

FINANCIAL REGULATION WEEKLY BULLETIN

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

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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 HOUSE OF LORDS FINANCIAL SERVICES REGULATION COMMITTEE

- 1.1 **FCA's approach to publicising enforcement investigations (CP24/2) and FCA and PRA's secondary international competitiveness and growth objective - House of Lords Financial Services Regulation Committee resumes inquiries - 5 August 2024** - The House of Lords Financial Services Committee (the Committee) was reappointed on 29 July 2024 following the State Opening of Parliament on 17 July 2024.

The Committee has since resumed its inquiries into the secondary international competitiveness and growth objective of the FCA and the PRA, and the FCA's proposed changes to publicising enforcement investigations in consultation paper CP24/2 (published in February 2024).

The deadline for responses to the reopened calls for evidence on CP24/2 and the secondary international competitiveness and growth objective are 11 October 2024 and 29 November 2024 respectively.

[Call for evidence: FCA consultation paper CP24/2](#)

[Call for evidence: the secondary international competitiveness and growth objective](#)

[Press release](#)

BANKING AND FINANCE //

2 EUROPEAN BANKING AUTHORITY

- 2.1 **Creditworthiness assessment practices of non-bank lenders - EBA publishes report - 7 August 2024** - The European Banking Authority (EBA) has published a report on its fact-finding exercise on the creditworthiness assessment (CWA) practices of non-bank lenders (NBLs).

The EBA finds that, while some NBLs might service segments of the population that have limited opportunities to access traditional banks for credit, a significant number appear to use inadequate practices for information gathering and verification during their CWAs. The report also highlights the lack of a harmonised definition of NBLs and of a regulatory framework for authorisation across the EU.

The EBA will continue monitoring the activities of NBLs and may consider initiating new ad hoc action should there be the need to foster further consumer protection.

[EBA report: fact finding exercise on creditworthiness assessment practices of non-bank lenders](#)

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3 BANK OF ENGLAND

- 3.1 Resolvability of UK banks - Bank of England publishes findings from its second assessment- 6 July 2024** - The Bank of England (the Bank) has published the findings from its second assessment of the resolvability of the eight major UK banks under the Resolvability Assessment Framework (RAF). The Bank finds that major UK banks have continued to make progress in improving their preparations for resolution, including embedding resolution preparations into their everyday business, and in addressing issues outstanding from the Bank's first assessment in 2022.

In light of the progress made to date on resolvability, and to give the Bank and major UK banks time to further enhance and progress testing of their resolution capabilities ahead of the next assessment, the PRA will consult on the necessary rule changes to postpone the third RAF assessment by one year to 2026-27 (rather than 2025-26). The next RAF assessment will focus on the continuity and restructuring outcome, including an assessment of the readiness of banks to quickly plan and execute restructuring options to address the causes of failure and restore viability.

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

SECURITIES AND MARKETS //

4 BANK OF ENGLAND

- 4.1 MoU on the supervision of Financial Market Infrastructures - Bank of England and FCA publish joint statement - 7 August 2024** - The Bank of England (the Bank) has published a joint statement with the FCA regarding their Memorandum of Understanding (MoU) on their supervision of financial market infrastructures (FMI).

The statement confirms that the arrangements of the MoU continue to be effective. The MoU will be updated in 2024 to reflect changes related to the Financial Services and Markets Act 2023, as well as new areas requiring coordination (including regulatory sandboxes) and policy initiatives.

The Bank and FCA are agreeing a separate MoU setting out how they intend to co-operate in relation to the operation and supervision of the Digital Securities Sandbox (DSS), which will be published before supervision in the DSS commences.

[Press release](#)

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ASSET MANAGEMENT //

5 FINANCIAL CONDUCT AUTHORITY

- 5.1 **Expansion of the dormant assets scheme - FCA publishes policy statement on second phase - 2 August 2024** - The FCA has published a policy statement (PS24/10) setting out the final rules for the second phase of the dormant assets scheme (DAS), following a consultation paper published in May 2023 (CP23/12).

The DAS allows banks and building societies to pay dormant monies to an authorised reclaim fund, to fund good causes. The Dormant Assets Act 2022 expanded the DAS to enable dormant assets in new sectors to be included, and this expansion is being undertaken in two phases. The second phase, covered by PS24/10, covers investments and client money.

The FCA confirms that, following these rule changes coming into force on 2 August 2024, Reclaim Fund Limited (RFL) are now able to accept contributions from the investment assets and client money sectors. Before any transfers can take place, RFL will need to put in place contracting agreements with participants and announce a start date for these expanded sectors.

[FCA policy statement: Expansion of the Dormant Assets Scheme - second phase \(PS24/10\)](#)

[Webpage](#)

INSURANCE //

6 INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS

- 6.1 **Operational resilience - IAIS launches consultation on objectives for the insurance sector- 8 August 2024** - The International Association of Insurance Supervisors (IAIS) has published a consultation paper on operational resilience objectives which it has developed for the insurance sector (the Objectives). The Objectives, which are outcomes based, aim to provide a sound and consistent foundation to support supervisory authorities in developing and strengthening their approaches to supervising insurers' operational resilience.

The deadline for responses is 11 October 2024. The Objectives represent the first phase of a two-part consultation. The second phase, to develop a draft toolkit setting out supervisory practices relevant to the Objectives, will be subject to public consultation in the first half of 2025.

[IAIS: Draft Application Paper on Operational Resilience Objectives \[and Toolkit\]](#)

[Press release](#)

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7 EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY

7.1 Solvency II - EIOPA publishes consultation paper on new proportionality framework - 2 August 2024 - The European Insurance and Occupational Pensions Authority (EIOPA) has published a consultation paper on the implementation of the new proportionality framework under the Solvency II Directive (2009/138/EC) (Solvency II).

The paper covers:

- the methodology to be used when classifying insurance undertakings and groups as small and non-complex; and
- the conditions for granting or withdrawing supervisory approval for proportionality measures to be used by undertakings and groups that are not classified as small and non-complex.

The deadline for responses is 25 October 2024.

[EIOPA consultation paper: technical advice on the implementation of the new proportionality framework under Solvency II \(EIOPA-BoS-24-293\)](#)

[Press release](#)

8 FINANCIAL CONDUCT AUTHORITY

8.1 Value for money - FCA launches consultation on framework for workplace DC pension schemes - 8 August 2024 - The FCA has published a consultation paper (CP24/16) containing detailed rules and guidance for a new value for money (VFM) framework for savers invested in default arrangements of workplace defined contribution (DC) pension schemes. The FCA wishes to reduce the number of savers with workplace personal pensions that are delivering poor value, and drive better VFM across the workplace DC market through greater scrutiny and competition on long-term value.

The VFM framework introduces four elements, which are that it:

- requires the consistent measurement and public disclosure of investment performance, costs and service quality by firms for all such arrangements against VFM metrics;
- enables those overseeing and challenging an arrangement's value to assess performance against other arrangements, and requires them to do so on a consistent and objective basis;
- requires public disclosure of assessment outcomes including a 'red, amber, green' VFM rating for each arrangement; and
- requires firms to take specified actions where an arrangement is assessed as not VFM.

The deadline for responses is 17 October 2024. The UK Government has separately announced its intention to bring forward primary legislation which will contain measures to apply the

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framework to trust-based schemes, regulated by the Pensions Regulator. The FCA explains it will continue to develop its approach to implementation in light of this.

[FCA consultation paper: The Value for Money Framework \(CP24/16\)](#)

[Webpage](#)

[Press release](#)

FINANCIAL CRIME //

9 EUROPEAN BANKING AUTHORITY AND EUROPEAN CENTRAL BANK

- 9.1 [PSD2 - EBA and ECB publish joint report on payment fraud - 1 August 2024](#) - The European Banking Authority (EBA) and European Central Bank (ECB) have published a joint report on payment fraud reported across 2022 and H1 2023 under the revised Payment Services Directive ((EU) 2015/2366) (PSD2).

The report finds that, across the EEA, fraud reported by the industry amounted to €4.3 billion in 2022 and €2.0 billion in the first half of 2023. Most payment fraud in value terms was related to credit transfers and card payments. The report also confirms the beneficial impact of strong customer authentication (SCA) on fraud levels, introduced by PSD2. SCA-authenticated transactions featured lower fraud rates than non-SCA transactions, especially for card payments, both in terms of values and volumes.

The EBA and the ECB state that they will publish fraud data on an aggregated basis moving forward.

[EBA and ECB report: payment fraud](#)

[Press release](#)

ENFORCEMENT //

10 FINANCIAL CONDUCT AUTHORITY

- 10.1 [Financial promotions - FCA publishes quarterly data for Q2 2024 - 7 August 2024](#) - The FCA has published quarterly data generated between 1 April 2024 and 30 June 2024 from actions it has taken against firms breaching financial promotions rules, and referrals and investigations into unregulated activity. The FCA's interventions in Q2 2024 resulted in 3,273 promotions being amended or withdrawn by authorised firms, and the FCA issued 528 alerts on unauthorised firms and individuals (11% of which were clone scams).

[Financial promotions quarterly data 2024 Q2](#)

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10.2 Cryptoasset financial promotions regime - FCA publishes assessment of firms' compliance with 'back end' rules - 7 August 2024 - The FCA has published its assessment of firms' compliance with 'back end' cryptoasset financial promotions rules, which include cooling-off periods, client categorisation, appropriateness assessments and personalised risk warnings. These have applied since 8 January 2024, following the expiration of an FCA modification by consent which gave firms the ability to delay implementation of these rules from 8 October 2023.

The FCA found some examples of firms demonstrating good practice, which it has shared to assist others in complying with the rules. It has, however, also found multiple instances where firms did not meet the required standards, including using inappropriate language encouraging customers to proceed with their investment journey, and pushing or leading consumers through the categorisation process by suggesting responses.

The FCA observes that firms rely on industry comparisons to benchmark what is acceptable, which they should not be doing given the levels of poor practice in the market. If firms do not improve, the FCA warns that it will act. The FCA will also consider firms' compliance with regulatory requirements, including the financial promotions regime, as part of any application to be authorised under the future financial services regulatory regime for cryptoassets.

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

10.3 H2O AM LLP to pay €250 million to investors following FCA investigation - 7 August 2024 - The FCA has published a final notice addressed to H2O AM LLP (H2O), a portfolio management company, ordering H2O to pay €250 million to investors unable to access their funds since 2020.

Between April 2015 and November 2019, the FCA found that H2O failed to conduct sufficient (or in some cases basic) due diligence on high-risk and illiquid investments relating to the Tennor Group of companies owned by Lars Windhorst, or other companies he introduced. As a result of these failings—and failing to have in place adequate risk management systems—H2O LLP entered into these investments without having appropriately considered their merits and risks, often without a reasonable basis for establishing their valuations.

The FCA also found that:

- H2O did not have adequate policies or procedures or exercise due skill and care in managing potential conflicts of interest. The FCA identified over 50 instances where hospitality had been received by H2O employees but was not properly declared, including the use of a superyacht and private jet; and
- H2O knowingly provided false and misleading statements and documentation to the regulator, such as fabricated records and minutes of meetings (although the FCA did not

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find that H2O's senior management all knew, or ought to have known, that the information provided to the FCA was false or misleading).

As a result, the FCA investigation found that H2O breached Principle 2 (skill, care and diligence), Principle 3 (management and control) and Principle 11 (relations with regulators) of its principles for business.

The FCA has agreed that H2O will make €250 million available to all those whose investments remain trapped. A significant proportion of this amount has been made available by way of voluntary contribution from the H2O Group, which has also formally waived its rights to fees and investments totalling €320 million. Were it not for this payment to affected investors, and the fact that the Autorité des marchés financiers (the French financial services regulator) has previously issued a penalty against H2O (currently subject to appeal) in relation to the same investments, the FCA would have issued H2O with a substantial fine.

H2O will apply to cancel its regulatory permissions in the UK by 31 December 2024.

[Final Notice: H2O AM LLP](#)

[Press release](#)

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

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

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

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

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