SLAUGHTER AND MAY

Financial Regulation Weekly Bulletin

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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

General

1. European Commission

1.1 Sustainable finance - European Commission TEG publishes final report on EU taxonomy for climate change mitigation and adaptation – *9 March 2020* – The European Commission Technical Expert Group on Sustainable Finance (TEG) has published a report on the EU taxonomy for climate change mitigation and adaptation. This follows the TEG's first technical report, published in June 2019, on technical screening criteria for economic activities which can substantially contribute to climate change mitigation or adaptation, and subsequent feedback received in summer 2019.

The report contains recommendations on the overarching design of the EU taxonomy that the TEG has developed and guidance on how companies and financial institutions can make disclosures using the taxonomy. This is supplemented by a technical annex with an updated list of technical screening criteria.

European Commission TEG final report on EU taxonomy for climate change mitigation and adaptation

Technical annex

Updated webpage

2. HM Government

2.1 Chancellor of the Exchequer delivers Budget 2020 – *March 2020* – the Chancellor of the Exchequer, Rishi Sunak, delivered the Budget 2020 on 11 March 2020. Financial services-related aspects include:

- Financial Services Bill: the Financial Services Bill, announced in the Queen's Speech, will be introduced later in the current parliamentary session. It is intended to: implement the remaining Basel III banking standards and provide a more proportionate prudential regime for investment firms; introduce a simplified regime for overseas funds to be marketed and sold in the UK; and provide long-term market access between the UK and Gibraltar (see the 'Financial Services Bill' item below for further information);

- Financial Services Future Regulatory Framework Review: the government is reviewing the UK's regulatory regime to enhance coordination between regulators. HM Treasury has published a document summarising the responses to its call for evidence and setting out the next steps and phase of work on this issue (see the 'Financial Services Future Regulatory Framework Review' item below for further information);

- Fintech sector: the government has invited Ron Kalifa OBE to lead a major review into the fintech sector to identify what more industry and government can do to support growth and competitiveness, to ensure that the UK maintains its global leadership in this sector. It has also published a discussion paper on the potential introduction of a central bank digital currency (See the 'Central Bank digital currency' item in the 'Banking and Finance' section below for further information). The government intends to consult on bringing certain cryptoassets into the scope of the financial promotions regulatory regime and on the broader regulatory approach to cryptoassets, including the challenges posed by 'stablecoins';

- Payments Landscape Review: HM Treasury, working alongside the regulators and the Financial Policy Committee, is leading a Payments Landscape Review to ensure that the UK's payments infrastructure and regulation are keeping pace with rapid developments in technology. As part of this review, HM Treasury will shortly be publishing a call for evidence to ask what more could be done by the government, industry and regulators to support a more innovative and resilient payments system;

- Review of UK funds regime: there will be a review of the UK funds regime this year covering direct and indirect tax, as well as regulation, which will consider whether any policy changes might be needed. This includes the consultation currently in progress on whether there are tax changes that could help make the UK a more attractive location for companies used by funds to hold assets (which closes on 19 May 2020);

- Regulation of pre-paid funeral plans: HM Treasury has published the response to its consultation on the regulation of pre-paid funeral plans, which indicates it intends to legislate to bring funeral plan providers within the FCA's jurisdiction (see the 'Pre-paid funeral plans' item below for further information);

- Credit unions: the government will bring forward legislation to allow credit unions to offer a wider range of products and services to their members;

- Money Laundering Regulations 2017: firms subject to the Money Laundering Regulations 2017 will be required to pay a new levy to help fund new government action to tackle money laundering and to ensure it delivers the reform it is committed to under its Economic Crime Plan. The government intends to consult on the levy in Spring 2020;

- Open finance and small and medium-sized enterprises (SMEs): HM Treasury intends to convene a summit with those 'at the cutting edge of industry innovation' to establish what further steps are required to allow SMEs to share data and obtain access to finance; and

- Reforming Regulation Initiative: the government is inviting input on regulatory reform from businesses and the public through its Reforming Regulation Initiative.

Budget 2020

Related material

Speech

3. HM Treasury

3.1 **Financial Policy Committee - HM Treasury publishes financial stability remit and recommendations** – *11 March 2020* – As part of the Budget 2020, the Chancellor of the Exchequer, Rishi Sunak has written a letter to Mark Carney (Governor of the Bank of England) setting out the remit and recommendations for the Financial Policy Committee (FPC) in respect of the Bank's Financial Stability Objective, as he is required to do at least once a year under the Bank of England Act 1998. In relation to Brexit, the Chancellor states that the FPC should continue to implement robust prudential standards in the UK irrespective of the nature of the UK's future relationship with EU, maintaining a level of resilience at least as high as the current standard. The letter also reiterates the government's commitment to strong, sustainable and balanced growth, the importance of regulating the non-bank financial sector, the role of the FPC in supporting the government's Green Finance Strategy, and the need for continued coordination with the Monetary Policy Committee (MPC).

Letter from Rishi Sunak (Chancellor of the Exchequer) to Mark Carney (Governor of the Bank of England) setting out remit and recommendations for the Financial Policy Committee

Press release

3.2 **Financial Services Bill - HM Treasury publishes policy statement on prudential standards, and consultations on overseas fund regime and long-term UK/Gibraltar market access** – *March 2020* – As part of the Budget 2020, HM Treasury has published three documents in relation to the Financial Services Bill, which the Budget confirms will be introduced later in the current Parliamentary session. The Bill is intended to enable the implementation of the remaining Basel banking standards and a more proportionate prudential regime for investment firms; support the asset management industry by simplifying the process for overseas investment funds seeking to market into the UK; and provide long-term market access between the UK and Gibraltar for financial services firms following Brexit.

Prudential standards

HM Treasury has published a policy statement indicating that it intends to take powers to enable:

- the implementation of the remaining Basel III standards that will not be incorporated into UK legislation by the end of the implementation period. The Capital Requirements Directive ((EU) 2019/878) (CRDV) will be transposed into UK law by the current transposition date of 28 December 2020 and the government will implement updated prudential rules reflecting the remaining provisions of the Capital Requirements Regulation II ((EU) 2019/876) (CRRII) applying after the implementation period;

- the implementation of the most recent revisions to the Basel standards which are not included in CRDV and CRRII; and

- the introduction of an updated prudential regime for investment firms in the UK, given that the recently introduced EU regime recently introduced through the Investment Firms Directive ((EU) 2019/2034) (IFD) and Investment Firms Regulation ((EU) 2019/2033) (IFR), will only apply in the EU from June 2021 and, therefore, will not apply in the UK by the end of the implementation period.

Overseas funds regime

HM Treasury has published a consultation setting out its proposals for a permanent overseas funds regime, intended to establish a more appropriate basis for the recognition of such funds, and to simplify the process for these fund to market and sell to UK investors, post-Brexit. The intention is that the proposed regime will apply after the temporary regime, already introduced by the government, comes to an end. The temporary regime will allow EU funds to continue marketing in the UK for a limited period after the end of the implementation period.

HM Treasury has indicated it will analyse responses to the consultation and respond in due course.

UK/Gibraltar long-term market access

HM Treasury has also published a consultation on its proposals for a long-term regime, the 'Gibraltar Authorisation Regime' (GAR), to allow Gibraltar-based financial services firms to access the UK market as 'authorised persons' under FSMA 2000 without having to apply for full authorisation from the UK regulators.

The regulated activities for which market access will be granted and for which such firms must already be authorised by the Gibraltar Financial Services Commission (GFSC) will be specified and are anticipated to be a sub-set of those activities under the FSMA 2000 (Regulated Activities) Order 2001 (SI 2001/544) (RAO). Firms authorised under the GAR will be able to carry on these regulated activities on a cross-border basis or via a UK branch.

HM Treasury has indicated it will analyse responses to the consultation and respond in due course.

Policy statement: Prudential standards in the Financial Services Bill

Webpage **(prudential standards)**

Financial Services Bill Consultations

Consultation on market access arrangements for financial services between the UK and Gibraltar

Webpage (market access arrangements for Gibraltar)

Consultation on overseas funds regime

Webpage (overseas funds regime)

3.3 **Financial Services Future Regulatory Framework Review - HM Treasury publishes responses to call for evidence on regulatory coordination** – *March 2020* – As part of the Budget 2020, HM Treasury has published a document summarising the responses received to its call for evidence, setting out the next steps, and explaining the next phase of work on regulatory coordination.

Phase I of the Review

The call for evidence was the first phase of HM Treasury's Financial Services Future Regulatory Framework Review (the Review), launched in July 2019, and intended to review how the UK's regulatory framework needs to adapt over the coming years to be fit for the future.

The document reports that responses to HM Treasury's call for evidence indicated that the effectiveness of regulatory coordination in the UK could be enhanced. Key themes include:

- regulatory coordination should seek to reduce the cumulative and significant impact on firms arising from regulatory change and, in particular, the volume and timing of regulatory initiatives;
- where the policies or objectives of one public body overlap with the remit or objectives of another, there is a risk of unintended interactions which need to be managed;

- responding to regulatory consultations can be resource intensive for financial services firms and, therefore, the publication of multiple consultations in a short period should be avoided where possible;
- data requests are also resource intensive for firms and the UK regulators should work together to ensure such requests are targeted, proportionate and only made where they genuinely aid regulation and supervision; and
- automation of supervisory engagement, such as the submission of firm data, could reduce the resources that firms need to allocate to supervisory compliance and regulators should work with the financial services industry to exploit the opportunities offered by regulatory technology (RegTech) to make regulation and supervision more effective, both for firms and the regulators.

Following these responses, to improve the effectiveness of regulatory coordination arrangements and at HM Treasury's request, the Bank of England, the PRA, the FCA and the Payment Systems Regulator have proposed a new consolidated 'forward-look' of upcoming regulatory initiatives in the form of a 'Regulatory Initiatives Grid' (the Grid). The intention of the Grid is to provide a more effective structure within which HM Treasury and the regulators will work together to identify peaks in regulatory developments and provide stakeholders, including the financial services industry, with a clearer picture of upcoming regulatory initiatives so they are better placed to plan for them.

The Grid will be launched in summer 2020 and provide an indicative two-year forward look of major upcoming regulatory initiatives affecting the financial services sector, which will be published bi-annually. It will be managed by a coordinating forum, the Financial Services Regulatory Initiatives Forum (the Forum), comprising members including the Bank of England, the PRA, the FCA, the Competition and Markets Authority (CMA) and HM Treasury as an observer. The Information Commissioner's Office, The Pensions Regulator and the Financial Reporting Council will be invited to attend and contribute on an ad-hoc basis. The Forum's functioning will be reviewed after one year and improvements considered on the basis of stakeholder feedback.

<u>Phase II of the Review</u>

Phase II of the Review will consider the development of a more coherent approach to UK financial services regulation. The document states that the UK's withdrawal from the EU provides an opportunity to develop a more coherent, agile regime which is better equipped to meet the specific regulatory needs of UK firms, markets and consumers (particularly given that the implementation of EU requirements has led to a fragmented set of requirements for such firms).

The aim of Phase II is to adapt the regulatory framework so it provides a clearer split of regulatory responsibilities. It will also explore how the UK regulators can take the lead in designing and implementing the specific requirements that apply to financial services firms, while ensuring there is appropriate democratic policy input.

This phase of the Review will form part of the government's upcoming white paper on financial services, to be published in the spring 2020.

Responses to the call for evidence on regulatory coordination

Updated Webpage

3.4 **Pre-paid funeral plans - HM Treasury publishes responses to consultation on regulation of pre-paid funeral plans** – *March 2020* – As part of the Budget 2020, HM Treasury has published a document summarising the responses received to its consultation on regulation of the pre-paid funeral plan market. This follows its call for evidence which confirmed that consumer detriment is present in the market and there is a need for compulsory regulation of the sector. The document sets out the government's final policy approach to amending the legislative framework to bring funeral plan providers within the remit of the FCA. The government plans to lay the necessary secondary legislation before Parliament shortly, and the full regulatory framework will fully come into force 18 months after the legislation is made.

Consultation response: Regulation of pre-paid funeral plans

Updated webpage

4. Treasury Committee

4.1 **Appointment of the Governor of the Bank of England - Treasury Committee publishes report** – *5 March 2020* - The House of Commons Treasury Committee has published a report on the appointment of Andrew Bailey to the position of Governor of the Bank of England. The report concludes that the Committee is satisfied that Mr Bailey has the professional competence and personal independence to be appointed as Governor of the Bank of England. Mr Bailey will succeed Mark Carney from 16 March 2020 on an eight-year term.

Treasury Committee report on the appointment of Andrew Bailey as the Governor of the Bank of England

Press release

4.2 **Helping consumers understand the 'carbon footprint' of financial products - Treasury Committee publishes letters to and responses from FCA and Bank of England** – *10 March 2020* – The House of Commons Treasury Committee has published a letter from its Chair, Rt Hon. Mel Stride MP, to Andrew Bailey (Chief Executive Officer of the FCA) and Mark Carney (Governor of the Bank of England) on actions the FCA and the Bank of England could take to help consumers understand and navigate the sustainability and climate risk aspects of financial markets. The letter requests responses on:

- potential disclosure requirements to help consumers understand the 'carbon footprint' of their investments;
- whether climate risk is being accurately priced by firms, and whether it could undermine the safety and soundness of firms and the UK's financial stability; and
- whether the Bank should consider requiring firms to hold additional capital against assets that are particularly exposed to climate risk (a 'brown penalising factor').

The FCA, in its response, agreed that there is currently insufficient transparency and clarity concerning the climate-related exposures of consumer investments and indicated its support for developing approaches to help consumers when making investment decisions. The Bank of

England, in its response, agreed that there is a risk to the viability of carbon-related assets if commitments to achieving net-zero carbon emissions by 2050 are realised, and indicated that it is exploring the option of introducing a brown penalising factor.

Letter from Rt Hon. Mel Stride MP to Andrew Bailey on helping consumers understand the 'carbon footprint' of financial products

Letter from Rt Hon. Mel Stride MP to Mark Carney on helping consumers understand the 'carbon footprint' of financial products

Response from Andrew Bailey to Rt Hon. Mel Stride MP

Response from Mark Carney to Rt Hon. Mel Stride MP

Treasury Committee Inquiry into Decarbonisation and Green Finance

Press release

5. Bank of England

5.1 COVID-19: Bank of England announces measures to respond to economic shock from COVID-19 – *11 March 2020* – The Bank of England's three policy committees (the MPC, the FPC and the Prudential Regulation Committee (PRC)) have announced a package of measures to help UK businesses and households weather the economic disruption which COVID-19 is anticipated to bring. This is in order to minimise the long-term economic harm that could be caused by disruptions to supply chains and weaker economic activity.

The MPC voted unanimously, in its special meeting on 10 March 2020, to reduce the Bank's base rate (the Bank Rate) by 50 basis points to 0.25%. It has also introduced a new Term Funding scheme with additional incentives for SMEs, which is to be financed by the issuance of central bank reserves. It will offer four-year funding of at least 5% of participants' stock of real economy lending at interest rates very close to the Bank Rate.

The FPC has reduced the UK countercyclical capital buffer rate to 0% of banks' exposure to UK borrowers with immediate effect, in order to maintain a supply of credit to UK businesses to cover this potentially challenging period. The rate had previously been 1%, and had been due to be increased to 2% by December 2020. This decreased rate is expected to be maintained for at least 12 months.

In support of the measures announced by the FPC, the PRA has released a statement setting out its supervisory expectation that banks should not increase dividends or other distributions, such as bonuses. This is to ensure that all elements of the banks' capital and liquidity buffers will be available for drawing down where necessary to support the economy.

Press release

Press conference

Statement by the PRA accompanying measures announced by the Financial Policy Committee

TFSME Market Notice

6. Financial Conduct Authority

6.1 **FCA Consultation Paper CP20/3: Proposals to enhance climate-related disclosures by listed issuers and clarify existing disclosure obligations** – *6 March 2020* – The FCA has published a Consultation Paper (CP20/3) setting out its proposals to require all commercial companies with a premium listing to either make climate related disclosures consistent with the approach set out by the Taskforce on Climate-related Financial Disclosures (TCFD) or provide reasons as to why they have not done so. These proposals build on the recommendations of the TCFD, an existing global standard.

In order to ensure a co-ordinated approach, the FCA is also considering consulting on extending its proposed requirements to a wider scope of issuers. The regulator is also seeking feedback on existing requirements on listed companies to provide climate, and other sustainability-related, disclosure and considering how best to enhance climate-related disclosures by regulated firms.

The FCA also jointly launched the Climate Financial Risk Forum industry group with the PRA in March 2019, which will help to build disclosure capabilities. The Forum will publish industry guidance shortly, covering climate-related disclosures, risk management, scenario analysis and innovation. These guidance materials are also grounded in the TCFD's recommendations and are intended to complement its proposed new requirements.

The consultation period closes on 5 June 2020.

FCA Consultation Paper CP20/3: Proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations

Webpage

Press release

Response form

6.2 **FCA Consultation Paper CP20/4: Quarterly Consultation Paper No. 27** – *6 March 2020* – The FCA has published its Quarterly Consultation Paper (CP20/4) containing proposed changes to a significant number of FCA Handbook provisions. The most consequential set of changes are to the Financial Crime Guide (alongside minor amendments to the Decision Procedure and Penalties manual and the Enforcement Guide) to reflect and implement provisions in the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (Chapters 2, 3 and 5). The FCA also proposes:

- changes to the Senior Managers and Certification Regime's (SMCR) Directory persons report under the FCA's Supervision manual, Annex 47AR. Firms are required to submit information on the Directory persons in their organisations through this form (Chapter 7);
- amendments to the way in which firms provide notifications under the Insurance Distribution Directive ((EU) 2016/97) and Mortgage Credit Directive (2014/17/EU) (Chapter 6); and
- amendments to the Consumer Credit Sourcebook high net worth exemption (Chapter 4), the MiFID II tick size regime (Chapter 8) and two Glossary terms concerning multilateral development banks (Chapter 9).

The consultation period closes on 3 April 2020 for chapters 2, 5, 7, 8 and 9, and 1 May 2020 for chapters 3, 4 and 6.

FCA Consultation Paper CP20/4: Quarterly Consultation Paper No 27

Webpage

Response form

6.3 **Cyber security and operational resilience: FCA publishes insights from the Cyber Coordination Groups** – *11 March 2020* – The FCA has published research derived from the outcome of discussions of its Cyber Coordination Groups (CCGs), which are comprised of a number of collaborative groups drawn from over 185 firms across the financial services sector, which focus on cyber security and operational resilience issues. Each CCG represents a specific sub-sector, such as insurance, brokers and principal trading firms, and fund management, and meet on a quarterly basis to discuss relevant cyber risk topics. The publication covers a number of themes, including:

- the highest level cyber risks in each sector and how CCG members and other firms could mitigate or manage these risks;
- identity and access management policies, processes and controls to prevent unauthorised users from accessing critical systems;
- practices and insights for dealing with malicious emails targeting human operators; and
- cyber risks posed by third parties and supply chains.

Webpage

Brexit

7. Bank of England

7.1 **The ideal post-EU regulatory framework - speech by Victoria Saporta, Executive Director of Prudential Policy at the Bank of England** – *10 March 2020* – Victoria Saporta (Executive Director of Prudential Policy at the Bank of England) has delivered a speech on the ideal institutional framework for post-Brexit EU prudential regulation. She addresses the on-shoring process of EU prudential requirements into UK law, noting that this leaves a ‘patchwork’ of prudential requirements which would be difficult for firms to navigate. She notes that the UK has begun a review of the post-Brexit regulatory framework, and discusses in particular:

- three features which should govern any future framework: dynamism to incorporate updated international standards in a timely manner and adjustments to cover unintended consequences of regulation, time consistency to avoid conflicts between the short-term and long-term incentives facing policymakers, and legitimacy through a clear regulatory mandate; and
- the reasons and evidence for why an independent regulatory body with a clear mandate set out in primary legislation and a clear set of accountability mechanisms to Parliament is the best model for a future institutional structure.

Speech by Victoria Saporta, Executive Director of Prudential Policy at the Bank of England on the ideal post-EU regulatory framework

See the **General** section for items on the Financial Services Bill and HM Treasury's Financial Services Future Regulatory Framework Review.

See the **Banking and Finance** section for an item on the PRA's policy statement on the pre-Issuance notification requirements for regulatory capital instruments.

See the **Securities and Markets** section for an item on ESMA's 2019 annual report and 2020 work programme

Banking and Finance

8. European Commission

8.1 EU Interchange Fee Regulation - European Commission publishes study on the application of the IFR - *March 2020* - The European Commission has published a study on the application of the EU Interchange Fee Regulation ((EU) 2015/751) for card-based payment transactions, which entered into force in 2015 and addresses the collectively agreed interchange fees for cards and card-based payment transactions. The study has found that the main objectives of the Regulation have been achieved, with an overall decrease of 35% in the level of interchange fees for consumer cards, resulting in lower charges for retailers and benefits to consumers.

The Commission will also submit a report on the application of the Regulation to the European Parliament and to the Council later this year, with material drawn from the study, stakeholders' feedback and evaluations from national enforcement authorities.

Study on the application of the IFR

Press release

9. European Banking Authority

9.1 CRD IV/CRR - EBA publishes consultation on updating RTS, ITS and Guidelines on the methodology for identifying G-SIIs – *5 March 2020* - The European Banking Authority (EBA) has published a consultation paper on proposed amendments to update the identification methodology for global systemically important institutions (G-SIIs) and related capital buffers under the Capital Requirements Directive (2013/36/EU) (CRD IV). The EBA states that the methodology for the identification of G-SIIs requires updating to reflect: (i) the Basel Committee on Banking Supervision's revised framework for global systemically important banks (G-SIBs), published in July 2018; and (ii) the EBA's mandate to draft an additional methodology for the allocation of G-SII buffer rates to G-SIIs.

The EBA's proposals include several amendments to:

- Delegated Regulation 1222/2014/EU, which contains regulatory technical standards (RTS) supplementing the CRD IV on the specification of the methodology for the identification of G-SIIs;

- Implementing Regulation 1030/2014/EU, which contains implementing technical standards (ITS) relating to uniform formats and the date for the disclosure of the values used to identify G-SIIs according to the Capital Requirements Regulation (575/2013/EU) (CRR); and

- the EBA's January 2016 Guidelines on the identification methodology and disclosure requirements for G-SIIs, which includes the specification of indicators of global systemic importance and their disclosure.

The EBA plans to host a public hearing on the consultation on 27 March 2020. The consultation period closes on 5 June 2020.

EBA Consultation Paper on updating RTS, ITS and Guidelines on the methodology for identifying G-SIIs under CRD IV and CRR

Webpage on Guidelines for the identification of G-SIIs

Webpage on technical standards for the identification of G-SIIs

Press release

9.2 **Basel III framework - EBA publishes Opinion on the treatment of credit insurance in the prudential framework** – *9 March 2020* – The EBA has published an Opinion (EBA/Op/2020/05) on the treatment of credit insurance in the prudential framework. This Opinion responds to the extensive feedback received to its public consultations on draft Guidelines covering credit risk mitigation for institutions applying the Internal Ratings-Based Approach (IRB Approach) with their own estimates of Loss Given Default (LGD). The consultations followed the European Commission's Call for Advice in May 2018 on the implementation of the final Basel III framework.

The Opinion concludes that there should not be a specific value of regulatory LGD for credit insurance claims, stating that specifying any preferential treatment for claims on credit insurance policies would not be compliant with the final Basel III framework. It also points out that the final Basel III framework has been calibrated at the overall level, and should be implemented in the EU as agreed by the Basel Committee on Banking Supervision.

The EBA has also submitted the Opinion to the European Commission to inform its current work on the proposed revisions to the Capital Requirements Regulation ((EU) 575/2013) in relation to the implementation of the final Basel III framework.

EBA Opinion on the treatment of credit insurance in the prudential framework

EBA Consultation Paper on Credit Risk Mitigation for institutions applying the IRB Approach with own estimates of LGDs

Press release

9.3 **EBA Handbook on valuation for the purposes of resolution - EBA publishes Chapter 10 of the Handbook on MIS** – *March 2020* - The EBA has published Chapter 10 of its Handbook on valuation for purposes of resolution. The Chapter covers the way in which resolution authorities should assess financial institutions' management information systems (MIS) in the context of the resolvability assessment, to ensure that data and information are swiftly provided to support a robust valuation for resolution. The Chapter's aim is to enhance institutions' preparedness to support a timely valuation in a resolution scenario. The Chapter is complemented by a data dictionary for benchmarking purposes, which does not introduce any reporting obligation but is, instead, intended to be used by institutions to perform a self-assessment of the internally available data and information, which can then be used to calibrate the valuation MIS requirements in dialogue with resolution authorities.

Valuation handbook for purposes of resolution: Chapter 10: Management information systems

Annex II: Data Dictionary

Explanatory note for the use of the Data Dictionary

Annex III: Combination information and data with valuation approaches

Press release

10. European Central Bank

10.1 COVID-19 - ECB publishes letter on significant institutions' contingency preparations – *6 March 2020* – The European Central Bank (ECB) has published a letter, dated 3 March 2020, from Andrea Enria (Chair of the ECB Supervisory Board) to all banks classified as significant institutions under the Single Supervisory Mechanism Regulation (1024/2013/EU) in relation to their contingency preparations in light of the COVID-19 outbreak.

The letter states that the ECB expects banks to review their business continuity plans and consider what actions can be taken to minimise the potential adverse effects of the spread of the virus. The ECB also warns of potential difficulties for banks arising from employees being unable to perform their usual tasks and key third-party service providers and outsourcers being unable to maintain critical processes.

ECB letter from Andrea Enria (Chair of the ECB Supervisory Board) to all banks classified as significant institutions on their contingency plans in relation to the coronavirus (COVID-19)

11. Bank of England

11.1 Digital currency - Bank of England publishes discussion paper on the potential introduction of a Central Bank digital currency – *March 2020* – As announced in the UK government's 2020 Budget, the Bank of England has published a Discussion Paper setting out its initial thinking on a Central Bank digital currency, an electronic form of central bank money that could be used by businesses and households to make payments. The Discussion Paper forms part of the Bank's broader review of the UK's financial system as a whole. It aims to provide a basis for further research and dialogue between the Bank and payments and technology providers; payments users; financial institutions; academics, and other central banks and public authorities.

The Bank is hosting a webinar on the Discussion Paper led by Tom Mutton (Director of Fintech) and Sarah John (Chief Cashier and Director of Notes). The period for responses to the Discussion Paper closes on 12 June 2020.

Discussion paper: Central Bank digital currency: opportunities, challenges and design

Webpage

Webinar registration

12. Prudential Regulation Authority

12.1 **PRA Policy Statement PS5/20 - Regulatory capital instruments: update to pre-issuance notification (PIN) requirements** – *10 March 2020* - The PRA has published a Policy Statement (PS5/20) and updated Supervisory Statement (SS7/13) 'Definition of capital (CRR firms)', which set out its final policy on its proposals to amend the Pre-Issuance Notification (PIN) regime for regulatory capital instruments applicable to firms subject to the Capital Requirements Regulation ((EU) 575/2013) (CRR).

The amendments are intended to enhance and maintain the quality of firms' capital resources, by providing the PRA with an opportunity to comment on the terms and conditions of proposed capital instruments prior to their issuance. The PRA considers that these improvements should make the PIN regime more risk-sensitive and proportionate, and allow firms greater flexibility in issuing capital instruments. This follows the PRA's consultation (CP20/19) on the matter, which was published in September 2019.

The PRA has published a number of documents as appendices to the Policy Statement and in addition to the Supervisory Statement:

- an amended Definition of the Capital Part of the PRA Rulebook (Appendix 1);
- an updated PIN form (Appendix 3);
- an updated Common Equity Tier 1 (CET1) compliance template (Appendix 4); and
- a summary table showing the PRA's final clarification of 'sufficiently in advance' notification and 'substantially the same' terms (as defined in updated SS7/13) (Annex).

The changes in the Policy Statement take effect from 1 April 2020. The PRA also states that it will keep the policy set out in this Policy Statement under review to assess whether any changes are required at the end of the implementation period as a result of changes in the UK regulatory framework.

PRA Policy Statement PS4/20 - Liquidity: The PRA's approach to supervising liquidity and funding risks

Press release

PRA Rulebook: CRR firms: Definition of capital amendment instrument (PRA2020/1)

Updated Supervisory Statement: Definition of capital (CRR firms) (SS7/13)

Updated Pre / Post-Issuance Notification (PIN) form for CRR firms

Updated Common Equity Tier 1 compliance template

Updated webpage

Updated webpage: Capital instruments - pre-issuance notification

Updated webpage: Capital Requirements Directive IV

12.2 **EU liabilities and service continuity - PRA and FCA publish joint letter to trade associations on LIBOR transition** – *9 March 2020* - The PRA and FCA have published a joint letter from Andrew Hauser (Executive Director of Markets at the PRA) and Edwin Schooling Latter (Director of Markets and Wholesale Policy at the FCA) to trade associations on how the discontinuation of LIBOR may affect their members and stakeholders, and suggesting next steps to take.

In particular, the letter requests that trade associations encourage their members and stakeholders to identify and understand the LIBOR exposures within their business, and how LIBOR-referencing products might be converted to alternative risk-free rates. It also offers educational material, designed to be shared with trade associations' members, on how the LIBOR transition may affect firms' businesses.

Letter from Andrew Hauser (Executive Director of Markets at the PRA) and Edwin Schooling Latter (Director of Markets and Wholesale Policy at the FCA) to trade associations on LIBOR transition

13. Financial Conduct Authority

13.1 **Mortgage switching - FCA publishes research report** – *10 March 2020* - The FCA has published a research report dated 3 March into mortgage switching and how consumers can be encouraged to switch to better mortgage products. This research was prompted by both the FCA's Mortgages Market Study (MS16/2) and the Citizens Advice super-complaint to the Competition and Markets Authority (CMA) about the 'loyalty penalty' to which consumers who are longstanding customers of mortgage providers can be subject. The research aims to improve the FCA's understanding of consumer behaviour in the mortgage market in order to allow it to design potential remedies to address the issue.

The FCA has concluded from its research that there is a case for intervening to help mortgage customers who do not switch mortgage providers. The range of remedies proposed in the research paper include a number of steps that could be taken by mortgage providers:

- engaging with customers in relation to the switching process;
- setting out the case for switching to different mortgage products; and
- providing consumers with an adequate (but not overwhelming) amount of information on these aspects.

The FCA will issue a consultation paper on a range of proposed remedies in Q2 2020, and aims to issue a Policy Statement containing finalised rule changes by the end of 2020.

FCA report on mortgage switching and encouraging consumers to seek out better deals

Occasional Paper 54 on the characteristics of consumers who do not switch

Webpage

Occasional Paper 55 on brand loyalty in the mortgage market

Webpage

Press Release

14. Payment Systems Regulator

14.1 Access to cash - PSR publishes annual review of Specific Direction 8 – *March 2020* – The Payment Systems Regulator (PSR) has published its annual review of Specific Direction 8 (SD8), which it issued to LINK in October 2018. LINK is the UK's largest ATM network and SD8 requires LINK to do all it can to fulfil its commitment to maintain the broad geographic spread of free-to-use ATMs.

The annual review sets out what LINK does, describes LINK's policies to maintain and replace protected ATMs, and examines wider developments in relation to access to cash. In addition, it contains a discussion of whether SD8 should remain in place, taking into account stakeholder responses, the reasons why SD8 was introduced and how it is working in practice.

The PSR has also published the full responses to its Call for Views on Specific Direction 8, published in October 2019.

PSR annual review of Specific Direction 8 on access to cash

Full responses to Call for Views

Summary of roundtable discussion and responses to the PSR's Call for Views CP19/6

Updated PSR webpage on access to cash

Webpage

15. Working Group on Sterling Risk-Free Reference Rates

15.1 Transition from LIBOR to overnight risk-free rates - Bank of England working group publishes statement on bond market conventions – *10 March 2020* - The Bank of England's Working Group on Sterling Risk-Free Reference Rates (RFRWG) has published a statement welcoming the Bank's discussion paper on the publication of a SONIA compounded index, and outlining how bond markets can use the proposed SONIA index. The RFRWG's Loan Enablers Task Force has also published an indicative roadmap outlining a path for the discontinuation of new Sterling LIBOR-based cash lending by end-Q3 2020, which is focused particularly on the development of products referencing compounded SONIA as the primary risk-free rate in sterling markets.

Statement on bond market conventions: Use of the SONIA Index and weighting approaches for observation periods

Roadmap for discontinuation of new GBP LIBOR lending by end-Q3 2020

Updated Bank of England webpage: Transition to sterling risk-free rates from LIBOR

See the **General** section for an item on the Financial Services Bill.

Securities and Markets

16. European Commission

16.1 **Sustainable finance - European Commission TEG publishes usability guide for the EU green bond standard** – *9 March 2020* – The European Commission Technical Expert Group on Sustainable Finance (TEG) has published a usability guide for the EU green bond standard, which provides guidance for market participants on the use of the proposed standard and the set-up of a market-based registration scheme for external verifiers. This follows a call for feedback in March 2019 and a preliminary report, published June 2019, on the development of an EU green bond standard to increase transparency and comparability of the green bond market and provide clarity to issuers on the steps to follow in relation to an issuance.

The European Commission will also carry out a public consultation on the renewed sustainable finance strategy between March to May 2020 which will explore the possibility of a legislative initiative for an EU green bond standard.

European Commission TEG usability guide for the EU green bond standard

Updated webpage

17. European Securities and Markets Authority

17.1 **ESMA publishes 2019 annual report and 2020 work programme -** *9 March 2020* – The European Securities and Markets Authority (ESMA) has published its 2019 annual report and 2020 supervision work programme, which focuses on its supervision of credit rating agencies (CRAs) and trade repositories (TRs), and its monitoring of third-country central counterparties (TC-CCPs) and Central Securities Depositories (TC-CSDs). ESMA is also preparing for its new supervisory responsibilities under the EU Securities Financing Transactions Regulation ((EU) 2015/2365) (SFTR), the EU Securitisation Regulation ((EU) 2017/2402), the EU Benchmarks Regulation ((EU) 2016/1011) (BMR) and the Market in Financial Instruments Regulation ((EU) 600/2014) (MiFIR).

Key supervisory themes for 2020 include:

- the CRA ratings process and CRA cybersecurity;
- TR data quality, business continuity planning and information security;
- the assessment of the application of the clearing obligation to TC-CCPs and TC-CSDs; and
- the consideration of direct supervision of Tier 2 TC-CCPs.

In addition, ESMA will continue to engage with supervised entities about their preparations for the end of the Brexit implementation period, and continue working on its own Brexit preparations and monitoring of the impact of Brexit in relation to the TC-CCP and TC-CSD regimes.

ESMA Supervision: Annual Report 2019 and Work Programme 2020

Press release

17.2 **EU Benchmarks Regulation - ESMA publishes Consultation Paper on draft RTS -** *9 March 2020* - ESMA has published a Consultation Paper on draft regulatory technical standards (RTS) under the

BMR. This follows the outcome of the European Supervisory Authorities' Review under Article 5 of Regulation ((EU) 2019/2175), which introduced a new mandate for ESMA to develop draft RTS to further specify certain of the BMR's requirements. The RTS include:

- requirements for robust governance arrangements of an administrator;
- conditions that ensure that the methodology to determine a benchmark is compliant with the BMR;
- requirements for systems and controls established by an administrator to ensure the integrity of input data to protect against attempted manipulation; and
- criteria to be applied by competent authorities when assessing how a benchmark is transitioned to a new administrator or ceases to be provided.

The consultation period closes on 9 May 2020.

ESMA Consultation Paper on draft RTS on various aspects of the Benchmarks Regulation

Updated webpage

Press release

Response form

17.3 **MiFID II/MiFIR - ESMA publishes Consultation Paper on MiFIR transparency regime for non-equity instruments -** *10 March 2020* - ESMA has published a Consultation Paper (CP) on reviewing the transparency regime for non-equity instruments and the trading obligation for derivatives under MiFIR. This is part of its broader review of MiFIR aimed at simplifying the current complex trade reporting regime, creating a uniform set of rules and improving the overall trade transparency available to market participants for non-equity instruments. It complements ESMA's CP on the transparency regime for equity and equity-like instruments, published in February 2020.

The CP contains ESMA's proposals for possible amendments to the transparency regime and includes its report on the impact of the trading obligation for derivatives and the progress made in moving trading in standardised over-the-counter derivatives to exchanges or electronic platforms. This CP also contains a level 2 review of the transparency regime in Commission Delegated Regulation (EU) 2017/583, which is the implementing measure which specifies the technical rules that set out how pre- and post-trade transparency apply to different asset classes in the EU.

The consultation period closes on 19 April 2020, and ESMA intends to submit its final review report of the transparency regime applicable to non-equity instruments to the European Commission in July 2020.

ESMA Consultation Paper on MiFIR Transparency Regime for non-equity instruments

Webpage

Press release

Reply form (ESMA70-156-2189rf)

17.4 **COVID-19 - ESMA publishes statement on recommendations to financial market participants** – *11 March 2020* – ESMA has published a public statement on the continuing impact of the COVID-19 outbreak on financial markets in the EU, and has made the following recommendations to financial market participants:

- all financial market participants should be ready to apply contingency plans to ensure business continuity in line with regulatory obligations;
- issuers should carry out a qualitative and quantitative assessment of their financial situation to provide transparency on the actual and potential impacts of COVID-19 in their 2019 year-end financial report or 2020 interim financial reporting disclosures;
- issuers should disclose to the market as soon as possible any relevant significant information concerning the impacts of COVID-19 on their businesses and financial situation; and
- asset managers should continue to apply requirements on risk management.

ESMA Statement on recommended action in response to COVID-19

18. Financial Conduct Authority

18.1 **FCA Consultation Paper CP20/5: Open-ended investment companies - proposals for a more proportionate listing regime** – *9 March 2020* – The FCA has published a Consultation Paper (CP20/5) setting out its proposals to disapply premium listing obligations on open-ended investment companies (OEICs) and, instead, facilitate the standard listing of such companies. These proposals follow the FCA's Discussion Paper (DP17/2) which reviewed the effectiveness of the UK's primary markets and the associated Feedback Statement (FS17/3), where the FCA found that there was limited rationale for requiring exchange traded funds like OEICs to be premium-listed and that standard listings for such funds may be more appropriate.

The consultation period closes on 9 June 2020.

FCA Consultation Paper CP20/5: Open-ended Investment Companies - Proposals for a more proportionate Listing regime

Webpage

Response form

18.2 **Open Finance - FCA publishes call for input** – *9 March 2020* – The FCA has published a call for input in order to better understand how data and advanced analytics are being accessed and used, the value offered to participants in wholesale financial markets, and whether they are competitively sold and priced. The call for input applies to both FCA-regulated, and connected but non-regulated, activities and firms, in order to allow the FCA to assess how the latter may affect competition in regulated markets.

The call for input considers the use and supply of market data, focusing particularly on trading data and benchmarks, and seeks user feedback on any concerns they may have about the way trading data, benchmarks and vendor services are priced and sold. It also invites comments about access to, and the changing use of, data and analytical techniques across all wholesale markets.

The call for input closes on 1 May 2020, after which the FCA intends to publish a Feedback Statement in autumn 2020 setting out its findings and any next steps.

FCA call for input on accessing and using wholesale data

Webpage

Press release

18.3 **SFTR - FCA publishes new webpages** – *11 March 2020* – The FCA has published new webpages on the Securities Financing Transactions Regulation ((EU) 2015/2365) (SFTR), which introduced requirements to improve transparency and monitor the risks associated with the securities financing transactions market. The webpages provide an overview of the SFTR and further information on the reporting obligation to which counterparties are subject under the SFTR.

Webpage

SFTR reporting obligation

SFTR library

Financial Crime

19. Financial Action Task Force

19.1 **Digital Identity systems for CDD - FATF publishes guidance** – *6 March 2020* – The Financial Action Task Force (FATF) has published guidance to help governments, financial institutions, virtual asset service providers and other regulated entities to determine whether, in relation to digital financial transactions, a digital ID is appropriate to use for customer verification and due diligence (CDD). It also clarifies how technologies such as biometric technology, smart phones and distributed ledger technology can assist in this process. The guidance follows FATF’s consultation on the draft guidance, published in October 2019 and previously reported in this Bulletin.

FATF guidance on digital ID systems for CDD

Webpage

20. Financial Conduct Authority

20.1 **Protecting against fraud - FCA publishes comparison of banks’ fraud controls** – *9 March 2020* – The FCA has published a new webpage containing a comparison of banks’ fraud controls, which has been compiled by UK Finance. The webpage is intended to allow consumers and consumer groups to compare how banks protect their customers against fraud and help them make informed choices about their banks.

The data covers firms’ approaches to fraud prevention and the systems and controls they have in place; what firms do to educate and contact their customers and how banks can be contacted by their customers; and any industry initiatives and collaboration in which firms participate.

Data on banking providers’ fraud controls

Webpage

Enforcement

21. Financial Conduct Authority

21.1 **FCA Handbook instrument: Non-legal changes document** - *March 2020* - The FCA has published a document which lists minor corrections and clarifications to the FCA Handbook which have no legal effect and do not signal a change in policy. The amendment relates to the Dispute Resolution: Complaints sourcebook (DISP), rule DISP 3.7.4R and sets out the maximum award limit of £355,000 for complaints referred to the Financial Ombudsman Service (FOS) on or after 1 April 2020 in respect of acts or omissions on or after 1 April 2019.

FCA non-legal changes document

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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