

## Financial Regulation Weekly Bulletin

16 January 2020 / Issue 1042

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. European Commission

- 1.1 European Green Deal - adopted by European Commission, European Parliament and Council of the EU - 14 January 2020** - The European Commission, European Parliament and Council of the European Union have adopted a Communication on a European Green Deal Investment Plan and a proposal for a Regulation establishing the Just Transition Fund as part of the Commission's European Green Deal. The European Green Deal aims to facilitate and finance the EU's transition to a climate neutral economy by 2050 and was first announced by the Commission on 11 December 2019.

The European Green Deal Investment Plan aims to: (i) implement strategies and measures to support and facilitate sustainable investment and green finance; (ii) increase financial institutions' disclosure of the sustainability of its investments; and (iii) enhance the integration of climate and environmental risks into the EU prudential framework, including reassessing the suitability of existing capital requirements for green assets.

The Just Transition Fund is a mechanism which aims to ensure that the transition towards a climate neutral economy happens in a fair way, providing targeted financial support to alleviate the socio-economic impact of the transition in the most affected regions, particularly for communities which rely on the fossil fuel value chain.

[European Commission Communication on the European Green Deal Investment Plan](#)

[European Parliament resolution on the European Green Deal](#)

[Webpage](#)

[Proposal for a Regulation establishing the Just Transition Fund](#)

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## 2. Council of the European Union

**2.1 Work programme - published by the Croatian Presidency - January 2020** - The Croatian Presidency of the Council of the European Union has published its work programme for 1 January 2020 to 30 June 2020. The work programme contains several financial services-related priorities, including:

- progressing the completion of the Banking Union, including the establishment of the European Deposit Insurance Scheme;
- further developing the Capital Markets Union; and
- promoting measures and activities designed to mitigate the negative fiscal effects of demographic trends.

### [Work programme of the Croatian Presidency of the Council of the European Union](#)

## 3. UK Parliament

**3.1 Financial Services (Duty of Care) Bill 2019-20 - first reading in the House of Lords - 9 January 2020** - The first House of Lords reading of the Financial Services (Duty of Care) Bill 2019-20 took place on 9 January 2020. If the Bill becomes law, it will amend FSMA 2000 to require the FCA to introduce rules to impose a duty of care owed by authorised persons to consumers when carrying on regulated activities under FSMA.

A date for the Bill's second reading in the House of Lords has yet to be scheduled.

### [Financial Services \(Duty of Care\) Bill 2019-20](#)

#### [Webpage](#)

## 4. Bank of England

**4.1 Finance Adviser for COP26 - Prime Minister appoints Mark Carney - 16 January 2020** - The Bank of England has announced that Mark Carney (Governor of the Bank of England) has been appointed as the Prime Minister's Finance Adviser for COP26, which focuses on how to mitigate the impact of climate change by building a sustainable financial system to support the transition to a net zero economy.

### [Press release: Mark Carney appointed as Finance Adviser to the Prime Minister for COP26](#)

## 5. Financial Conduct Authority

**5.1 Retail Distribution Review and Financial Advice Market Review - FCA publishes update - 14 January 2020** - The FCA has published an update on its call for input on its evaluation of the Retail Distribution Review and the Financial Advice Market Review, published in May 2019. The FCA states that it is currently analysing industry data, collected from a sample of approximately 400 firms, to inform its view of how financial services are developing to serve consumers now and in the future. It has also commissioned qualitative research on how consumers interact with the market, how they seek support on financial issues and their overall experiences. Finally, it is continuing to work closely with other organisations and shareholders, particularly on the impact of technology on the market, the potential for new innovative financial services and the challenges

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and barriers firms are facing. This latest workstream is focusing particularly on open finance, the effect it may have on the market and how that may be used to benefit consumers.

The FCA intends to publish a report detailing the findings of its evaluation of the Retail Distribution Review and the Financial Advice Market Review in autumn 2020.

### [FCA update to call for input on its evaluation of the Retail Distribution Review and Financial Advice Market Review](#)

#### [Call for input](#)

- 5.2 Policy development update - FCA publishes webpage - 10 January 2020** - The FCA has published its policy development update for January 2020, which provides information on recent and upcoming publications.

#### [FCA policy development update for January 2020](#)

## **6. Financial Conduct Authority and Prudential Regulation Authority**

- 6.1 Joint FCA and PRA Consultation Paper (FCA CP20/2, PRA CP1/20): Financial Services Compensation Scheme - Management expense levy limit 2020/21 - January 2020** - The FCA and the PRA have published a joint Consultation Paper (FCA CP20/2, PRA CP1/20) on the management expenses levy limit (MELL) for the Financial Services Compensation Scheme (FSCS) for the period from 1 April 2020 to 31 March 2021. The proposed MELL for 2020/21 is £83.2 million, a 4.8% increase from 2019/20. The MELL represents the maximum amount that the FSCS may levy in a year for its operating costs without further consultation and ensures that the FSCS has adequate funding to carry out its functions. See also item 7.1 immediately below on the FSCS Plan and Budget for 2020/21.

The consultation period closes on 7 February 2020.

#### [FCA and PRA Consultation Paper \(FCA CP20/2, PRA CP1/20\): FSCS - MELL 2020/21](#)

#### [Webpage](#)

#### [Webpage on FSCS](#)

## **7. Financial Services Compensation Scheme**

- 7.1 Plan and Budget 2020/21 - published by FSCS - January 2020** - The FSCS has published its Plan and Budget for 2020/21, which outlines the FSCS's expected management costs, its initial levy forecast for firms during 2020/21 and its latest forecast of potential claims volumes. In particular, the FSCS states that: (i) the proposed indicative levy for firms is £635 million; (ii) the total amount of FSCS management expenses will be £72 million; (iii) it will raise a supplementary levy for 2019/20 of £50 million from the Life Distribution, Pensions and Investment Intermediation classes; and (iv) it expects to process a broadly similar volume of claims as were received in 2019/20.

The FSCS intends to confirm the final FSCS levy for 2020/21 in April 2020.

#### [FSCS Plan and Budget for 2020/21](#)

#### [Press release](#)

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## Brexit

### 8. European Commission

- 8.1 Equivalence in financial services - European Commission publishes internal preparatory discussions on the future UK-EU relationship post-Brexit - 10 January 2020** - The European Commission has published a document containing internal EU27 preparatory discussions on the future UK-EU relationship post-Brexit, including in relation to cooperation and equivalence in the area of financial services. In particular, the document details the Commission's proposed approach to the provisions in the political declaration concerning: (i) regulatory and supervisory cooperation arrangements; and (ii) equivalence assessments and decisions in financial services. It also contains the Commission's proposed approaches in the area of personal data protection.

[European Commission document on the future UK-EU relationship in the area of financial services](#)

[Webpage](#)

## Banking and Finance

### 9. European Banking Authority

- 9.1 CRR II - EBA publishes Consultation Paper on draft RTS on the treatment of non-trading book positions subject to FX or commodity risk - 13 January 2020** - The European Banking Authority (EBA) has published a Consultation Paper on draft regulatory technical standards (RTS) on the treatment of non-trading book positions subject to foreign exchange (FX) or commodity risk under Article 325(9) of the Capital Requirements Regulation ((575/2013/EU) (CRR), as amended by the second Capital Requirements Regulation (EU) 2019/876 (CRR II). The draft RTS specifies:

- the value of non-trading book positions that institutions should use when calculating the own funds requirements for market risk in respect of those positions;
- the methodology and prudential treatment for the calculation of the own funds requirements for market risk of non-monetary items held at historical cost due to changes in the FX rate under the standardised and internal model approaches; and
- the calculation of the actual and hypothetical changes associated with non-trading book positions for the purpose of the backtesting and the profit and loss attribution requirements in order to address the issue of jumps in the value of the portfolio.

The consultation period closes on 10 April 2020. The EBA's 2020 work programme indicates that the EBA intends to finalise the draft RTS by the end of Q3 2020.

[EBA Consultation Paper on draft RTS on the treatment of non-trading book positions under CRR II](#)

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- 9.2 CRD IV - EBA publishes report on the application of RTS on the identification of staff with a material impact on institutions' risk profiles - 16 January 2020** - The EBA has published a peer review report on the application by national competent authorities (NCAs) of the EBA RTS on the criteria to identify staff whose professional activities have a material impact on institutions' risk profiles. The RTS supplement the Capital Requirements Directive (2013/36/EU) (CRD IV).

The report demonstrates that, during the reference period from 1 January 2015 to 31 December 2017, NCAs within the EEA have properly applied the RTS, with no deficiencies or significant issues identified. The report also identifies a number of best practices and areas of weakness in NCAs' application of the RTS.

[EBA report on the application of RTS on the identification of staff with a material impact on institutions' risk profiles by NCAs](#)

[Press release](#)

- 9.3 Big data and advanced analytics - EBA publishes report on implementation in the banking sector - January 2020** - The EBA has published a report on the use, development and implementation of big data and advanced analytics in the banking sector. The report observes that a data-driven approach is emerging across the financial sector and the enhanced use of big data and advanced analytics has the potential to create new business opportunities and improve existing services from an efficiency, productivity and cost saving perspective. The report also:

- identifies four key pillars crucial for the continued implementation of big data and advanced analytics: (i) data management; (ii) technological infrastructure; (iii) organisation and governance; and (iv) analytics methodology;
- discusses several 'trust' elements which institutions should respect throughout the implementation of big data and advanced analytics, including ethics, traceability and auditability; and
- concludes that the current trend in technological innovation may soon necessitate the development of regulatory frameworks and policies on the development and use of artificial intelligence and machine learning within financial institutions.

The EBA intends to continue monitoring developments in relation to the use of new technologies and advanced analytics in financial services.

[EBA report on the development and implementation of big data and advanced analytics in the banking sector](#)

[Press release](#)

## 10. Financial Conduct Authority

- 10.1 PSD2 - FCA updates webpage on strong customer authentication - 16 January 2020** - The FCA has updated its webpage on the strong customer authentication (SCA) requirements under the revised Payment Services Directive (EU) 2015/2366 (PSD2). The additional information is intended to provide increased guidance in relation to the FCA's position on the use of electronic identification, authentication trust services (eIDAS) certificates during the 18 month

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implementation period from 14 September 2019 to 14 March 2021. The additional guidance states that:

- during the implementation period, account servicing payment service providers (ASPSPs) are encouraged to allow third-party providers (TPPs) that do not currently have an eIDAS certificate, and are accessing accounts via application programming interfaces (APIs), to use equivalent certificates enabling secure identification; and
- following the implementation period, the FCA expects all ASPSPs and TPPs to rely on eIDAS certificates for the purpose of identification. Therefore, all ASPSPs must ensure that their interface enables a TPP to identify itself using only its eIDAS certificate.

The FCA reiterates that firms which fail to comply with the SCA requirements after 14 March 2021 will be subject to full FCA supervisory and enforcement action as appropriate.

[FCA webpage on strong customer authentication requirements under PSD2](#)

## Securities and Markets

### 11. International Organization of Securities Commissions

- 11.1 Synchronisation of timestamping clocks - IOSCO publishes final report - January 2020** - The International Organization of Securities Commissions (IOSCO) has published a final report recommending that trading venues and their participants synchronise the clocks they use for timestamping reportable events with coordinated universal time (UTC). This follows IOSCO's consultation on the matter, published in September 2019.

[IOSCO final report on the synchronisation of timestamping clocks with UTC](#)

[Press release](#)

### 12. International Swaps and Derivatives Association

- 12.1 Benchmark fallbacks - ISDA publishes FAQs on IBOR fallback rate adjustments - 10 January 2020** - The International Swaps and Derivatives Association (ISDA) has published FAQs, dated 3 December 2019, on fallback rate adjustments for interbank offered rates (IBORs). The FAQs aim to address the main issues arising from key adjustments that market participants will need to make if fallback provisions to risk-free rates are to take effect in contracts which reference IBORs.

[ISDA FAQs on fallback rate adjustments for IBORs](#)

[Webpage](#)

- 12.2 Smart derivatives contracts and DLT - ISDA publishes paper on various legal aspects - January 2020** - ISDA, Clifford Chance, R3 (a US-based blockchain and DLT software development company) and the Singapore Academy of Law have published a white paper which provides an analysis of various legal issues relating to the use of smart derivatives contracts, which utilise distributed ledger technology (DLT).

The paper acknowledges that, while smart contracts and DLT have the potential to significantly increase efficiency in the derivatives markets, a perceived lack of legal certainty may hamper their large-scale adoption. Among other matters, the paper considers issues of legal uncertainty

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relating to: (i) choice of law and enforceability; and (ii) the use of digital assets for payments or exchanging collateral on DLT platforms.

[ISDA paper examining the legal aspects relating to the use of smart derivatives contracts and DLT](#)

[Webpage](#)

[Press release](#)

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

- 13.1 Updates to the development of Q&As - published by ESMA - January 2020** - The European Securities and Markets Authority (ESMA) has published a list of questions received from stakeholders through its web-tool, which was set up to facilitate the submission and publication of questions in accordance with ESMA's obligations under Article 16b of the ESMA Regulation (1095/2010/EU). ESMA states that the submission of questions and additional interaction with stakeholders will further strengthen and increase supervisory convergence and understanding in the EU.

ESMA intends to publish shortly those questions which it: (i) intends to publish as an approved Q&A; (ii) does not intend to provide an answer to; and (iii) will forward to the European Commission.

[ESMA list of questions under development](#)

[Press release](#)

### 14. [Bank of England and Financial Conduct Authority](#)

- 14.1 LIBOR transition - Bank and FCA publish joint letter and statement - 16 January 2020** - The Bank of England and the FCA have published a joint letter to banks and insurers outlining the regulators' expectations of firms with regards to their progress in preparing for the transition away from the use of the London interbank offered rate (LIBOR) to alternative sterling risk-free rates, including the Sterling Overnight Index Average (SONIA), ahead of its planned cessation at the end of 2021.

The letter sets out the regulators' planned next steps to facilitate the smooth transitioning away from LIBOR, which includes encouraging firms to reduce their stock of legacy LIBOR contracts to an absolute minimum before the end of 2021. The Bank and the FCA emphasise that 2020 will be a key year for firms to actively engage with wider transition efforts in order to be adequately prepared for the cessation of LIBOR. Among other points, the Bank and the FCA expect firms to:

- demonstrate clear evidence of their engagement and progress in implementing preparatory measures from Q1 2020; and
- develop LIBOR transition plans, including targeted milestones, and ensure that information is published in order to allow authorities to track firms' progress. The letter states that firms' plans should consider action in the following areas: (i) product development; (ii) reviewing and updating infrastructure and loan system capabilities; (iii) client communications and awareness; and (iv) amending documentation.



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The Bank and the FCA have also published a statement encouraging market participants to change the market convention for sterling interest rate swaps from LIBOR to SONIA from 2 March 2020, cease the issuance of LIBOR-based loans by Q3 2020 and manage down legacy LIBOR-linked swap portfolios and exposures. The regulators also reiterate that the circumstances in which LIBOR contracts remain appropriate are limited and will continue to reduce as 2021 approaches, and that market participants should ensure that they, and their clients, are aware of the risks if new LIBOR transactions are entered into.

The Bank and the FCA expect to step up engagement with firms on LIBOR transition through regular supervisory correspondence, by reviewing management information and by collecting data to assess firms' progress.

See also the item immediately below on the Bank's Working Group on Sterling Risk-Free Rates' publication of a series of documents on LIBOR transition.

[Bank of England and FCA letter outlining its expectation of firms on LIBOR transition in 2020](#)

[Bank of England and FCA statement on the use of SONIA in sterling interest rate swaps](#)

[Webpage](#)

[Press release](#)

## 15. Bank of England

**15.1 LIBOR transition - RFRWG publishes documents outlining key priorities for 2020 - January 2020** - The Bank of England's Working Group on Sterling Risk-Free Reference Rates (RFRWG) has published a series of documents outlining key priorities, milestones and actions for firms to take in 2020 in preparation for transitioning away from the use of LIBOR ahead of its planned cessation at the end of 2021. The documents include:

- the RFRWG's 2020 roadmap and priorities for LIBOR transition;
- a paper which sets out the RFRWG's views on the appropriate use of SONIA compounded in arrears for businesses and clients, and guidance on the use of alternative approaches, such as a term SONIA reference rate;
- a statement considering helpful 'lessons learned' from recent conversions of legacy LIBOR contracts; and
- a factsheet for end-users summarising the LIBOR transition process, setting out why market participants need to act now.

The RFRWG has set several targets for 2020, including: (i) taking steps to enable a further shift from LIBOR to SONIA in derivatives markets; (ii) ceasing the issuance of cash products linked to sterling LIBOR by the end of Q3 2020; and (iii) significantly reducing the stock of LIBOR referencing contracts by Q1 2021.

[RFRWG 2020 roadmap and priorities for LIBOR transition](#)

[RFRWG paper on the use of SONIA](#)

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[RFRWG statement on lessons learned from recent conversions of legacy LIBOR contracts](#)

[RFRWG factsheet on LIBOR transition and why market participants should act now](#)

## Asset Management

### 16. Financial Conduct Authority

- 16.1 Asset management portfolio tools - FCA publishes findings of multi-firm review - 13 January 2020** - The FCA has published a report setting out the findings of its multi-firm review of how firms in the asset management sector select and utilise risk modelling and other portfolio management tools. The FCA's review, which comprised visits to 10 asset management firms, also examines how firms identify and manage operational risks and firms' capacity to respond to system failures and service disruptions. The report states that while the FCA observed good practice at most firms, it identified problems with firms' processes and controls, particularly in relation to risk model oversight and contingency planning. The report also contains the FCA's findings on: (i) how firms source and utilise portfolio management tools; (ii) vendor management strategies; (iii) model governance; (iv) managing change; (v) resilience and recovery; (vi) software testing; and (vii) customer expectations.

The FCA expects firms to ensure that their implementation of, and contingency arrangements for, portfolio management tools comply with its expectations, including ensuring that they can continue to function and meet their regulatory obligations in the event of an unforeseen interruption.

[FCA multi-firm review of asset management firms' use of portfolio management tools](#)

## Insurance

### 17. Prudential Regulation Authority

- 17.1 Insurance Data Release - PRA publishes call for feedback - 15 January 2020** - The PRA has published a call for feedback on its proposals to publish quarterly, aggregated data relating to the UK insurance market. While the PRA does not currently release a regular publication of UK insurance data externally, it acknowledges the value such data may provide and the improvements made to data quality since the implementation of the Solvency II Directive (2009/138/EC). The PRA proposes that the content of the initial publication will be based on Solvency II Quantitative Reporting Templates (QRTs) and will, where relevant, be supplemented with PRA data collections.

The call for feedback invites comments on the content and presentation of the proposed publication. The PRA intends to publish the first Insurance Data Release in the first half of 2020.

The deadline for comments is 16 March 2020.

[PRA call for feedback on its proposed Insurance Data Release](#)

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## 18. Financial Markets Law Committee

- 18.1 2020 Solvency II Review - FMLC publishes response to EIOPA consultation - 15 January 2020 -** The Financial Markets Law Committee (FMLC) has published its response to the European Insurance and Occupational Pensions Authority's (EIOPA's) October 2019 Consultation Paper on the European Commission's 2020 review of the Solvency II Directive (2009/138/EC). The Consultation Paper sets out draft technical advice and suggested amendments to the Directive.

The FMLC highlights several potential legal uncertainties and ambiguities arising from EIOPA's draft technical advice and suggested amendments, including:

- the introduction of new disclosure requirements under Article 18 of the Solvency II Directive relating to firms' passporting rights (freedom to provide services and freedom of establishment);
- ambiguities relating to EIOPA's amended definition of the calculation of Expected Profits In Future Premiums; and
- uncertainties relating to EIOPA's suggested amendments to long-term guarantee measures, including the application of a matching adjustment to risk-free interest rates to calculate liabilities under Article 77 of the Solvency II Directive.

[FMLC response to EIOPA Consultation Paper on the 2020 Solvency II Review](#)

[Press release](#)

## Financial Crime

### 19. Financial Conduct Authority

- 19.1 AML/CTF regime under MLRs - FCA commences role as supervisor of cryptoasset businesses - 10 January 2020 -** The FCA has commenced its role as the anti-money laundering (AML) and counter-terrorist financing (CTF) supervisor of certain UK cryptoasset businesses under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs). Cryptoasset businesses carrying out any of the activities listed on the FCA's dedicated webpage have been required to comply with the MLRs since 10 January 2020.

New cryptoasset businesses intending to carry out a cryptoasset activity must be registered with the FCA before they can carry on the activity, while existing cryptoasset businesses which were already carrying out such activities before 10 January 2020 may continue their business, in compliance with the MLRs, but must register with the FCA by 10 January 2021 or stop all cryptoasset activity. The FCA encourages businesses to apply well in advance of this deadline.

[Press release: FCA becomes AML and CTF supervisor of UK cryptoasset businesses](#)

[Webpage](#)

## Enforcement

### 20. Financial Conduct Authority

- 20.1 Unauthorised deposit taking - FCA commences civil proceedings against firms and senior individuals - 10 January 2020** - The FCA has commenced civil proceedings in the High Court against Bright Management Solution Limited, Soccer League International Limited, Soccer League UK Limited and several senior individuals at these firms for allegedly carrying on unauthorised deposit taking by accepting money from members of the public to finance various projects, including in relation to foreign exchange (FX) trading and cryptoassets.

The FCA has secured an interim injunction, by consent, preventing the firms from continuing these activities and freezing an estimated £1.3 million in assets pending a further hearing. The FCA is seeking a declaration from the court that the defendants' actions amounted to unauthorised deposit taking and an order preventing them from carrying out such authorised activities in the future. The FCA is also seeking a restitution order to reimburse consumers affected by the alleged breaches.

[Press release: FCA commences civil proceedings in relation to alleged unauthorised deposit taking](#)

### 21. Recent cases

- 21.1 *Financial Conduct Authority v Paradigm Consultancy SA and another* [2019] EWHC 3648 (Ch), 11 December 2019**

*Court approval of a proposed scheme of distribution under section 382(3) FSMA 2000 - jurisdiction to approve a scheme of distribution in the absence of a court order - unauthorised collective investment scheme*

The High Court has approved a scheme of distribution, proposed by the FCA, in respect of a claim admitted by the liquidators of Paradigm Consultancy SA under section 382 FSMA 2000. The judgment also clarifies the court's jurisdiction to approve a scheme of distribution under section 382(3) FSMA 2000 where the FCA has not obtained a court order against a firm or individual for the payment of sums pursuant to section 382(2) FSMA 2000.

In 2012, the then Financial Services Authority secured judgment against three firms, including two individuals, who operated unauthorised collective investment schemes, in the form of land banking investment schemes, in contravention of section 19 FSMA 2000. Following the individuals' subsequent bankruptcy, the FCA commenced proceedings against Paradigm to enforce the unpaid restitution orders, which totalled approximately £35 million, on the basis of its knowing involvement in the schemes, and sought an order for payment under section 382(2) FSMA 2000. Sections 382(1) and (2) provide that the court may order an individual or entity to make payment to the relevant regulator where it is satisfied that: (i) that individual or entity has contravened a regulatory requirement or been knowingly concerned in that contravention; (ii) they have accrued profits as a result of the contravention; and (iii) one or more persons have also suffered loss or been adversely affected as a result of it.

However, before obtaining judgment in those proceedings, the FCA sought a winding up petition against Paradigm on the basis of the section 382(2) FSMA 2000 claim. The winding up petition was granted and the appointed liquidators admitted the claim. The FCA then applied to the court to

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approve its distribution of the funds to affected investors under section 382(3) FSMA 2000, which provides that “*any amount paid to the regulator concerned in pursuance of an order under subsection (2) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct*”.

The question arose as to whether the court had jurisdiction to approve the distribution under section 382(3) given no court order had actually been made under section 382(2) (as the FCA’s winding up petition had been granted and the claim under it admitted by Paradigm’s liquidators before any judgment was made in respect of the FCA’s original proceedings against Paradigm).

The High Court (Kimbell QC) held that, even where a court order had not been made under section 382(2), the court could still exercise its jurisdiction under section 382(3) where the regulator had properly received money “*arising out of a claim*” under section 382(2). Kimbell QC applied a purposive interpretation of section 382(3) and held that the provision should be read as if the words “*or otherwise received*” had been added after the words “*subsection (2)*”.

In this particular case, where the FCA had followed the appropriate procedures in obtaining a winding up petition and its claim had been admitted by the liquidators, the position was akin to a consent order being in place between them. It would be a “*surprising triumph of technicality over substance*” for the court to withhold its approval solely on the basis that an express court order under section 382(2) did not exist. Accordingly, the court approved the distribution of the Paradigm funds to qualifying investors.

Kimbell QC also considered the principles the court should apply when determining whether to approve a scheme of distribution more generally. The court endorsed the eight principles laid down in *FCA v Anderson [2014] EWHC 3630 (Ch)*, emphasising that any proposed distribution should, among other things, be as fair and as simple as possible. In particular, the court accepted the FCA’s approach to:

- the definition and identification of certain ‘qualified persons’, including joint investors, dissolved companies and deceased persons; and
- the calculation of net loss as equal to the investors’ out-of-pocket losses, meaning the actual investment amount.

The FCA published a statement following the judgment confirming that it had finalised the total amount of compensation due to each investor and had sent letters to all qualifying persons on 20 December 2019, enclosing a cheque for the amount due.

[Financial Conduct Authority v Paradigm Consultancy SA and another \[2019\] EWHC 3648 \(Ch\)](#)

[FCA statement](#)

[Press release](#)

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

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

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

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

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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