

Financial Regulation Weekly Bulletin

23 April 2020 / Issue 1056

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. Financial Stability Board

- 1.1 Cyber incident response and recovery - FSB publishes consultation - 20 April 2020** - The Financial Stability Board (FSB) has published a consultation on effective practices for cyber incident response and recovery, which aims to provide a toolkit of practices to assist financial institutions before, during and after a cyber incident. The FSB states that cyber incidents have the potential to seriously disrupt financial systems, including critical infrastructure, and therefore pose a threat to global financial stability.

The consultation focusses on the implementation of 46 efficient and effective practices to help financial institutions respond to, and recover from, cyber incidents and related financial stability risks. These practices are divided into seven distinct categories: (i) governance; (ii) preparation; (iii) analysis; (iv) mitigation; (v) restoration; (vi) improvement; and (vii) coordination and communication.

The consultation period closes on 20 July 2020. The FSB intends to publish the final toolkit of effective practices in October 2020.

[FSB consultation on effective practices for cyber incident response and recovery](#)

[Press release](#)

2. Financial Conduct Authority

- 2.1 COVID-19 - FCA publishes statement outlining its expectations for wet-ink signatures in light of coronavirus restrictions - 20 April 2020** - The FCA has published a statement outlining its expectations of firms when dealing with the need for physical document signings, including signing a document by hand using a pen ('wet-ink' signatures), in light of the COVID-19 pandemic.

The FCA clarifies that its rules do not explicitly require wet-ink signatures in agreements, nor do they prevent firms from using electronic signatures in agreements. The FCA states that when considering the use of electronic signatures, firms should consider the legal validity of electronic signatures and any related requirements under the FCA's Principles for Businesses and general rules, including:

- FCA Principles 2 (care, skill and diligence), 3 (management and control) and 6 (treating customers fairly) in reviewing and minimising the risks and harms of using electronic signatures; and

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- the client's best interests rule (COBS 2.1.1R) and the 'fair, clear and not misleading' rule (COBS 4.2.1R) to ensure that, when a client signs a document electronically, this does not make it more difficult for the client to understand what they are agreeing to.

The FCA confirms that it will accept electronic signatures for fund-related applications, on all applications from mutual societies, as well as generally in all interactions with firms.

[FCA statement on its expectations for physical documents signings in light of COVID-19](#)

- 2.2 COVID-19 - FCA clarifies its expectations of firms in relation to the cancellation of professional qualification exams - 21 April 2020** - The FCA has updated its webpage containing information for firms in response to the COVID-19 outbreak to clarify its expectations of firms regarding the cancellation of professional qualification exams. The FCA notes that many accredited bodies and qualification providers are cancelling exams due to COVID-19, with no specific arrangements in place to reschedule them. This may affect firms that must ensure their employees complete appropriate qualifications within a specific time limit, in line with FCA requirements.

The FCA states that it has no intention of taking action against a firm or accountable individual that is unable to ensure that an employee has attained an appropriate qualification within the required 48 months (TC 2.2A.1R) because the examinations were cancelled or postponed. Instead the FCA confirms that it will amend the time limit for attaining the appropriate qualification as "*within 48 months or, where necessary, as soon as reasonably practicable afterwards, up to a further 12 months*", allowing relevant employees an additional 12 months to complete the appropriate qualifications. Firms will need to assess and decide if an extension should be granted to an employee and record the reasons for this.

The FCA will adopt this approach for six months until 31 October 2020. Therefore, firms may apply a time limit of up to 60 months where examinations were cancelled or postponed up to and including 31 October 2020.

[FCA webpage on its expectations of firms in response to COVID-19](#)

- 2.3 COVID-19 - FCA temporarily extends regulatory reporting deadlines - 22 April 2020** - The FCA has temporarily extended the deadlines for submitting certain regulatory reports due up to and including 30 June 2020 in light of the COVID-19 pandemic. A full list of the affected returns can be found on the relevant FCA webpage. The FCA clarifies that returns not listed on the webpage do not have an extension and firms must submit those returns in the usual timeframe.

The FCA also confirms that it has waived the administrative fee for late returns for small or medium-sized businesses (paying less than £10,000 in fees and levies in 2020/21) until 30 June 2020.

The FCA intends to keep these changes under review in light of the ongoing COVID-19 pandemic.

[FCA temporarily extends regulatory reporting deadlines in light of COVID-19](#)

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Brexit

3. UK Parliament

3.1 Draft Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020 - laid before Parliament - April 2020 - The draft Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2000, made under section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018, have been laid before Parliament, together with explanatory information.

The instrument seeks to ensure a coherent and functioning financial services regulatory regime in the UK at the end of the Brexit transition period. To this end, the draft Regulations revoke several pieces of retained EU law and UK domestic law which would not be appropriate to keep on the statute books after the end of the Brexit transition period as they deal with cross-border activity within the EU and the functioning of EU institutions. The draft Regulations also make a number of amendments to address deficiencies in UK domestic law and retained EU law arising from the UK's withdrawal from the EU, as well as a number of minor clarifications and corrections to previous financial services EU exit instruments.

[Draft Financial Services \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2020](#)

[Explanatory memorandum](#)

[Webpage](#)

Banking and Finance

4. Council of the European Union

4.1 COVID-19 - Council of EU publishes statement on bank lending and insurance - 16 April 2020 - The Council of the European Union has published a statement by EU finance ministers on the importance of continuing bank lending and maintaining a well-functioning insurance sector during the COVID-19 pandemic. Among other things, the statement:

- stresses the importance of supervisory authorities continuing to take coordinated approaches when specifying how firms can make best use of the available flexibility;
- urges banks to refrain from making distributions during the COVID-19 pandemic and to use the freed capital and available profits to extend credit or other urgent financing needs to customers affected by the COVID-19 pandemic; and
- urges insurance companies to take measures to preserve their capital positions, including by temporarily suspending all discretionary distributions.

The Council of the EU states that the EU finance ministers will continue to closely monitor the economic impact of the COVID-19 pandemic and take further action where necessary.

[Press release: Council of the EU statement on bank lending and insurance firms in light of COVID-19](#)

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- 4.2 EU crowdfunding legislative proposals - Council of the EU publishes final compromise texts and invites COREPER to approve - April 2020** - The Council of the European Union has published an item note, dated 13 March 2020, containing the final compromise texts on: (i) proposed Regulation (EU) 2018/0048(COD) on European crowdfunding service providers (ECSPs) for business; and (ii) proposed Directive (EU) 2018/0047(COD), which makes consequential amendments to the Markets in Financial Instruments Directive (2014/65/EU) (MiFID II) in relation to crowdfunding.

The Council of the EU invites the Permanent Representatives Committee (COREPER) to approve the texts, with a view to adopting the texts as the Council of the EU's position at first reading. The Council of the EU, European Parliament and European Commission reached political agreement on the texts in December 2019. The new rules will be formally adopted by the Council of the EU and the Parliament pursuant to the early second reading agreement procedure.

Item note: Council of EU publishes final compromise texts and invites COREPER to approve first reading position

Final compromise text of proposed Regulation (EU) 2018/0048 (COD) on European crowdfunding service providers for business

Final compromise text of proposed Directive (EU) 2018/0047(COD), which makes consequential amendments to MiFID II in relation to crowdfunding

5. European Banking Authority

- 5.1 CRR - EBA publishes Opinion on proposed amendments to draft RTS on assigning risk weights to specialised lending exposures - 17 April 2020** - The European Banking Authority (EBA) has published an Opinion, dated 27 March 2020, agreeing with the European Commission's proposed amendments to the final draft regulatory technical standards (RTS) on the assignment of risk weights to specialised lending exposures under Article 153(9) of the Capital Requirements Regulation (575/2013/EU) (CRR). The EBA submitted the draft RTS to the Commission in July 2016 and, in March 2020, the Commission informed the EBA of its intention to endorse the draft RTS with amendments.

The Commission's proposed amendments introduced three substantive changes. The first two changes allow a certain flexibility in relation to the incorporation of risk drivers. The third substantive change simplifies the rules on overlapping criteria at the level of the sub-factor or of the sub-factor components. The EBA states that, despite their substantive nature, the proposed amendments do not alter the draft RTS in a significant manner as they still maintain a good balance between the flexibility and risk sensitivity required for the internal ratings-based (IRB) approach.

The text of the Delegated Regulation containing the revised RTS, as well as a draft Commission explanatory memorandum, is set out in the annexes to the Opinion. The RTS will apply one year following its publication in the Official Journal of the European Union.

EBA Opinion on the Commission's proposed amendments to draft RTS on the assignment of risk weights to specialised lending exposures under CRR

Press release

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5.2 COVID-19 - EBA publishes final report on amendments to draft RTS on prudent valuation under the CRR - 22 April 2020 - The EBA has published a final report on draft amendments to RTS on prudent valuation under the CRR in light of the COVID-19 pandemic.

Under Article 105 of the CRR, institutions are required to prudently value their fair-valued instruments, and Delegated Regulation (EU) 2016/101 specifies how additional valuation adjustments (AVAs) should be calculated for this purpose by reference either to a core or a simplified approach. The EBA states that the COVID-19 pandemic has triggered extreme levels of volatility which have impacted aggravated AVAs. Therefore, it proposes to amend Delegated Regulation (EU) 2016/101 to increase temporarily the aggregation factor applicable to the core approach from 50% to 66% until 31 December 2020 in order to mitigate the excessive procyclical effect of the current prudent valuation aggregation part of the framework.

The EBA calls on the European Commission to adopt the draft RTS as soon as possible to allow for the application of the revised RTS for common reporting (COREP) on 30 June 2020. The EBA states that it has not consulted on the draft RTS because of the need for prompt action to update the RTS to assist institutions affected by the crisis in their calculation of AVAs.

The EBA also recommends that, in future, it should be given a mandate to specify the provisions that apply for prudent valuation purposes under exceptional circumstances so that it can react appropriately to future market disruptions of a similar nature.

[EBA final report on amendments to draft RTS on prudent valuation under the CRR](#)

[Press release](#)

5.3 COVID-19 - EBA publishes further guidance on additional supervisory measures - 22 April 2020 - The EBA has published two statements providing further guidance on the use of flexibility in supervisory measures and approaches in light of the COVID-19 pandemic. The statements cover market risk, the Supervisory Review and Evaluation Process (SREP), recovery planning, digital operational resilience and securitisation.

The EBA's statement on the application of the prudential framework on market risk confirms that:

- the EBA intends to defer the start date for the Fundamental Review of the Trading Book standardised approach (FRTB-SA) reporting requirements from Q1 2021 to Q3 2021;
- following agreement between the Basel Committee on Banking Supervision and the International Organization of Securities Commissions (IOSCO), there will be a delay to the final implementation stages of the framework for margin requirements for non-centrally cleared derivatives;
- the EBA is working with the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) to postpone by one year the requirements to implement initial margins for counterparties above €50 billion (due to start in September 2020) and above €8 billion (due to start in September 2021); and
- the CRR provides sufficient flexibility to mitigate the effect of increased value-at-risk (VAR) risk metrics, which are used to calculate own funds requirements for market risk for institutions using the internal model approach.

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The EBA's statement on additional supervisory measures in light of the COVID-19 pandemic states that: (i) it intends to adopt a pragmatic approach to SREP assessments in 2020, focusing on the most material risks and vulnerabilities driven by the crisis; (ii) in terms of recovery planning, institutions should enhance their focus on understanding which recovery options are necessary and available under the current stressed conditions; (iii) institutions should maintain digital operational resilience by ensuring business continuity and adequate IT and security risk management; and (iv) institutions should follow its guidance on the prudential application of the definition of default and forbearance under the CRR and how the EBA Guidelines on legislative and non-legislative moratoria on loan repayments apply to securitisations.

[EBA statement on the application of the prudential framework on market risk in light of COVID-19](#)

[EBA statement on additional supervisory measures in light of COVID-19](#)

[Press release](#)

- 5.4 Supervisory data - EBA publishes updated guides on risk indicators and IMF-FSI mapping - April 2020** - The EBA has published updated versions of its methodological guide on how to report the International Monetary Fund (IMF) financial soundness indicators (FSIs) and a revised methodological guide on how to compile risk indicators and detailed risk analysis tools (DRAT). FSIs provide insight into the financial health and soundness of countries' financial institutions as well as corporate and household sectors, thus supporting the economic and financial stability analysis.

The EBA has also published: (i) a revised list of EBA risk indicators and the DRAT tool; and (ii) a document on FSI forms mapping to the templates in the implementing technical standards (ITS) on supervisory reporting templates.

The EBA states that the updates to these documents largely reflect the 2019 IMF FSI Guide, which was published in December 2018, and the outcome of an EBA review of its reporting framework, which has resulted in changes to, among other things, information on securitisations and on non-performing and forbome exposures.

[Press release: EBA updates supervisory data guides on risk indicators and IMF-FSI mapping](#)

[EBA methodological guide on risk indicators](#)

[List of EBA risk indicators](#)

[EBA detailed risk analysis tool](#)

[EBA guidance note on IMF FSIs](#)

[EBA IMF-FSI ITS data](#)

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6. European Central Bank

- 6.1 COVID-19 - ECB announces temporary relief for capital requirements for market risk for banks under the Single Supervisory Mechanism - 16 April 2020** - The European Central Bank (ECB) has announced a temporary reduction in capital requirements for market risk for banks under the Single Supervisory Mechanism in response to the high levels of volatility recorded in financial markets since the outbreak of COVID-19.

The ECB states that this temporary reduction relates to the qualitative market risk multiplier, which is set by supervisors and used to compensate for the possible underestimation by banks of their capital requirements for market risk. This temporary reduction of the qualitative multiplier compensates for currently observed increases of another factor, the quantitative multiplier, which can rise when market volatility has been higher than predicted by the bank's internal model. The ECB states that the measure is intended to smooth procyclicality and maintain banks' ability to provide market liquidity and continue market-making activities.

The ECB will review the decision after six months on the basis of observed market volatility.

[Press release: ECB announces temporary relief for capital requirements for market risk](#)

7. Bank of England

- 7.1 Q&As on liquidity and capital buffers - published by the Bank of England - 20 April 2020** - The Bank of England has published a series of Q&As on liquidity and capital buffers in light of recent measures taken by the Bank in response to the economic impact of the COVID-19 pandemic. The Q&As aim to answer some commonly asked questions on the usability of liquidity and capital buffers and how they operate under the PRA's rules and guidance.

The Bank of England intends to update the document as the current COVID-19 situation evolves. The document is relevant to all banks to which the Capital Requirements Directive (2013/36/EU) (CRD IV) applies.

[Bank of England Q&As on liquidity and capital buffers](#)

[Webpage](#)

8. Financial Conduct Authority

- 8.1 COVID-19 - FCA consults on temporary financial relief for motor finance and high-cost credit customers - 17 April 2020** - The FCA has published for consultation a series of temporary financial relief measures for customers in light of the economic impact caused by the COVID-19 pandemic. The proposed measures, which are published in the form of guidance for firms and focus on the application of FCA Principle 6 (treating customers fairly), cover motor finance, high-cost short-term credit and buy-now pay-later credit customers. The main proposals include:

Motor finance

The FCA guidance includes an expectation that firms provide a three-month payment freeze to customers who are experiencing temporary difficulties meeting finance or leasing payments due to the COVID-19 pandemic, and states that firms should not take steps to end agreements or repossess vehicles in such circumstances.

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High-cost short-term credit

The FCA guidance expects high-cost short-term credit and payday loan firms to provide customers experiencing payment difficulties due to the COVID-19 pandemic a one-month interest-free payment freeze. Following the end of the freeze, the firm should allow the customer to pay the deferred payment in an affordable way, for example, by a single payment after the end of the term or by a number of smaller instalments.

Rent-to-own, buy-now pay-later and pawnbroking

The FCA is proposing that firms that enter into rent-to-own (RTO), buy-now pay-later (BNPL) or pawnbroking agreements will be expected to provide a three-month payment freeze to customers facing temporary payment difficulties due to the COVID-19 pandemic.

The FCA reiterates that if a customer was already in financial difficulty, the FCA's existing forbearance rules still apply. The consultation period closes on 20 April 2020. If confirmed, the FCA expects the measures to be finalized by 24 April 2020 and to enter into force shortly thereafter.

The FCA intends to review the guidance over the next three months and may, if appropriate, revise it in light of further developments regarding the COVID-19 pandemic.

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

[FCA draft guidance for rent-to-own, buy-now pay-later and pawnbroking firms in light of COVID-19](#)

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

[Press release](#)

9. Payment Systems Regulator

- 9.1 **New payments architecture - PSR extends consultation deadline in light of COVID-19 - 20 April 2020** - The Payment Systems Regulator (PSR) has announced that it has extended the deadline for responding to its consultation on competition issues arising from the development of, and procurement of infrastructure for, the UK's new payments architecture (NPA) until 1 May 2020. The NPA is the UK payments industry's proposed new way of organising the clearing and settlement of payments between banks.

The consultation was originally due to close on 24 March 2020 but this deadline was postponed in response to the economic impact and disruption caused by the COVID-19 pandemic.

[Press release: PSR extends deadline for consultation on competition issues arising from the UK's new payments architecture in light of COVID-19](#)

Securities and Markets

10. Council of the European Union

- 10.1 Taxonomy Regulation for sustainable investment - Council of the EU publishes statement of reasons and voting results following its adoption - 16 April 2020** - The Council of the European Union has published its statement of reasons and voting results following its formal adoption, at first reading, of the text of proposed Regulation (EU) 2018/0178 (COD) (Taxonomy Regulation) on the establishment of a framework to facilitate sustainable investment and identify green activities (as reported in the previous edition of this Bulletin).

The European Parliament is expected to formally adopt the text in plenary at second reading.

[Adopted text of the proposed Taxonomy Regulation \(EU\) 2018/0178\(COD\) on the establishment of a framework to facilitate sustainable investment and identify green activities](#)

[Statement of reasons](#)

[Voting result](#)

11. Joint Committee of the European Supervisory Authorities

- 11.1 ESG disclosure rules - ESAs publish consultation paper on draft RTS - 23 April 2020** - The Joint Committee of the European Supervisory Authorities (ESAs) (the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA)) have published a consultation paper containing draft regulatory technical standards (RTS) setting out environmental, social and governance (ESG) disclosure rules and standards for financial market participants, advisers and products under Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial sector. The ESG disclosure rules aim to strengthen protection for end-investors and to improve ESG disclosures to investors both from financial market participants and advisers, and in respect of financial products.

The draft RTS set out the content, methodologies and presentation of ESG disclosures at both entity and product level. Under the draft RTS:

- entities should disclose on their website the principal adverse impacts that investment decisions have on sustainability factors. The disclosure should take the form of a statement of due diligence policies showing how investments adversely affect sustainability indicators relating to the climate and environment, as well as social matters such as human rights, anti-corruption and anti-bribery; and
- the sustainability characteristics of financial products should be disclosed within pre-contractual and periodic documentation and online. Financial products that have designated an index as a reference benchmark are also subject to additional disclosures.

The consultation period closes on 1 September 2020, following which the ESAs intend to submit the final RTS to the European Commission.

[ESAs consultation on ESG disclosure rules and standards](#)

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12. [European Securities and Markets Authority](#)

- 12.1 [COVID-19 - ESMA updates Q&As on its Guidelines on alternative performance measures - 17 April 2020](#)** - ESMA has published a new Q&A on the application of its Guidelines on alternative performance measures (APMs) for listed issuers under the Transparency Directive (2004/109/EC) in light of the COVID-19 pandemic. The APM Guidelines address the information that issuers should publish when disclosing APMs (such as Operating Results and EBITDA) to the market in management reports, ad-hoc disclosures and prospectuses.

Among other things, the Q&A clarifies that ESMA:

- recommends that issuers exercise caution when adjusting APMs and including new APMs solely with the objective of depicting the impact that COVID-19 may have on their performance and cashflows;
- believes that it may not be appropriate to include new APMs or adjust APMs when the impact of COVID-19 has a pervasive effect on the overall financial performance, position, or cash flows of an issuer, as they may mislead users' understanding of the true and fair view of issuer's assets, liabilities, financial position and profit or loss; and
- urges issuers to improve their disclosures, rather than adjusting or including new APMs, and include narrative information in their communication documents in order to explain how COVID-19 has, and is expected to, impact their operations and performance, including the level of uncertainty and the measures adopted or expected to be adopted to address the pandemic.

[ESMA Q&As on its Guidelines on alternative performance measures for listed issuers](#)

[Press release](#)

- 12.2 [MoU on benchmark cooperation arrangements - agreed between ESMA and MAS - 17 April 2020](#)** - ESMA and the Monetary Authority of Singapore (MAS) have agreed a memorandum of understanding (MoU) completing the process to allow the use of Singapore's financial benchmarks in the EU. The MoU sets out cooperation, information exchange and supervisory arrangements following the European Commission's decision in July 2019 to recognise as equivalent Singapore's legal and supervisory framework for administrators of certain financial benchmarks under Article 30 of the Benchmarks Regulation (EU) 2016/1011 (BMR).

ESMA states that the Commission's July 2019 equivalence decision and the MoU will allow financial institutions in the EU to continue using the Singapore interbank offered rate (SIBOR) and the Singapore Dollar swap offer rate, as reference rates in their contracts.

[MoU agreed between ESMA and MAS on cooperation arrangements for specific benchmarks in Singapore](#)

[Press release](#)

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13. [European Central Securities Depositories Association](#)

- 13.1 CSDR Penalties Framework - ECSDA publishes updated version - 17 April 2020** - The European Central Securities Depositories Association (ECSDA) has published an updated version of its CSDR Penalties Framework. The framework aims to harmonise settlement penalties mechanisms across central securities depositories (CSDs) subject to the Central Securities Depositories Regulation (909/2014/EU) (CSDR), or its equivalent. The changes include the introduction of the concept of 'Penalties Business Days' in order to help CSDs manage cross-CSD settlement fails penalties processing.

[ECSDA CSDR Penalties Framework](#)

[Press release](#)

14. [International Swaps and Derivatives Association](#)

- 14.1 IBOR Fallback Rate Adjustments Rule Book - published by ISDA and BISL - 22 April 2020** - The International Swaps and Derivatives Association (ISDA) and the Bloomberg Index Services Limited (BISL) have published the IBOR Fallback Rate Adjustments Rule Book. The Rule Book sets out the methodologies, rules and conventions that BISL will use to calculate the adjustments to be made to risk-free rates in contractual fallback provisions in order to facilitate the transition away from the use of interbank offered rates (IBORs) to alternative risk-free rates in derivative contracts.

ISDA has also published a preliminary timetable identifying key milestones for the implementation of fallback provisions in derivative contracts, including:

- publication of consultation results and next steps for implementing permanent cessation and pre-cessation fallbacks in late April or early May 2020;
- publication of BISL indicative fallback rates during the first half of 2020;
- publication of amendments to the 2006 ISDA Definitions and related protocols; and
- a review of the effectiveness of the amendments to the 2006 ISDA Definitions and related protocols, up to 3 or 4 months following publication.

[ISDA and BISL IBOR Fallback Rate Adjustment Rule Book](#)

[Webpage](#)

Please see the **Asset Management** section for an item on the FCA updating its March 2020 statement outlining its expectations of solo-regulated firms in light of COVID-19.

Asset Management

15. [Financial Conduct Authority](#)

- 15.1 COVID-19 - FCA updates its statement outlining its expectations of solo-regulated firms - 17 April 2020** - The FCA has updated its statement, published on 26 March 2020, setting out its financial resilience expectations of FCA solo-regulated firms in light of the COVID-19 pandemic, to include additional information on wind-down plans, discretionary distributions and non-bank lenders subject to IFRS 9. The FCA states that:

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- firms planning to draw down a capital or liquidity buffer should contact the FCA or its named FCA supervisor;
- firms should maintain an up-to-date wind-down plan that considers the current market impact of the COVID-19 pandemic and if the plan identifies material execution risks, the firm should contact the FCA or its named supervisor with a plan for the immediate period ahead;
- if a firm is considering whether to make a discretionary distribution of capital to fund a share buy-back, dividend or to meet a variable remuneration decision, it should satisfy itself that each distribution is prudent given current market circumstances and its risk appetite; and
- non-bank lenders subject to IFRS 9 are reminded that the forward-looking information used in expected credit loss (ECL) estimates should be reasonable and supportable.

[Updated FCA statement on its expectations of FCA solo-regulated firms in light of COVID-19](#)

Insurance

16. Prudential Regulation Authority

- 16.1 IFRS 9, capital requirements and loan covenants - PRA publishes follow-up note to insurance firms in light of COVID-19 - 23 April 2020** - The PRA has published a follow-up note to insurance firms following its 'Dear CEO' letter, published on 26 March 2020, which provided guidance on the application of IFRS 9, capital requirements and loan covenant breaches in light of the COVID-19 pandemic. The follow-up note seeks to clarify how the guidance contained in the letter should be applied to insurers' internal assessments of loan creditworthiness and the treatment of unrated assets.

The PRA explains that its expectations regarding insurers' use of unrated assets are set out in Supervisory Statement (SS) 3/17 'Solvency II: Illiquid, unrated assets' and Policy Statement (PS9/20) 'Solvency II: Income producing real estate loans and internal credit assessments for illiquid, unrated assets'.

The PRA also states that while the letter does not explicitly address insurers' internal credit ratings or assessments, firms should "*make well-balanced and consistent decisions*" that: (i) take into account the unprecedented support provided by governments and central banks to protect the economy; and (ii) give due weight to established long-term economic trends, given the challenges of preparing detailed forecasts far into the future.

The PRA reiterates that loan covenant breaches arising directly as a result of COVID-19 may not necessarily be reflective of long-term credit risk and therefore firms will need to use their judgement to determine which covenant breaches do reflect increased credit risk and which do not.

[PRA follow-up note to insurance firms on IFRS 9, capital requirements and loan covenants in light of COVID-19](#)

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17. Financial Conduct Authority

- 17.1 COVID-19 - FCA publishes information on professional indemnity insurance for financial advisers - 21 April 2020** - The FCA has published a new webpage containing information on the impact the COVID-19 pandemic is having on professional indemnity insurance (PII) for financial advisers. The FCA states that while firms may be concerned that the COVID-19 pandemic may affect their ability to renew PII in a timely manner, affecting their operational resilience, industry discussions indicate that cover remains available and the crisis is not preventing insurers from undertaking the renewals process.

The FCA confirms that firms need to have suitable policies in place in order to support their ability to meet liabilities as they fall due and to protect their consumers. Although the cost and terms of policies are commercial decisions for insurers, the FCA reminds insurers of the need to comply with their regulatory obligations, including when manufacturing, distributing and writing a contract of insurance.

The FCA will continue to monitor how insurers review their approach to underwriting in light of COVID-19 and will consider taking action if insurers' ability to process renewals is affected. If an individual firm has concerns it will be unable to secure appropriate PII, including at the point of renewal, it should notify the FCA.

[FCA webpage on professional indemnity insurance for financial advisers](#)

Please see the **Banking and Finance** section for an item on a statement by the Council of the European Union on, among other things, insurance firms' capital positions during the COVID-19 pandemic.

Financial Crime

18. The Wolfsberg Group

- 18.1 Correspondent Banking Due Diligence Questionnaire - updated by the Wolfsberg Group - 17 April 2020** - The Wolfsberg Group has published an updated version of its Correspondent Banking Due Diligence Questionnaire (CBDDQ) and Financial Crimes Compliance Questionnaire (FCCQ), along with completion guidance, FAQs, and a glossary. The CBDDQ aims to set an enhanced and reasonable standard for cross-border and other higher risk correspondent banking due diligence.

In order to maintain the adoption rate of the CBDDQ as the industry transitions away from the Wolfsberg anti-money laundering (AML) Questionnaire the changes to the CBDDQ have been incremental and focus on improving its ease of use and enhancing its readability. The Wolfsberg Group calls on the banking industry and supervisors to continue the acceleration of the adoption of the CBDDQ as the standard for higher risk correspondent banking activity.

[Updated Correspondent Banking Due Diligence Questionnaire](#)

[Updated Financial Crimes Compliance Questionnaire](#)

[Completion guidance for the CBDDQ](#)

[FAQs](#)

[Glossary](#)

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Enforcement

19. Office of the Complaints Commissioner

- 19.1 FCA handling of regulatory applications and decisions - Complaints Commissioner publishes final report - April 2020** - The Financial Regulators Complaints Commissioner has published a final report, dated 3 April 2020, in relation to a series of seven complaints made against the FCA regarding failures in its handling of regulatory applications and decisions.

The Complaints Commissioner upheld the fourth complaint, relating to mistakes made by the FCA in publishing an unredacted First Supervisory Notice, recommending that the FCA offer an ex gratia payment of £500 for distress and inconvenience. The Commissioner also recommended that, in respect of delays in handling the complaint, the FCA provide an apology from the FCA's Executive Committee and a further £100 compensation (in addition to the £150 already offered) for the delay and maladministration in the FCA's processing of the complaint. The Complaints Commissioner did not uphold the other complaints.

The Commissioner calls on the FCA to make improvements regarding the transparency of the complaints scheme in relation to compensation, stating that individuals may have unrealistic expectations about the compensation they might receive as there is no clear published set of principles to assist in determining whether an award is justified.

The FCA confirms that it has accepted the recommendations and that it is taking steps to address delays in its complaints handling processes.

[Complaint FCA00700 \(dated 3 April 2020\)](#)

[FCA response](#)

20. Competition and Markets Authority

- 20.1 Retail Banking Market Investigation Order 2017 - CMA publishes letter to Metro Bank regarding breach - 20 April 2020** - The Competition and Markets Authority (CMA) has published a letter to Metro Bank plc in relation to breaches of Part 6 of the Retail Banking Market Investigation Order 2017, concerning failures to send text alerts to personal current account customers before charging them for unarranged overdrafts. According to the CMA, Metro Bank plc breached Part 6 of the Order because it imposed unarranged overdraft charges on approximately 130,000 customers without providing a sufficient warning that it would do so.

Metro Bank plc has committed to refund £11.4 million to affected customers, who did not receive a compliant alert, by summer 2020.

[CMA letter to Metro Bank plc in relation to breaches of Part 6 of the Retail Banking Market Investigation Order 2017](#)

[Webpage](#)[Press release](#)

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21. Recent cases

21.1 *Financial Solutions (Euro) Ltd v The Financial Conduct Authority*, [2020] UKUT 139 (TCC), 22 April 2020

Decision Notice overturned - cancellation of Part 4A permission - failure to maintain compliant professional indemnity insurance - failure to pay FCA fees and levies - FSMA 2000

The Upper Tribunal (Tax and Chancery Chamber) (Timothy Herrington, Jo Neill and Peter Freeman) has directed the FCA to overturn its Decision Notice cancelling Financial Solutions (Euro) Ltd's (FSE's) Part 4A permission under section 55J of FSMA 2000 in relation to alleged failures to maintain compliant professional indemnity insurance (PII) and pay fees and levies to the FCA.

In May 2019, the FCA issued a Decision Notice cancelling FSE's Part 4A permission on the basis of the firm's failure to maintain compliant PII (MIPRU 3.2.1R) and failure to pay fees and levies mandated by the FCA (FEES 4.2.1R).

FSE referred the FCA's Decision Notice to the Upper Tribunal, claiming that it had not failed to satisfy the suitability or appropriate resources Threshold Conditions as its failure to obtain compliant insurance was a direct result of ongoing regulatory action by the FCA into FSE, such that no provider would grant FSE a policy. As a consequence of not having compliant insurance, FSE decided to cease trading and, for this period, not pay the FCA its fees and levies.

The Upper Tribunal unanimously allowed FSE's reference, finding that, in the circumstances, FSE managed its business "*in a sound and prudent manner*". The Tribunal decided that the FCA had failed to take into account a number of relevant factors in reaching its decision, including: (i) that FSE's failure to obtain compliant PII was a direct consequence of the FCA's ongoing investigations; (ii) whether to exercise its power to remit or reduce fees, or at least forbear from taking action to enforce them pending the outcome of the investigation; (iii) consideration of alternative routes other than cancelling the firm's Part 4A permission; and (iv) whether it should, as an alternative to pursuing cancellation, have concluded its investigation into FSE either by discontinuing the investigation or instituting regulatory proceedings.

[Financial Solutions \(Euro\) Ltd v The Financial Conduct Authority \[2020\] UKUT 139 \(TCC\)](#)

[Webpage](#)

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.

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