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

Selected Headlines
General
Brexit
Banking and Finance
Securities and Markets
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

Interim Executive Director of Strategy and Competition – FCA appoints Sheldon Mills 1.2

Brexit

Governance of financial globalisation – speech by Sir Jon Cunliffe, Deputy Governor for Financial Stability at the Bank of England 2.1

Future UK-EU relationship – European Parliament adopts resolution on the proposed mandate for negotiations 3.1

Banking and Finance

Deposit Guarantee Schemes Directive - EBA publishes Opinion on DGS funding and the use of DGS funds 5.1

CRD IV – EBA publishes consultation on draft Guidelines on the application of a systemic risk buffer 5.2

Basic bank accounts – FCA publishes findings of multi-firm review 6.1

Securities and Markets

Crypto-asset trading platforms – IOSCO publishes report on regulatory considerations 7.1

MiFIR/EMIR Refit - ESMA publishes report on the alignment of the scope of counterparties under the derivatives trading and clearing obligations 10.1

Legal guidelines for smart derivatives contracts – published by ISDA 11.1

Insurance

Outsourcing to cloud service providers – EIOPA publishes Guidelines 14.1

Credit protection insurance – EIOPA launches thematic review of consumer protection issues 14.2

Crisis management – EIOPA publishes report on walkthrough exercise 14.3

Financial Crime

5MLD – European Commission publishes decisions on infringement proceedings against eight member states 15.1

Enforcement

Market integrity and strategic approach – speech by Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA 16.1

Personal data and CMCs – FCA, ICO and FSCS publish joint statement to authorised firms and insolvency practitioners 17.1

General

1. Financial Conduct Authority

1.1 **Policy development update - FCA publishes webpage** – *7 February 2020* - The FCA has published its policy development update for February 2020, which provides information on recent and upcoming publications.

FCA policy development update for February 2020

1.2 **Interim Executive Director of Strategy and Competition - FCA appoints Sheldon Mills** – *13 February 2020* – The FCA has announced that Sheldon Mills has been appointed as Interim Executive Director of Strategy and Competition. Mr Mills currently holds the position of Director of Competition at the FCA and will replace Christopher Woolard when he takes up the role of Interim Chief Executive following Andrew Bailey's departure on 16 March 2020.

Press release: FCA appoints Sheldon Mills as Interim Executive Director of Strategy and Competition

Brexit

2. Bank of England

2.1 **Governance of financial globalisation - speech by Sir Jon Cunliffe, Deputy Governor for Financial Stability at the Bank of England** – *11 February 2020* – Sir Jon Cunliffe (Deputy Governor of Financial Stability at the Bank of England) has delivered a speech on the governance of financial globalisation. He addressed the progress made by banks and regulators in developing international standards to promote financial stability, and potential future challenges, including the development and use of artificial intelligence, climate change and the potential impact of the future UK-EU relationship post-Brexit. In particular, he suggested that the following should be considered in relation to the future UK-EU relationship:

- both the UK and EU need assurances in relation to the potential financial stability risks stemming from the other. Given that the UK cannot outsource its regulation and supervision to another jurisdiction, this argues against the 'textual' alignment of both jurisdictions' regulatory frameworks. Instead, the relationship should be built on the assessment of similar outcomes, paying due respect to home country regimes;

- the regulatory and supervisory arrangements should be stable and built on good faith and that any decisions to take diverging regulatory and supervisory approaches, which may require additional controls and restrictions on cross border activity, should be clear and transparent, grounded in evidence and applied within agreed procedures to ensure that their implementation does not become a source of risk; and

- the relationship should provide for deep supervisory cooperation in all areas of cross-border financial activity to ensure that the jurisdiction 'importing' potential financial stability risk from the other has sufficient information and influence, and that arrangements for shared supervision are reciprocal, proportionate and subject to agreed procedures which recognise the primacy of the lead supervisor.

Speech by Sir Jon Clunliffe (Deputy Governor for Financial Stability at the Bank of England) on the governance of financial globalisation including the future UK-EU relationship post-Brexit

3. European Parliament

3.1 **Future UK-EU relationship - European Parliament adopts resolution on the proposed mandate for negotiations** – *12 February 2020* - The European Parliament has adopted a non-legislative resolution on the proposed mandate for the authorisation of negotiations with the UK in relation to the future UK-EU relationship post-Brexit. This follows the European Commission's draft negotiating directive, published on 3 February 2020. The resolution states that the Parliament broadly supports the position set out by the Commission, emphasises that a non-EU country cannot enjoy the same rights as an EU member state and that the integrity of the single market must be preserved. In the area of financial services, the Parliament states that any future trade agreement with the UK should:

- contain commitments on trade in services which exceed the parties' WTO commitments;
- include a prudential carve-out and limitations in the cross-border provision of financial services, as is a customary feature in EU trade agreements;
- provide for market access on the basis of equivalence, provided that the EU is satisfied that the UK regulatory and supervisory regime and standards are, and continue to be, fully equivalent to those of the EU;
- provide for an effective mechanism to guarantee that, once equivalence has been granted in respect of the UK, that equivalence is maintained over time; and
- safeguard financial stability in the EU and maintain the EU's regulatory and supervisory autonomy.

The Council of the European Union is expected to formally adopt the decision to authorise the Commission to open negotiations at the next meeting of the Council of the EU on 25 February 2020.

European Parliament resolution on the proposed mandate for negotiations on the future UK-EU relationship post-Brexit

4. Association for Financial Markets in Europe

4.1 **Selling restrictions for equity transactions - AFME publishes revised version for Prospectus Regulation** – *February 2020* – The Association for Financial Markets in Europe (AFME) has published an updated version of its model selling restrictions for equity transactions (EEA and UK) for use until the end of the Brexit implementation period on 31 December 2020. The updated version reflects the application of the Prospectus Regulation (EU) 2017/1129 following the UK's withdrawal from the EU. It is substantially the same as the previous version published in July 2019,

with the exception that it now refers to the UK in addition to EEA states and uses the defined term 'Relevant State' instead of 'Member State'.

AFME selling restrictions for equity transactions

Webpage

Banking and Finance

5. European Banking Authority

5.1 Deposit Guarantee Schemes Directive – EBA publishes Opinion on DGS funding and the use of DGS funds – *11 February 2020* – The European Banking Authority (EBA) has published its third and final Opinion, dated 23 January 2020, on the implementation of the Deposit Guarantee Schemes Directive (2014/49/EU) (DGSD), deposit guarantee scheme (DGS) funding and the use of DGS funds, following the European Commission's call for technical advice on 6 February 2019. The EBA's first Opinion on the eligibility of deposits, coverage level and cooperation between DGSs was published in August 2019, and its second Opinion on strengthening depositor protection in the EU was published in October 2019. The Opinion sets out several proposed amendments to the current legal framework, including measures to:

- clarify what funds should count towards a DGS's available financial means, when different DGS funding sources can be used and under what conditions; and
- increase the transparency of DGS fund reporting, improve the consistency of approach to payment commitments, and clarify how DGS funds should be invested.

The Opinion also recommends that the Commission considers further the use of DGS funds to prevent the failure of credit institutions and the maximum limit up to which DGS funds could be used for such failure prevention, and the possible use of failed institutions' assets to repay depositors.

EBA Opinion on the implementation of the DGSD

Factsheet

Press release

5.2 CRD IV – EBA publishes consultation on draft Guidelines on the application of a systemic risk buffer – *12 February 2020* - The EBA has published a Consultation Paper setting out draft Guidelines on the appropriate subsets of sectoral exposures to which competent authorities may apply a systemic risk buffer in accordance with the Capital Requirements Directive (2013/36/EU) (CRD IV). The Guidelines aim to develop a common framework to harmonise the design of the subsets.

The consultation sets out pre-determined dimensions or components of exposures, which competent authorities should use when defining a subset of sectoral exposures in the application of a systemic risk buffer. The EBA explains that a pre-condition to defining a subset of sectoral exposures is its systemic relevance, determined in accordance with a qualitative and quantitative assessment conducted by the relevant authority, which the EBA recommends should be based on three criteria: (i) size; (ii) level of risk; and (iii) interconnection.

The draft Guidelines also set out general principles intended to achieve balance between the systemic risk stemming from the identified subset of sectoral exposures and the unintended consequences when applying a sectoral systemic risk buffer to that subset, including that competent authorities should avoid unwarranted interaction with other macroprudential measures.

The EBA plans to host a public hearing on the consultation on 27 March 2020. The consultation period closes on 12 May 2020.

EBA Consultation Paper on draft Guidelines on the appropriate subsets of sectoral exposures to which competent authorities may apply a systemic risk buffer under CRD IV

Press release

6. Financial Conduct Authority

6.1 **Basic bank accounts – FCA publishes findings of multi-firm review** – *11 February 2020* – The FCA has published the findings of its multi-firm review of how retail banks provide information to customers about basic bank accounts (BBAs). The FCA's review, which included a mystery shopping exercise, examined five of the nine banks providing BBAs and aimed to evaluate the banks' approaches and responses to initial account opening enquiries from BBA-eligible customers. The Payment Account Regulations 2015 (SI 2015/2038) sets out the BBA eligibility criteria for customers and the obligations of banks providing BBAs.

The report states that while the FCA observed good practice generally, particularly in relation to the provision of clear customer information and taking account of individual customers' circumstances, it also observed practices which it considered could increase the difficulty for eligible individuals to open a BBA, including the lack of prominence of information on the availability of BBAs and bank staff's identification and application of BBA eligibility criteria. The report contains the FCA's findings on: (i) banks' identification of customers potentially eligible for a BBA; (ii) the adequacy and appropriateness of the information provided to BBA-eligible customers; (iii) banks' treatment of vulnerable customers; and (iv) banks' application of their identification and verification policies.

The FCA states that BBAs will remain a key area of focus and encourages all firms to create a 'customer journey' which is inclusive of all customers and their needs. This includes considering how best to support consumers who are inadvertently excluded from participating in financial services and preventing that exclusion from continuing, and considering how the current structure of customer journeys on BBAs helps or impedes participation.

FCA multi-firm review of banks' provision of basic bank account information

6.2 **FCA Feedback Statement FS20/1: Recognition of codes** – *11 February 2020* – The FCA has published a Feedback Statement (FS20/1) on its recognition of the Lending Standards Board's (LSB) Standards of Lending Practice for business customers performing unregulated activities. This follows the FCA's September 2019 consultation (CP19/27) in which it sought views as to whether it should recognise the LSB Standards. The FCA's rational for the recognition of industry codes for certain unregulated activities is that, where firms' behaviour is in line with an FCA-recognised code, this will tend to indicate that they are complying with applicable FCA market conduct rules when they undertake unregulated activities.

Taking account of the consultation feedback received, the FCA has confirmed that it will recognise the LSB Standards for a three-year period, after which it can extend that recognition if it considers that the Standards' content is still relevant and appropriate. The FCA can also withdraw recognition before the end of the three-year period if it believes that the Standards no longer represent proper market conduct standards.

The FCA makes clear that firms following the code will still need to comply with any financial promotion restrictions in FSMA 2000 or Chapter 3 of the Consumer Credit sourcebook (CONC) which apply to unregulated activities. It notes that the LSB Standards expressly acknowledge that where legislation or statutory rules replicate or conflict with the Standards, the legislation or rules will supersede them.

The FCA also states that it does not intend to supervise firms or individuals directly against the LSB Standards, rather its role is to ensure firms meet their governance, and systems and controls obligations, including under the Senior Managers and Certification Regime (SMCR). In addition, while it will not take action based solely on a breach of market codes, whether or not these are FCA-recognised, such codes may be used to determine what proper standards were, or were believed to be, at the relevant time.

FCA Feedback Statement FS20/1: Recognition of codes

LSB webpage on Standards of Lending Practice for business customers

FCA webpage on the recognition of industry codes

6.3 Credit brokers – FCA publishes letter to firms on portfolio strategy – *13 February 2020* – The FCA has published a letter from Andrew Kay (Head of Department, Retail Lending 1, Supervision, Retail and Authorisations at the FCA) addressed to the directors of credit brokers which sets out the FCA's supervisory priorities and expectations in this area. The letter outlines several areas on which the FCA intends to focus as part of its wider supervision of credit brokers over the next two years, including:

- firms' submission of accurate regulatory data, including their compliance with new rules under the FCA Handbook Supervision manual (SUP) 16.10 which requires firms to review and confirm their 'Firm Details' annually. The FCA encourages all firms to register with Connect, states that it will consider using its enforcement powers where such firms fail to comply and reminds them of their obligations to deal with regulators in an open and cooperative way under Principle 11 of the FCA Principles for Businesses;

- reviewing credit brokers' business models, including credit brokers of third party finance providers, to identify potential consumer harm relating to the provision of information and firms' oversight of staff to prevent mis-selling; and

- investigating the potential consumer harm caused by domestic premises suppliers (firms which offer to sell products or services when visiting consumers' homes) and exploring whether adequate controls are in place to mitigate such risks.

The FCA encourages all relevant firms to register and review its monthly newsletter ('Regulation Round up') and its video series covering different aspects of consumer credit firms' regulatory obligations.

The regulator intends to continue actively engaging with credit brokers to identify consumer harm and expects firms to examine the issues raised and consider making changes to their business to reduce consumer harm.

FCA portfolio strategy letter to credit brokers

Securities and Markets

7. International Organization of Securities Commissions

7.1 Crypto-asset trading platforms - IOSCO publishes report on regulatory considerations – *February 2020* – The International Organization of Securities Commissions (IOSCO) has published a report setting out the key issues, risks and regulatory considerations associated with crypto-asset trading platforms (CTPs). The report sets out several key considerations, which are intended to assist regulatory authorities in evaluating CTPs within the context of their regulatory frameworks, including: (i) access to CTPs; (ii) safekeeping of participants' assets, including custody arrangements; (iii) identification and management of conflicts of interest; (iv) market integrity; and (v) operational resiliency and cyber security.

IOSCO also states that many of the issues relevant to the regulation of CTPs are common to traditional securities trading venues, although these may be heightened by the business models used by CTPs and that, where a regulatory authority has determined that a crypto-asset is a security and falls within its remit, the basic principles or objectives of securities regulation should apply. Accordingly, the report states that the IOSCO Principles and Methodology for securities regulation (May 2017) provide useful guidance for regulatory authorities considering the issues and risks identified in its report.

IOSCO intends to continue monitoring the evolution of crypto-asset markets to ensure that the issues, risks and considerations identified in the report remain appropriate.

IOSCO report on the issues, risks and regulatory considerations associated with CTPs

Press release

8. Council of the European Union

8.1 Taxonomy Regulation for sustainable investment - political agreement reached between the Council of the EU and the European Parliament – *7 February 2020* – The Council of the European Union has published an item note confirming that it and the European Parliament have reached political agreement on the text of proposed Regulation (EU) 2018/0178 (COD) (Taxonomy Regulation) which covers the establishment of a framework to facilitate sustainable investment and identify green economic activities. The Council of the EU is expected to formally adopt the text at first reading, followed by the Parliament adopting it in plenary at second reading.

Council of the EU item note on reaching political agreement on the proposed Taxonomy Regulation

Consolidated version of the proposed Taxonomy Regulation

Procedure file

9. European Commission and European Securities and Markets Authority

9.1 SFTR – European Commission and ESMA clarify scope of reporting obligations for non-EU AIFs – *February 2020* - The European Commission and European Securities and Markets Authority (ESMA) have published letters clarifying the scope of reporting obligations for non-EU alternative investment funds (AIFs) under Article 4(1) of the Securities Financing Transaction Regulation (EU) 2015/2365 (SFTR). This follows a request for clarification by the Alternative Investment Management Association (AIMA) of a statement, which AIMA perceived to be ambiguous, contained within ESMA's Guidelines on reporting requirements under Articles 4 and 12 of SFTR, published in January 2020.

The letters provide explicit confirmation that non-EU AIFs are not subject to the reporting obligations set out in Article 4(1) of SFTR, even if the AIF manager (AIFM) is authorised or registered in accordance with the Alternative Investment Fund Managers Directive (2011/61/EU) (AIFMD), except in respect of securities financing transactions (SFTs) concluded in the course of the operations of a branch in the EU of the non-EU AIF.

ESMA letter clarifying the reporting obligations of non-EU AIFs under Article 4 of SFTR

European Commission letter clarifying the reporting obligations of non-EU AIFs under Article 4 of SFTR

AIMA letter requesting clarification on the reporting obligations of non-EU AIFs under Article 4 of SFTR

Press release

10. European Securities and Markets Authority

10.1 MiFIR/EMIR Refit – ESMA publishes report on the alignment of the scope of counterparties under the derivatives trading and clearing obligations – *7 February 2020* - ESMA has published a final report on the alignment of the scope of counterparties subject to the derivatives trading obligation under the Markets in Financial Instruments Regulation (600/2014/EU) (MiFIR), with those subject to the derivatives clearing obligation under the EMIR Refit Regulation (EU) 2019/834 (EMIR Refit). This follows ESMA's October 2019 Consultation Paper on the same matter. EMIR Refit misaligned the counterparties subject to the trading and clearing obligations by introducing an exemption from the clearing obligation for small financial counterparties, which were still subject to the MiFIR trading obligation. In its report, ESMA recommends that:

- the changes made by EMIR Refit to the scope of the clearing obligation for both financial counterparties and non-financial counterparties should be replicated in MiFIR; and
- the mechanism introduced by EMIR Refit for temporarily suspending the clearing obligation in certain circumstances should be mirrored in MiFIR in respect of the derivatives trading obligation, with certain specific revisions to the trading obligation suspension criteria.

ESMA has submitted the report to the European Commission. The Commission is required to publish a report on the matter to the European Parliament and Council of the EU by 18 December 2020.

ESMA final report on the alignment of the scope of counterparties subject to the trading obligation under MiFIR and clearing obligation under EMIR Refit

Press release

10.2 **Sustainable financial markets: Translating changing risks and investor preferences into regulatory action - speech by Steven Maijoor, Chair of ESMA** – *12 February 2020* – Steven Maijoor (Chair of ESMA) has delivered a speech on sustainable financial markets at the European Financial Forum, held in Dublin, Ireland. Mr Maijoor addressed several issues relating to the potential regulatory impact of climate change on financial markets, including the importance of environmental, social and governance (ESG) disclosures by corporates for market participants and the development of effective anti-greenwashing measures. In particular, Mr Maijoor states that:

- ESMA and other European authorities are working on codifying the requirements for marketing products which claim to possess ESG characteristics and confirms that ESMA plans to consult on specific disclosure requirements for firms in relation to the adverse impacts of their investments by the end of Q1 2020;
- in advance of the development of harmonised international standards on corporate ESG disclosures, the EU should develop a single set of disclosure standards which would also be the basis for the digitalisation of ESG information; and
- the EU should develop a standard for green bonds to avoid mis-selling and mis-labelling practices and there ought to be greater regulation and supervision of ESG ratings agencies to clarify the methodologies underpinning their scoring mechanisms.

Speech by Steven Maijoor (Chair of ESMA) on ESG disclosures and anti-greenwashing measures

Press release

11. International Swaps and Derivatives Association

11.1 **Legal Guidelines for smart derivatives contracts - published by ISDA** – *February 2020* – The International Swaps and Derivatives Association (ISDA) has published legal Guidelines for smart derivatives contracts, which aims to support technology developers, legal advisers and other stakeholders in the development of smart derivatives contracts in the equity derivatives market. In particular, the Guidelines:

- provide an overview of equity derivatives transactions and different product types;
- explain how equity derivatives transactions are documented under both the 2002 and 2011 ISDA Equity Definitions; and
- explore how smart derivatives contracts might be developed and delivered within the framework created by the 2011 ISDA Equity Definitions.

ISDA also recommends several steps that the industry should take to further standardise and digitise equity derivatives documentation, including: (i) identifying features that market participants may wish to automate; (ii) determining whether market practice is clear enough to define one or more trade lifecycle processes on which to focus automation efforts; and (iii)

determining the appropriate manual processes to preserve the market's current approach to extraordinary event risk.

ISDA legal Guidelines for smart derivatives contracts

Press release

12. European Association of CCP Clearing Houses

12.1 CSDR Settlement Discipline Framework - published by EACH – *12 February 2020* – The European Association of CCP Clearing Houses (EACH) has published its CSDR Settlement Discipline Framework, applicable to all central counterparties (CCPs) subject to the Central Securities Depositories Regulation (EU) 2014/909 (CSDR). The framework aims to provide ESMA, other relevant authorities and market participants with details of how EACH will implement the CSDR settlement discipline provisions. The framework covers several topics, including:

- the specific matching criteria for settlement instructions, as required by Article 5 of Delegated Regulation (EU) 2018/1229 which contains regulatory technical standards (RTS) on settlement discipline;
- the implementation of a standardised cash penalty regime in order to ensure that market participants settle transactions on time;
- the process and imposition of minimum standards for buy-in procedures under the CSDR; and
- the implementation of procedures to enable trading venues to suspend any participant that fails consistently and systematically to deliver financial instruments under Article 4(7) of CSDR.

EACH CSDR Settlement Discipline Framework

Please see the **Brexit** section for an item on AFME's updated version of its model selling restrictions for UK and EEA equity transactions.

Insurance

13. Official Journal of the European Union

13.1 Solvency II - Commission Implementing Regulation on the calculation of technical provisions and basic own funds for Q1 2020 published in the Official Journal – *13 February 2020* – Commission Implementing Regulation (EU) 2020/193 of 12 February 2020, which lays down technical information for the calculation of technical provisions and basic own funds for reporting, with reference dates from 31 December 2019 until 31 March 2020, in accordance with the Solvency II Directive (2009/138/EU), has been published in the Official Journal of the European Union.

The Implementing Regulation enters into force on 14 February 2020 and applies from 31 December 2020.

Official Journal: Commission Implementing Regulation (EU) 2020/193 on the calculation of technical provisions and basic own funds for Q1 2020 under Solvency II

14. European Insurance and Occupational Pensions Authority

14.1 Outsourcing to cloud service providers - EIOPA publishes Guidelines – *6 February 2020* - The European Insurance and Occupational Pensions Authority (EIOPA) has published a report setting out its Guidelines on the application of the outsourcing provisions of the Solvency II Directive (2009/138/EC) and the Solvency II Delegated Regulation (EU) 2015/35 to cloud service providers. This follows EIOPA's consultation on the Guidelines, published in July 2019. The Guidelines aim to provide clarification and transparency to market participants and foster supervisory convergence in relation to the expectations and processes that apply to cloud outsourcing.

The Guidelines cover several aspects, including: (i) criteria to distinguish whether cloud services should be considered within the scope of outsourcing; (ii) principles of governance in cloud outsourcing; (iii) pre-outsourcing analysis, including materiality assessments, risk assessments and due diligence on service providers; (iv) contractual requirements; and (v) management of access and audit rights, security of data and systems, sub-outsourcing, monitoring and oversight of cloud outsourcing and exit strategies.

EIOPA Guidelines on outsourcing to cloud service providers

Press release

14.2 Credit protection insurance - EIOPA launches thematic review of consumer protection issues – *6 February 2020* - EIOPA has launched a thematic review of consumer protection issues relating to the sale of mortgage life and other credit protection insurance by banks. EIOPA states that national competent authorities (NCAs) have reported several issues and risks relating to these insurance products which may lead to consumer detriment, including unmitigated conflicts of interest, aggressive sales techniques and high levels of commission.

EIOPA plans to hold a roundtable discussion on 5 March 2020 to consult and collect inputs from external stakeholders on: (i) issues and risks with these types of insurance products; (ii) the business models used to manufacture and distribute these products and associated conduct risks; (iii) potential benefits for consumers, insurers and banks; (iv) market practices which may lead to consumer detriment; and (v) developments and trends in recent years.

Press release: EIOPA launches roundtable discussion on consumer protection issues relating to mortgage life and other credit protection insurance products sold through banks

14.3 Crisis management - EIOPA publishes report on walkthrough exercise - *7 February 2020* - EIOPA has published a report setting out its approach and lessons learned from its first crisis walkthrough exercise, conducted in June 2019. The two main participants of the walkthrough exercise were EIOPA and a national supervisory authority (unnamed), together with a 'simulated' insurance group and other simulated authorities. The exercise analysed participants' crisis management procedures in a severe stress scenario and assessed the way in which participants interacted in terms of exchanging information, cooperating and adopting decisions. The report sets out EIOPA's findings, including that:

- certain terminology in the EU regulatory framework on crisis procedures may require further clarification;

- supervisors should critically assess and challenge firms' crisis procedures and documentation, potentially by conducting a crisis walkthrough exercise;

- new recovery and resolution tools are needed, such as those set out in EIOPA's July 2017 Opinion on the recovery and resolution framework; and

- clear internal and external communication strategies represent a key element in crisis management, such that all participants should avoid non-aligned or contradictory messages and actions which may aggravate the crisis.

EIOPA report on its crisis walkthrough exercise

Press release

14.4 **Supervisory convergence plan for 2020 - published by EIOPA** – *February 2020* – EIOPA has published its supervisory convergence plan for 2020. Priority areas include the implementation of a common supervisory culture, addressing risks to the internal market and the supervision of emerging risks. The plan also includes several new priority areas, including: (i) cyber underwriting; (ii) supervisory technology; and (iii) pensions.

Please also see the items directly below on EIOPA's cyber underwriting and supervisory technology strategies.

EIOPA supervisory convergence plan for 2020

14.5 **Strategy on cyber underwriting - published by EIOPA** – *February 2020* - EIOPA has published its strategy on cyber underwriting, setting out its strategic priorities and action plan for facilitating the growth of a resilient cyber insurance market. EIOPA identifies several key characteristics of a resilient cyber insurance market, including the provision of appropriate cyber underwriting and risk management practices, adequate tools to address potentially systemic and extreme risks, and the availability of quality data on cyber incidents at a European level.

In particular, EIOPA states that, as part of its strategy on cyber underwriting, it intends to: (i) periodically assess firms' cyber underwriting and risk management practices; (ii) investigate the issue of non-affirmative cyber exposures and accumulation of risk; (iii) include cyber risk event scenarios and incidents in the stress testing framework; and (iv) explore and promote the development of a harmonised cyber incident reporting taxonomy.

EIOPA strategy on cyber underwriting

Press release

14.6 **Strategy on supervisory technology - published by EIOPA** – *February 2020* – EIOPA has published its strategy on the use of supervisory technology. The strategy sets out its strategic priorities to build on its existing use of technology and to create innovative and efficient supervisory solutions to support a more effective, flexible and responsive supervisory system. In particular, EIOPA intends to:

- implement a platform for the ongoing exchange of knowledge and experience to promote a culture of innovation and initiative between supervisors; and

- organise and endorse the analysis of potential supervisory tools aimed at addressing specific issues identified by supervisors and to develop them following a positive analysis.

EIOPA strategy on supervisory technology

Press release

Financial Crime

15. European Commission

15.1 5MLD – European Commission publishes decisions on infringement proceedings against eight member states – *12 February 2020* - The European Commission has announced that it has sent letters of formal notice to eight EU member states for failing to notify it of any measures taken to transpose the Fifth Money Laundering Directive (EU) 2018/843 (5MLD) into domestic law by the 10 January 2020 deadline. Letters of formal notice have been sent to: (i) Cyprus; (ii) Hungary; (iii) the Netherlands; (iv) Portugal; (v) Romania; (vi) Slovakia; (vii) Slovenia; and (viii) Spain.

The Commission encourages these EU member states to transpose 5MLD urgently and states that, unless it receives a satisfactory response within two months, it may send reasoned opinions to infringing EU member states.

Press release: European Commission sends letters of formal notice to eight EU member states for failing to transpose 5MLD

15.2 AML/CTF – European Commission publishes roadmap for consultation – *12 February 2020* – The European Commission has published for consultation a roadmap on its proposed action plan to enhance the EU's anti-money laundering (AML) and counter-terrorist financing (CTF) framework. The roadmap aims to trigger debate and discussion to identify areas where further action is needed and contains the Commission's views on how it intends to approach the preparatory work for future proposals to deliver a coherent and effective framework on AML and CTF.

The consultation period closes on 11 March 2020. The roadmap states that the Commission plans to present new policy initiatives in early 2021.

European Commission roadmap on its action plan on AML and CTF framework

Webpage

Enforcement

16. Financial Conduct Authority

16.1 Market integrity and strategic approach – speech by Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA – *6 February 2020* – Mark Steward (Executive Director of Enforcement and Market Oversight at the FCA) has delivered a speech on the FCA's strategic and integrated approach to market integrity. Mr Steward discusses several topics, including:

- the benefits of the FCA's increasingly integrated strategic approach to market integrity, comprising enforcement but also primary and secondary market oversight and surveillance, and wholesale supervision;

- the FCA's approach to market integrity in securities markets and the progress made to increase the granularity and consolidation of market data to increase its capacity to monitor market activity;

- the FCA's development of a new additional metric, the abnormal trading volume ratio (ATV), following a review of the effectiveness of the market cleanliness (MC) metric. Mr Steward explained that the ATV overcomes some of the limitations experienced with the MC metric by taking into account a broader scope of data and products as well as changes in volume in addition to price. He states that the ATV is not a replacement of the MC metric, rather they are simply different, but nonetheless both useful, proxies for measuring market activity; and

- the FCA's increasing enforcement action in the area of market manipulation.

Speech by Mark Steward (Executive Director of Enforcement and Market Oversight at the FCA) on the FCA's strategic and integrated approach to market integrity

17. Financial Conduct Authority, Information Commissioner's Office and the Financial Services Compensation Scheme

17.1 Personal data and CMCs – FCA, ICO and FSCS publish joint statement to authorised firms and insolvency practitioners – *7 February 2020* - The FCA, the Information Commissioner's Office (ICO) and the Financial Services Compensation Scheme (FSCS) have published a joint statement warning authorised firms and insolvency practitioners to deal with clients' personal data responsibly, especially in relation to selling client data to claims management companies (CMCs).

The statement highlights that the FCA, ICO and FSCS are aware that some insolvency practitioners and authorised firms have attempted to sell clients' data to CMCs unlawfully, usually before or after a firm has entered into administration and where it is likely that claims for compensation will be made to the FSCS. The statement warns that:

- the terms, conditions and clauses within standard contracts are unlikely to constitute legal consent for clients' personal data to be shared with CMCs to market their services and therefore such sharing may be unlawful and in breach of the General Data Protection Regulation (EU) 2016/679 (GDPR); and

- any subsequent direct marketing by CMCs may breach the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) or, alternatively, relevant parts of the FCA Handbook where CMCs fail to act honestly, fairly and professionally in consideration of the best interests of their customers. CMCs intending to buy and use such personal data must be able to demonstrate how they have considered the fair treatment of customers and how their actions comply with privacy laws.

The statement also notes that: (i) the FCA and the ICO intend to take appropriate enforcement action in respect of breaches of relevant data protection legislation or any relevant parts of the FCA Handbook, including the Claims Management: Conduct of Business sourcebook (CMCOB); and

(ii) where an authorised firm enters administration, eligible consumers can bring claims for free by contacting the FSCS directly, rather than using CMCs to bring a claim.

FCA, ICO and FSCS joint statement on authorised firms' and insolvency practitioners' dealings with clients' personal data in relation to CMCs

18. Recent cases

18.1 ***Case C-883/19 P – Appeal against the judgement of the General Court in Case T-105/17 HSBC Holdings plc, HSBC Bank plc and HSBC France v Commission***, 10 February 2020

Manipulation of EURIBOR - annulment of fine imposed by the European Commission for insufficient explanation of its calculation – obligation to state reasons - reduction factor

On 3 December 2019, HSBC Holdings plc, HSBC Bank plc and HSBC France submitted an appeal against a decision of the General Court of the European Union, dated 24 September 2019, which considered the HSBC Group's participation in anti-competitive practices in the interest rate derivatives sector. As reported in a previous edition of this Bulletin, the General Court upheld the European Commission's finding that HSBC participated in an illegal cartel in the euro interest rate derivatives sector. However, the Court annulled the €33.6 million fine imposed on the HSBC Group on the basis of insufficient reasoning as to how the Commission calculated the fine, in particular regarding the setting of a reduction factor.

Notice of appeal submitted against T-105/17 in the Official Journal of the European Union

Case T-105/17 HSBC Holdings plc, HSBC Bank plc and HSBC France v Commission

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.

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