

Financial Regulation Weekly Bulletin

9 April 2020 / Issue 1054

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. Prudential Regulation Authority and Financial Conduct Authority

1.1 SMCR - PRA and FCA publish statement on its expectations of dual-regulated firms in light of COVID-19 - 3 April 2020 - The PRA and FCA have published a joint statement setting out their expectations of dual-regulated firms in relation to the Senior Managers and Certification Regime (SMCR) in light of the impact of the COVID-19 pandemic. The statement acknowledges that firms will need to keep their governance arrangements under review and, where possible, the regulators intend to provide firms with flexibility. The statement sets out a number of provisions in relation to the regime given the current circumstances:

- **SMF responsibility for firms' COVID-19 response:** the PRA and FCA do not require or expect firms to designate a single Senior Management Function (SMF) to be responsible for all aspects of a firm's COVID-19 response but expect firms to have a clear framework in place which allocates responsibilities across a number of SMFs to cover the different aspects of their COVID-19 response. Certain responsibilities may naturally sit with the Chief Operating Officer (SMF24), including business continuity, information security and outsourcing; liquidity management would usually sit with the Chief Financial Officer (SMF2).

The exception to this is in relation to the identification of key workers (on which both regulators provided statements on 20 March 2020 (for which see our Bulletin dated 26 March 2020)). The responsibility for such identification must be allocated to the Chief Executive (SMF1) or, where this function does not exist within a firm, the most relevant member of the senior management team;

- **Statements of Responsibilities:** the PRA and FCA acknowledge that COVID-19 may cause significant changes to SMF responsibilities, due to sickness or temporary operational challenges and, therefore, have relaxed the requirements in relation to the submission of an updated Statement of Responsibilities (SoR) where there is a 'significant change' in an SMF's responsibilities. Firms will now be required to provide updated SoRs "*as soon as reasonably practicable*" and the regulators understand that this may take longer than usual in the present environment;
- **Temporary arrangements to cover SMF absence:** the regulators are currently investigating whether the '12-week' rule, which allows individuals to perform SMFs without approval for a temporary period, is likely to give firms sufficient flexibility to deal with temporary absence of SMFs as a result of COVID-19. If the rule proves to be insufficient, the PRA and FCA confirm that they will consider additional measures.

Ordinarily, where an SMF becomes temporarily vacant, firms should reallocate that SMF's prescribed responsibilities (PRs) among the remaining SMFs until a permanent replacement is approved. The statement confirms that this remains the PRA and FCA's preference but that if this is not possible due to COVID-19, firms can temporarily allocate the PRs to the individual who is acting as interim SMF under the 12-week rule, even if that individual is not an approved SMF;

- **SMF furloughing and internal records:** dual-regulated firms must have individuals performing certain SMFs at all times, including the SMF1, SMF2, Chair of the governing body (SMF9) and Head of Overseas Branch (SMF19). These SMFs, together with FCA 'required' functions, including the Compliance Officer (SMF16) and Money Laundering Reporting Officer (SMF17), must only be furloughed as a last resort.

If any of these individuals become absent as a result of furloughing or other reason, firms must appoint other individuals to these SMFs and, if the absence is temporary, firms can rely on the 12-week rule.

Other SMFs are not mandatory under PRA and FCA rules and this provides some flexibility in relation to furloughing these individuals. However, firms should consider very carefully the potential risks and unintended consequences of doing this, particularly in relation to those SMFs key to firms' business continuity (such as the SMF24);

- **Status of furloughed SMFs:** furloughed SMFs will retain their approval during their absence and will not need to be re-approved on their return, although firms remain responsible for ensuring his/her fitness and propriety at that point. Their PRs must be allocated to remaining SMFs (or other individual if relying on the 12-week rule) and this reallocation must be clearly documented in relevant SoRs, Management Responsibilities Maps and other relevant internal documents; and
- **Certification regime:** firms should continue to take reasonable steps to complete any annual certification function certificates that are due to expire while the COVID-19 restrictions are in place, and certification employees should not be re-certified if they cease to be fit and proper. The regulators do, however, acknowledge that firms' standard certification processes and policies may need to be adjusted and 'reasonable steps' may be altered by current circumstances.

[PRA and FCA statement on its expectations of dual-regulated firms regarding the SMCR and COVID-19](#)

2. Financial Conduct Authority

2.1 SMCR - FCA publishes statement on its expectations of solo-regulated firms in light of COVID-19 - 3 April 2020 - The FCA has published a statement setting out its expectations of solo-regulated firms in relation to the SMCR in light of the impact of the COVID-19 pandemic. It acknowledges that firms will need to keep their governance arrangements under review and make appropriate changes as circumstances change. The statement sets out a number of provisions in relation to the regime given current circumstances:

- **SMF responsibility for firms' COVID-19 response:** the FCA does not require firms to have a single SMF responsible for their COVID-19 response; instead, firms should allocate relevant responsibilities in a way which best enables them to manage the risks they face;

- **Statements of Responsibilities:** the FCA acknowledges that the COVID-19 pandemic may cause significant changes to SMFs' responsibilities, due to sickness or temporary operational challenges, and therefore clarifies that it does not intend to enforce the requirement on firms to submit updated SoRs, provided that the change is: (i) made to cover multiple sicknesses, or for other temporary COVID-19-related reasons; and (ii) temporary and the firm expects to revert to its previous arrangements.

Nonetheless, the regulator expects all allocations, however temporary, to be clearly documented internally. Firms should have clear records of their senior manager population and responsibilities during this period; all relevant SoRs, and Responsibilities Maps (if applicable) should be maintained; and these should include the responsibilities of non-senior managers who have taken on the responsibilities of absent SMFs;

- **Temporary appointments to cover SMF absence:** the 12-week rule (which allows an individual to act in the capacity of an SMF without approval for a temporary period) can be extended by up to 36 weeks, provided the firm consents to a modification of the rule. The FCA intends to issue a Modification of Consent to that rule to facilitate this.

While the FCA expects the individual taking on the PRs of an SMF also to be in a SMF if possible, he/she does not need to be. Nonetheless, it should be the most senior person responsible for the relevant area, who has sufficient authority and the appropriate level of knowledge and competence to carry out the role; and

- **SMF furloughing:** any SMF who is furloughed must be notified to the FCA by email or telephone. He/she will retain their approval while absent and not need to be re-appointed on their return, although the firm remains responsible for ensuring he/she is fit and proper at that point. The PRs of a furloughed SMF must be allocated to another SMF (unless relying on the 12-week rule) and, where applicable, non-executive SMF responsibilities should not be allocated to an executive in accordance with existing requirements under the regime.

Individuals performing any of the FCA's 'required functions', including the Compliance Officer (SMF16), Money Laundering Reporting Officer (SMF17) and Limited Scope Function (SMF29), must only be furloughed as a last resort and replaced until their return. Firms have greater flexibility in relation to individuals performing 'non-mandatory' functions - these functions may be furloughed if, for example, a particular business service is suspended due to COVID-19.

FCA statement on its expectations of solo-regulated firms regarding the SMCR and COVID-19

- 2.2 Business Plan 2020/21 - published by the FCA - April 2020** - The FCA has published its Business Plan for 2020/21, setting out its key overall, cross-sectoral and sector-specific priorities for the year ahead. The Business Plan has a specific focus on addressing the challenges presented by economic impact of, and disruption caused by, the COVID-19 pandemic.

The Business Plan sets out the FCA's overall priorities:

- **COVID-19 response** (pages 9-10): the FCA plans continue to protect consumers, firms and markets from the economic impact of, and disruption caused by, the COVID-19 pandemic by issuing relevant guidance, implementing temporary relief measures and communicating effectively with both firms and consumers;

- **Transforming how the FCA works and regulates** (pages 11-13): the FCA plans to transform the way in which it operates and regulates firms by investing in new technologies, systems and processes to become increasingly efficient and effective in prioritising regulatory outcomes, adapting to changing regulatory landscapes and reducing the operational and regulatory burden on firms;
- **Enabling effective consumer investment decisions** (page 14): the FCA plans to continue its work on ensuring that investment products are suitable and appropriate for consumers' needs, facilitating the provision of appropriate information to allow consumers to make effective investment decisions and ensuring that firms operate to high regulatory standards and in consumers' best interests;
- **Ensuring consumer credit markets work well** (page 15): the FCA intends to ensure that consumers can access clear and simple information to allow them to understand and identify which credit products are right for them, preventing consumer credit firms benefiting from exploitative rates and fees, increasing access to fair and affordable credit and ensuring that firms provide consumers in financial difficulty with suitable forbearance and debt advice at an early stage;
- **Making payments safe and accessible** (page 16): the FCA intends to ensure that consumers and small and medium-sized enterprises (SMEs) can safely access a variety of payment services by working with firms and payment service providers (PSPs) to minimise the impact of fraud and operational outages, safeguard consumer funds and data, and ensure that consumers still maintain access to cash; and
- **Delivering fair value in a digital age** (page 17): the FCA plans to ensure that consumers receive fair value for financial services and receive the benefits of increased digitalisation and innovation by making sure that they can access and act on high-quality and suitable data to make informed decisions, increasing competition in financial markets and ensuring that firms treat vulnerable consumers fairly.

The FCA's cross-sectoral priorities include: (i) continuing to prepare for the UK's withdrawal from the EU (page 18); (ii) incorporating physical and transitional climate-related risks into the UK's regulatory framework (page 18); (iii) utilising data, artificial intelligence and machine learning to regulate more efficiently and effectively (page 18-19); (iv) strengthening the operational resilience of firms and financial market infrastructures (FMs) (page 19); (v) reducing consumer harm by working to prevent financial crime, money laundering and fraud (page 19-20); and (vi) improving the culture within financial services through the effective application of the SMCR (page 20).

The Business Plan also considers the FCA's sector-specific priorities: (i) wholesale financial markets (page 21); (ii) investment management (page 22); (iii) retail banking (page 22-23); and (iv) general insurance and protection (page 23).

The Business Plan sets out the FCA's proposals for its regulatory fees and levies for 2020/21 (page 24-25) (see item below).

[FCA Business Plan 2020/21](#)

[Webpage](#)

Press release

- 2.3 FCA Consultation Paper CP20/6 - FCA regulated fees and levies: Rates proposals 2020/21 - April 2020** - The FCA has published a Consultation Paper (CP20/6) on its policy proposals for regulatory fees and levies for 2020/21. The regulatory fees and levies are used to fund the FCA, the Financial Ombudsman Service (FOS), the Money and Pensions Services, debt advice delivered by the devolved authorities, and the illegal money lending levy that is raised to cover the expenses that HM Treasury incurs in providing funding for teams tackling illegal money lending. The FCA's annual funding requirement for 2020/21 is £587.6 million, an increase of 5.2% from 2019/20.

In light of the COVID-19 pandemic, the FCA's proposals aim to: (i) protect the smallest firms by proposing a freeze on minimum fees; and (ii) help medium-sized and smaller firms by proposing to extend the period for firms to pay their fees from one month to 90 days.

The consultation period closes on 19 May 2020. Subject to FCA Board approval, the FCA intends to publish its feedback and final rules in a Policy Statement in July 2020.

[FCA Consultation Paper CP20/6 - FCA regulated fees and levies: Rates proposals 2020/21](#)

- 2.4 COVID-19 - FCA publishes guidance on firms' communication with consumers during market volatility - 7 April 2020** - The FCA has published a new webpage providing guidance on how firms can communicate with consumers about the performance and value of their investments and life assurance in the context of increased market volatility caused by the impact of COVID-19. The guidance details how firms can avoid making personal recommendations when explaining to customers the implications of investment realisation or life assurance cancellation.

The webpage provides examples of the types of communication that would not amount to a personal recommendation; the ways in which firms can ask customers for background information without it amounting to a personal recommendation; and information on signposting customers to financial advisers. The FCA states that firms should try to help consumers where possible but be particularly cautious not to provide regulated advice, even implicitly, by steering the customer to a specific course of action on their investments, unless they are prepared to comply with the conduct requirements concerning personal recommendations.

The FOS also confirms that, in deciding what is fair and reasonable in all the circumstances of a complaint, this guidance will be taken into account if a customer brings a complaint against a firm regarding its communication on realising their investments.

[FCA webpage on guidance on firms' communication with consumers during market volatility](#)

- 2.5 Client Assets sourcebook - FCA publishes webpage in light of COVID-19 - 6 April 2020** - The FCA has published a new webpage setting out and clarifying some of the enquiries it has received as a result of COVID-19 on the rules and guidance contained in the FCA Client Assets sourcebook (CASS). The webpage provides information on several topics, including: (i) handling cheques; (ii) CASS audit reports; (iii) physical asset reconciliations; and (iv) depositing client money.

[FCA webpage on CASS rules and guidance in light of COVID-19](#)

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3. [Financial Ombudsman Service](#)

3.1 **Plans and budget for 2020/21 - published by the FOS - April 2020** - The FOS has published its plans and budget for 2020/21, following its December 2019 consultation.

The FOS states that respondents to its consultation broadly supported the FOS's proposals. However, in light of the economic impact and disruption caused by the COVID-19 pandemic, the FOS has made several adjustments to its budget and funding arrangements to help mitigate the financial pressures on firms, including: (i) freezing the minimum levy paid by businesses; (ii) notwithstanding that its case fee will increase, the 'free' case allowance will remain at 25 cases for firms outside the FOS's group account fee arrangement; and (iii) a recalculation of the level of FOS income from case fees, from 60%, as consulted on, to 70%.

The FOS intends reassess the situation throughout 2020/21.

[FOS Plans and Budget for 2020/21](#)

[Press release](#)

Banking and Finance

4. [Basel Committee](#)

4.1 **COVID-19 - Basel Committee announces additional measure to alleviate the impact of COVID-19 - April 2020** - The Basel Committee on Banking Supervision has announced a series of additional measures which aim to alleviate the economic impact of the COVID-19 pandemic on the global banking system. The measures include:

- publishing technical clarifications to ensure that banks reflect the risk-reducing effects of government-backed loan guarantee schemes when calculating their regulatory capital requirements;
- amending the Basel Committee's transitional arrangements for the regulatory capital treatment of expected credit loss (ECL) accounting. The amended transitional arrangements aim to provide jurisdictions with greater flexibility in how to phase in the impact of ECLs on regulatory capital;
- in agreement with the International Organization of Securities Commissions (IOSCO), deferring the final two implementation phases of the framework for margin requirements for non-centrally cleared derivatives by one year. The Basel Committee confirms that the final implementation phase will commence on 1 September 2022; and
- the Basel Committee will conduct the 2020 global systemically important bank (G-SIB) assessment exercise as planned, based on data as at end-2019, but has agreed not to collect the memorandum data included in the data collection template. The Basel Committee has also postponed the implementation of the revised G-SIB framework by one year, from 2021 to 2022.

The Basel committee also reiterates that: (i) capital resources should be used by banks to support the real economy and absorb losses; and (ii) banks and supervisors must remain vigilant to the

evolving nature of COVID-19 to ensure that the global banking system remains financially and operationally resilient.

[Basel Committee measures to alleviate the impact of COVID-19](#)

[Webpage](#)

[Press release](#)

- 4.2 Basel III - Basel Committee publishes results of latest monitoring exercise - April 2020** - The Basel Committee on Banking Supervision has published the results of its latest Basel III monitoring exercise, based on data as at 30 June 2019. The main findings of the report are that: (i) changes in minimum required capital from fully phased-in final Basel III requirements remain stable for large internationally active banks compared with end-2018; and (ii) liquidity ratios remain stable compared with end-June 2019. The Basel Committee confirms that, because the results are based on data as at June 2019, the results do not reflect the economic impact of the COVID-19 pandemic on participating banks.

In order to provide additional operational capacity for banks and supervisors to respond to the financial stability implications arising from the COVID-19 pandemic, the Committee has decided not to collect Basel III monitoring data for end-June 2020 and therefore does not intend to publish a report in spring 2021.

The next step will be publication of the results of the Basel III monitoring exercise based on data provided as at end-December 2019, which the Committee aims to do in autumn 2020.

[Basel Committee report on the results of the latest Basel III monitoring exercise](#)

[Webpage](#)

[Press release](#)

5. European Commission

- 5.1 COVID-19 - European Commission extends consultation deadlines - 3 April 2020** - The European Commission has updated its consultation webpage to explain that it is extending the deadlines for responses to certain consultations in light of the disruption caused by the COVID-19 pandemic. These include:

- the post-implementation review of the regulatory framework for investment firms and market operators under the Markets in Financial Instruments Directive (2014/65/EU) (MiFID II) and the Markets in Financial Instruments Regulation (600/2014/EU) (MiFIR), which will be extended from 20 April 2020 to 18 May 2020; and
- the review of the Non-Financial Reporting Directive (2014/95/EU), which will be extended from 14 May 2020 to 11 June 2020.

[European Commission webpage on consultations](#)

- 5.2 Digital finance and retail payments - European Commission publishes consultations on the adoption of new EU-wide strategies - 3 April 2020** - The European Commission has published

consultation documents outlining its proposals to adopt a new EU digital finance strategy and an EU retail payments strategy.

The consultation on the adoption of a new digital finance strategy focuses on a number of priority areas for the development of digital finance in the EU, including: (i) ensuring that the EU financial services regulatory framework is fit for the digital age; (ii) enabling consumers and firms to reap the opportunities offered by the EU-wide single market for digital financial services; (iii) promoting a data-driven financial sector for the benefit of EU consumers and firms; and (iv) enhancing the digital operational resilience of the EU financial system.

The consultation on the adoption of an EU retail payments strategy focuses on four key objectives: (i) the provision of fast, convenient, safe, affordable and transparent payment instruments, with a pan-European reach and 'same as domestic' customer experience; (ii) the establishment of an innovative, competitive and contestable European retail payments market; (iii) access to safe, efficient and interoperable retail payments systems and other support infrastructures; and (iv) improved cross-border payments, including remittances, to facilitate and increase the international role of the Euro.

The consultation period for each consultation closes on 26 June 2020.

[European Commission consultation on a new EU digital finance strategy](#)

[European Commission consultation on an EU retail payments strategy](#)

[Press release](#)

- 5.3 Sustainable finance - European Commission consults on renewed sustainable finance strategy - April 2020** - The European Commission has published a consultation document outlining its proposals to adopt a renewed sustainable finance strategy. The consultation builds on the Commission's action plan on financing sustainable growth, which was published in March 2018. The renewed strategy aims to provide a roadmap of actions to increase private investment in sustainable projects, support the implementation of the European Green Deal and to manage and integrate climate and environmental risks into the financial system.

The consultation period closes on 15 July 2020.

[European Commission consultation on a renewed sustainable finance strategy](#)

[Webpage](#)

6. European Banking Authority

- 6.1 COVID-19 - EBA publishes final Guidelines on moratoria on loan repayments - 2 April 2020** - The European Banking Authority (EBA) has published its final Guidelines on legislative and non-legislative moratoria on loan repayments applied in light of the COVID-19 pandemic. The Guidelines aim to clarify several issues in relation to the treatment of legislative and non-legislative moratoria applied before 30 June 2020. This follows on from the EBA's statement on the application of the prudential framework regarding default, forbearance and IFRS 9 in light of the ongoing COVID-19 pandemic, which was published on 25 March 2020.

The Guidelines clarify that: (i) payment moratoria do not trigger classification as forbearance or distressed restructuring if the measures taken are based on applicable national law or an industry-wide initiative agreed by the relevant credit institutions; and (ii) the requirements for identifying forborne exposures and defaulted debtors remain in effect and institutions must continue to identify those situations where debtors may face longer term financial difficulties and classify them in accordance with existing requirements.

To facilitate the effective monitoring of the economic effects of the COVID-19 pandemic, the Guidelines confirm that institutions must also collect information on the scope and effects of the use of moratoria. The EBA expects institutions to use the general payment moratoria in a transparent manner, providing relevant information to their competent authorities. Specific disclosure requirements to the public will be published at a later time.

The Guidelines will apply from the date of translation into all EU languages. Due to the urgency of the matter, the EBA has not carried out a public consultation or a cost-benefit analysis on these Guidelines.

[EBA final Guidelines on moratoria on loan repayments in light of COVID-19](#)

[Press release](#)

- 6.2 Basel III - EBA publishes reports on the results of the latest monitoring exercise and liquidity measures - 8 April 2020** - The EBA has published two reports, based on data as at end-June 2019, on the results of the Basel III capital monitoring exercise (see item in this section entitled 'Basel Committee publishes results of latest monitoring exercise') and on liquidity measures under the Capital Requirements Regulation (575/2013/EU) (CRR).

The EBA's report on the latest Basel III capital monitoring exercise assesses the impact on EU banks of revisions to the Basel III framework, including in relation to credit risk. The EBA estimates that, once fully implemented, the Basel III reforms will result in an average increase of 16.1% of EU banks' Tier 1 minimum required capital.

The EBA's report on liquidity measures under the CRR states that EU banks have continued to improve their compliance with the liquidity coverage ratio (LCR). The report notes that, at the reporting date of 30 June 2019, EU banks' average LCR was 147%, and 78% of the banks in the sample had an LCR above 140%.

The EBA reiterates that because the results are based on data as at June 2019, the results do not reflect the economic impact of the COVID-19 pandemic on participating banks.

[EBA report on the results of the latest Basel III capital monitoring exercise](#)

[EBA report on liquidity measures under the CRR](#)

[Press release](#)

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7. HM Treasury

- 7.1 COVID-19 - HM Treasury announces amendments to the CBILS and the introduction of a new loan scheme for large businesses - 3 April 2020** - HM Treasury has announced that Rishi Sunak MP (Chancellor of the Exchequer) will implement further action to support firms affected by the COVID-19 pandemic, including increasing business interruption loans for small businesses and announcing a new scheme for larger companies. The Chancellor's announcement comes as more than £90 million of loans to nearly 1,000 small and medium-sized enterprises (SMEs) have been approved under the Coronavirus Business Interruption Loan Scheme (CBILS) and almost £1.9 billion of government financing has been provided to larger companies by the Bank of England.

HM Treasury confirms that the Chancellor will extend the CBILS so that all viable small businesses affected by COVID-19, and not just those unable to secure regular commercial financing, will now be eligible under the scheme. Furthermore, the government is prohibiting lenders from requesting personal guarantees for loans under £250,000, making operational changes to speed up lending approvals and confirms that it will continue to cover the first twelve months of interest and fees.

The new Coronavirus Large Business Interruption Loan Scheme (CLBILS) will provide a government guarantee of 80% to enable banks to make loans of up to £25 million to firms with an annual turnover of between £45 million and £500 million. The scheme aims to give banks the confidence to lend to more businesses that are affected by COVID-19. Loans backed by a guarantee under CLBILS will be offered at commercial rates of interest and further details of the scheme will be announced later this month.

[Press release: HM Treasury announces amendments to the CBILS and the introduction of a new loan scheme for large businesses](#)

8. Prudential Regulation Authority

- 8.1 COVID-19 - PRA publishes 'Dear CEO' letter to credit unions on supervisory priorities and changes to minimum provisioning requirements - 8 April 2020** - The PRA has published a 'Dear CEO' letter to the directors, staff members and volunteers of PRA-regulated credit unions, setting out its supervisory priorities and changes to minimum provisioning requirements in response to the COVID-19 pandemic.

The letter states that the PRA's current supervisory focus in relation to credit unions is ensuring that credit unions act reasonably, prudently and in the best interests of members in light of the economic impact of COVID-19. This includes ensuring that such firms have sufficient capital and liquidity buffers. The PRA also emphasises that boards should think carefully about how to identify, prioritise and focus on the risks their firms are facing.

The PRA states that it has issued a direction for modification by consent of Rule 3.11 of the Credit Unions Part of the PRA Handbook on minimum provisioning requirements. The modification reduces the minimum provisioning requirements for bad debt in line with the rates set out in its letter and will be available to all consenting credit unions from 8 April 2020 until 1 January 2021. In deciding whether to consent to the modification, the PRA urges credit unions to consider the profile of their membership, historic and current rates of arrears in their loan book, and the overarching PRA requirement to make adequate provision for bad debts. The PRA also states that it will consider using its policy tools to assist credit unions manage the risks arising from the expected increase in provisioning after the point at which the modification expires in January 2021.

The letter also reiterates that, in response to the disruption caused by COVID-19, it will accept the delayed submission of regulatory reports due on or before 31 May 2020 and has granted firms: (i) a two-month extension for submitting annual returns and accounts; and (ii) a one-month extension for submitting quarterly returns.

[PRA 'Dear CEO' letter to credit unions in response to COVID-19](#)

[Webpage](#)

[Webpage on credit unions](#)

9. Payment Systems Regulator

9.1 APP scams - PSR publishes details of meeting on progress - April 2020 - The Payment Systems Regulator (PSR) has published the details of a meeting, held on 30 March 2020 via conference call, regarding the progress made by the payments industry and other authorities in tackling authorised push payment (APP) scams. The meeting covered several topics, including:

- recent fraud statistics and the work undertaken by the PSR and FCA on fraud prevention;
- discussions on the effectiveness, and potential barriers to adoption, of the voluntary Contingent Reimbursement Model (CRM) Code;
- long-term financing options available for funding the reimbursement of consumers in 'no-blame' situations; and
- alternative ways to achieve progress in these areas, whether this be continuing with a current approach, implementing Faster Payments Service (FPS) rule changes, or relying on regulatory action by the PSR.

[PSR note on meeting on authorised push payment scams \(30 March 2020\)](#)

[Press release](#)

9.2 COVID-19 - PSR publishes update on access to cash - 8 April 2020 - The PSR has published an update on its work to support consumers' access cash during the COVID-19 pandemic. The PSR provides an update on its recent work to ensure that consumers can access cash, which includes:

- supporting the industry's initiative to increase the limit for contactless payments to £45 from 1 April 2020. It cites the FCA's statement that the regulator is unlikely to take enforcement action if a firm does not apply strong customer authentication when the cumulative amount of transaction values has exceeded €150 or five contactless transactions in a row, provided that the firm sufficiently mitigates the risk of unauthorised transactions and fraud (as previously reported in this Bulletin); and
- issuing a joint statement with the FCA in response to the Competition and Markets Authority's (CMA's) guidance on business cooperation under competition law, stating that it is important that competition law does not impede firms from working together to provide essential services to consumers in light of the ongoing COVID-19 situation (as also previously reported in this Bulletin).

The PSR states that it is working with a number of organisations, including LINK and independent ATM deployers, to make sure cash and digital payment networks remain available. The PSR also states that stakeholders should be mindful of the impact that COVID-19 could have on cash use and access to cash for those consumers that need or want it.

[Press release: PSR publishes update on access to cash in light of COVID-19](#)

10. Recent Cases

10.1 *Case C-228/18 Budapest Bank and Others*, 2 April 2020

Anti-competitive nature of a multilateral interchange fee (MIF) agreement - interpretation of Article 101 of Treaty on the Functioning of the European Union

The European Court of Justice (Fifth Chamber) (ECJ) has given a preliminary ruling on the interpretation of Article 101 of Treaty on the Functioning of the European Union (TFEU) in relation to the anti-competitive nature of a multilateral interchange fee (MIF) agreement, agreed between several Hungarian banks, Visa and MasterCard.

The Hungarian Competition Authority (HCA) had originally ruled that that the MIF Agreement constituted a restriction of competition by both object and effect. The ruling was challenged before the Budapest High Court, which held that: (i) it was not possible for conduct to constitute a restriction of competition by object and, at the same time, a restriction of competition by effect; and (ii) the MIF agreement did not constitute a restriction of competition by object. This case concerns an appeal made by the HCA against the decision of the Budapest High Court in relation to the correct interpretation of Article 101 TFEU.

The ECJ held that:

- the same conduct of an undertaking can be held to infringe Article 101 of TFEU for having both the object and the effect of restricting competition in the internal market. It is for the referring court to determine whether the MIF agreement constituted a restriction by object; and
- Article 101(1) of TFEU should be interpreted as meaning that a MIF agreement, which fixes the commission when a card payment transaction is carried out for the banks issuing such cards, cannot be qualified as an agreement having an object to prevent, restrict or distort competition unless that MIF agreement, having regard to its terms, objectives and context, can be regarded as having a sufficient degree of harm to competition to qualify as such, this being a matter for the national court to verify.

The official judgement is not yet available in English.

[Case C-228/18 Budapest Bank and Others](#)

Securities and Markets

11. International Organization of Securities Commissions

- 11.1 COVID-19 - IOSCO reprioritises its 2020 work program - 8 April 2020** - The International Organization of Securities Commissions (IOSCO) has announced that it has agreed to reprioritise and delay some of its planned work for 2020, as set out in its 2020 work program. This is to allow it to focus its resources on addressing the challenges that securities markets regulators are facing in light of the economic impact of the COVID-19 pandemic.

IOSCO confirms that its work on the following topics will be delayed or paused: (i) IOSCO's analysis of the use of artificial intelligence and machine learning by market intermediaries and asset managers; (ii) the impact of the growth of passive investing and potential conduct issues in index provision; and (iii) issues relating to market data, outsourcing and implementation monitoring.

IOSCO intends to continue to proceed with its work on good practices for deference and other projects that are near completion which will not burden limited regulatory or industry resources. IOSCO also plans to examine any specific investor protection issues, market integrity or conduct risks that may arise in the context of the COVID-19 crisis.

[Press release: IOSCO reprioritises 2020 work program in light of COVID-19](#)

12. European Commission

- 12.1 BMR - European Commission consults on draft Implementing Decision on the equivalence of Japanese benchmarks** - The European Commission has published for consultation a draft Implementing Decision on the equivalence of the legal and supervisory framework applicable to benchmarks in Japan under the Benchmarks Regulation (EU) 2016/1011 (BMR).

The draft Implementing Decision states that the legal and supervisory framework applicable to benchmarks administered in Japan, such as the Japanese Yen Tokyo interbank offered rate (TIBOR) and Euroyen TIBOR, are equivalent to the requirements of the BMR. In making such an assessment, the Commission has considered several factors, including: (i) whether the legal framework and supervisory practice of a third-country ensures compliance with the IOSCO principles for financial benchmarks; and (ii) whether the relevant specific administrators or benchmarks are subject to effective supervision and enforcement on an ongoing basis in that third-country.

The Commission intends to adopt cooperation arrangements alongside the Implementing Decision to ensure the effective exchange of information, and coordination of supervisory activities, between the European Securities and Markets Authority (ESMA) and the Japanese Financial Services Agency.

The consultation period closes on 4 May 2020.

[European Commission consultation on draft Implementing Decision on the equivalence of benchmarks in Japan under the BMR](#)

[Webpage](#)

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13. European Securities and Markets Authority

13.1 EMIR - ESMA publishes consultation on clearing solutions for pension scheme arrangements - 2 April 2020 - The European Securities and Markets Authority (ESMA) has published for consultation its report on central clearing solutions for pension scheme arrangements (PSAs) under the European Market Infrastructure Regulation (648/2012/EU) (EMIR). The report discusses the issues faced by PSAs in clearing their contracts, studies the rationale for the use of derivatives by PSAs and explores the different solutions already envisaged to allow PSAs to centrally clear their over-the-counter (OTC) derivatives. In particular, the consultation seeks detailed feedback on:

- the structure of PSAs' portfolios and on the potential reduction of portfolios' investment returns from increasing their cash holdings; and
- solutions still being explored, such as relying on the ancillary services of collateral transformation of clearing members, a market-based repo solution or access to alternative emergency liquidity arrangements.

In line with its obligations under the EMIR Refit Regulation (EU) 2019/834, which extended the exemption from the clearing obligation for PSAs, ESMA also seeks to investigate whether central counterparties (CCPs), clearing members and PSAs have developed viable technical solutions to facilitate PSAs' participation in central clearing by posting cash and non-cash collateral as variation margins, including the implications of those solutions for market liquidity and pro-cyclicality, and their potential legal implications.

The consultation period closes on 15 June 2020. Following the receipt of stakeholders' feedback, ESMA plans to publish a second report and submit it to the European Commission by the end of 2020.

[ESMA consultation report on central clearing solutions for pension scheme arrangements under EMIR](#)

[Press release](#)

13.2 Consultation practices - ESMA publishes updated statement - 3 April 2020 - ESMA has published an updated version of its Public Statement of Consultation Practices, taking into account amendments made to the ESMA Regulation (1095/2010/EU) by the European Supervisory Authorities (the European Banking authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and ESMA) (ESAs).

The statement summarises ESMA's consultation practices, including: (i) publishing an annual work programme; (ii) launching calls for evidence; (iii) publishing reasoned consultative proposals and facilitating consultation with stakeholders; and (iv) publishing a summary of the responses received.

[ESMA Statement of Consultation Practices](#)

[Press release](#)

- 13.3 Financial Innovation Standing Committee - ESMA publishes Terms of Reference - 7 April 2020 -** ESMA has published the Terms of Reference, dated 13 March 2020, for its Financial Innovation Standing Committee. The Committee was established by ESMA's Board of Supervisors with the aim of considering how to: (i) increase the number of retail investors in order to develop the Capital Markets Union; (ii) promote sustainable finance and long-term oriented capital markets; (iii) develop digital finance as an opportunity for market participants and regulators; and (iv) achieve a proportionate approach in response to these objectives.

[Terms of Reference for ESMA's Financial Innovation Standing Committee](#)

14. Financial Conduct Authority

- 14.1 COVID-19 - FCA publishes Statement of Policy on listed companies' share issuances - 8 April 2020 -** The FCA has published a Statement of Policy setting out a series of new measures which aim to assist listed companies in raising new share capital in response to the economic impact of the COVID-19 pandemic, but also retain an appropriate degree of investor protection. The measures include a combination of temporary policy interventions and reminders of existing options for companies and their current and prospective shareholders.

Among other things, the Statement of Policy:

- sets out the FCA's new, temporary approach to the preparation of working capital statements in share prospectuses and shareholder circulars published by premium listed companies where the Listing Rules require such statements. Under this approach key modelling assumptions underpinning the 'reasonable worst-case scenario' will be permitted to be disclosed in an otherwise clean working capital statement, provided that: (i) such assumptions are COVID-19-related, clear, concise and comprehensible; and (ii) there is an accompanying statement that the working capital statement has otherwise been prepared in accordance with ESMA's Recommendations and the FCA's technical supplement to this policy;
- modifies the FCA's Listing Rules in relation to Class 1 transactions (LR 10.5.1R(2)) and related party transactions (LR 11.1.7R) to temporarily allow firms to obtain shareholder consent without the requirement to hold a general meeting, reflecting the government guidelines on social distancing;
- welcomes recent industry work to agree pragmatic steps to balance the pre-emption rights of existing shareholders with the need for share issuances to be completed as efficiently as possible in light of the current economic environment;
- encourages eligible companies to make use of the new simplified prospectus, introduced by the Prospectus Regulation (EU) 2017/1129, which recognises that investors already have access to a range of information on the issuer and removes the need to include information such as organisational structure, capital resources, remuneration and benefits, and board practices; and
- reiterates that no changes have been made to the application of the Market Abuse Regulation (596/2014/EU) (MAR) and that it remains in force.

The FCA confirms that the policy set out in the statement is intended to be temporary in response to the disruption caused by the COVID-19 pandemic. The policy interventions regarding working

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capital statements and general meeting requirements will apply until further notice. Although the guidance applies from 8 April 2020, the FCA welcomes stakeholders' feedback on the measures taken.

[FCA Statement of Policy on listed companies' share issuances in light of COVID-19](#)

[FCA Technical Supplement on working capital statements](#)

[FCA Technical Supplement on general meeting requirements under the Listing Rules](#)

[Press release](#)

Asset Management

15. European Securities and Markets Authority

- 15.1 Guidelines on performance fees in UCITS and certain AIFs - published by ESMA - 3 April 2020 -** The European Securities and Markets Authority (ESMA) has published a final report containing Guidelines on performance fees in undertakings for collective investment in transferable securities (UCITS) and certain alternative investment funds (AIFs). This follows ESMA's consultation on draft Guidelines, published in July 2019. The Guidelines, which apply to fund managers and national competent authorities (NCAs), aim to promote convergence in the way NCAs supervise performance fee structures and provide fund managers with guidance on designing performance fee models.

The Guidelines address: (i) the calculation method for performance fees; (ii) consistency between performance fee models and funds' investment objectives, strategies and policies; (iii) the frequency and crystallisation of performance fees; (iv) negative performance (loss) recovery; and (v) disclosure of performance fee models.

The Guidelines will apply two months after publication of their translation into the official EU languages.

[ESMA Guidelines on performance fees in UCITS and certain AIFs](#)

[Press release](#)

16. Financial Conduct Authority

- 16.1 COVID-19 - FCA publishes webpage setting out its expectations of funds - 6 April 2020 -** The FCA has published a new webpage setting out its expectations of funds in light of the COVID-19 pandemic. The webpage states that the FCA:

- has agreed that the publication of annual fund reports by authorised fund managers (AFMs) of UK UCITS schemes and non-UCITS retail schemes may be delayed by two months and that the publication of half-yearly fund reports may be delayed by one month;
- does not have supervisory concerns about firms holding general meetings of unitholders in a virtual format. However, fund documentation may contain requirements in addition to what is prescribed by its rules and therefore AFMs should consider any private law obligations under the terms of their fund documentation when making arrangements for meetings;

- expects firms already to have plans in place to deal with any compliance issues relating to limits on value at risk, including consideration of appropriate remediation action, market conditions and customers' best interests; and
- confirms that where firms are struggling to obtain physical signatures for fund-related applications due to the COVID-19 pandemic, it is willing to accept electronic signatures on applications to authorise funds or approve changes to funds.

[FCA webpage setting out its expectations of funds in light of COVID-19](#)

Please see the **General** section for an item on the FCA's guidance in relation to consumer communications in light of COVID-19 and increased market volatility.

Insurance

17. [European Insurance and Occupational Pensions Authority](#)

- 17.1 COVID-19 - EIOPA publishes statement on insurers' dividend distribution and variable remuneration policies - 2 April 2020** - The European Insurance and Occupational Pensions Authority (EIOPA) has published a statement urging insurers to temporarily suspend all discretionary dividend distributions and share buy backs aimed at remunerating shareholders in light of the COVID-19 pandemic. The statement follows EIOPA's 17 March 2020 statement, which called on insurers to take measures to preserve their capital positions, including by following prudent dividend distribution and variable remuneration policies.

EIOPA explains that this prudent approach should be applied by all insurance groups at the consolidated level, including significant intra-group dividend distributions which may materially influence the solvency or liquidity position of the group or of one of the undertakings involved. EIOPA reiterates that insurers' assessments of their overall solvency must be forward-looking, taking into account the current level of uncertainty in relation to the size and duration of the impact of COVID-19 on financial markets and the economy. Insurers should review dividend suspensions as the financial and economic impact of the COVID-19 pandemic becomes clearer.

The statement also urges insurers to adopt a prudent approach to variable remuneration policies, including setting variable remuneration at a conservative level and considering its postponement.

[EIOPA statement urging insurers to temporarily suspend dividend distributions and share buy backs in light of COVID-19](#)

[Press release](#)

- 17.2 COVID-19 - EIOPA publishes update on consultations and data collections - 2 April 2020** - EIOPA has published an update on the extent to which its consultations and data collections have been affected by the COVID-19 pandemic. Among other things, EIOPA confirms that it is extending:
- its consultation on reviewing technical implementation means for the package on supervisory reporting and public disclosure under the Solvency II Directive (2009/138/EC) by six weeks from 20 April to 1 June 2020;

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- its consultation on implementing technical standards (ITS) under Regulation (EU) 2019/1238 on a pan-European Personal Pension Product (PEPP Regulation) by four weeks from 20 May to 17 June 2020;
- the period for commenting on its discussion paper on interbank offered rate (IBOR) transition by nine weeks from 30 April to 30 June 2020; and
- the information request deadline for its market and credit risk comparative study by five weeks from 31 May to 3 July.

EIOPA also confirms that: (i) it has decided to delay the publication of its discussion notes on value chain/InsurTech and on methodology principles of insurance stress testing until further notice; (ii) its information request to national competent authorities (NCAs) relating to the long-term guarantees review under Solvency II will be postponed from the Q2 to Q3 2020; (iii) its data collection on the impact of ultra-low yields on insurers will now incorporate COVID-19 reflections, if necessary; and (iv) it has decided to cancel the planned data request relating to the 2020 climate risk sensitivity analysis and intends to produce the report with already-available information.

[Press release: EIOPA publishes update on consultations and data collections in light of COVID-19](#)

- 17.3 Supervision of remuneration principles in the insurance and reinsurance sector - EIOPA publishes Opinion - April 2020** - EIOPA has published an Opinion, dated 31 January 2020, on the supervision of remuneration principles in the insurance and reinsurance sector. The Opinion aims to enhance the supervisory convergence of the remuneration principles set out in the Solvency II Delegated Regulation (EU) 2015/35 and provide guidance for national competent authorities (NCAs) on the application of the principles to supervised undertakings. EIOPA consulted on a draft version of the Opinion in July 2019.

In particular, the Opinion focuses on the application of the principles to a reduced scope of staff, identified as potential higher profile risk-takers. However, EIOPA states that NCAs may apply the guidance to staff below the prescribed thresholds, taking into account: (i) remuneration practices in the relevant national markets; (ii) individuals' specific responsibilities; and (iii) the size and risk profile of the relevant undertaking. EIOPA states that the thresholds included in the Opinion should be used for the purposes of supervisory dialogue and not as hard targets for the practical implementation of Solvency II remuneration principles.

EIOPA plans to start monitoring the application of the Opinion by NCAs in 2022.

[EIOPA Opinion on the supervision of remuneration principles in the insurance and reinsurance sector](#)

[EIOPA feedback statement to consultation on draft Opinion](#)

[Webpage](#)

[Press release](#)

18. Prudential Regulation Authority

- 18.1 COVID-19 - PRA publishes statement welcoming insurers' decision to pause dividend payments - 8 April 2020** - The PRA has published a statement welcoming the decision of some insurance firms to pause dividend payments in light of the COVID-19 pandemic. This follows the PRA's 'Dear CEO' letter to UK insurance firms, published on 31 March 2020, requesting that firms adopt prudent dividend distribution policies and manage their financial resources prudently in light of the current economic conditions.

[PRA statement welcoming insurance firms' decision to pause dividend payments](#)

19. Financial Conduct Authority

- 19.1 COVID-19 - FCA updates webpage for firms on new rules regarding the provision of pension information - 3 April 2020** - The FCA has updated its webpage containing information for firms in response to the COVID-19 pandemic to include a new section on communicating certain pension information to consumers.

The FCA notes that several firms are experiencing difficulties in implementing new rules which change the information that firms must provide to consumers entering pension drawdown or taking an income for the first time, and the annual information given to these consumers. The new rules, set out in PS19/1, were finalised in January 2019 and come into effect on 6 April 2020. Therefore, the FCA expects firms to have already implemented these rules or be in the final phases of implementation.

The FCA states that it understands that firms may experience operational challenges in testing and finalising processes in light of the disruption caused by the COVID-19 pandemic, particularly where firms rely on third parties to complete this work. It acknowledges that some firms may not be able to avoid a short delay in implementing the rules. Nevertheless, the FCA expects firms to implement the new rules as soon as reasonably practicable and, if this is later than 31 May 2020, to notify it in accordance with Chapter 15 of the Supervision manual (SUP).

[Updated FCA webpage on information for firms in response to COVID-19](#)

- 19.2 COVID-19 - FCA publishes guidance for pension providers and deferred benefit pension transfer advisors - 7 April 2020** - The FCA has published a new webpage providing guidance for pension providers and deferred benefit pension transfer advisors in light of the COVID-19 pandemic. Among other things, the guidance for pension providers states that:

- when communicating with customers, unless they are willing to comply with the conduct requirements for making personal recommendations, providers must be careful not to provide regulated advice by steering the customer to a specific course of action on their investments;
- providing a warning to customers, who wish to change and de-risk their investments, about the relevant risks to consider when making such a decision will not amount to a personal recommendation, provided that the language used clearly demonstrates that the firm wants to ensure the customer makes a considered and informed decision; and

- providers can communicate proactively with customers, including providing additional information and details of planned communications in the coming weeks and months, where they consider there is a current information need.

The webpage sets out a table identifying certain risk factors which providers should consider in the current economic climate, including: (i) sustainability of income in retirement; (ii) investment risk; (iii) tax implications; and (iv) charges.

The webpage also sets out the FCA's guidance for deferred benefit pension transfer advisors in light of the COVID-19 pandemic. The guidance states that the FCA expects firms to provide suitable advice, and to follow the existing Handbook rules and guidance, particularly those set out in Chapters 9 and 19 of the Conduct of Business sourcebook (COBS). The guidance provides information on how advisors can demonstrate that transfers are suitable, how to address customer misconceptions and how to deal with consumers transferring against advice received.

The Financial Ombudsman Service (FOS) also confirms that, in deciding what is fair and reasonable in all the circumstances of a complaint, this guidance will be taken into account if a customer brings a complaint against a firm regarding its pension transfer advice.

[FCA webpage on guidance for pension providers and deferred benefit pension transfer advisors in light of COVID-19](#)

- 19.3 Signposting to travel insurance for consumers with medical conditions - FCA publishes addendum to Policy Statement - April 2020** - The FCA has published an addendum to its February 2020 Policy Statement (PS20/3) containing final rules and guidance on travel insurance and consumers with pre-existing medical conditions. Under the new rules, travel insurance firms are required to signpost such consumers to a directory of specialist providers.

The FCA explains that 20 responses to its consultation were not reviewed due to a system error, which the FCA describes as an isolated incident that has not impacted any other consultations. The FCA states that these responses have now been reviewed and the addendum contains its comments on stakeholders' responses.

[FCA addendum to Policy Statement PS20/3 Signposting to travel insurance for consumers with medical conditions](#)

[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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