

Financial Regulation Weekly Bulletin

19 March 2020 / Issue 1051

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

Quick Links

- [Selected Headlines](#)
- [General](#)
- [Brexit](#)
- [Banking and Finance](#)
- [Securities and Markets](#)
- [Asset Management](#)
- [Insurance](#)
- [Financial Crime](#)
- [Enforcement](#)

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

IT failures in the financial services sector - Treasury Committee publishes government and regulators' responses to report 1.1

COVID-19 - FCA publishes webpage containing information for firms 2.1

Brexit

Equivalence in financial services - European Commission publishes letter on its approach to equivalence decisions 4.1

Future UK-EU Partnership - European Commission publishes draft text of the Agreement on the New Partnership with the United Kingdom 4.2

Banking and Finance

COVID-19 - EBA publishes statement on actions to mitigate impact 5.1

COVID-19 - ECB announces temporary capital and operational relief 6.1

Case C-511/17 Györgyné Lintner v UniCredit Bank Hungary Zrt 10.1

Securities and Markets

COVID-19 - Net short positions - ESMA publishes Decision temporarily lowering notification thresholds 12.1

COVID-19 - ESMA publishes statement postponing the implementation of reporting obligations and trade repository registration requirements under the SFTR 12.2

Cryptoassets - FMLC publishes response to European Commission consultation on EU regulatory framework 16.1

Asset Management

COVID-19 - FCA publishes statement on property fund suspensions 17.1

Insurance

COVID-19 - EIOPA publishes statement on actions to mitigate impact 19.1

COVID-19 - FCA publishes webpage on its expectations for general insurance firms 21.1

Consumer complaints - FOS publishes report on underinsurance, misrepresentation and non-disclosure 22.1

[Selected Headlines](#)
[Asset Management](#)

[General](#)
[Insurance](#)

[Brexit](#)
[Financial Crime](#)

[Banking and Finance](#) [Securities and Markets](#)
[Enforcement](#)

Financial Crime

Economic crime - Treasury Committee publishes government and regulators' responses to report 24.1

AML and CTF - JMLSG consults on new sectoral guidance for cryptoasset exchanges and custodian wallet providers 25.1

Enforcement

Payment Protection Insurance Market Investigation Order 2011 - CMA issues directions to Paymentsshield 27.1

General

1. Treasury Committee

- 1.1 IT failures in the financial services sector - Treasury Committee publishes government and regulators' responses to report - 13 March 2020** - The House of Commons Treasury Committee has published the government and regulators' (FCA, PRA and Bank of England) responses to its October 2019 report regarding IT failures in the financial services sector. The report concluded that the current level of IT failures in the financial services sector is unacceptable, and urged regulators to take action to improve the operational resilience of firms in the financial services sector.

In their responses, the regulators highlight the framework of operational resilience policies proposed in December 2019, which are currently under consultation, as well as commenting on specific recommendations contained in the October 2019 report. Notably, the regulators have initially rejected the Committee's call to increase regulators' levies to fund additional operational resilience resources, although they will keep the proposal under review.

The regulators also observe that there is a strong case for extending the Senior Managers and Certification Regime (SMCR) to financial market infrastructures (FMIs). The government confirms in its response that it is considering whether to create new Senior Management Regimes (SMRs) for firms regulated outside the scope of FSMA 2000, including FMIs.

[Government and regulators' responses to Treasury Committee report on the operational resilience of the financial services sector](#)

[Webpage](#)

[Press release](#)

2. Financial Conduct Authority

- 2.1 COVID-19 - FCA publishes webpage containing information for firms - 17 March 2020** - The FCA has published a new webpage containing information for firms in response to the COVID-19 outbreak. Among other things, the FCA states that:

- it is extending the closing date for responses to open Consultation Papers and Calls for Input until 1 October 2020;

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Asset Management](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

- firms are expected to show flexibility to support customers, including supporting customers in relation to mortgage repayments and unsecured debt products (particularly those in persistent credit card debt);
- insurance firms should ensure that customers have access to appropriate and transparent information about their travel and health insurance policies; and
- it expects all firms to have appropriate contingency plans in place to deal with major events, and will review firms' assessments of operational risks as well as their ability to continue to operate effectively and support their customers.

The delayed Consultation Papers include CP19/32: Building operational resilience: impact tolerances for important business services, CP20/1: Introducing a single easy access rate (SEAR) for cash savings and CP20/5: Consultation paper on open-ended investment companies - proposals for a more proportionate listing regime.

The FCA states that it will continue to update the webpage with information for firms and expects to adapt its guidance as the COVID-19 situation develops in order to protect consumers and ensure that markets function well.

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

3. [Financial Ombudsman Service](#)

- 3.1 **Ombudsman News Issue 150 - published by the FOS - 13 March 2020** - The Financial Ombudsman Services (FOS) has published Issue 150 of Ombudsman News. Among other things, this issue includes: (i) statistics on product complaints received by the FOS in Q3 2019; (ii) a report on consumer complaints relating to underinsurance, misrepresentation and non-disclosure in the insurance sector; and (iii) information for customers relating to COVID-19, including travel and medical insurance.

[Ombudsman News Issue 150](#)

[Webpage](#)

Please see the **Insurance** section for an item on the FOS report on issues arising from underinsurance, misrepresentation and non-disclosure in the insurance sector.

Brexit

4. [European Commission](#)

- 4.1 **Equivalence in financial services - European Commission publishes letter on its approach to equivalence decisions - 13 March 2020** - The European Commission has published a letter from Valdis Dombrovskis (Vice President of the European Commission) to Rishi Sunak MP (Chancellor of the Exchequer) setting out its approach to equivalence assessments and determinations in the area of financial services.

The letter states that the Commission's approach reflects the political declaration, agreed in October 2019, such that the EU and the UK should start assessing equivalence as soon as possible and should endeavour to conclude these assessments before the end of June 2020. Mr Dombrovskis

[Selected Headlines](#)
[Asset Management](#)

[General](#)
[Insurance](#)

[Brexit](#)
[Financial Crime](#)

[Banking and Finance](#) [Securities and Markets](#)
[Enforcement](#)

comments, however, that the commitment in the political declaration refers only to proceeding with the assessments, not taking equivalence decisions, by June 2020. He also confirms that any equivalence assessment will be forward looking, taking into account any divergences of UK rules from EU rules.

This follows Rishi Sunak MP's letter, published on 27 February 2020, which outlined the UK's preparations for assessments of equivalence in the area of financial services. In this letter Mr Sunak commented that the EU and UK should be able to conclude equivalence assessments swiftly, and that he saw no reason as to why comprehensive positive findings could not be delivered before the end of June 2020.

[Letter from Valdis Dombrovskis \(Vice President of the European Commission\) to Rishi Sunak MP \(Chancellor of the Exchequer\) setting out the Commission's approach to equivalence assessments in the area of financial services](#)

- 4.2 Future UK-EU Partnership - European Commission publishes draft text of the Agreement on the New Partnership with the United Kingdom - 18 March 2020** - The European Commission has published a draft legal agreement for the future EU-UK partnership. It translates into legal text the negotiating directives approved by Member States in the General Affairs Council on 25 February 2020, in line with the Political Declaration agreed between the EU and the UK in October 2019.

The draft agreement follows consultations with the European Parliament and Council, and aims to provide a tool to support the negotiations and to enable progress with the UK. It is extensive in its coverage and addresses the vast majority of the policy areas found in the Political Declaration, spanning economy and trade, the security partnership, and sound financial management among other areas. The agreement envisages close alignment between the UK and the EU, including in the area of financial services.

David McAllister (Chair of the European Parliament's UK Coordination Group) commented in response to the publication of the draft agreement that the EU is "*truly offering the UK cooperation of an unprecedented nature*", observing that the Commission proposes to clarify a series of areas that go beyond what the EU usually engages in with third countries. The UK has indicated that it will put forward some texts covering some of the elements of the future EU-UK relationship outlined in the Political Declaration.

Substantive work on the legal texts on both sides will continue over the coming weeks, notwithstanding developments relating to COVID-19.

[European Commission draft text of the agreement on the new partnership with the United Kingdom](#)

[Press release: European Commission publishes draft legal agreement for the future UK-EU partnership](#)

[Press release: Statement by David McAllister, Chair of the European Parliament's UK Coordination Group, on the publication of a draft legal agreement on the future EU-UK partnership](#)

Banking and Finance

5. European Banking Authority

- 5.1 COVID-19 - EBA publishes statement on actions to mitigate impact - 12 March 2020** - The European Banking Authority (EBA) has published a statement on actions to mitigate the impact of COVID-19 on the EU banking sector. Among other things, the EBA states that it is postponing the 2020 EU banking stress test until 2021 to allow banks to focus on, and ensure continuity of, their core operations. The EBA intends to carry out an additional EU-wide transparency exercise in 2020 to provide updated information on banks' exposures and asset quality to market participants.

The EBA reiterates that banks' capital and liquidity buffers are designed to absorb losses and ensure continued lending to the economy during a downturn. It advises banks to classify exposures accurately and in a timely manner to reflect any deterioration of asset quality and to follow prudent dividend and other distribution policies, including variable remuneration.

The EBA also recommends that national competent authorities (NCAs): (i) plan supervisory activities in a pragmatic and flexible way, including postponing non-essential activities; (ii) give banks some leeway in the remittance dates for some areas of supervisory reporting without compromising the information needed to monitor closely banks' financial and prudential situation; and (iii) utilise the flexibility embedded in the regulatory framework to support the banking sector, including the European Central Bank's (ECB's) decision to allow banks to cover Pillar 2 requirements with capital instruments other than common equity Tier 1 capital (see immediately below for further detail).

[Press release: EBA publishes statement on actions to mitigate the impact of COVID-19](#)

6. European Central Bank

- 6.1 COVID-19 - ECB announces temporary capital and operational relief - 12 March 2020** - The ECB has announced a number of measures designed to ensure that its directly supervised banks can continue to fulfil their role in funding the real economy as the economic effects of COVID-19 become apparent. The measures provide that:

- banks will be allowed to operate temporarily below the level of capital defined by the Pillar 2 guidance, the capital conservation buffer and the liquidity coverage ratio. The ECB considers that these temporary measures will be enhanced by the appropriate relaxation of the countercyclical capital buffer by the national macroprudential authorities; and
- banks will be allowed to use partial capital instruments that do not qualify as common equity Tier 1 capital to meet the Pillar 2 requirements. This measure was initially scheduled to come into effect in January 2021 under the fifth Capital Requirements Directive (EU) 2019/878 (CRD V).

The ECB also states that: (i) it is discussing individual measures with banks, including adjusting timetables, processes and deadlines, such as the implementation of remediation action and rescheduling on-site inspections; and (ii) supports the EBA's decision to postpone the 2020 EU banking stress test until 2021.

[Press release: ECB announces temporary capital and operational relief in light of COVID-19](#)

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Asset Management](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

7. Bank of England

- 7.1 SME finance - Bank of England publishes report on open data - March 2020** - The Bank of England has published a report setting out its proposals to develop an open data platform to boost access to finance for small and medium-sized enterprises (SMEs). Inspired by Open Banking, the open data platform would take the form of a decentralised network of data providers, using a standardised set of application programming interfaces (APIs) to move data around the financial system instantly at the request of the SME. The report states that expanding the sources of data that lenders could access, such as data held at insurance and utilities companies, as well as search, ratings and social media data could help to build richer credit files.

The report goes into detail on several topics, including: (i) how open data could help to address the SME funding gap; (ii) policy issues and design considerations; (iii) comparative case studies from alternative jurisdictions; and (iv) technical considerations for the implementation of the open data platform.

[Bank of England report on open data for SME finance](#)

[Webpage](#)

8. Prudential Regulation Authority

- 8.1 PRA Policy Statement PS6/20 - Credit unions: Review of the capital regime - March 2020** - The PRA has published a Policy Statement (PS6/20) setting out its final policy decisions on proposed changes to the capital requirements that apply to credit unions, including amendments to the Credit Unions Part of the PRA Rulebook and Supervisory Statement SS2/16 'The prudential regulation of credit unions'. This follows the PRA's October 2019 Consultation Paper (CP28/19) on the same matter.

The PRA confirms that it intends to implement its proposals largely as consulted on, which include a 'graduated rate' approach for capital requirements for credit unions with more than £10 million in total assets, and new expectations in SS2/16 in relation to credit unions with a capital to assets ratio (CAR) in the 3-5% range, in which a credit union with a CAR below 5% should be prepared to engage more fully with the PRA.

The policy changes outlined in PS6/20 will come into force from 16 March 2020.

[PRA Policy Statement PS6/20 - Credit unions: Review of the capital regime](#)

[Updated Supervisory Statement SS2/16 'The prudential regulation of credit unions'](#)

[Webpage](#)

[Webpage on credit unions](#)

9. Payment Systems Regulator

- 9.1 Card-acquiring services - PSR publishes update on market review interim report - 16 March 2020** - The Payment Systems Regulator (PSR) has released an update on its market review into the supply of card-acquiring services, stating that it intends to publish its interim report for consultation in June 2020. After publication of the interim report, the PSR intends to carry out a programme of stakeholder engagement, in addition to considering any written responses received,

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Asset Management](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

before publishing the final report. The PSR is carrying out the market review following concerns that the supply of these services may not be working well for merchants, and ultimately consumers.

[Press release: PSR publishes update on the publication of its interim report on its market review into the supply of card-acquiring services](#)

10. Recent Cases

10.1 *Case C-511/17 Györgyné Lintner v UniCredit Bank Hungary Zrt*, 11 March 2020

Scope of national court's duty to assess the fairness of terms in consumer contracts of its own motion - interpretation of the Unfair Contract Terms Directive (93/13/ECC)

The European Court of Justice (Third Chamber) (ECJ) has given a preliminary ruling on the scope of a national court's duty to assess the fairness of terms in consumer contracts of its own motion, including those not challenged by the claimant, under the Unfair Contract Terms Directive (93/13/ECC) (UCTD). The ECJ held that a national court is not required to examine, of its own motion, all the contractual terms not challenged by the consumer in order to ascertain whether they are unfair, unless the terms are connected to the subject matter of the dispute as defined by the parties' pleas and the orders sought.

[Case C-511/17 Györgyné Lintner v UniCredit Bank Hungary Zrt](#)

[Press release](#)

10.2 *Case C-639/18 KH v Sparkasse Südholstein*, Opinion of Advocate General Sharpston, 12 March 2020

Interpretation of 'distance contract' - interest rate agreements for existing loans concluded at a distance - Article 2(a) of the Distance Marketing of Financial Services Directive (220/65/EC)

Advocate General Sharpston has delivered an Opinion in relation to a request for a preliminary ruling on the interpretation of Article 2(a) of the Distance Marketing of Financial Services Directive (220/65/EC) (DMFSD), and the concept of a 'distance contract'. The Opinion considered whether the DMFSD applied to a subsequent interest rates agreement amending a loan contract only with regard to its interest rate. Article 2(a) of DMFSD defines 'distance contract' as meaning "any contract concerning financial services concluded between a supplier and a consumer under an organised distance sales or service-provision scheme run by the supplier, who, for the purpose of that contract, makes exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded".

The Advocate General held that an interest rate agreement clearly fell within the scope of 'financial services' under Article 2(b) of DMFSD and that the concept of a 'distance contract' under Article 2(a) of DMFSD must be interpreted as including a subsequent interest rate agreement that neither extends the term or modifies the loan amount.

The Advocate General also considers the criteria for determining whether a contract concluded without the simultaneous physical presence of the supplier and the consumer is a 'distance contract' within the meaning of Article 2(a) of DMFSD.

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Asset Management](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

[Case C-639/18 KH v Sparkasse Südholstein, Opinion of Advocate General Sharpston](#)

10.3 *Case C-143/18 Romano and another v DSL Bank*, 11 September 2019

Suppliers' obligations regarding withdrawal rights under a distance contract - national legislation incompatible with Directive - Distance Marketing of Financial Services Directive (220/65/EC)

The European Court of Justice (First Chamber) (ECJ) has given a preliminary ruling concerning the obligations of a supplier in relation to the provision of information on a consumer's right to withdraw from a distance contract under Article 6 of the DMFSD, where an EU member state's national legislation is inconsistent with the provisions of the DMFSD.

The ECJ held that the obligations of a supplier of a financial service under the DMFSD in relation to withdrawal rights, and in particular in relation to information on the effect of Article 6(2)(c), would be fulfilled if the supplier complied with the provisions of the DMFSD even if that information was not consistent with an EU member state's legislation.

[Case C-143/18 Romano and another v DSL Bank](#)

Securities and Markets

11. European Central Bank

11.1 **Transition from EONIA to €STR - ECB working group publishes consultation on recommendations for swaptions impacted by the CCP discounting switch - 13 March 2020** - The European Central Bank (ECB) industry-led working group on euro risk-free rates has published a public consultation on whether to issue recommendations to address specific issues for interest rate swaption products in relation to the transition from the euro overnight index average (EONIA) to the euro short-term rate (€STR). The consultation observes that the central counterparty (CCP) discounting switch from EONIA to the €STR, planned for June 2020, will cause specific issues for swaption products; if the exercise date of these contracts is after the CCP transition date, their valuation may change as a result of the transition. The CCP compensation mechanism will not currently apply to them, however, because the contracts are bilateral, not cleared.

The consultation focuses only on euro-denominated contracts and seeks feedback on whether the ECB should issue recommendations regarding the voluntary exchange of cash compensation between bilateral counterparties to swaption contracts.

The consultation period closes on 3 April 2020.

[ECB working group consultation on recommendations for swaption products impacted by the CCP discounting switch](#)

[Webpage](#)

[Press release](#)

11.2 **EURIBOR fallbacks and the transition from EONIA to €STR - ECB working group publishes factsheets - March 2020** - The ECB industry-led working group on euro risk-free rates has published factsheets on: (i) understanding euro interbank offered rate (EURIBOR) fallbacks; and (ii) the transition from EONIA to the €STR.

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Asset Management](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

The factsheets aim to provide information on EURIBOR fallbacks in the context of interest rate benchmark reform and the key messages regarding products, models, and the legal, accounting and risk management implications of the transition from EONIA to the €STR.

[ECB working group factsheet on EURIBOR fallbacks](#)

[ECB working group factsheet on the transition from EONIA to the €STR](#)

12. European Securities and Markets Authority

- 12.1 COVID-19 - ESMA publishes Decision temporarily lowering notification thresholds for net short positions - 16 March 2020** - The European Securities and Markets Authority (ESMA) has published a Decision, pursuant to Article 28(1) of the Short Selling Regulation (236/2012/EU), temporarily requiring natural or legal persons holding net short positions in shares traded on an EU regulated market to notify the relevant national competent authority (NCA) if the position reaches or exceeds 0.1% of the issued share capital after the entry into force of the Decision. ESMA explains that lowering the reporting threshold for net short positions is a precautionary measure to allow NCAs to monitor market developments in light of the economic impact of COVID-19, which ESMA describes as constituting a serious threat to market confidence in the EU.

The temporary requirements do not apply to shares admitted to trading on a regulated market where the principal venue for the trading of the shares is located in a third country, or market making or stabilisation activities.

The Decision entered into force on 16 March 2020 and will apply for a period of three months, until 16 June 2020.

[ESMA Decision to lower the notification threshold for net short positions in light of the economic impact of COVID-19](#)

[Press release](#)

- 12.2 COVID-19 - ESMA publishes statement postponing the implementation of reporting obligations and trade repository registration requirements under the SFTR - 18 March 2020** - ESMA has published a statement postponing the implementation of reporting obligations and the registration of trade repositories under the Securities Financing Transaction Regulation (EU) 2015/2365 (SFTR) in light of the impact of COVID-19. The reporting obligations for credit institutions, investment firms and relevant third country entities, and the requirement to register trade repositories under the SFTR, were due to apply from 13 April 2020.

ESMA expects competent authorities not to prioritise their supervisory actions towards counterparties, entities subject to reporting, and investment firms in respect of reporting obligations under the SFTR and the Market in Financial Instruments Regulation (600/2014/EU) (MiFIR) as of 13 April 2020, until 13 July 2020. Furthermore, ESMA does not consider it necessary to register any trade repository ahead of 13 April 2020. The revised date coincides with the next scheduled phase of the planned implementation of SFTR reporting obligations for central counterparties (CCPS), central securities depositories (CSDs) and relevant third-country entities.

ESMA intends to continue to monitor the implementation of relevant measures by the relevant market participants with regards to the impact of COVID-19 to ensure the regulatory alignment of reporting requirements under the SFTR and supervisory practices in the EU.

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Asset Management](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

[ESMA statement postponing the implementation of reporting obligations and trade repository registration requirements under the SFTR](#)

[Press release](#)

13. Financial Conduct Authority

- 13.1 LIBOR transition - FCA publishes webpage on contractual triggers - 11 March 2020** - The FCA has published a new webpage containing information on how it plans to announce the London interbank offered rate (LIBOR) contractual triggers. The FCA observes that an increasing number of contracts referencing LIBOR include pre-cessation contractual triggers, which converts the contract to reference a relevant risk-free rate, plus an appropriate spread, if the FCA finds that LIBOR is no longer representative of the underlying market. The FCA further observes that the activation of these pre-cessation triggers depends on the FCA's potential announcements. Similarly, many LIBOR cessation triggers are activated by an FCA announcement that LIBOR will cease.

The FCA webpage seeks to make market participants aware of how these announcements would be made.

[FCA webpage on LIBOR contractual triggers](#)

- 13.2 COVID-19 - FCA publishes statement on lowering notification thresholds for net short positions - 17 March 2020** - The FCA has published a statement confirming that, following ESMA's Decision to lower the notification threshold for persons holding net short positions in shares traded on EU regulated markets to 0.1% of the issued share capital, it will apply these changes in the UK. Owing to the technological changes required to implement this change, however, the FCA states that firms should continue to report in accordance with the previous thresholds until further notice.

The FCA also outlines its policy on cooperating with EU regulators in relation to the implementation of powers to ban short selling under the Short Selling Regulation (236/2012/EU).

[FCA statement on short selling reporting](#)

- 13.3 Primary Market Bulletin No. 27 - published by the FCA - 17 March 2020** - The FCA has published its Primary Market Bulletin No. 27, which contains key information for market participants in light of the COVID-19 outbreak. The Bulletin covers several topics, including: (i) ongoing disclosure requirements under the Market Abuse Regulation (596/2014/EU) (MAR); (ii) market volatility and suspension of trading; (iii) the importance of transaction notifications; (iv) contingency planning for delays to corporate reporting; and (v) logistical challenges, including shareholder meetings.

Of particular note, issuers should be aware that their own operational response to COVID-19 may itself meet the requirements for disclosure under MAR. Issuers should also ensure they have thoroughly examined the justification for any requested suspension of trading in certain securities.

[FCA Primary Market Bulletin No. 27 on information for market participants in light of COVID-19](#)

14. International Swaps and Derivatives Association

- 14.1 EMIR Refit - ISDA publishes document clarifying the implementation of OTC derivative contract reporting requirements for FCs on behalf of both themselves and NFC- clients - March 2020** - The International Swaps and Derivatives Association (ISDA) has published a document which aims

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Asset Management](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

to clarify the interpretation, management and implementation of the requirement, from 18 June 2020, for financial counterparties (FCs) to report over-the-counter (OTC) derivative contracts on behalf of both themselves and their non-financial counterparty minus (NFC-) clients under the EMIR Refit Regulation (EU) 2019/834.

The document identifies several operational considerations relating to the implementation of the EMIR Refit requirements for FCs. Among other things, the document covers the data to be provided by NFC- clients to FCs, and the application of the requirements to third-country FCs.

[ISDA document clarifying the OTC derivative contract reporting requirements for FCs and NFCs under the EMIR Refit Regulation](#)

[Press release](#)

15. [International Securities Lending Association and International Capital Market Association](#)

- 15.1 COVID-19 - ISLA and ICMA publish letter urging ESMA to delay the implementation of SFTR reporting obligations - 16 March 2020** - The International Securities Lending Association (ISLA) and the International Capital Market Association (ICMA) have published a letter urging ESMA to delay the implementation of reporting obligations under the SFTR, which are due to apply to banks and investment firms from 11 April 2020, in light of the impact of COVID-19.

The letter states that, as a result of the impact of COVID-19 on personnel and market volatility, firms believe that they will no longer be able to ensure compliance with the SFTR reporting obligations from 11 April 2020. ESMA is asked to delay the SFTR reporting go-live date to an appropriate date that falls well outside the expected critical phase of the pandemic, and 11 October 2020 is suggested (the reporting start date for the third phase of SFTR reporting). In the absence of a formal delay, ISLA and ICMA ask ESMA, at a minimum, to consider implementing equivalent measures that would provide forbearance and sufficient reassurance for firms that they are not expected by ESMA, and their respective NCAs, to ensure strict compliance with SFTR reporting obligations for an appropriate period of time following the legal reporting start date on 11 April 2020.

[ISLA and ICMA letter urging ESMA to delay the implementation of reporting obligations under the SFTR](#)

16. [Financial Markets Law Committee](#)

- 16.1 Cryptoassets - FMLC publishes response to European Commission consultation on EU regulatory framework - March 2020** - The Financial Markets Law Committee (FMLC) has published its response to the European Commission's public consultation on the suitability of the existing EU regulatory framework for cryptoassets, launched in December 2019. The FMLC has published its response in the form of two reports, covering: (i) the classification of cryptoassets; and (ii) cryptoassets which fall within the EU regulatory perimeter.

The first report considers the section of the consultation which deals with whether and how to classify cryptoassets. The FMLC calls on the Commission to reconsider its proposed classification criteria, arguing that the classification of cryptoassets simply by reference to their functions yields an incomplete picture. In order to illustrate this point, the report breaks down six characteristics on the basis of which cryptoassets might be differentiated.

[Selected Headlines](#)
[Asset Management](#)[General](#)
[Insurance](#)[Brexit](#)
[Financial Crime](#)[Banking and Finance](#) [Securities and Markets](#)
[Enforcement](#)

The second report considers the section of the consultation which deals with cryptoassets that currently fall within the scope of the EU legislation. The FMLC observes that, at least as far as market infrastructure is concerned, it is likely that a new type of regulation will be needed rather than trying to shoehorn a new phenomenon into old concepts. It also draws out specific uncertainties in respect of centralised and permissioned versus decentralised and permission-less platforms as well as several definitions in the Markets in Financial Instruments Directive (2014/65/EU) (MiFID II), the Central Securities Depository Regulation (909/2014/EU), and the E-Money Directive (2009/110/EC).

[FMLC response to European Commission consultation on the EU regulatory framework for cryptoassets \(Part I: Taxonomical approaches cryptoassets\)](#)

[FMLC response to European Commission consultation on the EU regulatory framework for cryptoassets \(Part II: Regulation of cryptoassets\)](#)

[Press release](#)

Asset Management

17. Financial Conduct Authority

- 17.1 COVID-19 - FCA publishes statement on property fund suspensions - 18 March 2020** - The FCA has published a statement on the suspension of property funds in light of the COVID-19 outbreak. The FCA states that certain independent valuers have determined that there is currently material uncertainty over the value of commercial real estate (CRE) and therefore it is not possible to establish a fair and reasonable valuation of CRE funds.

The FCA comments that some managers of open-ended CRE funds have temporarily suspended dealing in units of those funds, and that others are likely to follow. The FCA clarifies that managers of open-ended funds can use suspensions in line with their obligations under applicable regulations and that, in these circumstances, suspension is likely to be in the best interests of fund investors.

[FCA statement on property fund suspensions](#)

Insurance

18. International Association of Insurance Supervisors

- 18.1 ICS Version 2.0 - IAIS publishes document on specifications for the monitoring period - March 2020** - The International Association of Insurance Supervisors (IAIS) has published a document containing detailed specifications relating to the monitoring period for version 2.0 of the risk-based global Insurance Capital Standard (ICS). The ICS is a consolidated group-wide capital standard for internationally active insurance groups (IAIGs), which is designed to enhance global convergence among group capital standards and will be operationalised during a five-year monitoring period starting in 2020. IAIS explains that the ICS monitoring period aims to monitor the performance of the ICS, rather than IAIGs' capital adequacy.

[IAIS document on ICS version 2.0 monitoring period](#)

[Webpage](#)

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Asset Management](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

19. European Insurance and Occupational Pensions Authority

19.1 COVID-19 - EIOPA publishes statement on actions to mitigate impact - 17 March 2020 - The European Insurance and Occupational Pensions Authority (EIOPA) has published a statement on actions to mitigate the impact of COVID-19 on the EU insurance sector. Among other things, EIOPA states that:

- national competent authorities (NCAs) should be flexible with regards to the timing of supervisory reporting and public disclosure for end-2019;
- EIOPA is extending the deadline of the Holistic Impact Assessment for the 2020 Solvency II Review by two months to 1 June 2020, and intends to communicate details on postponing additional reporting and information requirements shortly;
- the Solvency II framework includes a number of tools that can be used to mitigate impacts to the sector in extreme situations and EIOPA and NCAs are ready to implement these tools, if and when necessary, in a coordinated manner; and
- while recent stress tests demonstrate that the EU insurance sector is well capitalised and able to withstand severe but plausible economic shocks, insurance companies should take measures to preserve their capital position and follow prudent dividend and other distribution policies, including variable remuneration.

EIOPA states that it will continue to monitor the situation and will take or propose to EU institutions any measure necessary in order to mitigate the impact of market volatility to the stability of the insurance sector in Europe and safeguard the protection of policyholders.

[Press release: EIOPA publishes statement on actions to mitigate the impact of COVID-19](#)

20. Prudential Regulation Authority

20.1 PRA Policy Statement PS7/20 - Solvency II: Adjusting for the reduction of loss absorbency where own fund instruments are taxed on conversion - March 2020 - The PRA has published a Policy Statement (PS7/20) setting out its final policy regarding its proposal to add an expectation that insurers would deduct the maximum tax charge generated on conversion when they: (i) include in their own funds external Tier 1 (RT1) capital instruments that convert into ordinary shares on trigger; and (ii) that trigger has a conversion share offer mechanism in its terms. This proposal, which makes amendments to SS3/15 'Solvency II: The quality of capital instruments', is intended to maintain the regulatory policy of only recognising RT1 instruments to the extent that they provide loss absorbency on trigger, and to prevent the amount of loss-absorbency provided by RT1 instruments that convert into ordinary shares on trigger from being overstated.

In response to its consultation, the PRA has made several minor changes to its proposals in order to clarify the tax opinion process and how the maximum tax impact is to be calculated. SS3/15 will be amended to account for the policy changes outlined in PS7/20. The policy changes outlined in PS7/20 will come into force from 16 March 2020.

[PRA Policy Statement PS7/20 - Solvency II: Adjusting for the reduction of loss absorbency where own fund instruments are taxed on conversion](#)

[Updated Supervisory Statement SS3/15 'Solvency II: The quality of capital instruments'](#)

[Selected Headlines](#)
[Asset Management](#)

[General](#)
[Insurance](#)

[Brexit](#)
[Financial Crime](#)

[Banking and Finance](#) [Securities and Markets](#)
[Enforcement](#)

[Webpage](#)

[Webpage on the quality of capital instruments under Solvency II](#)

21. [Financial Conduct Authority](#)

21.1 COVID-19 - FCA publishes webpage on its expectations for general insurance firms - 19 March 2020 - The FCA has published a new webpage setting out its expectations for general insurance firms in response to the COVID-19 outbreak. The webpage also provides information for consumers about what they should expect from their insurance provider during the COVID-19 pandemic. Among other things, the FCA states that:

- in relation to travel insurance, where there is currently a lot of consumer demand, firms should ensure that they continue to treat customers fairly through the lifecycle of a product, including during purchase, claim and renewal;
- in relation to home and motor insurance, firms should not reject claims because of a consumer's understandable temporary change in how they use their vehicle and their home address in response to government advice regarding COVID-19; and
- in relation to product suspension, mid-term adjustments and renewals, firms should continue to ensure that they treat customers fairly, clearly communicate to policyholders any changes in new or existing policy coverage, including exclusions that may impact the cover and use of individual policies, and ensure that alternative products are not sold to consumers that do not meet their demands and needs.

[FCA webpage on its expectations for general insurance firms in response to COVID-19](#)

[Press release](#)

22. [Financial Ombudsman Service](#)

22.1 Consumer complaints - FOS publishes report on underinsurance, misrepresentation and non-disclosure - March 2020 - The Financial Ombudsman Service (FOS) has published a report considering issues arising from consumer complaints relating to underinsurance, misrepresentation and non-disclosure in the insurance sector. Among other things, the report states that the FOS regularly deals with complaints from consumers who have taken out insurance policies which provide insufficient cover, underinsure their possessions or misrepresent their circumstances.

The report, which includes a selection of case studies of specific consumer complaints, highlights the consequences for consumers of providing the wrong information to insurers and how insurers are required to rectify such issues in a fair and reasonable way, with reference to the Consumer Insurance (Disclosure and Representations) Act 2012.

[FOS report on underinsurance, misrepresentation and non-disclosure in the insurance sector](#)

[Press release](#)

Financial Crime

23. European Commission

- 23.1 CSMAD - European Commission publishes report on implementation - 13 March 2020** - The European Commission has published a report assessing EU member states' transposition and implementation of the Directive on criminal sanctions for insider dealing and market manipulation (2014/57/EU) (CSMAD).

The report concludes that most EU member states have correctly transposed the provisions of CSMAD. However, the Commission also highlights that 11 member states experienced issues transposing certain provisions of CSMAD, including Article 5 (Market manipulation), which caused issues because certain elements of manipulation through "*any other behaviour*" or "*relating to spot commodity contracts*" have typically not been included in national legislation.

The Commission states that there is currently no need to recommend legislative revisions to CSMAD.

[European Commission report on the implementation of CSMAD](#)

24. Treasury Committee

- 24.1 Economic crime - Treasury Committee publishes government and regulators' responses to report - 13 March 2020** - The House of Commons Treasury Committee has published the government, FCA and the Payment Systems Regulator (PSR) responses to its November 2019 report on the scale and impact of economic crime on consumers. The report contained several recommendations on measures to be taken by firms to combat and investigate economic crime as well as consumers' rights and responsibilities.

In its response to the report, the government states, among other things, that: (i) it intends to publish an updated national risk assessment of money laundering and terrorist financing by July 2020; and (ii) it does not accept the Committee's recommendation that the Contingent Reimbursement Model (CRM) Code - a voluntary financial services code which sets out how firms should reimburse consumers for losses arising from authorised push payment (APP) fraud - should be made compulsory in legislation. The PSR shares this view, while the FCA agrees with the Committee's recommendation.

The PSR further comments that it is currently monitoring relevant firms' implementation of Confirmation of Payee (CoP) requirements by the March 2020 deadline. CoP provides end-users of payment systems with greater assurance that they are sending their payments to the intended recipient by checking the name on the account that is being paid. The PSR states that it expects firms not subject to the March 2020 deadline, including smaller payment service providers (PSPs), to implement the requirements by the end of 2020.

Among other things, the FCA states that it will consider the benefit of implementing a mandatory delay of up to 24 hours on initial or first-time payments, during which time a consumer about to be defrauded could remove themselves from the high-pressure environment in which they are being manipulated. The FCA also notes that it is planning to consult on its 'Payment Services and Electronic Money - Our Approach' document this year.

[Government and regulators' responses to Treasury Committee report on economic crime](#)

[Selected Headlines](#)
[Asset Management](#)

[General](#)
[Insurance](#)

[Brexit](#)
[Financial Crime](#)

[Banking and Finance](#) [Securities and Markets](#)
[Enforcement](#)

[Webpage](#)

[Press release](#)

25. [Joint Money Laundering Steering Group](#)

- 25.1 AML and CTF - JMLSG consults on new sectoral guidance for cryptoasset exchanges and custodian wallet providers - March 2020** - The Joint Money Laundering Steering Group (JMLSG) has published for consultation the proposed text of a new chapter to be included in Part II of its Guidance on the prevention of money laundering and the financing of terrorism in the UK financial services industry. The new chapter (Sector 22) contains sectoral guidance in relation to cryptoasset exchanges and custodian wallet providers and covers several topics, including: (i) the scope of regulation; (ii) money laundering and terrorist financing risks; (iii) risk management; (iv) customer due diligence; and (v) dealing with suspicious transactions.

This follows the entry into force of The Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (MLRs), on 10 January 2020, which brought cryptoasset exchange providers and custodian wallet providers within the scope of the MLRs.

The consultation period closes on 18 May 2020.

[JMLSG consultation on new sectoral guidance for cryptoasset exchanges and custodian wallet providers](#)

[Webpage](#)

[Press release](#)

26. [Recent Cases](#)

- 26.1 *N v The Royal Bank of Scotland plc***, appeal against [2019] EWHC 1770 (Comm), 8 July 2019

Suspected money laundering by customers of a money services business (MSB) - bank's closure of MSB's accounts without notice was a lawful exercise of contractual discretion - section 338(4A) Proceeds of Crime Act 2002

The Court of Appeal has dismissed an appeal brought against a High Court decision which concerned the exercise of a bank's contractual right to close a customer's accounts and terminate its relationship without notice, where the bank had suspicion that the accounts were being used for money laundering purposes. The High Court held that the bank's decision to close the accounts of the customer (an authorised payment institution) was not a breach of contract or negligent.

[Court of Appeal case tracker: Appeal dismissed in *N v The Royal Bank of Scotland plc*](#)

[Selected Headlines](#)[General](#)[Brexit](#)[Banking and Finance](#)[Securities and Markets](#)[Asset Management](#)[Insurance](#)[Financial Crime](#)[Enforcement](#)

Enforcement

27. Competition and Markets Authority

27.1 Payment Protection Insurance Market Investigation Order 2011 - CMA issues directions to Paymentsshield - 19 March 2020 - The Competition and Markets Authority (CMA) has issued directions to Paymentsshield Limited in relation to the firm's failure to comply with certain provisions of the Payment Protection Insurance Markets Investigation Order 2011. The Order requires payment protection insurance (PPI) providers to send annual reminders to customers, setting out information including their policy details and cancellation rights.

The directions require Paymentsshield to: (i) implement all the actions arising from its own internal audit; (ii) appoint an independent body to carry out an assurance audit; and (iii) prepare and comply with an action plan for taking remedial action.

[Directions issued to Paymentsshield Limited under the Payment Protection Insurance Market Investigation Order 2011](#)

[Paymentsshield action plan](#)

[Webpage](#)

[Press release](#)

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:

Jan Putnis jan.putnis@slaughterandmay.com
Ben Kingsley ben.kingsley@slaughterandmay.com
Nick Bonsall nick.bonsall@slaughterandmay.com

© Slaughter and May 2019

This material is for general information only and is not intended to provide legal advice.
For further information, please speak to your usual Slaughter and May contact.