

FINANCIAL REGULATION WEEKLY BULLETIN

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

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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 EUROPEAN SECURITIES AND MARKETS AUTHORITY

- 1.1 **MiCA - Draft technical standards and guidelines published - 25 March 2024** - The European Securities and Markets Authority (ESMA) has published a final report (ESMA18-72330276-1634) on draft regulatory technical standards (RTS) and implementing technical standards (ITS) under the Regulation on markets in cryptoassets ((EU) 2023/1114), referred to as MiCA. The draft standards deal with the authorisation of cryptoasset service providers (CASPs) as well as the proposed acquisition of qualifying holdings in a CASP, among other things. ESMA has submitted the draft RTS and ITS to the European Commission, which has three months to decide whether to adopt them. A final report on the draft RTS on conflicts of interest for CASPs will be published at a later stage.

ESMA has also separately published a consultation paper (ESMA75-453128700-1002) on RTS and guidelines under MiCA. This package includes RTS on arrangements, systems and procedures for detecting and reporting suspected market abuse in cryptoassets as well as three sets of guidelines. The deadline for responses is 25 June 2024.

[Consultation Paper \(ESMA75-453128700-1002\)](#)

[Webpage](#)

[Press release](#)

[Final report on draft technical standards specifying certain requirements of MiCA \(ESMA18-72330276-1634\)](#)

[Webpage](#)

[Press release](#)

2 BANK OF ENGLAND

- 2.1 **Financial stability - FPC publishes record of meeting and outlines approach to operational resilience - 27 March 2024** - The Bank of England has published the summary and record of the meeting of its Financial Policy Committee (FPC) on 13 March 2024. The FPC welcomed progress on implementation of its recommendations on liability-driven investment (LDI) made in November 2022 and March 2023. It has also confirmed that it is maintaining the UK countercyclical capital buffer rate at 2%.

The FPC has also separately published a document on its approach to operational resilience. In short, it intends to continue its programme of cyber stress testing; it also plans to monitor the implementation and outcomes of the new critical third parties regime and to consider whether to set impact tolerances for additional vital services beyond payments.

[Financial policy summary and record of the Financial Policy Committee meeting on 13 March 2024](#)

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3 FINANCIAL CONDUCT AUTHORITY

- 3.1 Approach to appointment of statutory panel members - FCA publishes statement of policy - 22 March 2024** - The FCA has published a statement of policy outlining its approach to appointing and reappointing members to its statutory panels (including the Consumer Panel and the Practitioner Panel, among others). Its recruitment process to the panels seeks to enable it to appoint the best available candidates from as broad a pool as possible to meet diversity targets.

[FCA Statement of Policy: Panel Appointments](#)[Press release](#)

- 3.2 Financial promotions on social media - FCA publishes finalised guidance - 26 March 2024** - The FCA has published its finalised guidance (FG24/1) regarding the use of social media when promoting financial products or services online, following an earlier consultation (GC23/2) published in July 2023. The guidance reminds firms working with affiliate marketers that they are expected to be proactive in taking responsibility for how their affiliates communicate financial promotions. Firms remain responsible for the compliance of every promotion they make or cause to be made.

The guidance does not create new obligations but clarifies the FCA's expectations of firms and other persons (such as influencers and 'finfluencers') communicating financial promotions on social media. FG24/1 replaces the FCA's previous guidance on social media and customer communications (FG15/4), which was published in March 2015.

[FCA Finalised Guidance: Financial promotions on social media \(FG24/1\)](#)[Webpage](#)[Press release](#)

BEYOND BREXIT //

4 HM TREASURY

- 4.1 Smarter Regulatory Framework - HM Treasury publishes policy paper on next phase - 21 March 2021** - HM Treasury has published a policy paper outlining the next phase of work on the Smarter Regulatory Framework, which is, broadly, its project to replace assimilated law (formerly retained EU law) relating to financial services. HM Treasury has allocated this law to over 40 policy files and has prioritised its work by allocating the files to a number of tranches.

In the document, HM Treasury confirms the policy files on which it will focus in the next tranche of the SRF (tranche 3). These files concern assimilated law relating to:

- the Alternative Investment Fund Managers Directive (2011/61/EU) (AIFMD) and the UCITS Directive (2009/65/EC);

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- the revised Payment Services Directive ((EU) 2015/2366) (PSD2) and the second Electronic Money Directive (2009/110/EC) (2EMD);
- EMIR (648/2012) with a particular focus on Titles III, IV and V of EMIR relating to central counterparties;
- the Markets in Financial Instruments Regulation (600/2014) (UK MiFIR) and the MiFID II Directive (2014/65/EU), focusing on Commission Delegated Regulation (EU) 2017/565 (MiFID Org Regulation) and MiFIR provisions relating to transaction reporting; and
- the Capital Requirements Regulation (575/2013) (CRR), dealing with those parts of the CRR that are not affected by the implementation of Basel 3.1.

HM Treasury will also review the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/541) and the Equivalence Determinations for Financial Services (Amendment etc) (EU Exit) Regulations 2020 (SI 2020/1055). This exercise will ensure that onshored equivalence decisions are within the scope of the deference accountability mechanism introduced by the Financial Services and Markets Act 2023.

HM Treasury will communicate its approach to the remaining assimilated law and further tranches in due course.

[HM Treasury policy paper: Building a Smarter Financial Services Regulatory Framework for the UK: The next phase](#)

[Webpage](#)

BANKING AND FINANCE //

5 COUNCIL OF THE EUROPEAN UNION

- 5.1 **MREL reforms - Council of the EU adopts proposed Directive - 26 March 2024** - The Council of the EU has adopted the proposed Directive making targeted amendments to the Bank Recovery and Resolution Directive (2014/59/EU) (BRRD) and the Single Resolution Mechanism (SRM) Regulation (806/2014) concerning the minimum requirement for own funds and eligible liabilities (MREL). Also referred to as the Daisy Chains directive, it includes targeted proportionality requirements on the treatment of internal MREL in bank resolution groups.

The European Parliament adopted the Directive in February 2024. The Directive will enter into force on the 20th day following its publication in the Official Journal.

[Press release](#)

6 PAYMENT SYSTEMS REGULATOR

- 6.1 **Specific direction 12 and maintenance of free-to-use ATMs - PSR calls for views - 27 March 2024** - The Payment Systems Regulator (PSR) has issued a call for views on its second annual

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review of the specific direction issued to Link Scheme Holdings Ltd (LINK) on maintaining free-to-use (FTU) ATMs in the UK (specific direction 12 or SD12).

The call for views is open until 2 May 2024.

[Webpage](#)

7 RECENT CASES

7.1 *Farol Holdings Ltd and others v Clydesdale Bank Plc and another*, [2024] EWHC 593 (Ch), 19 March 2024

Business loans - Contract terms - Early termination - Misrepresentation

The High Court (Zacaroli J) has dismissed claims brought by four claimants against Clydesdale Bank PLC (the Bank) and its former parent, National Australia Bank Limited, following a 12-week trial heard from October to December 2023. The claims related to fixed rate loans provided to the claimants and offered more generally to business customers from around 1999 up to around 2012.

The claimants argued that the defendants had made fraudulent or negligent representations about the payment of break costs on the early repayment of the loans. In particular, it was contended that the Bank had not been entitled to charge them any such break costs under the applicable contractual terms. The claimants also argued that the defendants provided false and dishonest explanations of the nature and specific amount of the fixed interest rate costs payable under the loans. Two of the claimants relied upon the unfair relationship provisions under s.140A Consumer Credit Act. The Court concluded that both aspects of the claims failed.

[Farol Holdings Ltd and others v Clydesdale Bank Plc and another](#), [2024] EWHC 593 (Ch)

SECURITIES AND MARKETS //

8 EUROPEAN COMMISSION

8.1 **MiFIR Amending Regulation transitional provision - European Commission interpretative notice and ESMA guidance published - 27 March 2024** - The European Commission has published a communication (C(2024) 2083) on a draft interpretative notice on the transitional provision in Regulation (EU) 2024/791 (MiFIR Amending Regulation). The European Securities and Markets Authority (ESMA) has also published a public statement on the transitional provision (ESMA74-2134169708-7163).

The Commission points out that, in some cases, the new MiFIR provisions - which will apply on 28 March 2024 - must be supplemented by new or amended Commission delegated regulations to become fully operational and cannot be supplemented adequately by existing Commission delegated regulations. In those cases, the existing delegated regulations will continue to apply together with the MiFIR provisions that they supplement, as applicable before 28 March 2024. In

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particular, the rules on the double volume cap, as specified in Commission Delegated Regulation (EU) 2017/577 (RTS 3), will continue to apply.

The ESMA statement provides further guidance on the new rules that need to be supplemented by delegated regulations and those rules that are ‘self-executing’ (i.e., they do not need to be supplemented by delegated regulations to be effective).

[Approval of the content of a draft Commission Notice on the interpretation and implementation of the transitional provision laid down in Regulation \(EU\) 2024/791 of the European Parliament and of the Council of 28 February 2024 amending Regulation \(EU\) No 600/2014 as regards enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payment for order flow](#)

[Annex](#)[Press release](#)

9 EUROPEAN SECURITIES AND MARKETS AUTHORITY

9.1 EMIR 3 - ESMA publishes guidance on clearing obligation for third-country pension scheme arrangements - 27 March 2024 - The European Securities and Markets Authority (ESMA) has issued a public statement noting that it expects national competent authorities (NCAs) not to prioritise supervisory action related to the clearing obligation for derivative transactions with third-country pension scheme arrangements that are exempt from the clearing obligation under their national law.

The Council and the European Parliament reached provisional agreement on legislative proposals to amend EMIR, known as EMIR 3, on 7 February 2024. The agreement on the EMIR 3 text provides for an exemption regime from the clearing obligation when a pension scheme arrangement established in a third country is exempted from the clearing obligation under its national law.

[ESMA statement: Deprioritisation of supervisory actions on the EMIR clearing obligation for third-country pension scheme arrangements in light of the agreement on the EMIR review](#)

[Press release](#)

ASSET MANAGEMENT //

10 EUROPEAN COMMISSION

10.1 ELTIF Regulation - European Commission announces intention to adopt amended draft RTS - 26 March 2023 - The European Commission has published a Communication to the Commission (C(2024) 1375 final) (dated 6 March 2024) explaining that it intends to adopt, with amendments, the European Securities and Markets Authority’s (ESMA) draft regulatory technical standards (RTS) under the Regulation on European Long-Term Investment Funds ((EU) 2015/760) (ELTIF

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Regulation) as amended by Regulation (EU) 2023/606. In short, the Commission has sought to take a more proportionate approach to the drafting of the RTS, particularly the calibration of requirements relating to redemptions and liquidity management tools.

[Communication to the Commission on the intention to adopt with amendments the Commission Delegated Regulation supplementing Regulation \(EU\) 2015/760 with regard to RTS specifying obligations concerning hedging derivatives, redemption policy and liquidity management tools, trading and issue of units or shares of an ELTIF, and transparency requirements and repealing Delegated Regulation \(EU\) 2018/480](#)

[Annex](#)

11 FINANCIAL CONDUCT AUTHORITY

- 11.1 Using a host model to manage AIFs - FCA publishes findings from review - 25 March 2024** - The FCA has published a new webpage setting out the findings from a review conducted during 2023 of alternative investment fund managers (AIFMs) that use a host model to manage alternative investment funds (AIFs). The webpage notes that this model - referred to as AIFM hosting - can involve AIFMs employing staff on secondment from a third party who help the AIFM to carry out regulated tasks (for example, portfolio management of the AIF's assets or administrative jobs such as dealing with customers). In some cases, the AIFM may be a principal firm and the person seconded to the AIFM may come from one of its appointed representatives (ARs).

The FCA found potential harm from a lack of oversight of seconded staff, insufficient involvement in investor due diligence and inadequacies in capital adequacy calculations. It also found misleading claims from third parties that had seconded staff to an AIFM. For example, it found cases of ARs marketing themselves as investment managers, wealth managers and stockbrokers, despite only seconded staff being permitted to carry out these functions on behalf of the AIFM.

Given these findings, the FCA emphasises the need for firms operating the AIFM host model to supervise and monitor the actions of all their employees, including secondees. Firms should also undertake regular reviews and audits of the files of any third parties they delegate due diligence functions to, including fund administration and investor onboarding, to make sure they comply with their financial crime obligations. While there is no explicit requirement to hold more capital when taking on new ARs, AIFMs should fully consider the risks when assessing adequate financial resources and preparing their internal capital and risk assessment.

[Webpage](#)

12 HM TREASURY TECHNOLOGY WORKING GROUP

- 12.1 Fund tokenisation in UK asset management - report published - 26 March 2024** - The Investment Association has published its second interim report, drafted by HM Treasury's Technology Working Group, on fund tokenisation and its impact on the asset management sector.

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The report identifies two key use cases for fund tokenisation. The first concerns fully on-chain investment markets, with tokenised funds investing in tokenised securities such as fixed income or other asset classes. The second relates to the use of tokenised money market fund units as collateral where eligible under the UK regime for non-centrally cleared derivative contracts. The report also considers the possible next stages of development for fund tokenisation, such as on-chain fund settlement via digital money. The appendices of the report provide a model fund prospectus disclosure for firms to use and a summary of emerging technical standards that will enable interoperability.

The third phase of the Group's work will focus on how the UK's investment management sector can harness the opportunities presented by AI.

[Technology Working Group report: Further fund tokenisation: achieving Investment Fund 3.0 through collaboration](#)

[Press release](#)

INSURANCE //

13 EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY

13.1 Reporting taxonomy - EIOPA launches survey on implementation date - 25 March 2024 - The European Insurance and Occupational Pensions Authority (EIOPA) has launched a survey on its taxonomy implementation starting dates. In particular, it is considering the challenges associated with a potential starting date of a new supervisory reporting taxonomy of 1 January (rather than Q4 of the current year).

The survey closes on 14 June 2024.

[EIOPA survey: taxonomy implementation](#)

[Webpage](#)

14 FINANCIAL CONDUCT AUTHORITY AND DEPARTMENT FOR WORK AND PENSIONS

14.1 Pensions dashboard - FCA publishes further Consultation Paper (CP24/4) and DWP publishes guidance on connection - 26 and 27 March 2024 - The FCA has published a Consultation Paper (CP24/4) on further proposals for the regulatory framework for firms operating a pension dashboard service (PDS). It is consulting on proposed new guidance in its Perimeter Guidance manual (PERG) to help firms understand the scope of the new regulated activity of operating a PDS. Legislation bringing the activity within the scope of regulation came into force on 11 March 2024, as previously reported in this bulletin.

There are two substantive changes to the FCA's original proposals. First, firms will be required to present the consumer with choices for their initial next steps after viewing their pensions data on a PDS, and to provide certain communications that will help ensure consumers can take appropriate care when their selected next step takes them outside the FCA-regulated PDS. It has

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also amended its data export proposals to make delegated access the single, consistent route for consumers to share their dashboard data with an FCA-regulated investment adviser. The deadline for responses is 8 May 2024.

The Department for Work and Pensions (DWP) has separately published guidance relating to the pension dashboard connection deadline. This sets out a staged timetable for occupational pension schemes and personal and stakeholder pension providers to be connected to the pensions dashboard ecosystem.

[FCA Consultation Paper: The regulatory framework for pensions dashboard service firms: further consultation \(CP24/4\)](#)

[Webpage](#)

[DWP: Pensions dashboards: guidance on connection: the staged timetable](#)

14.2 Claims-handling processes for total-loss claims - FCA publishes multi-firm review findings - 27 March 2024 - The FCA has published the findings from its multi-firm review into insurers' claims-handling processes for valuing vehicles that have been stolen or written-off (total-loss claims).

The FCA undertook the review after seeing evidence that some consumers are being offered settlement values lower than a fair estimate of their vehicle's market value. The FCA's findings consider good and bad practices related to the valuation of vehicles and the outsourcing of the claims handling process, among other things. While the consumer duty was not in force during the period under review, the FCA comments where it saw practices that may have fallen short of these requirements.

The FCA expects senior managers to consider the findings to ensure that processes meet requirements.

[FCA: Findings of multi-firm review into insurers' valuation of vehicles](#)

[Press release](#)

FINANCIAL CRIME //

15 RECENT CASES

15.1 *CCP Graduate School Ltd v National Westminster Bank plc and another*, [2024] EWHC 581 (KB), 14 March 2024

App fraud - Retrieval duty - Quincecare duty

This case concerned an alleged authorised push payment (APP) fraud perpetrated between 13 September and 12 October 2016. The claimant issued proceedings against both the first and second defendants (the sending PSP and receiving PSP respectively), alleging that the first defendant had breached its so-called *Quincecare* duty and that the second defendant owed and

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breached some other duty of care owed to the claimant by allowing sums transferred to it by the first defendant to be removed.

The defendants made an application for reverse summary judgment and strike out. Following the Supreme Court's judgment in *Philipp v Barclays Bank UK plc* [2023] UKSC 25, the claimant made a cross-application to amend its case against both defendants to include breach of a duty to take reasonable steps to retrieve or recover the sums paid out as a result of an APP fraud. The High Court summarily dismissed the claim against the sending PSP (on the basis that it was statute-barred under the Limitation Act 1980) but refused to strike out the retrieval duty claim against the receiving PSP (which was not statute-barred).

[CCP Graduate School Ltd v National Westminster Bank plc and another, \[2024\] EWHC 581 \(KB\)](#)

16 OFFICE OF FINANCIAL SANCTIONS IMPLEMENTATION

16.1 Financial sanctions compliance in the UK - OFSI publishes survey - 25 March 2024 - The Office of Financial Sanctions Implementation (OFSI) has published a survey aimed at gathering industry perspectives and understanding threats to financial sanctions compliance in the UK. This survey will be open until 12 April 2024.

[OFSI Threat Assessment: Threats to Financial Sanctions Compliance in the UK](#)

17 NATIONAL CRIME AGENCY

17.1 SARs Portal - NCA updates guidance - 26 March 2024 - The National Crime Agency (NCA) has published the following updated Suspicious Activity Reports (SARs) Portal resources relating to the new online portal:

- [FAQs for organisations and individuals that submit SARs](#);
- [an overview of the new SAR portal](#); and
- [guidance on how to register to the new SAR portal](#).

[SAR Portal FAQs](#)

[SAR Portal Overview](#)

[SAR Portal: How to Register](#)

ENFORCEMENT //

18 EUROPEAN CENTRAL BANK

18.1 Internal model breaches - ECB imposes fines - 22 March 2024 - The European Central Bank (ECB) has published a decision imposing two administrative penalties on Confédération Nationale

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du Crédit Mutuel (the bank), amounting to EUR 3,540,000 for breaching requirements set out in two ECB decisions on internal models.

The ECB found that, between May 2021 and April 2022, when using its internal models to determine its risk-weighted assets, the bank did not apply floors that had been set by the ECB in two internal model decisions for calculating credit risk for certain exposures. Underestimating risk-weighted assets means the bank reported a higher Common Equity Tier 1 ratio than it should have done. Among other things, this prevented the ECB from having a comprehensive view of the bank's risk profile. Out of the severity categories "minor", "moderately severe", "severe", "very severe" and "extremely severe", the ECB classified one of the breaches as moderately severe and the other as minor.

The bank may challenge the ECB's decision before the Court of Justice of the European Union.

[Imposition of two administrative penalties on Confédération Nationale du Crédit Mutuel](#)**[Press release](#)****19 EUROPEAN SECURITIES AND MARKETS AUTHORITY**

19.1 Conflicts of interest failures under CRA Regulation - ESMA issues fine - 22 March 2024 - The European Securities and Markets Authority (ESMA) has published a public notice (ESMA43-1868696574-745) relating to breaches of the CRA Regulation (1060/2009) by Scope Ratings GmbH (the firm) together with the related decision of its Board of Supervisors (ESMA43-1868696574-770). ESMA has fined the firm a total of EUR 2,197,500 for five separate breaches of the CRA Regulation on handling conflicts of interest. Among other things, the firm's policies and procedures on avoiding and managing conflicts of interest were found to be inadequate.

The firm can appeal the decision to the Board of Appeal of the European Supervisory Authorities.

[Decision of the Board of Supervisors: Scope Ratings GmbH](#)**[Webpage](#)****20 FINANCIAL CONDUCT AUTHORITY**

20.1 Unauthorised investment scheme - FCA charges four individuals - 22 March 2024 - The FCA has commenced criminal proceedings against four individuals for running an unauthorised investment scheme and making misleading representations about the purposes to which investors' money would be used and expected returns. The FCA alleges that, between May 2015 and July 2019, the individuals claimed that capital raised from investors would be paid towards the costs of, or otherwise invested in, a genuine water extraction and bottled water production.

The FCA has charged the four individuals with multiple counts of conspiracy to commit fraud by false representation, with two of the individuals also charged with money laundering.

The individuals are due to appear in court on 3 April 2024.

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

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

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

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

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:

| | |
|------------------|--|
| Jan Putnis | jan.putnis@slaughterandmay.com |
| Nick Bonsall | nick.bonsall@slaughterandmay.com |
| David Shone | david.shone@slaughterandmay.com |
| Kristina Locmele | kristina.locmele@slaughterandmay.com |
| Sabine Dittrich | sabine.dittrich@slaughterandmay.com |

London
T +44 (0)20 7600 1200
F +44 (0)20 7090 5000

Brussels
T +32 (0)2 737 94 00
F +32 (0)2 737 94 01

Hong Kong
T +852 2521 0551
F +852 2845 2125

Beijing
T +86 10 5965 0600
F +86 10 5965 0650

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For further information, please speak to your usual Slaughter and May contact.

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