

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:

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GENERAL //

1 FINANCIAL CONDUCT AUTHORITY

- 1.1 Enhancing the National Storage Mechanism - FCA launches consultation - 9 August 2024** - The FCA has published a consultation paper (CP24/17) on proposals to change the requirements for submitting data to the National Storage Mechanism (NSM) in accordance with the Disclosure Guidance and Transparency Rules, the Listing Rules and parts of the UK Market Abuse Regulation. The FCA is also proposing to standardise the way in which Primary Information Providers (firms approved by the FCA to disseminate regulated information on behalf of issuers) submit information to the NSM.

The consultation is part of a broader initiative to improve the NSM's functionality, which will augment other primary market changes. The deadline for responses is 27 September 2024. The FCA intends to publish the final rules later in 2024, with an implementation date in the second half of 2025.

[FCA consultation paper: Enhancing the National Storage Mechanism \(CP24/17\)](#)

[Webpage](#)

2 FINANCIAL REPORTING COUNCIL

- 2.1 Financial and narrative reporting in the UK - FRC publishes discussion paper - 13 August 2024** - The Financial Reporting Council (FRC), as part of a cross-regulatory group comprising the FCA, Companies House, HMRC and the Charity Commission for England and Wales, has published a discussion paper on opportunities for future UK digital reporting.

The paper seeks feedback from a wide range of stakeholders on what work may be required to achieve a transition from paper-based to digital reporting. In particular, it sets out the context for the FCA's requirements for structured digital reporting, which originated in the EU's European Single Electronic Framework (ESEF) and explains that the FRC considers that reliance on the ESEF taxonomy post-Brexit is "sub-optimal" because: (i) the UK no longer has any role in the ESEF legislation, taxonomy or supporting materials provided by ESMA; and (ii) FCA policy for corporate digital reporting and the potential further expansion of digital reporting in other areas may diverge from the EU over time, creating potential friction or incompatibility with reliance upon an EU-produced taxonomy.

The deadline for responses is 1 November 2024.

[FRC discussion paper: Opportunities for the future of digital reporting](#)

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BANKING AND FINANCE //

3 EUROPEAN BANKING AUTHORITY

- 3.1 Benchmarking of internal models - EBA publishes final report - 9 August 2024** - The European Banking Authority (EBA) has published its final report (EBA/ITS/2024/07) on draft amendments to Commission Implementing Regulation (EU) 2016/2070 which contains implementing technical standards (ITS) on the benchmarking of internal models. The proposed amendments relate to the 2025 benchmarking exercise assessing the quality of internal approaches used for the calculation of own funds requirements. Among other things, the EBA is proposing the expansion of the alternative standardised approach validation portfolios to all asset classes.

The EBA has submitted the draft ITS to the European Commission for endorsement. They will apply 20 days after publication in the Official Journal of the European Union.

[EBA final report: Draft ITS on amending Commission Implementing Regulation \(EU\) 2016/2070 with regard to the benchmarking of internal models \(EBA/ITS/2024/07\)](#)

[Press release](#)

- 3.2 Postponement of CRR III market risk requirements - EBA publishes no-action letter - 12 August 2024** - The European Banking Authority (EBA) has published an opinion (EBA/Op/2024/05), in the form of a no-action letter, on the boundary between the banking book and the trading book in the Capital Requirements Regulation (575/2013) (CRR), following the adoption of a Commission Delegated Regulation postponing the application of the CRR III market risk reforms.

The CRR III Regulation ((EU) 2024/1623) amends the CRR to impose a revised approach to calculating market risk as a binding own funds requirement, reflecting the Basel Committee on Banking Supervision's Fundamental Review of the Trading Book (FRTB). The CRR III Regulation also makes amendments to the trading book boundary in the CRR that were drafted on the assumption that they would apply from the same date as the market risk reforms. In July 2024, the European Commission adopted a Delegated Regulation postponing until 1 January 2026 the application of the CRR III reforms on own funds requirements for market risk, but not the reforms to the trading book boundary. The EBA has separately published a document on technical and implementation issues arising from the postponement of the market risk reforms.

In the opinion, the EBA states that competent authorities should not prioritise any supervisory or enforcement action relating to the CRR III provisions on the trading book boundary until the date that the FRTB requirements are fully implemented for the purpose of calculating the own funds requirements for market risk. It also suggests that the Commission should introduce a legislative proposal, under an accelerated adoption procedure, to provide the necessary legal certainty on these issues.

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[EBA opinion: Application of the provisions relating to the boundary between trading book and banking book, and on the internal risk transfer between books as referred to Article 1, points \(34\), \(35\) and \(38\) of Regulation \(EU\) No 2024/1623](#)

[EBA consideration on the postponement of the application of the FRTB in the EU](#)

Press release

- 3.3 2024 resolution convergence report and 2025 priorities - published by EBA - 13 August 2024 -** The European Banking Authority (EBA) has published its 2024 resolution convergence report (EBA-Rep-2024-18). The report sets three priorities for resolution authorities and banks for 2025: (i) operationalisation of their resolution tools; (ii) liquidity strategies in resolution; and (iii) management information system for valuation. The report also looks at the progress achieved during 2023 on relevant topics and identifies areas for improvement.

New priorities for 2025 reflect policy and market developments, progress and expertise gained by resolution authorities. Building up own funds and eligible liabilities is no longer a separate priority, the report notes, given that most banks have met their minimum requirement for own funds and eligible liabilities.

[EBA report: EREP 2024 \(EBA/REP/2024/18\)](#)

Press release

- 3.4 Market risk and CRR III FRTB reforms - EBA publishes final report on amendments to RTS - 13 August 2024 -** The European Banking authority (EBA) has published a final report (EBA/RTS/2024/18) containing draft regulatory technical standards (RTS) amending three Commission Delegated Regulations to reflect reforms made to the Capital Requirements Regulation (575/2013) (CRR) by the CRR III Regulation ((EU) 2024/1623) relating to the Fundamental Review of the Trading Book (FRTB).

The final draft RTS amend: (i) Commission Delegated Regulation (EU) 2022/2059, which contains RTS specifying the technical details of profit and loss attribution requirements; (ii) Commission Delegated Regulation (EU) 2022/2060, which contains RTS on the modellability assessment of risk factors; and (iii) Commission Delegated Regulation (EU) 2023/1577, which contains RTS on the treatment of foreign-exchange (FX) and commodity risk in the banking book.

The EBA will submit the final draft RTS to the European Commission for endorsement, after which they will be subject to scrutiny by the European Parliament and the Council of the European Union before being published in the Official Journal of the European Union.

[EBA final report: Draft RTS amending delegated regulations on profit and loss attribution requirements, risk factor modellability assessment, and the treatment of FX and commodity risk in the banking book \(EBA/RTS/2024/8\)](#)

Press release

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4 PAYMENT SYSTEMS REGULATOR

- 4.1 **Variable recurring payments - PSR publishes consultation feedback - 15 August 2024** - The Payment Systems Regulator (PSR) has published feedback received (RP24/1) to its December 2023 consultation paper (CP23/12) on expanding variable recurring payments (VRPs) to new use, low-risk cases.

While there was some support for the key proposals in the paper, respondents also raised significant concerns, particularly around the need for a multilateral agreement (MLA) to facilitate coordination, the extent to which the MLA should include a central price and Pay.UK's capacity to deliver the MLA on time. Respondents were also varied in their views on how to price application programming interface access for VRPs.

As a result of the feedback received, the PSR intends to consult on an updated set of proposals in autumn 2024.

[PSR: Expanding variable recurring payments: Response to the call for views \(CP23/12\) \(RP24/1\)](#)

[Webpage](#)

[Press release](#)

5 RECENT CASES

- 5.1 *X v Finanzmarktaufsicht (Case E-10/23)*, 9 August 2024

European Free Trade Association Court - CRD IV - Professional secrecy

The European Free Trade Association (EFTA) Court has considered the scope of the professional secrecy requirement that is imposed on national competent authorities (NCAs) under Article 53 of the CRD IV Directive (2013/36/EU). In short, the court held that all information held by NCAs that is not public and the disclosure of which is likely to affect adversely the interests of the natural or legal person who provided that information or of third parties, or the proper functioning of the system for monitoring the activities of credit institutions and investment firms, should be classified as confidential information covered by Article 53.

Furthermore, the protection of the confidentiality of that information must be guaranteed and implemented in such a way as to reconcile it with general principles of EEA law, including the principle of effective judicial protection, the rights of defence and the protection against arbitrary or disproportionate intervention by public authorities in the sphere of private activities.

The court followed the approach taken by the European Court of Justice (ECJ) in *Bundesanstalt für Finanzdienstleistungsaufsicht v Baumeister* (Case C-15/16) EU:C:2018:464, which considered

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the interpretation of equivalent provisions in the Markets in Financial Instruments Directive (2004/39/EC) (MiFID).

[X v Finanzmarktaufsicht \(Case E-10/23\)](#)

[Press release](#)

SECURITIES AND MARKETS //

6 FINANCIAL CONDUCT AUTHORITY

- 6.1 **Consolidated tapes for bonds and equities - FCA outlines work to date - 13 August 2024** - The FCA has published two new webpages providing an update on its work to establish a consolidated tape (CT) for bonds and a CT for equities (shares and exchange traded funds (ETFs)).

The FCA is working with DotEcon Ltd to finalise the tender design to appoint a bond CT provider. It will share updates on the progress of this work, including commencement of the tender, on the new webpage. The FCA expects to commence the tender before the end of 2024.

On its equities CT webpage, the FCA notes that it has appointed consultants from Europe Economics to undertake an analysis on the possible impact of the inclusion of pre-trade data on the stability and resilience of UK equity markets and the outcomes for different types of market users. It has published the terms of reference for the study which, when completed, will be an important input to the FCA's decision-making on an equities CT. The FCA intends to provide a further update before the end of 2024.

[FCA webpage: Bond consolidated tape](#)

[FCA webpage: Equities consolidated tape](#)

[Terms of Reference: Independent Study of a UK Equities Consolidated Tape](#)

INSURANCE //

7 EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY

- 7.1 **Collaboration of supervisory authorities - EIOPA publishes follow-up report to peer review - 14 August 2024** - The European Insurance and Occupational Pensions Authority (EIOPA) has published a report (EIOPA(2024)0026919) following up on its December 2020 peer review of its decision on the collaboration of insurance supervisory authorities (EIOPA-BoS-17/014).

The follow-up report describes the extent to which national competent authorities (NCAs) have implemented various recommended actions addressed to them, which were included in the

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December 2020 peer review report (a list of the recommended actions is set out in Annex I to the follow-up report).

EIOPA will continue to closely monitor implementation of the recommended actions.

[EIOPA report: Follow-up on EIOPA'S Decision on the Collaboration of Insurance Supervisory Authorities \(EIOPA\(2024\)0026919\)](#)

[Webpage](#)

[Press release](#)

ENFORCEMENT //

8 FINANCIAL CONDUCT AUTHORITY

- 8.1 Failing to treat customers fairly - FCA fines investment firm and cancels permissions - 14 August 2024** - The FCA has published a final notice (dated 9 August 2024) issued to Forex TB Ltd (also trading as Patron FX) (FXTB), a Cypriot investment firm that markets contracts for difference (CFDs) via a trading platform accessed through its websites.

The FCA has fined FXTB for a breach of Principle 6 of its Principles for Businesses as well as section 20(1) of FSMA 2000 by carrying out the regulated activity of advising on investments without the necessary permission. Among other things, the FCA found that, during the relevant period, FXTB account managers exploited their position as trusted and apparently experienced professional advisers to encourage customers to trade through FXTB without any, or any adequate, explanation of the associated risks. FXTB also enabled customers to become “professional clients” by encouraging them to provide false information. Compounding these failings, FXTB frequently provided customers with investment advice, despite not having the necessary permission to do so in the UK.

FXTB was required by the FCA to stop providing services to UK consumers on 12 April 2021 and has not held any FCA permissions since 10 October 2023.

[Final Notice: Forex TB Limited](#)

[Press release](#)

- 8.2 Failing to act with honesty and integrity - FCA bans former sole director of insurance broker - 14 August 2024** - The FCA has published a final notice issued to Martin Christopher Sarl for failing to act with honesty and integrity, imposing a financial penalty and banning him from working in financial services. Mr Sarl was the controller and sole director of Perry Prowse, a small independent insurance broker, and approved to perform the CF1 (Director) controlled function during the relevant period.

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The FCA found that, during the relevant period, Mr Sarl acted dishonestly by failing to pass clients' premiums on to insurers, even after the failure was pointed out to him by insurers and queried by customers. This meant that some customers were left uninsured without their knowledge. He also misled customers when they questioned him about their insurance cover. Furthermore, it was found that Mr Sarl's handling of client money in the firm's insurance brokerage business was reckless.

[Final Notice: Martin Sarl](#)

[Press release](#)

- 8.3 Failings in client assets reports - FCA censures auditor - 15 August 2024** - The FCA has published a final notice (dated 6 August 2024) censuring the auditor MacIntyre Hudson LLP (MHA), a firm of chartered accountants with 22 offices in the UK, for failing to prepare client assets reports to the required standard.

An FCA investigation found that, between 2015 and 2019, MHA failed to prepare four client assets reports (relating to two firms) to the required standard. It failed to report 25 breaches of the rules by firms it had audited. These ranged from failings in documentation, to firms' assets being held alongside client assets. MHA failed to notify the FCA of rule breaches by firms it had audited, which could have put customers' money at risk.

[Final Notice: MacIntyre Hudson 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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