

Financial Regulation Weekly Bulletin

20 February 2020 / Issue 1047

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. Financial Stability Board

- 1.1 Regulatory areas of focus - FSB letter to G20 Finance Ministers and Central Bank Governors - 18 February 2020** - The Financial Stability Board (FSB) has published a letter from Randal K. Quarles (Chair of the FSB) to the G20 Finance Ministers and Central Bank Governors, outlining key areas of regulatory focus ahead of their upcoming meeting in Riyadh, Saudi Arabia.

The letter notes that the global financial system is facing an array of new regulatory challenges that require the FSB's attention, including: (i) transitioning from the London interbank offered rate (LIBOR) by the end of 2021; (ii) the increasing provision of financial services by large technology firms and the use of technology in financial regulation and supervision; (iii) developing an appropriate regulatory and supervisory response to so-called 'stablecoins'; (iv) improving the efficiency and inclusivity of cross-border payment systems; (v) the financial stability vulnerabilities associated with increasing non-bank financial intermediation; and (vi) finalising, and evaluating the effectiveness of, the post-crisis regulatory framework.

[FSB letter to G20 Finance Ministers and Central Bank Governors on key areas of focus](#)

[Webpage](#)

[Press release](#)

2. European Systemic Risk Board

- 2.1 Cyber risk - ESRB publishes report on financial stability implications - February 2020** - The European Systemic Risk Board (ESRB) has published a report on the systemic financial stability implications of cyber risk. Cyber-attacks and associated incidents are estimated to have cost the global economy between \$45 billion to \$654 billion in 2018.

The report notes that cyber risk can be differentiated from other sources of operational risk because of the speed and scale of its propagation and the intent of its perpetrators. A cyber incident might evolve into a systemic risk to threaten financial stability through the interconnectedness of information systems across sectors and borders. Incidents could also become systemic because of a weakening in confidence in the financial system leading to an unwillingness to lend by financial institutions.

The ESRB intends to continue to evaluate the costs and benefits of different policy options aimed at reducing systemic cyber risk.

[ESRB report on the systemic financial stability implications of cyber risk](#)

[Press release](#)

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3. Financial Conduct Authority

- 3.1 Annual Sector Views 2020 - published by the FCA - February 2020** - The FCA has published its Sector Views analysing the changing landscape within each financial market it regulates and the impact on consumers, competition and market integrity. The Sector Views will feed into the FCA's Business Plan 2020/21. The seven sectors covered are: (i) retail banking and payments; (ii) retail lending; (iii) general insurance and protection; (iv) pensions savings and retirement income; (v) retail investments; (vi) investment management; and (vii) wholesale financial markets. Christopher Woolard, Executive Director of Strategy and Competition at the FCA and interim Chief Executive designate, noted: *"What is clearly apparent from the Sector Views, is that many of the harms we are seeing are created by a significant number of smaller firms we regulate or firms beyond our remit"*.

[FCA Sector Views 2020](#)

[Webpage](#)

[Press release](#)

See the **Banking and Finance** section for an item on an interim report published by the High-level Forum on the Capital Markets Union.

Banking and Finance

4. European Commission

- 4.1 CRR - European Commission adopts Implementing Regulation amending institutions' liquidity reporting requirements - 14 February 2020** - The European Commission has adopted an Implementing Regulation amending Implementing Regulation (680/2014/EU) on the supervisory reporting of institutions' liquidity coverage requirement (LCR) under the Capital Requirements Regulation (575/2013/EU) (CRR). It is based on the European Banking Authority's (EBA's) final draft implementing technical standards (ITS) on supervisory reporting, published in May and July 2019.

The Implementing Regulation amends the supervisory reporting requirements to:

- reflect changes to common reporting (COREP) following the implementation of the new securitisation framework;
- reflect amendments made to the reporting of the LCR by Delegated Regulation (EU) 2018/1620; and
- enable the monitoring of institutions' non-performing exposures (NPEs) strategies, profit and loss items and financial reporting under International Financial Reporting Standard (IFRS) 16 on leases, in accordance with financial information reporting (FINREP) on NPEs and forbearance.

The Implementing Regulation will enter into force on the day after its publication in the Official Journal of the European Union, notwithstanding that the revised reporting requirements on: (i) own funds will apply from 30 March 2020; (ii) liquidity reporting will apply from 1 April 2020; and (iii) NPEs and financial information will apply from 1 June 2020.

[Commission Implementing Regulation amending Implementing Regulation \(EU\) 680/2014 on the supervisory reporting of institutions' LCR under CRR](#)

[Annexes](#)

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4.2 Capital Markets Union - High-level Forum publishes interim report - February 2020 - The High-level Forum on the Capital Markets Union (CMU), established by the European Commission in November 2019, has published an interim report setting out its vision for the future of the CMU. The High-level Forum comprises 28 experts in the field of financial markets who are mandated to propose targeted recommendations designed to further advance CMU policies and initiatives. While the interim report does not put forward any specific policy proposals, it addresses several broad policy areas, including:

- the creation of an institutional and regulatory framework to support the advancement of the European economy, including transitioning to a more sustainable economy and increasing financial resilience;
- facilitating a more sustainable financial future for EU citizens and entrepreneurs; and
- strengthening the euro as an international currency and becoming global leaders on sustainability objectives.

The report also notes that shortcomings, such as diverging rules and supervisory practices, fragmented infrastructure and distribution channels across EU member states “*may become all the more prominent after Brexit*”.

The High-level Forum intends to publish a final report in May 2020, containing a set of specific, targeted policy recommendations. The views expressed in the report are those of its membership and do not constitute the views of the European Commission, nor do they provide any indication of the European Commission's policy approach to the CMU.

[High-level Forum on the CMU interim report](#)

[Webpage](#)

[Press release](#)

5. Single Resolution Board

5.1 MREL - SRB launches consultation on policy changes - February 2020 - The Single Resolution Board (SRB) has launched a public consultation on proposed changes to its policy on the minimum requirement for own funds and eligible liabilities (MREL). The proposed changes would bring the policy in line with amendments introduced by the 2019 EU banking package, including the second Capital Requirements Regulation (EU) 2019/876 (CRR II), the fifth Capital Requirements Directive (EU) 2019/878 (CRD V), the second Bank Recovery and Resolution Directive (EU) 2019/879 (BRRD II) and the second Single Resolution Mechanism Regulation (EU) 2019/877 (SRM II). A number of areas are addressed, including: (i) calibration; (ii) subordination for resolution entities; (iii) internal MREL requirements for non-resolution entities; (iv) MREL requirements for co-operative groups; and (v) eligibility of liability issues under the law of third countries.

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The new policy changes will be phased in by 2024, with intermediate targets set for 1 January 2022 and 2023. The consultation period closes on 6 March 2020. Feedback will help the SRB prepare its Policy Statement, which it plans to publish in April 2020.

[SRB survey on proposed changes to its MREL policy](#)

[SRB consultation document on proposed changes to its MREL policy](#)

[Press release](#)

6. Bank of England

- 6.1 Standards Advisory Panel - Bank of England publishes minutes setting out approach to guidance for enhanced ISO messages - 17 February 2020** - The Bank of England has published the minutes of a meeting of its Standards Advisory Panel (SAP), held on 2 December 2019, in which the Bank and Pay.UK set out their approach to the development of thematic market guidance on the use of enhanced data ISO messages. Although the Bank and Pay.UK will facilitate and co-ordinate the guidance, it will be “owned” by industry.

Guidance for priority transactions will be issued by the end of 2020 to enable participants sufficient time for implementation before March 2022, the deadline by which all direct participants in CHAPS must be able to receive ISO 20022 enhanced messages. Guidance on other, lower priority, transactions will follow.

[The Bank of England SAP minutes on the development of market guidance for the use of enhanced data ISO messages](#)

7. Payment Systems Regulator

- 7.1 Confirmation of Payee - PSR publishes Policy Statement varying Specific Direction 10 - February 2020** - The Payment Systems Regulator (PSR) has published a Policy Statement (PS20/1) confirming its decision to vary Specific Direction 10 (SD10) on the implementation of Confirmation of Payee (CoP) (a process that ensures that the names of payment recipients are checked before payments are sent, with a view to preventing Authorised Push Payment scams). This follows the PSR’s consultation on varying SD10, published in January 2020. Among other things, the PSR has varied SD10 to include an additional basis for exemption, as consulted on.

The revised Specific Direction is addressed to members of the UK’s six largest banking groups to fully implement CoP by 31 March 2020.

[PSR Policy Statement varying SD10 on the implementation of CoP](#)

[Updated SD10 on the implementation of CoP](#)

[Responses to PSR consultation on varying SD10](#)

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8. Lending Standards Board

- 8.1 Standards of Lending Practice for business customers - LSB publishes report on its themed review of customers in financial difficulty - February 2020** - The Lending Standards Board (LSB) has published a report following its review of firms' compliance with the Standards of Lending Practice for business customers in financial difficulties, launched in 2017. The review, which was carried out in 2019, evaluated the way in which six firms managed business customers approaching, or already in, financial difficulty. In particular, it considered the key controls in place at the firms to ensure that the Standards were followed, including an assessment of each firms' governance, controls and oversight, and staff training.

The LSB identified several examples of good practice, but also highlighted areas for improvement, including in relation to the assessment of financially vulnerable business customers and early intervention strategies. The LSB believes that these improvements would facilitate more consistency, while also increasing the likelihood of good customer outcomes.

In response to its review, the LSB has issued individual action plans to all six firms. It intends to carry out a follow-up review of each firm, as well as further work focusing on other specific elements of the Standards of Lending Practice.

[LSB report on its themed review of firms' compliance with the Standards of Lending Practice for business customers in financial difficulty](#)

[Press release](#)

9. Recent Cases

- 9.1 Case C-686/18 Adusbef and others v Banca d'Italia and others**, Opinion of Advocate General Hogan, 11 February 2020

Legality of Italian legislation imposing a capital or asset threshold on co-operative "people's" banks - ability to defer or limit the redemption of shares - Capital Requirements Regulation (575/2013/EU) - Commission Delegated Regulation (EU) 241/2014

Advocate General Hogan has delivered an Opinion in relation to a request for a preliminary ruling on the legality of Italian legislation, under Article 10(1) of the CRR and Article 10 of Commission Delegated Regulation (EU) 241/2014, which sets an asset or capital threshold of €8 billion, above which a co-operative "people's" bank must be converted into a company limited by shares. The request for a preliminary ruling was made by the Italian court.

The reference also sought clarification of whether such a bank, once converted into a company limited by shares, could defer or limit the redemption of shares held by a withdrawing shareholder for an unlimited period and limit the associated amount in full or in part. The Advocate General held that EU legislation does not prevent such a threshold from being imposed or for the redemption of shares from being deferred or limited as described.

[Case C-686/18 Adusbef and others v Banca d'Italia and others, Opinion of Advocate General Hogan](#)

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Please see the **General** section for an item on the ESRB's report on the financial stability implications of cyber risk and on the FCA's Sector Views, which covers retail banking, payments and lending, among others.

Securities and Markets

10. European Commission

10.1 MiFID II/MiFIR - European Commission consultation on the review of the regulatory framework - 17 February 2020 - The European Commission has published a Consultation Paper on its 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). The European Commission is required to undertake a post-implementation review of the MiFID II regime under Article 90 of MiFID II and Article 52 of MiFIR.

The European Commission is seeking stakeholders' views on:

- their experiences of applying the MiFID II/MiFIR regime, including whether “*a targeted review of MiFID II/MiFIR with an ambitious timeline would be appropriate to address the most urgent shortcomings*”;
- various technical aspects of the current MiFID II/MiFIR regime, including the impact of potential changes to investor protection rules, actions to improve research coverage for small and medium-sized enterprises (SMEs) and the potential introduction of a new transparency tool allowing investors and their intermediaries a view of trading data across the EU (referred to as the ‘consolidated tape’); and
- any further regulatory aspects of the MiFID II/MiFIR regime which stakeholders wish to draw to the attention of the European Commission.

The European Commission has also published for consultation an impact assessment on the review.

The consultation period closes on 20 April 2020.

[European Consultation Paper on the review of the MiFID II/MiFIR regulatory framework](#)

11. European Securities and Markets Authority

11.1 CSDR - ESMA updates Q&As on implementation - 17 February 2020 - The European Securities and Markets Authority (ESMA) has updated its Q&As on the implementation of the Central Securities Depositories Regulation (909/2014/EU) (CSDR). The seven new Q&As clarify aspects of the implementation of the settlement discipline regime.

[ESMA updated Q&As on the implementation of CSDR](#)

[Press release](#)

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- 11.2 CRA Regulation - ESMA updates Q&As - 17 February 2020** - ESMA has updated its Q&As on the Credit Rating Agencies Regulation (462/2013/EU) (CRA Regulation). The latest Q&A clarifies the steps to be taken by a credit ratings agency (CRA) to ensure a sufficient level of quality and transparency in the periodic review of CRAs, conducted in accordance with Article 8(5) of the CRA Regulation.

[ESMA updated Q&As on the CRA Regulation](#)

[Press release](#)

- 11.3 MiFID II/MiFIR - ESMA updates Q&As on investor protection and intermediaries - 18 February 2020** - ESMA has updated its Q&As on the implementation of investor protection and intermediaries topics under MiFID II and MiFIR. The updated Q&As clarifies certain aspects relating to the sale of financial instruments subject to the Bank Recovery and Resolution Directive (2014/59/EU) (BRRD) resolution regime.

[ESMA updated Q&As on investor protection and intermediaries under MiFID II/MiFIR](#)

[Press release](#)

- 11.4 Prospectus Regulation - ESMA updates Q&As - 18 February 2020** - ESMA has updated its Q&As on the Prospectus Regulation (EU) 2017/1129. The two new Q&As clarify aspects of the application of Article 7(7), namely the length of summaries where there is more than one guarantor or where it relates to several securities.

[ESMA updates Q&As on the Prospectus Regulation](#)

[Press release](#)

12. European Central Bank

- 12.1 Transition from EONIA to €STR - ECB publishes working group report on the transfer of liquidity for cash and derivative products - 19 February 2020** - The European Central Bank (ECB) has published a report by its private sector working group on euro risk-free rates on the transfer of liquidity from euro overnight index average (EONIA) cash and derivatives products to the euro short-term rate (€STR). This follows the ECB's report on the impact of transitioning from the EONIA to the €STR for cash and derivative products, which was published in August 2019.

The report highlights that contracts referencing EONIA, with maturities beyond 3 January 2022, “entail significant risks” and therefore recommends that: (i) market participants should replace EONIA products with €STR products and reduce their EONIA-linked legacy exposures as soon as possible; and (ii) central counterparties (CCPs) should consider developments in the ‘nettability’ (compression) of €STR and EONIA. The report also encourages participants proactively to price in €STR, by default, rather than EONIA in order to accelerate the transition process.

The ECB working group expects a full migration from EONIA-linked to €STR-linked products.

[ECB working group report on the transfer of liquidity from EONIA cash and derivative products to the €STR](#)

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Please see the **General** section for an item on EIOPA publishing a report on the financial stability implications of cyber risk.

Insurance

13. European Insurance and Occupational Pensions Authority

13.1 Financial stability - EIOPA publishes Supervisory Statement on the impact of ultra-low and negative interest rates - 19 February 2020 - The European Insurance and Occupational Pensions Authority (EIOPA) has published a Supervisory Statement on the financial stability-related impact of the ultra-low and negative interest rate environment on the European insurance sector. EIOPA considers this to be one of the most important sources of systemic risk for insurers in the coming years. Among other things, EIOPA recommends:

- increased monitoring and supervision by national competent authorities (NCAs) of insurers identified as facing greater exposure to the low interest rate environment;
- further dialogue with NCAs to explore actions that might improve financial resilience;
- considering a restriction on the distribution of dividends might be necessary to improve financial resilience and maintain sound capital planning;
- paying particular attention to pre-emptive recovery and resolution planning to reduce the likelihood and impact of insurance failures; and
- a broadening of NCAs' analysis of the low interest rate environment.

[EIOPA Supervisory Statement on the financial stability impacts of ultra-low and negative interest rates on the European insurance market](#)

[EIOPA background note on Supervisory Statement](#)

[Webpage](#)

[Press release](#)

Please see the **General** section for an item on the FCA's Sector Views, which covers the pensions savings and retirement income, and general insurance sectors, among others.

Enforcement

14. Financial Conduct Authority

14.1 Penalties, remediation and our General Principles - speech by Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA - 13 February 2020 - Mark Steward (Executive Director of Enforcement and Market Oversight at the FCA) has delivered a speech on the FCA's approach to enforcement under the Decision Procedure and Penalties manual (DEPP), focusing on the importance and application of financial penalties, remediation and the FCA's Principles for Businesses. He covers a range of related topics, including:

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- the FCA's outcomes-based approach to enforcement and the imposition of penalties under the DEPP, including specific and general deterrence, just outcomes and the prevention of serious misconduct;
- the practical application of the FCA's Penalty Policy and the factors relevant to the calculation of financial penalties, including the seriousness of the misconduct, its deterrent effect and firms' responses to failings, including cooperation and remediation;
- the importance of the FCA's Principles for Businesses, which "*should be an integral part of firms' operational planning and decision-making at all levels*"; and
- an overview of recent 'non-regulatory cases' not involving the Principles or rules, including in relation to insider dealing, the operation of illegal collective investment schemes and illegal money lending.

[Speech by Mark Steward \(Executive Director of Enforcement and Market Oversight at the FCA\) on the FCA's approach to enforcement action and the imposition of financial penalties](#)

- 14.2 Unfair treatment of customers in arrears - FCA publishes Final Notice fining motor finance provider - 17 February 2020** - The FCA has published a Final Notice fining Moneybarn Ltd (a motor finance provider) £2.77 million for failing to treat fairly customers who had fallen behind with loan repayments while in financial difficulties. The FCA found that between April 2014 and October 2017, Moneybarn failed to: (i) communicate to customers the likely financial consequences of failing to keep up with repayments in a clear, fair and not misleading way; (ii) give customers the chance to clear their arrears over a realistic and sustainable period; and (iii) communicate clearly to customers their options for exiting their loans and the associated financial implications, which resulted in many customers incurring higher termination costs.

The FCA considered these failings to constitute serious breaches of Principles 6 (Customers' Interests) and 7 (Communications with clients) of the FCA's Principles for Businesses, particularly in light of the fact that Moneybarn specialises in providing motor finance to customers who are typically unable to access finance from mainstream lenders due to their personal circumstances. The FCA therefore considered these customers to be financially vulnerable and at greater risk of suffering detriment if they fell into arrears.

The firm did not dispute the FCA's findings and qualified for a 30% discount under the FCA's executive settlement policy procedure, without which the FCA would have imposed a penalty of approximately £4 million. Moneybarn has voluntarily provided redress of more than £30 million to all 5,933 customers potentially affected by its failings.

[FCA Final Notice fining Moneybarn Ltd £2.77 million for failing to treat customers fairly](#)

[Press release](#)

- 14.3 Unclear, unfair and misleading adverts - FCA publishes Supervisory Notice banning a motor finance firm's online adverts - 18 February 2020** - The FCA has published a second Supervisory Notice to Rix Motor Company Ltd (Rix) (a car finance credit broker), dated 27 December 2019, banning the firm from publishing a number of online adverts which were posted on three of the firm's websites and on social media. The FCA has the legal power to ban financial promotions under section 137S FSMA 2000.

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The FCA found that the adverts breached FCA rules requiring all financial promotions to be clear, fair and not misleading because: (i) representative examples of the cost of credit to the consumer were either missing from the advert or unlikely to be seen; (ii) the advert did not make clear whether consumers were dealing with a credit broker or a lender; and (iii) the advert did not specify the legal name of the firm as it appears on the Financial Services Register.

The FCA confirms that Rix has now withdrawn the offending adverts and that it has directed the firm not to breach these rules again. The FCA previously raised concerns with Rix about its online adverts in 2017 and 2018, which the firm subsequently addressed.

[FCA Supervisory Notice banning online adverts published by Rix Motor Company Ltd](#)

[Press release](#)

15. [Office of the Complaints Commissioner](#)

- 15.1 **FCA placing applications on hold for firms providing defined benefit pension transfer advice - Complaints Commissioner publishes final report - 18 February 2020** - The Financial Regulators Complaints Commissioner has published a final report, dated 28 January 2020, in which it fails to uphold a complaint made against the FCA for putting on hold an individual's application to cancel their firm's direct authorisation and to instead become an appointed representative (AR) of another firm, following difficulties in securing professional indemnity insurance. The FCA argued that any applications submitted to the FCA, by firms authorised to provide defined benefit pension transfer advice, would be placed on hold while it determined whether the practices and procedures of the firm are up to expected standards.

The Complaints Commissioner did not uphold the complaint against the FCA's decision to put the application on hold. However, the Commissioner states that a blanket policy of deferring applications, pending review, becomes less defensible the longer the deferrals last and urges the FCA to complete its reviews as soon as possible to enable applications to be considered.

[Complaint FCA00671 \(dated 28 January 2020\)](#)

[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.

If you would like to find out more about our Financial Regulation Group or require advice on a financial regulation matter, please contact one of the following or your usual Slaughter and May contact:

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