, and the government to consider whether additional forms of support may be needed.

[FCA Feedback Statement FS20/4: Temporary financial relief for customers impacted by coronavirus](#)

[FCA temporary guidance for motor finance firms in light of COVID-19](#)

[FCA temporary guidance for high-cost short-term credit and payday loan firms in light of COVID-19](#)

[FCA temporary guidance for BNPL, RTO and pawnbroking firms in light of COVID-19](#)

[Webpage on Feedback Statement FS20/4](#)

[Webpage on information for credit consumers in light of COVID-19](#)

[Press release](#)

- 11.2 COVID-19 - FCA publishes statement outlining its approach to the regulation of firms participating under the CBILS and BBLs - 27 April 2020** - The FCA has published a statement outlining its approach to the regulation of firms participating in the CBILS and the new Bounce Back Loan Scheme (BBLs). This follows announcements by the government and HM Treasury on the implementation of amendments to the CBILS to support small businesses, including changes to the criteria to be applied by lenders when considering businesses for loans under these schemes.

Among other things, the FCA states that:

- as an interim measure, pending the roll-out of the BBLs, if a firm complies with the requirements of the CBILS, the FCA will not expect it to comply with rules 5.2A.4 to 5.2A.34 of the Consumer Credit sourcebook (CONC) where the lending is regulated. However, firms must continue to carry out creditworthiness assessments in line with CONC 5.2A on all other regulated lending;
- it will regard individuals' compliance with the relevant requirements of the CBILS as compliance with Chapters 2.1 and 2.2 of the Code of Conduct sourcebook (COCON) (with the exception of 2.1.1, 2.1.3 and 2.2.4), for the purposes of the Senior Managers and Certification Regime (SMCR) and assessments of creditworthiness and affordability. The FCA intends to provide similar clarity on the BBLs when it is formally launched;
- in light of the need to balance the risks of fraud and money laundering against the need for the fast and efficient release of funds, where a firm has carried out appropriate customer due diligence (CDD) for existing customers prior to receiving an application under the CBILS or BBLs, it does not need to make further additional checks unless the firm has information suggesting that a customer poses a higher risk; and

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

- firms should continue to carry out the normal CDD processes for new customers. However, if the money laundering and terrorist financing risks associated with a new business relationship are low, the firm may implement simplified due diligence or consider alternative verification methods.

[FCA statement on its approach to the regulation of firms participating under the CBILS and the BBLs](#)

- 11.3 COVID-19 - FCA extends deadline for implementing SCA requirements under PSD2 - 30 April 2020** - The FCA has published a statement announcing that it is extending the deadline for firms to implement strong customer authentication (SCA) requirements for e-commerce transactions under the revised Payment Services Directive (EU) 2015/2366 (PSD2). The deadline will be extended by six months to 14 September 2021. The FCA has made the decision to delay the implementation of SCA requirements in light of the disruption caused by COVID-19.

Following consultation with stakeholders, the FCA intends to work closely with UK Finance in order to publish a revised implementation plan and critical path. In the meantime, it expects firms to continue with the necessary preparatory activities, such as robust end-to-end testing.

The FCA reminds firms that any firm that does not comply with the SCA requirements after 14 September 2021 will be subject to full FCA supervisory and enforcement action.

[FCA statement on extending deadline for implementing SCA requirements under PSD2 in light of COVID-19](#)

- 11.4 Consumer credit firms - FCA publishes guidance on authorisation - 30 April 2020** - The FCA has published a sample business plan and additional guidance for use by firms applying for authorisation to carry on consumer credit lending activities under FSMA 2000. The FCA states that it is publishing the guidance to help firms meet its expectations and to help avoid delays in the application process caused by lack of detail being provided in the business plan.

The sample business plan covers issues including capitalisation, governance, treating customers fairly (TCF), business model overview, marketing activities, customer journey, compliance and complaints, training and staff incentives, and policies and procedures. The FCA confirms that this is not an exhaustive list of the information that is needed to be provided by firms and additional information may be required depending on the firm and the permissions for which it is applying.

The FCA also provides further guidance on:

- key issues that all business plans should address, such as the business opportunity identified, the services to be offered and the firm's governing body or senior management experience;
- the production of business plans for different types of lending firms, such as unsecured credit lenders, pawnbrokers, home collected credit firms and high-cost short-term credit firms; and
- content that should be included in business plans by firms with appointed representatives.

[FCA sample business plan for consumer credit lending firms](#)

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

Webpage

12. Lending Standards Board

- 12.1 CRM Code for APP scams - LSB publishes report on its application by firms - April 2020** - The Lending Standards Board (LSB) has published a report setting out its findings and recommendations on how firms have interpreted and applied the voluntary Contingent Reimbursement Model (CRM) Code. The CRM Code sets out customer protection standards for signatories, including a commitment to reimburse 'no blame' victims of authorised push payment (APP) fraud and scams. The report analyses the Code's effectiveness in delivering fair outcomes for consumers and the consistency of approach across its application by signatory firms.

The report states that all signatory firms have taken positive steps to implement the requirements of the Code and have demonstrated a willingness to ensure a consistent approach. However, it identifies key areas for improvement, including in relation to: (i) reimbursement processes; (ii) identification of vulnerability; (iii) effective warnings; and (iv) and record keeping. The LSB confirms that more consistent approaches are required across these areas.

The LSB intends to monitor firms' progress in applying the Code before undertaking a full review of the Code itself during 2020.

[LSB report on firms' application of the CRM Code for APP scams](#)

Press release

13. UK Finance

- 13.1 COVID-19 - UK Finance announces commitment to help mortgage customers transfer products - 28 April 2020** - UK Finance has announced that mortgage lenders have renewed and expanded a commitment to help existing mortgage customers easily transfer products when they reach the end of their fixed-rate term, in light of the economic impact of the COVID-19 pandemic. This follows an industry-wide agreement in 2018 between UK Finance, the Building Societies Association (BSA) and the Intermediary Mortgage Lenders Association (IMLA) that eligible customers coming to the end of a fixed-rate mortgage should be offered a product transfer by their lender, giving customers the option to switch to a new deal with their existing lender instead of automatically moving onto a reversion rate.

UK Finance states that normally customers on payment holidays and existing borrowers who have been furloughed would not be eligible for a product transfer but, given the current exceptional circumstances, lenders are waiving these rules. To be eligible for a product transfer, customers need to: (i) be up to date with payments; (ii) be approaching the end of their fixed-rate term and not looking to borrow any more; and (iii) have a minimum remaining mortgage term of two years and an outstanding loan of at least £10,000. This cross-industry commitment only applies to customers of those lenders that are able to offer alternative products to their existing borrowers.

UK Finance states that this commitment forms part of a broad range of measures introduced by the industry to support borrowers, including the introduction of three-month payment holidays, a moratorium on repossessions and a commitment to extend mortgage offers for three months for customers who have already exchanged contracts.

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

[Press release: UK Finance announces commitment to help mortgage customers transfer products in light of COVID-19](#)

Please see the **General** section for an item on the House of Commons Treasury Committee publishing its Terms of Reference for the next stage of its inquiry into the economic effects of COVID-19.

Securities and Markets

14. European Commission

- 14.1 Taxonomy Regulation for sustainable investment - European Commission accepts EU Council position - 23 April 2020** - The European Commission has published a Communication to the European Parliament confirming that it accepts the position adopted by the Council of the European Union, at first reading on 15 April 2020, on the text of the proposed Regulation (EU) 2018/0178(COD) (Taxonomy Regulation) on the establishment of a framework to facilitate sustainable investment and identify green activities.

The Communication sets out the amendments made to the Commission's initial proposals. The European Parliament is expected to formally adopt the text in plenary at second reading.

[European Commission Communication to European Parliament on adopting the Council of EU's position on the text of the proposed Taxonomy Regulation \(EU\) 2018/0178\(COD\)](#)

15. European Securities and Markets Authority

- 15.1 ESG disclosure requirements under the BMR - ESMA publishes no action letter to NCAs and Opinion to the European Commission - 29 April 2020** - The European Securities and Markets Authority (ESMA) has published a letter asking national competent authorities (NCAs) not to prioritise supervisory or enforcement action against benchmark administrators that fail to comply with the the new environmental, social and governance (ESG) disclosure requirements under the Benchmarks Regulation (EU) 2016/1011 (BMR). The new requirements are due to apply from 30 April 2020 and require benchmark administrators to include details of how ESG factors are reflected in their methodology documents and benchmark statements.

The reason for the request is the difficulties encountered by benchmark administrators in fulfilling these requirements prior to the adoption and application of related Delegated Regulations. These Regulations set out minimum standards on the reflection of ESG factors in benchmark methodologies and benchmark statements.

As reported in a previous edition of this Bulletin, these Delegated Regulations are currently subject to a one month consultation by the European Commission, due to close on 6 May 2020. Following this, the Delegated Regulations will also be subject to a scrutiny by the European Parliament and by the Council of the European Union before they enter into force. To this end, ESMA has also published an Opinion to the European Commission stating that delay in the adoption of the Delegated regulations should be avoided.

[ESMA no action letter to NCAs regarding ESG disclosure requirements for benchmark administrators under the BMR](#)

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

[ESMA Opinion to the European Commission on the need to avoid delay in adopting Delegated Regulations regarding ESG disclosure requirements for benchmark administrators under the BMR](#)

[Press release](#)

16. [Various trade associations](#)

- 16.1 COVID-19 - trade associations publish letter to ESMA on the application of OTC derivative contract reporting requirements for financial counterparties under EMIR Refit - 27 April 2020 -** The International Swaps and Derivatives Association (ISDA) has published a letter submitted to ESMA on behalf of ISDA, the Association for Financial Markets in Europe (AFME), the Asia Securities Industry and Financial Markets Association (ASIFMA), the Global Financial Markets Association (GFMA) and the Securities Industry and Financial Markets Association (SIFMA). The letter requests national competent authorities (NCAs) not to prioritise supervisory action in relation to the application of mandatory over-the-counter (OTC) derivative contract reporting requirements for financial counterparties (FCs) under the EMIR Refit Regulation (EU) 2019/834 (EMIR Refit).

The letter states that COVID-19 has impeded market participants' preparations and ability to comply with the requirement on FCs to report OTC derivative contracts on behalf of both themselves and of their non-financial counterparty minus (NFC-) clients from 18 June 2020. The letter calls on ESMA to request that NCAs will not prioritise supervisory action and will generally apply their risk-based supervisory powers in relation to this requirement in a proportionate manner until 21 November 2020.

The letter confirms that where NFC- clients have fulfilled their obligations of providing all relevant data to FCs before 18 June 2020, they will no longer be responsible for reporting its trades. FCs will assume liability for reporting OTC derivative trades on behalf of NFC- firms from 18 June 2020, even if they are not yet in a position to report those trades.

[Various trade associations publish letter to ESMA on the application of OTC derivative contract reporting requirements for financial counterparties under the EMIR Refit Regulation in light of COVID-19](#)

[Webpage](#)

17. [Financial Conduct Authority](#)

- 17.1 COVID-19 - FCA publishes 'Dear CEO' letter on the fair treatment of corporate customers preparing to raise equity finance - 28 April 2020 -** The FCA has published a 'Dear CEO' letter from Jonathan Davidson (Executive Director of Supervision, Retail and Authorisations at the FCA) and Megan Butler (Executive Director of Supervision, Investment, Wholesale and Specialist at the FCA) to firms on the fair treatment of corporate customers preparing to raise equity finance in light of the ongoing COVID-19 pandemic.

There have been reports of some banks failing to treat corporate clients fairly, by using their lending relationships with clients to exert pressure and secure roles on equity mandates to which they might otherwise not have been appointed. That sort of conduct could breach several FCA rules and Principles for Businesses, including: (i) Principle 1 (integrity); Principle 5 (market conduct); (iii) COBS 2.1 (best interests of the client); (iv) COBS 11A.2 (prohibition of future service restrictions); and (v) SYSC 10.1 (conflicts of interest).

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

The FCA reminds firms to consider requirements of the Market Abuse Regulation (596/2014/EU) (MAR), including in relation to the identification, handling and disclosure of inside information received in connection with the renegotiation of a corporate client's existing facilities, as well as the individual conduct rules of the Senior Managers and Certification Regime (SMCR).

Firms that are active in both equity and lending markets must review their current systems and controls to satisfy themselves that they are appropriate for ensuring the fair and proper treatment of clients, identification and mitigation of conflicts of interest and handling of inside information. The FCA intends to contact firms with a lending relationship and equity role with issuers that have recently raised significant equity capital in order to understand how those firms ensured clients were treated fairly and inside information was handled appropriately.

[FCA 'Dear CEO' letter to firms on the fair treatment of corporate customers preparing to raise equity finance in light of COVID-19](#)

- 17.2 LIBOR transition - FCA publishes further statement on the impact of COVID-19 - 29 April 2020 -** The FCA has published a second statement on the impact of COVID-19 on firms' London interbank offered rate (LIBOR) transition plans. This follows the FCA's previous statement made on 25 March 2020. Among other things, the FCA reiterates that firms should not rely on LIBOR being published after the end of 2021 and this should remain the target date for all firms to meet.

The FCA states that it is pleased to see continued progress on LIBOR transition, particularly within sterling cash markets and bond markets. However, the target of completely transitioning away from LIBOR in new sterling LIBOR-linked loans by end-Q3 2020 will not be achievable. Therefore, the Bank of England's Working Group on Sterling Risk-Free Reference Rates recommends that:

- by end-Q3 2020, lenders should be able to offer non-LIBOR linked products to their customers;
- after end-Q3 2020, lenders should include clear contractual arrangements in all new and re-financed LIBOR-referencing loan products to facilitate conversion ahead of end-2021. These arrangements should include pre-agreed conversion terms, or an agreed process for renegotiation, to the Sterling Overnight Index Average (SONIA) or other alternative rates; and
- there should be no new issuances of sterling LIBOR-referencing loan products with maturities beyond the end of 2021 by the end of Q1 2021.

The FCA, the Bank of England and the Chair of the UK's Working Group on Risk-Free Reference Rates (RFRWG) will continue to support the delivery of the RFRWG's workplan, including the publication of guidance on 'tough legacy' contracts and the calculation of a fair credit spread adjustment in legacy cash products to assist LIBOR transition in cash markets. The FCA and the Bank of England will also continue to assess the evolving impact of COVID-19 on firms' LIBOR transition plans.

[FCA statement on the impact of COVID-19 on firm's LIBOR transition plans](#)

Insurance

18. European Insurance and Occupational Pensions Authority

18.1 EIOPA's response to the Coronavirus crisis - speech by Gabriel Bernardino, Chair of EIOPA - 27 April 2020 - Gabriel Bernardino (Chair of the European Insurance and Occupational Pensions Authority (EIOPA)) has delivered a speech on EIOPA's response to the ongoing COVID-19 pandemic. Among other things, Mr Bernardino explains that:

- EIOPA has implemented a range of measures to help insurers focus on ensuring business continuity and continuing to serve their customers;
- although the sector has better aligned capital to risk since the implementation of the Solvency II Directive (2009/138/EU), given the overall uncertainty of the scale and duration of the crisis, it is important that insurers preserve capital and maintain continuity of service; and
- while the COVID-19 pandemic has caused several insurers to utilise digital technology to improve the accessibility of their services, policymakers and national competent authorities (NCAs) should ensure that increased digitalisation does not expose customers to an increased risk of fraud, cybercrime or financial exclusion.

He also states that despite the allocation of considerable resources to monitoring and mitigating the effects of COVID-19, EIOPA is able to continue with its other priorities for 2020, including its work on: (i) the Solvency II 2020 review; (ii) digitalisation, cyber risk and cyber insurance; (iii) sustainable finance; and (iv) the development of the Capital Markets Union (CMU).

[Speech by Gabriel Bernardino \(Chair of EIOPA\) on EIOPA's response to the ongoing COVID-19 pandemic](#)

19. Prudential Regulation Authority

19.1 PRA Policy Statement PS10/20 - Solvency II: Group availability of subordinated liabilities and preference shares - April 2020 - The PRA has published a Policy Statement (PS10/20) which outlines: (i) its final policy relating to the determination of the availability of subordinated liabilities and preference shares in group own funds under the Solvency II Directive (2009/138/EC); and (ii) its expectations of firms in presenting relevant analysis to the PRA. This follows the PRA's Consultation Paper (CP16/19) on the matter, published in July 2019.

The PRA confirms that it will proceed with its original proposals largely as consulted on, save for the inclusion of additional material in Supervisory Statement SS9/15 'Solvency II: Group supervision', which aims to clarify: (i) the PRA's assessment of group availability for different types of groups; and (ii) the legal requirements that restrict the ability of subordinated liabilities and preference shares to absorb all types of group losses.

The policy changes outlined in PS10/20 will come into effect from 30 April 2020.

[PRA Policy Statement PS10/20 - Solvency II: Group availability of subordinated liabilities and preference shares](#)

[Updated Supervisory Statement SS9/15 'Solvency II: Group supervision'](#)

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

Webpage

20. Financial Conduct Authority

- 20.1 PPI complaints deadline - FCA publishes final report - April 2020** - The FCA has published a final report on the impact of the 29 August 2019 deadline for payment protection insurance (PPI) complaints and the outcome of its two-year consumer communication campaign. In total, over 23.4 million PPI-related complaints were made to firms and, to date, in excess of £38 billion has been paid in redress to affected consumers.

According to the report, the communication campaign leading up to the PPI complaints deadline was successful in reaching many consumers who had not previously engaged with the complaints process. 8.9 million complaints were submitted in the final 14 months of the campaign, compared to 3.7 million in the first 10 months; 1.4 million complaints were received in the final month. The FCA found little evidence of consumers running out of time to complain about PPI. It also observes that firms made continued improvements in PPI complaints handling and their engagement with the Financial Ombudsman Service (FOS) and its decisions.

The FCA will continue to publish monthly figures for PPI redress paid until all complaints have been dealt with and expects firms to be in a position to provide most remaining complaints with final responses by summer 2020.

[FCA final report on the impact of the PPI complaints deadline](#)

Webpage

Press release

21. Lloyd's Market Association

- 21.1 Consumer Wordings Guidance - LMA publishes updated version - 29 April 2020** - The Lloyd's Markets Association (LMA) has published an updated version of its guidance on consumer wordings. The guidance has been updated to:

- acknowledge the expansion of the remit of the Financial Ombudsman Service (FOS), which took effect on 1 April 2019, to include small and medium-sized enterprises, which have an annual turnover of less than £6.5 million and one of either a balance sheet of less than £5 million or fewer than 50 employees, as 'eligible complainants'; and
- include various suggestions and recommendations for how to improve the readability of policy wording in order to increase customers' understanding of the coverage provided.

[Press release: LMA updates Consumer Wordings Guidance](#)

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

Financial Crime

22. Financial Action Task Force

- 22.1 COVID-19 - FATF extends its mutual evaluation assessment and follow-up deadlines - 28 April 2020** - The Financial Action Task Force (FATF) has announced that it is extending its mutual evaluation assessment and follow-up deadlines in response to the disruption caused by the ongoing COVID-19 pandemic. It has published a revised mutual evaluation schedule.

The FATF has also decided to extend its deadline for a review of its list of high-risk jurisdictions subject to a call for action and jurisdictions subject to increased monitoring. Aside from Mongolia and Iceland, which have asked for their deadlines not to be extended, the FATF no longer plans to review the relevant jurisdictions in June 2020.

[Press release: FATF extends its mutual evaluation assessment and follow-up deadlines in light of COVID-19](#)

Please see the **Banking and Finance** section for an item on the FCA's approach to the regulation of firms under the UK Coronavirus Business Interruption Loan Scheme (CBILS), including in relation to firms' customer due diligence measures.

Enforcement

23. Financial Conduct Authority

- 23.1 Unauthorised investment advisors - FCA commences civil proceedings - 27 April 2020** - The FCA has announced that it has commenced civil proceedings in the High Court against 24HR Trading Academy Ltd and Mr Mohammed Fuaath Haja Maideen Maricar (sole director at the firm) for allegedly advising on investments, arranging dealings in investments and engaging in financial promotions without authorisation, or not having such promotions approved by an authorised person. In the alternative, the FCA alleges that Mr Maricar was knowingly concerned in such contraventions.

The FCA's allegations date from 2017 onwards and concern investment recommendations communicated to clients via WhatsApp and other social media platforms. Clients were induced to sign up with a 'partnered' broker to place their trades, following which the firm and/or Mr Maricar would receive commission. The FCA has secured an interim injunction to put a stop to these activities and to freeze the defendants' assets, up to a value of £624,311, pending further hearings.

The FCA is seeking several final orders from the court, including: (i) a declaration that the defendants carried on regulated activities without authorisation and unlawfully made financial promotions; (ii) a prohibition order to prevent the firm and individual from carrying out regulated activities in the future; and (iii) a restitution order to distribute the defendants' frozen assets to consumers who suffered financial losses as a result of the alleged breaches of FSMA 2000.

[Press release: FCA commences civil proceedings against a firm and senior individual for allegedly providing unauthorised investment advice](#)

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](#).

The Group's recent work includes advising:

- A number of global banks, insurance and asset management groups on their preparations for Brexit;
- A number of banking groups in relation to banking structural reform, including the UK ring-fencing regime;
- Prudential plc on the proposed demerger of its UK & Europe business (M&G Prudential) from Prudential plc, resulting in two separately-listed companies;
- Standard Life plc on the recommended all-share merger with Aberdeen Asset Management and the subsequent sale by Standard Life Aberdeen plc of its capital-intensive insurance business to Phoenix;
- UK Asset Resolution and Bradford & Bingley plc in relation to the disposal of legacy buy-to-let mortgage assets to Prudential plc and funds managed by Blackstone for a total consideration of £11.8bn;
- On the legal implications of developments across a broad Fintech waterfront for clients such as Euroclear, TreasurySpring, Bupa, TrueLayer, WorldRemit and Stripe, as well as other established businesses, challengers and start-ups; and
- A number of multi-national clients in relation to the UK, EU, and US economic and trade sanctions regimes.

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
Ben Kingsley ben.kingsley@slaughterandmay.com
Nick Bonsall nick.bonsall@slaughterandmay.com

© Slaughter and May 2020

This material is for general information only and is not intended to provide legal advice.
For further information, please speak to your usual Slaughter and May contact.