SLAUGHTER AND MAY/

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FINANCIAL REGULATION WEEKLY BULLETIN

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

QUICK LINKS

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.

SELECTED HEADLINES //

Selected Headlines
General
Beyond Brexit
Banking and Finance
Securities and Markets
Insurance
Financial Crime
Enforcement

GENERAL //

1 EU PLATFORM FOR SUSTAINABLE FINANCE

1.1 **Assessment of corporate transition plans - Platform on Sustainable Finance publishes report** - *23 January 2025* - The EU Platform on Sustainable Finance, an advisory body to the European Commission, has published a report on the development and assessment of corporate transition plans in alignment with the EU Corporate Sustainability Reporting Directive ((EU) 2022/2464) and the Corporate Sustainability Due Diligence Directive ((EU) 2024/1760). Although the report focuses on climate mitigation, it acknowledges the importance of other environmental goals - such as adaptation - to support the comprehensive assessment of transition plans.

Webpage

Report on transition plans

2 JOINT COMMITTEE OF THE EUROPEAN SUPERVISORY AUTHORITIES

2.1 **DORA - Terms of reference for EU-SCICF forum published** - *27 January 2025* - The Joint Committee of the European Supervisory Authorities (ESAs) has published the terms of reference for a forum established under the Regulation on digital operational resilience for the financial sector ((EU) 2022/2554) (DORA), forming part of the EU systemic cyber incident co-ordination framework (EU-SCICF). The objective of the forum is to facilitate effective EU-level co-ordination in the event of a cross-border major ICT-related incident or related threat that could have a systemic impact on the EU financial sector. Members include representatives from both national and EU-level authorities and other bodies, including the ESAs, the European Systemic Risk Board (ESRB), the European Union Agency for Cybersecurity (ENISA) and the European Commission.

The terms of reference came into effect on 17 January 2025.

Terms of reference

3 EUROPEAN COMMISSION

3.1 **EU Competitiveness Compass - European Commission publishes communication** - *29 January 2025* - The European Commission has published a Competitiveness Compass for the EU (COM(2025) 30) which sets out a framework for its work on competitiveness over the next five years. Among the initiatives trailed, the document refers to an “omnibus simplification” project which will involve the simplification of sustainable finance reporting requirements, sustainability due diligence measures and the sustainable finance taxonomy. The Commission’s first simplification omnibus package is expected to be published on 26 February 2025.

The Compass also highlights the upcoming publication of a savings and investments union strategy, intended to enable wealth creation for EU citizens and mobilise capital. This will include proposals designed to promote low-cost saving and investment products at EU level and to promote the EU's securitisation market. This strategy is expected to be published in the first quarter of 2025.

Communication: A Competitiveness Compass for the EU (COM(2025) 30)

Factsheet

Press release

4 NEW LEGISLATION

4.1 **The Financial Services and Markets Act 2023 (Digital Securities Sandbox) (Amendment) Regulations 2025** - *30 January 2025* - The Financial Services and Markets Act 2023 (Digital Securities Sandbox) (Amendment) Regulations 2025 (SI 2025/93) have been published on legislation.gov.uk, together with an explanatory memorandum. In short, the Regulations modify the effect of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692) (MLRs 2017) by temporarily disapplying provisions of the MLRs 2017 that apply to cryptoassets (and other related terms) in relation to activities within the scope of the Digital Securities Sandbox (DSS). It does this by amending the Financial Services and Markets Act 2023 (Digital Securities Sandbox) Regulations 2023 (SI 2023/1398) (the DSS Regulations).

The Regulations will come into force on 3 March 2025.

The Financial Services and Markets Act 2023 (Digital Securities Sandbox) (Amendment) Regulations 2025

Explanatory memorandum

5 HM TREASURY

5.1 **PRA and FPC responses to remit and recommendations letters - published by HM Treasury** - *27 January 2025* - HM Treasury has published a response (dated 18 December 2024) from Andrew Bailey, Governor of the Bank of England, in his role as Chair of the Prudential Regulation Committee (PRC), to HM Treasury's November 2024 letter on the remit, recommendations and priorities of the PRA in the current Parliament. Among other things, the letter describes what the PRA is doing to advance its secondary competitiveness and growth objective. An Annex to the letter lists the specific initiatives that the PRA is undertaking on the six recommendations that were set out in HM Treasury's letter.

HM Treasury has also published a similar letter from the Financial Policy Committee (FPC), which includes an explanation of the FPC's work to support its secondary objective of supporting the government's economic policy.

PRC response

FPC response

6 PRUDENTIAL REGULATION AUTHORITY AND FINANCIAL CONDUCT AUTHORITY

6.1 **Climate change adaptation reports - published by FCA and PRA** - *28 and 30 January 2025* - The Financial Conduct Authority (FCA) has published a report on climate change adaptation challenges faced by firms. The report has been prepared following an invitation by the Department for Environment, Food and Rural Affairs under the climate adaptation power in the Climate Change Act 2008.

The FCA's report concludes that there are three major issues affecting climate change adaptation in the financial services industry: the availability and accuracy of data and modelling to help financial services firms quantify and manage climate risks; barriers and enablers to insurance underwriting for climate risks (and, in consequence, lending and investment); and finally, barriers and enablers in allocating capital to adaptation. The report is based on informal engagement with firms and the FCA's understanding of market dynamics; it is not intended to set out regulatory expectations.

The PRA has also separately published a climate change adaptation report which looks at the steps taken by banks and insurers to respond to the impacts of climate change and how the PRA's regulatory work has been evolving. It also looks ahead to the planned release, later in 2025, of a consultation paper seeking views on an update to Supervisory Statement (SS) 3/19.

FCA Adaptation report

PRA Adaptation report

7 FINANCIAL CONDUCT AUTHORITY

7.1 **CMCs - FCA publishes portfolio letter** - *30 January 2025* - The FCA has published a portfolio letter addressed to claims management companies (CMCs) setting out the FCA's strategy and expectations for firms in this sector. The FCA intends to focus, over the next two years, on their implementation of the consumer duty, including by conducting a review of marketing literature and due diligence around the sourcing of personal injury leads. It will consider whether CMCs are investigating the existence and merits of each element of a potential claim before making or pursuing the claim or advising the customer to do so. In addition, the FCA intends to look at CMCs submitting high volumes of complaints to the Financial Ombudsman Service but achieving low uphold rates.

Portfolio letter

BEYOND BREXIT //

8 NEW LEGISLATION

8.1 **The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) Regulations** - *27 January 2025* - The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) Regulations have been published. The Regulations amend references to "retained EU law" or "REUL" and related terms (such as "retained direct EU legislation") contained in secondary legislation to what is now known as "assimilated law". They also remove references in secondary legislation to general principles of EU law which were removed as a general aid to interpretation by section 4 of the Retained EU Law (Revocation and Reform) Act 2023. The Regulations do not make any policy changes.

They will come into force on 25 February 2025.

The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) Regulations 2025

Explanatory memorandum

BANKING AND FINANCE //

9 NEW LEGISLATION

9.1 **Silicon Valley Bank UK Limited Compensation Scheme Order 2025** - *28 January 2025* - The Silicon Valley Bank UK Limited Compensation Scheme Order 2025 (SI 2025/83) has been published on legislation.gov.uk, alongside an explanatory memorandum. In short, the Order confirms that no compensation is due to persons who held shares in Silicon Valley Bank UK Ltd (SVB UK) before those shares were transferred to HSBC UK Bank plc in March 2023 as part of the resolution of SVB UK.

The Order came into force on 28 January 2025.

Silicon Valley Bank UK Limited Compensation Scheme Order 2025

Explanatory memorandum

10 PRUDENTIAL REGULATION AUTHORITY

10.1 **Prime brokerage - PRA publishes speech** - *28 January 2025* - The Prudential Regulation Authority (PRA) has published a speech given by Rebecca Jackson, Executive Director, Authorisations, Regulatory Technology and International Supervision, on the growth of prime brokers and the importance of liquidity risk, operational resilience and counterparty credit risk management in this context. It is noted in the speech that the PRA has "zero tolerance" for new entrants to the market with inadequate systems and procedures for due diligence and risk oversight. Unless firms have robust risk management frameworks tailored to the type of counterparty they face, they will be susceptible to operational failures, mispricing of products and insufficient collateral assessments. Prime broker firms are expected to choose the metrics used to control the size of their exposures carefully and should use measures of gross exposure and absolute leverage to monitor their businesses.

Speech

11 FINANCIAL CONDUCT AUTHORITY

11.1 **Wholesale brokers - FCA publishes new supervisory strategy** - *24 January 2025* - The FCA has published a portfolio letter on its new supervisory strategy for wholesale brokers. Over the next two years, the FCA plans to focus on the following four key strategic areas in its proactive work relating to these firms: broker conduct; culture; business oversight; and financial resilience. The letter notes that, apart from the usual detection and monitoring controls, the FCA will be particularly interested in firms' use of remuneration tools (such as deferrals, clawback or malus) in cases of proven misconduct. Its work will also involve testing wholesale brokers' contingency funding plans and frameworks to assess whether these are adequate for potential liquidity challenges caused by stress events. Where material weaknesses are identified, the FCA says that it is likely to impose additional capital and liquidity requirements.

The FCA expects CEOs to have discussed the letter with their fellow directors and boards, and to have agreed actions and next steps, where necessary, by the end of March 2025.

Portfolio letter

11.2 **Mortgage intermediaries - FCA publishes strategy letter** - *30 January 2025* - The FCA has published the portfolio letter it has sent to mortgage intermediaries setting out its key current and future priority areas of supervisory focus over the next two years. One key focus area is on quality of advice and unsuitable products. The FCA intends to review whether sufficient assessment of customer circumstances is being carried out and whether the advice given is suitable. It will also assess how firms are identifying and managing conflicts of interest and whether the risk of high-pressure sales is being properly managed. Other priorities concern excessive fees and fair value, financial promotions, dormant appointed representatives, managing conflicts with regard to appointed representatives, the use of trading names and conditional selling.

Firms are expected to discuss the letter within their leadership team and satisfy themselves that the FCA's areas of focus are being addressed under existing consumer duty work programmes, or if not, how these risks may need to be addressed going forward.

Portfolio letter

Selected Headlines
General | Securities and Markets | Enforcement
Beyond Brexit | Insurance
Banking and Finance | Financial Crime

12 UK FINANCE

12.1 GenAI opportunities in financial services - UK Finance publishes report - *28 January 2025* - UK Finance has published a report, written in collaboration with Accenture, on the opportunities and risks of using generative AI (GenAI) in financial services. The report observes that most live generative AI use cases at the end of 2024 focused on exploiting relatively well understood capabilities of the technology, involved active human oversight and concerned relatively low-risk processes or tasks. The report uses three case studies (relating to customer complaints processing, "know your customer" (KYC) and software development) to illustrate real-life applications. The report also argues that the UK's principles-based regulatory model should have greater flexibility to adapt to technological developments but that, over time, guidance on specific AI issues may be needed.

Report

SECURITIES AND MARKETS //

13 EUROPEAN SYSTEMIC RISK BOARD

13.1 Active account requirement under EMIR 3 - ESRB responds to ESMA consultation - *27 January 2025* - The European Systemic Risk Board (ESRB) has published its response to ESMA's consultation paper of November 2024 on the conditions of the active account requirement (AAR) under EMIR 3 ((EU) 2024/2987), as previously reported in this bulletin.

In its response, the ESRB concludes that the AAR is likely to be insufficient to adequately address risks to financial stability arising from reliance on clearing services of substantial systemic importance in third countries. As such, it calls for close monitoring and evaluation of its effectiveness and looks forward to contributing to the joint monitoring mechanism, which is tasked with assessing the impact of the AAR. The ESRB also welcomes the inclusion of the aggregate value of initial and variation margins as a risk-based measure in the reporting requirement.

The response builds on the ESRB's previous comments on the introduction of the AAR, in particular its October 2023 letter to the EU co-legislators.

ESRB response

14 EUROPEAN SECURITIES AND MARKETS AUTHORITY

14.1 Shaping the future of EU capital markets - ESMA publishes speech - *29 January 2025* - The European Securities and Markets Authority (ESMA) has published a speech given by Klaus Löber, Chair of the ESMA CCP Supervisory Committee, on shaping the future of EU capital markets.

Among other things, Klaus Löber welcomes the Commission's intention to extend the equivalence of the UK framework for a further three years, noting that this decision will give sufficient time for the active account requirement to take effect, as well as for ESMA and the Commission to assess its impact on the exposure of EU counterparties to Tier 2 CCPs. ESMA intends to work on strengthening the resilience of EU CCPs and the wider clearing ecosystem. It has been mandated to improve the transparency of margin requirements collected by CCPs and clearing members and to consider the potential procyclical effects of haircuts on collateral on the broader ecosystem, as well as to clarify the minimum participation requirements for clearing members, particularly non-financial counterparties.

Speech

14.2 **DPE regime and end to publication of SI data under MiFID - announced by ESMA** - *24 January 2025* - The European Securities and Markets Authority has published a press release reminding firms of the start of the new regime for reporting OTC transactions for post-trade transparency purposes on 3 February 2025. It has also announced that it will discontinue the quarterly publication of systematic internaliser (SI) data with immediate effect. This is due to responsibility for reporting OTC transactions shifting from SIs to designated publishing entities pursuant to the new Article 21a of the Markets in Financial Instruments Regulation (600/2014) (MiFIR).

The mandatory SI regime will no longer apply from 1 February 2025.

Press release

15 THE GLOBAL FOREIGN EXCHANGE COMMITTEE

15.1 **FX Global Code of Conduct - new version published by GFXC** - 24 January 2025 - The Global Foreign Exchange Committee (GFXC) has published the December 2024 version of its FX Global Code of Conduct, superseding the July 2021 version. Five of the Code's 55 principles of good practice in the FX market have been updated to strengthen the guidance on FX settlement risk. The changes are also designed to increase transparency around certain types of FX transaction and the use of client-generated data on electronic trading platforms. The new version also includes links to certain existing GFXC reports offering insight into practical implementation of the Code.

Press release

Updated Code

16 RECENT CASES

16.1 Wirral Council v Indivior plc [2025] EWCA Civ 40

s.90A FSMA - alleged fraudulent statements and dishonest omissions - representative action in securities claims

The Court of Appeal has upheld the High Court's decision to refuse to allow a securities class action brought under s.90A of the Financial Services and Markets Act 2000 to proceed as a representative action under CPR 19.8, confirming that any claims should be pursued as ordinary multi-party proceedings with the investors as claimants.

Wirral Council v Indivior plc

INSURANCE //

17 EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY

17.1 **Gender and inclusion in financial services - EIOPA publishes speech** - *24 January 2025* - The European Insurance and Occupational Pensions Authority (EIOPA) has published a speech delivered by Petra Hielkema, EIOPA Chair, on gender and inclusion. Among other things, Petra Hielkema shares concrete examples of the implications of a lack of diversity in financial services in the context of automotive safety testing, credit scoring models, AI-powered recruitment tools and mobile banking apps. The speech highlights three key measures that can reduce gender disparity in the financial services sector: treating diversity as a core governance issue (which means setting clear targets, measuring progress and holding leadership accountable for results); upskilling and reskilling; and finally, incorporating diverse perspectives in product design and risk assessment.

Speech

17.2 **Reassessment of NatCat risks in standard formula under Solvency II - EIOPA publishes opinion** - *30 January 2025* - EIOPA has published an opinion (EIOPA-BoS-24/462) on the 2023/24 reassessment of natural catastrophe (Nat Cat or NatCat) risks in the standard formula under the Solvency II Directive (2009/138/EC). In short, EIOPA recommends updates to the way in which NatCat risks are accounted for in insurers' standard formula calibrations. It supports the formalisation of an approach to re-assess and, where material, recalibrate the NatCat solvency capital requirement parameters on a regular basis. In particular, and drawing on new scientific insights, recent climate data and advanced risk modelling, EIOPA proposes adjusting standard formula risk factors for perils like flood, hail, earthquake and windstorm for certain regions. It also proposes expanding the number of countries considered.

EIOPA has submitted its opinion to the European Commission to consider the potential (re)calibration of the relevant standard formula parameters.

Opinion

18 FINANCIAL CONDUCT AUTHORITY

18.1 **Ban on pension transfer contingent charging and other remedies - FCA publishes evaluation paper** - *30 January 2025* - The FCA has published an evaluation paper (EP25/1) on the effect on market structure, pricing and uptake of advice as a result of its ban on contingent charging and other interventions. This follows introduction of the ban on contingent charging in the defined benefit (DB) pension transfer market in its June 2020 policy statement (PS20/6).

The FCA has also published a technical annex setting out the methodology and results of an econometric analysis of the remedies in PS20/6.

The FCA is particularly interested in assessing the impact on the size of the market for providing DB transfer advice, consumers' uptake of DB transfer advice and the fees they paid, and the level of ongoing product and advice charges consumers continue to pay and broader impacts. Overall, the paper suggests that the FCA’s package of policies has had the intended impact. Among other things, it finds that the intervention had a far greater impact on the volume of advice provided than on fees for advice. The FCA welcomes views on the paper.

Evaluation paper

FINANCIAL CRIME //

19 THE JOINT MONEY LAUNDERING STEERING GROUP

19.1 **Amendments to Part 1 of JMLSG guidance - published for consultation** - *28 January 2025* - The Joint Money Laundering Steering Group (JMLSG) has published, for consultation, proposed revisions to Part I of its anti-money laundering (AML) and counter-terrorist financing (CTF) guidance for the financial services sector. The proposed revisions include a new paragraph on Court of Protection orders and local authorities, and professional deputies, as well as an amendment concerning powers of attorney. There are also additions and amendments to the existing paragraphs on group companies, intermediaries acting as agent for a customer and outsourcing.

The proposed changes have been approved by the JMLSG board. The deadline for responses is 28 March 2025.

Press release

ENFORCEMENT //

20 FINANCIAL CONDUCT AUTHORITY

20.1 **Transaction reporting failures - FCA fines broker under UK MiFIR** - *29 January 2025* **-** The Financial Conduct Authority (FCA) has published a final notice and fined Infinox Capital Limited (the firm) £99,200 for failing to submit 46,053 transaction reports which risked market abuse going undetected. This is the first enforcement action against a firm for a breach of transaction reporting requirements since they became law under the UK Markets in Financial Instruments Regulation.

According to the press release, between 1 October 2022 and 31 March 2023, the firm failed to submit transaction reports for single-stock contracts for difference (CFD) trades executed through one of its corporate brokerage accounts. Although the firm identified its failure to submit these transaction reports following a third-party review, it did not proactively report the breach to the FCA. The FCA independently identified this discrepancy in transaction data submitted by the firm. The breach highlighted weaknesses in the firm's transaction reporting systems and controls for a high-risk investment product.

Press release

Final Notice

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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