

Financial Regulation Weekly Bulletin

6 February 2020 / Issue 1045

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

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If you have any comments or questions, please contact [Selmin Hakki](#).

Slaughter and May also produces a periodical Insurance Newsletter. If you would like to go on the distribution list, please contact [Beth Dobson](#).

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General

1. UK Parliament

- 1.1 Goods Mortgages Bill 2019-20 - first reading in the House of Lords - 6 February 2020** - The Goods Mortgages Bill 2019-20 has had its first reading in the House of Lords. If the Bill becomes law, it will replace the Bills of Sales Acts 1878 and 1882 with a modern legal framework enabling a wide range of individuals to use goods that they already own to secure loans and other obligations. The Bill would also create a new form of non-possessory security, a 'goods mortgage', which could be created over qualifying goods owned by individuals.

A date for the Bill's second reading in the House of Lords has yet to be scheduled.

[Goods Mortgages Bill 2019-20](#)

[Webpage](#)

Brexit

2. HM Government and European Commission

- 2.1 Future UK-EU relationship - HM Government publishes written statement setting out its proposed approach to negotiations and European Commission recommends opening negotiations - 3 February 2020** - HM Government has published a written statement made by the Prime Minister setting out the government's proposed approach to negotiations on the future UK-EU relationship. In relation to financial services, the statement provides that any agreement should require both the UK and the EU to provide a predictable, transparent, and business-friendly environment for financial services firms, ensuring financial stability and providing certainty for both business and regulatory authorities, and with obligations on market access and fair competition. The statement also highlights that, given the depth of the UK-EU relationship in this area, there should also be enhanced provision for regulatory and supervisory cooperation arrangements between the UK and the EU, and for the structured withdrawal of equivalence findings.

More generally, the statement indicates that the UK government's ambition is to negotiate a free trade agreement whose provisions are at least as good as those in the EU's recent trade agreements, such as those with Canada or Japan. The need to respect the sovereignty of both parties is also expressed, with the consequence that any agreement cannot include any regulatory alignment, any jurisdiction for the CJEU over the UK's laws, or any supranational control in any area including the UK's borders and immigration policy.

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Meanwhile, the European Commission has published a recommendation to the Council of the European Union to authorise the Commission to open negotiations with the UK over a new agreement governing the future UK-EU relationship post-Brexit. The recommendation includes an annex detailing the purpose, scope and content of the envisaged partnership between the UK and the EU for the purposes of negotiation, which should be ambitious, wide-ranging and economically balanced. The aim is the establishment of a free trade area, with no tariffs, fees or charges applied in any sector, and free of all customs duties or taxes on exports. In the area of financial services, the Commission states that:

- the envisaged partnership should provide for transparent, efficient and compatible regulatory approaches, including regulatory provisions in line with existing EU free trade agreements in financial services;
- the key instrument that the UK and EU will use to regulate interactions between their financial systems will be their respective unilateral equivalence frameworks; and
- the cooperation on financial services should establish close and appropriately structured voluntary cooperation on regulatory and supervisory matters, and allow for informal exchange of information and bilateral discussions on regulatory initiatives.

The Council of the EU must adopt the decision formally to authorise the Commission to open negotiations. This is expected to take place at the next Council of the EU meeting on 25 February 2020.

[Written statement by the Prime Minister on the government's proposed approach to negotiations on the future UK-EU relationship](#)

[European Commission recommendation in relation to the opening of negotiations for the future UK-EU relationship](#)

[Press release](#)

3. [HM Treasury](#)

- 3.1 Financial sanctions post-Brexit - HM Treasury publishes updated guidance - January 2020** - HM Treasury has published an update to its general guidance on the application of the UK financial sanctions regime after Brexit. The guidance highlights that, following the end of the implementation period, secondary legislation under the Sanctions and Anti-Money Laundering Act 2018 in the form of statutory instruments will transfer existing EU-derived sanctions into UK law.

[Updated HM Treasury general guidance on financial sanctions post-Brexit](#)

[Webpage](#)

4. [Financial Conduct Authority and Bank of England](#)

- 4.1 Temporary transitional power - FCA and Bank of England update status of TTP directions - 31 January 2020** - The FCA has updated its webpage on the temporary transitional power (TTP) directions and Brexit Policy Statement (PS19/5) to state that, following the UK's withdrawal from the EU and entry into an implementation period, EU law continues to apply in the UK until 31 December 2020. The FCA confirms that, as a result, the TTP directions did not come into force on

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31 January 2020 as they were not required at this stage. The FCA intends to update firms on the implementation of the TTP directions after the implementation period in due course.

The Bank of England and PRA have also amended their webpage on transitioning to post-Brexit rules to confirm that they have not made final versions of their transitional directions. The Bank and the PRA intend to update firms on the status of the directions before the end of the implementation period. The Bank also confirms that the EU (Withdrawal Agreement) Act 2020 defers the entry into force of EU exit instruments and rulebook instruments made by the Bank and the PRA until the end of the implementation period.

[FCA webpage on TTP directions](#)

[Bank of England webpage on transitioning to post-exit rules and standards](#)

[Bank of England webpage on the EU \(Withdrawal Agreement\) Act 2020](#)

5. Financial Conduct Authority

- 5.1 Brexit implementation period - FCA publishes information to assist UK firms - 31 January 2020** - The FCA has published further information setting out how the implementation period, which is due to operate until 31 December 2020, may affect UK firms and what factors UK firms should consider when preparing for the end of the implementation period. The webpage provides information on several areas, including: (i) the ability to continue servicing customers based in the EEA; (ii) firms' continued dependency on the provision of EEA-based outsourcing or third-party service providers; (iii) the identification requirements for payments between the UK and the EEA; and (iv) engaging with European regulators to ensure firms are able to continue to provide services in the EEA after the implementation period.

[FCA webpage on UK firms' preparations for the end of the Brexit implementation period](#)

6. European Securities and Markets Authority

- 6.1 Governance and reporting obligations for UK firms post-Brexit - ESMA publishes statement - 31 January 2020** - The European Securities and Markets Authority (ESMA) has published a statement clarifying UK firms' governance and reporting obligations under EU law from 1 February 2020 following the UK's withdrawal from the EU. ESMA states that, under the terms of the Withdrawal Agreement, UK representatives will no longer be permitted to participate in EU institutions, agencies or bodies, and their governance structures, except where exceptionally justified. As a result, the FCA will no longer be a member of ESMA's Board of Supervisors and it will not be permitted to participate in any of ESMA's governing bodies.

ESMA also highlights that, during the implementation period, from 1 February 2020 to 31 December 2020, EU law will continue to apply to the UK as if it were an EU member state, including that:

- rights and obligations for UK entities under EU law, such as reporting and notification obligations under the Markets in Financial Instruments Directive (2014/65/EU) (MiFID II), the Markets in Financial Instruments Regulation (600/2014/EU) (MiFIR) and the Central Securities Depositories Regulation (EU) 909/2014 (CSDR), among others, will continue to apply; and

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- ESMA will continue to directly supervise registered credit rating agencies (CRAs), trade repositories (TRs) and securitisation repositories established in the UK.

ESMA intends to continue monitoring the application of EU law to UK firms and other developments in preparation for the end of the implementation period on 31 December 2020.

[ESMA statement on UK firms' governance and reporting obligations post-Brexit](#)

[Press release](#)

7. [New Legislation](#)

7.1 **The Financial Services and Markets Act 2000 (Central Counterparties, Investment Exchanges, Prospectus and Benchmarks) (Amendment) Regulations 2020 (SI 2020/117)** were made on 3 February 2020, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The Regulations make minor amendments to UK law in order to update and ensure the effective implementation of several pieces of EU legislation, including:

- Regulation (EU) 2019/2099 amending the European Market Infrastructure Regulation (648/2012/EU) (EMIR) as regards the procedures and authorities involved for the authorisation of central counterparties (CCPs) and requirements for the recognition of third-country CCPs (EMIR 2.2);
- Regulation (EU) 2019/2115 which amends the Market Abuse Regulation (596/2014/EU) (MAR) and the Prospectus Regulation (EU) 2017/1129 with regard to the promotion of the use of small and medium-sized enterprise (SME) growth markets;
- the Low Carbon Benchmarks Regulation (EU) 2019/2089 on low and positive carbon benchmarks and sustainability-related disclosures for benchmarks; and
- the Investment Firms Directive on the prudential supervision of investment firms (EU) 2019/2034.

The Regulations enter into force on 27 February 2020, save for Regulation 4 (which concerns the Recognition Requirements Regulations) which enters into force on 26 March 2020.

[The Financial Services and Markets Act 2000 \(Central Counterparties, Investment Exchanges, Prospectus and Benchmarks\) \(Amendment\) Regulations 2020 \(SI 2020/117\)](#)

[Explanatory memorandum](#)

Please see the **Securities and Markets** section for an item on ESMA's consultation on draft technical standards on the provision of investment services and activities by third-country firms in the EU under MiFID II and MiFIR and an item on ESMA's technical advice on general equivalence criteria for third-country prospectuses under the Prospectus Regulation.

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8. [Official Journal of the European Union](#)

- 8.1 CRR - Commission Implementing Regulation published in the Official Journal - 30 January 2020** - Commission Implementing Regulation (EU) 2020/125 of 29 January 2020, which contains implementing technical standards (ITS) amending Implementing Regulation (EU) 945/2014 in relation to relevant appropriately diversified indices in accordance with the Capital Requirements Regulation (EU) 575/2013 (CRR), has been published in the Official Journal of the European Union.

The Commission Implementing Regulation will enter into force on 19 February 2020.

[Official Journal: Commission Implementing Regulation \(EU\) 2020/125 amending the ITS relating to relevant appropriately diversified indices under the CRR](#)

9. [European Banking Authority](#)

- 9.1 2020 EU-wide stress test - EBA announces launch - 31 January 2020** - The European Banking Authority (EBA) has launched the 2020 EU-wide stress test exercise for EU banks and released the details of the macroeconomic scenarios that it will apply in this exercise. The stress test aims to assess banks' resilience to an adverse economic shock, the results of which will inform the 2020 Supervisory Review and Evaluation Process (SREP). The EBA states that, for the first time, the adverse scenario will follow a 'lower for longer' narrative, comprising a recession coupled with low or negative interest rates for a prolonged period, during which EU GDP would decline by 4.3% cumulatively by 2022, resulting in the most severe scenario to date.

The EBA published its methodology and draft templates in November 2019, and expects to publish the results of the exercise by 31 July 2020.

[Press release: EBA launches 2020 EU-wide stress test exercise](#)

[Macro-financial scenario for the 2020 EU-wide stress test](#)

[European Systemic Risk Board letter on the 2020 EU-wide stress test adverse macroeconomic scenario](#)

[Methodological note](#)

[FAQs](#)

[ECB press release](#)

- 9.2 CRD IV - EBA publishes two reports on the consistency of risk weighted assets - 31 January 2020** - The EBA has published two reports setting out the results of its 2019 annual credit risk and market risk benchmarking exercises. The reports assess the consistency of risk weighted assets (RWAs) across all EU institutions authorised to use internal model approaches for the calculation of capital requirements. The results of these reports demonstrates that the majority of the variability of the risk-weightings can be explained by fundamentals, and that these benchmarking exercises are a fundamental supervisory and convergence tool to address unwarranted inconsistencies and restore trust in internal models.

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[EBA report on its 2019 credit risk benchmarking report](#)

[Annex](#)

[EBA report on its 2019 market risk benchmarking report](#)

[Press release](#)

- 9.3 CRD IV - EBA publishes report on the benchmarking of diversity practices - January 2020** - The EBA has published a report on the benchmarking of diversity practices and policies in credit institutions and investment firms under Article 91 of the the Capital Requirements Directive (2013/36/EU) (CRD IV). The report concludes that, based on 2018 data, 41% of institutions have not yet adopted a policy promoting diversity with their management bodies and that the representation of women, although increasing marginally from 2015, remains relatively low. Two thirds of institutions had executive directors of only one gender, and in nearly all such cases the board was composed only of men.

The EBA calls on EU member states and institutions to consider additional measures for promoting greater diversity within management bodies to ensure institutions' compliance with the requirement to adopt diversity policies under CRD IV. The EBA intends to continue monitoring diversity levels in management bodies and issuing periodical benchmark studies on the matter.

[EBA report on the benchmarking of institutions' diversity practices under CRD IV](#)

[Press release](#)

- 9.4 AML and CTF - EBA publishes report on NCAs' supervision of banks - February 2020** - The EBA has published a report on national competent authorities' (NCAs') approaches to the anti-money laundering (AML) and counter-terrorist financing (CTF) supervision of banks. While the report demonstrates that most NCAs are taking significant steps to strengthen their approach to the supervision of AML and CTF risks, the EBA found that significant challenges remain, including:

- the need to move away from a 'tick box' approach to compliance regarding banks' AML and CTF systems and controls;
- strengthening NCAs' approach to implementing more proportionate and dissuasive measures to correct deficiencies in banks' systems and controls; and
- the need for NCAs to cooperate more effectively with domestic and international stakeholders to emphasise to role of AML and CTF supervision within the international supervisory framework.

[EBA report on NCAs' approaches to the supervision of AML and CTF risks in banks](#)

[EBA factsheet](#)

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10. European Central Bank

- 10.1 Internal models for calculating counterparty credit risk - ECB publishes consultation on draft Guide on assessment methodology - February 2020** - The European Central Bank (ECB) has published for consultation a second draft Guide on the methodology for assessing the internal models applied by banks to calculate their exposure to, and capital requirements for, counterparty credit risk under the CRR.

The consultation period closes on 18 March 2020.

[ECB draft Guide on the assessment methodology for banks' internal models for calculating counterparty credit risk under CRR](#)

[FAQs](#)

[Webpage](#)

[Press release](#)

11. European Systemic Risk Board

- 11.1 AIFMD - ESRB publishes letter to the European Commission outlining shortcomings - 3 February 2020** - The European Systemic Risk Board (ESRB) has published a letter from Francesco Mazzaferro (Head of the ESRB Secretariat) to John Berrigan (Director General (acting) for Financial Stability, Financial Services and the Capital Markets Union at the European Commission) outlining several shortcomings in the framework of the Alternative Investment Fund Managers Directive (2011/61/EU) (AIFMD). In particular, Mr Mazzaferro highlights:

- the financial stability vulnerabilities posed by increasing financial intermediation by investment funds, including in relation to liquidity risks and pro-cyclical risk-taking;
- several areas for improvements in AIFMD reporting, including in relation to the use of a legal entity identifier (LEI); and
- the need to develop the macroprudential policy framework, both in general and for investment funds.

The Commission intends to report on its review of the AIFMD framework in early 2020.

[ESRB letter to the European Commission on various shortcomings of the AIFMD framework](#)

12. Bank of England

- 12.1 RTGS renewal programme - Bank publishes timeline and further information - 3 February 2020** - The Bank of England has published further information on the renewal and improvement of the UK's real-time gross settlement (RTGS) service, including an indicative timeline setting out its planned implementation. The RTGS renewal programme aims to create a world-leading payments service, including the implementation of the new payment messaging standard for UK payments, ISO 20022. The implementation of ISO 20022 seeks to align credit payment messages across the UK's three main interbank payments systems: CHAPS, Bacs and Faster Payments. Among other things, the timeline indicates that the Bank intends to issue the ISO 20022 message set and technical guidance later in 2020, with participants going live with ISO 20022 in 2022.

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[RTGS renewal programme timeline](#)

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13. Financial Conduct Authority

13.1 Approach to persistent debt customers - FCA publishes 'Dear CEO' letter to credit card firms - 3 February 2020

The FCA has published a 'Dear CEO' letter from Philip Salter (Director of Retail Lending and Claims Management Supervision, Retail and Authorisations at the FCA) to the CEOs of credit card firms, setting out areas of concern identified by the FCA following a recent review into firms' approach to, and treatment of, customers who have been in persistent debt for 36 months (PD36).

The FCA's PD36 rules entered into force in March 2018 and apply to customers who, over a period of 18 months, have paid more in interest, fees and charges than they have repaid of the principal balance on their card. In its letter the FCA identifies several areas of concern, including that some customers may not respond to firm communications about being in persistent debt, and that some firms may be planning a blanket suspension of credit cards for all PD36 customers.

[FCA 'Dear CEO' letter to credit card firms on their approaches to PD36 customers](#)

[Press release](#)

13.2 FCA Policy Statement PS20/1 - Mortgage advice and selling standards: Feedback to CP19/17 and final rules - January 2020

The FCA has published a Policy Statement (PS20/1) setting out its final rules and guidance on the provision of mortgage advice and selling standards, which follows the FCA's May 2019 Consultation Paper (CP19/17) on the matter. The FCA confirms that it will proceed with its proposals largely as consulted on, including:

- amending the Perimeter Guidance Sourcebook (PERG) to clarify that using online tools to search for, filter and find a mortgage based on objective criteria does not necessarily constitute giving advice, and to align the FCA's approach more closely with its recently updated guidance on advising on retail investments;
- permitting more customer interaction before firms are required to give advice; and
- implementing changes to make execution-only mortgage sales channels more accessible.

The final rules and guidance entered into force on 31 January 2020. Some of the rules will, however, be subject to transitional provisions until 30 July 2020 to allow firms time to adapt their processes to accommodate the changes.

[FCA Policy Statement PS20/1 - Mortgage advice and selling standards: Feedback to CP19/17 and final rules](#)

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14. Competition and Markets Authority

- 14.1 Retail Banking Market Investigation Order 2017 - CMA publishes letter regarding breaches of Part 6 - 6 February 2020** - The Competition and Markets Authority (CMA) has published a letter to Nationwide in relation to breaches of Part 6 of the Retail Banking Market Investigation Order 2017, concerning failures to send text alerts to customers with personal current accounts before charging them for unarranged overdrafts. According to the CMA, Nationwide breached Part 6 of the Order because it imposed unarranged overdraft charges on approximately 70,000 customers without providing a warning that it would do so.

Nationwide has committed to refund £900,000 to affected customers, who did not receive a compliant alert, by the end of May 2020.

[CMA letter to Nationwide in relation to breaches of Part 6 of the Retail Banking Market Investigation Order 2017](#)

[Press release](#)

15. Pay.UK

- 15.1 Global standard to modernise UK payments - Pay.UK consults on adopting ISO 20022 - February 2020** - Pay.UK, the retail payments authority, has published a Consultation Paper setting out its proposals for adopting ISO 20022, the new common global messaging standard for UK payments, and other key standards to enhance the clearing and settlement capabilities of the new payments architecture (NPA). The consultation builds on the matters covered in its joint consultation with the Bank of England and the Payment Systems Regulator (PSR) on the transition to ISO 20022, published in June 2018.

The consultation period closes on 31 March 2020. Pay.UK intends to publish the findings of its consultation during the second half of 2020.

[Pay.UK Consultation Paper on adopting ISO 20022](#)

[Press release](#)

Securities and Markets

16. International Swaps and Derivatives Association

- 16.1 Benchmark fallbacks - ISDA announces second consultation and publishes updated FAQs on IBOR fallback rate adjustments - 5 and 6 February 2020** - The International Swaps and Derivatives Association (ISDA) has announced that it will re-consult on how to implement pre-cessation fallbacks in contracts referencing interbank offered rates (IBORs) following its May 2019 consultation, which failed to achieve market consensus. This follows the release of new information by the FCA and ICE Benchmark Administration on the length of time for which a non-representative LIBOR might be published.

ISDA intends to publish the new consultation, which will focus on whether the 2006 ISDA Definitions should be amended to include both pre-cessation fallbacks and permanent cessation fallbacks for derivatives contracts referencing IBORs, by the end of February 2020. Based on the results of the consultation, ISDA *“will move quickly to deliver the appropriate, industry endorsed fallback solution later this year”*.

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ISDA has also updated its FAQs on fallback rate adjustments for IBORs to include a new question on whether fallbacks constitute ‘benchmarks’ for regulatory purposes. The FAQs aim to address the main issues arising from key adjustments that market participants will need to make if fallback provisions to risk-free rates are to take effect in contracts referencing IBORs.

[Press release: ISDA announces second consultation on pre-cessation fallbacks](#)

[Webpage](#)

[Updated ISDA FAQs on fallback rate adjustments for IBORs](#)

[Webpage](#)

17. European Securities and Markets Authority

17.1 MiFID II/MiFIR - ESMA publishes consultation on the provision of investment services and activities by third-country firms - 31 January 2020 - The European Securities and Markets Authority (ESMA) has published for consultation draft technical standards on the provision of investment services and activities by third-country firms in the EU under the Markets in Financial Instruments Directive (2014/65/EU) (MiFID II) and the Markets in Financial Instruments Regulation (600/2014/EU) (MiFIR). More specifically, ESMA is consulting on:

- draft regulatory technical standards (RTS) and implementing technical standards (ITS) to reflect changes made to the MiFIR regime for third-country firms providing investment services and activities to EU eligible counterparties and per se professional clients by the Investment Firms Regulation (EU) 2019/2033 (IFR); and
- draft ITS to reflect changes made to the MiFID II regime for third-country firms providing investment activities to professional and retail clients by the Investment Firms Directive (EU) 2019/2034 (IFD).

The consultation period closes on 31 March 2020. ESMA intends to publish the draft technical standards and a final report to the European Commission in Q3 2020.

[ESMA Consultation Paper on draft technical standards on the provision of investment services and activities by third-country firms under MiFID II and MiFIR](#)

[Webpage](#)

17.2 Prospectus Regulation - ESMA publishes technical advice to the European Commission on general equivalence criteria - 31 January 2020 - ESMA has published a letter from Steven Maijor (Chair of ESMA) to John Berrigan (Director General (acting) for Financial Stability, Financial Services and the Capital Markets Union at the European Commission) setting out ESMA’s technical advice on general equivalence criteria for third-country prospectuses under Article 29(3) of the Prospectus Regulation (EU) 2017/1129.

In its advice, ESMA concludes that the operation of an equivalence regime under Article 29 would raise serious practical challenges. It notes that: “*Article 28 of the Prospectus Regulation already provides third country issuers with access to EU markets*” and that preliminary indications from national competent authorities (NCAs) and market participants suggest that there is limited demand for an equivalence regime.

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[ESMA letter to European Commission on technical advice on general equivalence criteria for third-country prospectuses under the Prospectus Regulation](#)

- 17.3 MiFIR - ESMA publishes Consultation Paper on the pre-trade transparency regime for systematic internalisers active in non-equity instruments - 3 February 2020** - ESMA has published a Consultation Paper on the pre-trade transparency regime for systematic internalisers active in non-equity instruments under MiFIR. The Consultation Paper sets out several proposed amendments to the legal framework including simplifying the requirements for systematic internalisers' quotes in liquid and illiquid instruments.

The consultation period closes on 18 March 2020. ESMA intends to submit a final report to the European Commission in July 2020.

[ESMA Consultation Paper on the pre-trade transparency regime for systematic internalisers in non-equity instruments under MiFIR](#)

[Press release](#)

- 17.4 MiFIR - ESMA publishes technical advice on the effects of product intervention measures - 3 February 2020** - ESMA has published a final report containing technical advice to the European Commission on the effects of its product intervention measures under MiFIR. In July 2018 and August 2018, ESMA introduced and applied temporary product intervention measures in respect of retail binary options and retail contracts for difference (CFDs). Following three consecutive renewals, these measures expired on 1 July 2019 for binary options and 31 July 2019 for CFDs. Nearly all NCAs also implemented national product intervention measures in relation to the marketing, distribution or sale of binary options and CFDs to retail clients. ESMA recommends several improvements to the product intervention framework including, among other things, addressing the risk of arbitrage between MiFID firms and fund management companies.

[ESMA report containing technical advice on the effects of product intervention measures under MiFIR](#)

[Press release](#)

- 17.5 MiFID II/MiFIR - ESMA publishes Consultation Paper on the transparency regime for equity and equity-like instruments, the DVC mechanism and the trading obligations for shares - 4 February 2020** - ESMA has published a Consultation Paper on the transparency regime for equity and equity-like instruments, the double volume cap (DVC) mechanism and the trading obligations for shares under MiFID II and MiFIR. The Consultation Paper proposes to simplify the trade reporting regime and improve overall trade transparency, as well as address the ongoing high volume of dark trading.

The consultation period closes on 17 March 2020. ESMA intends to submit its final report to the European Commission in July 2020.

[ESMA Consultation Paper on on the transparency regime for equity and equity-like instruments, the double volume cap \(DVC\) mechanism and the trading obligations for third-country under MiFID II and MiFIR](#)

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- 17.6 CSDR - ESMA postpones entry into force of RTS on settlement discipline - 4 February 2020 -** ESMA has published a report presenting new draft RTS postponing the entry into force of the RTS on settlement discipline under the Central Securities Depositories Regulation (909/2014/EU) (CSDR). The RTS on settlement discipline were due to enter into force on 13 September 2020. ESMA states that further time is needed before the implementation of the new requirements under the RTS on settlement discipline due to various factors.

[ESMA report on postponing the entry into force of the CSDR RTS on settlement discipline](#)

- 17.7 Transparency Directive - ESMA publishes amended Guidelines on the enforcement of financial disclosures - 4 February 2020 -** ESMA has published amended Guidelines on NCAs' enforcement of financial disclosures published under the Transparency Directive (2004/109/ EC). The amendments aim to further harmonise the way in which NCAs enforce listed issuers' financial disclosures and largely relate to NCAs' methods for selecting the issuers whose financial disclosures should be subject to examination.

The updates Guidelines will apply from 1 January 2022.

[ESMA updated Guidelines on NCAs' enforcement of financial disclosures](#)

[ESMA report on amendments to Guidelines on NCAs' enforcement of financial disclosures](#)

[Press release](#)

- 17.8 MiFID II - ESMA launches common supervisory action with NCAs on suitability rules - 5 February 2020 -** ESMA has launched a common supervisory action with NCAs on the application of suitability rules under MiFID II. ESMA aims to gauge the progress made by intermediaries in the application of the suitability requirements and to analyse whether, and how, the costs of investment products are taken into account by firms when recommending an investment product to a client. The common supervisory action will take place during 2020.

[Press release: ESMA launches common supervisory action with NCAs on MiFID II suitability rules](#)

- 17.9 MiFIR - ESMA statement on implementing the pre-trade transparency regime for commodity derivatives - 6 February 2020 -** ESMA has published an update on the implementation of its June 2019 supervisory briefing on pre-trade transparency requirements for commodity derivatives under MiFIR. ESMA states that most NCAs have completed two of the three implementation stages set out in its supervisory briefing, namely: (i) identifying trading venues operating non-compliant trading systems and requiring them to set out measures to comply with MiFIR pre-trade transparency obligations; and (ii) ensuring that all trading venues identified in stage one would either operate under a compliant pre-trade transparency waiver or be fully pre-trade transparent by 31 December 2019. It notes, however, that the FCA completed stage one with a significant delay and understands the FCA expects to complete stage two by June 2020.

[ESMA statement on implementing the pre-trade transparency for commodity derivatives under MiFIR](#)

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- 17.10 Strategy on sustainable finance - published by ESMA - 6 February 2020** - ESMA has published its strategy on sustainable finance, setting out how it intends to place sustainability at the core of its activities by focusing on environmental, social and governance (ESG) factors in its work. ESMA highlights several priority areas, including in relation to: (i) transparency requirements; (ii) climate-related financial risks; (iii) convergence of national ESG supervisory practices; and (iv) the development of an EU taxonomy on sustainable investment.

[ESMA strategy on sustainable finance](#)

[Press release](#)

18. Financial Conduct Authority

- 18.1 EMIR - FCA updates webpage on web portal - 6 February 2020** - The FCA has updated its webpage on the submission of notifications and applications under the European Market Infrastructure Regulation (648/2012/EU) (EMIR). The legacy EMIR web portal will be decommissioned on 31 March 2020. All notifications and applications will be submitted using the FCA Connect system, except applications for intragroup exemptions from bilateral margining which will be submitted by email. The webpage contains detailed instructions on how counterparties can register and make submissions using the new web portal.

[FCA webpage on the EMIR web portal](#)

19. Recent Cases

- 19.1 *Norham Holdings Group Ltd v Lloyds Bank Plc*, [2019] EWHC 3744 (Ch), 28 June 2019**

Dismissal of a preliminary issue concerning the construction of a contractual entitlement to a consequential loss claim arising from a basic award for a mis-sold interest rate hedging product - FSA review into mis-sold interest rate swaps

The High Court has dismissed two preliminary issues in dispute in proceedings relating to a claim regarding the mis-selling of an interest rate hedging product (IRHP). In 2008, Norham Holdings Group Ltd (Norham) entered into two loan agreements with Lloyds Bank plc, alongside an IRHP, an interest rate swap. Shortly afterwards, interest rates fell sharply. Consequently, Norham were liable to pay substantial sums to Lloyds under the IRHP, which Norham allege caused significant damage to its business.

Following a Financial Services Authority (FSA) review into the sales of its swaps transactions, Lloyds informed Norham that the sale of its IRHP qualified for redress as there was insufficient evidence to demonstrate Lloyds' compliance with the regulatory requirements. Having accepted Lloyds' offer for basic redress, Norham alleged that the effect of the basic redress award agreement was: (i) to give Norham a contractual entitlement to consequential loss, subject to proof of causation; and (ii) consequently Lloyds was estopped from disputing that the swaps were mis-sold and that the only matter for the court to determine was the amount of consequential loss sustained.

The High Court dismissed both preliminary issues. Kramer J stated that “*if the objective intention of the [basic redress award] agreement had been to create contractual rights to a consequential loss determination part way through the review process one would expect to see express words to that effect*”. Moreover, although the review established that there was insufficient evidence to

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demonstrate Lloyds' compliance with the regulatory requirements, a contractual claim for consequential losses arising from breaches of the regulatory requirements could not automatically follow, as insufficient evidence to demonstrate compliance does not equate to the existence of a sufficient cause, or causes, of action.

[Norham Holdings Group Ltd v Lloyds Bank Plc \[2019\] EWHC 3744 \(Ch\)](#)

Please see the **Insurance** section for an item on EIOPA publishing a discussion paper on IBOR transition.

Asset Management

20. Investment Association

- 20.1 FX trading - IA publishes policy document on the standardisation of reject codes - February 2020** - The Investment Association (IA) has published a policy document proposing the development of new standardised categories to simplify the processing of unsuccessful trades in the foreign exchange (FX) markets. Under the proposals, when a request by an investment manager to execute a trade on the FX markets is not executed, the brokers, dealers and platforms will be asked to use one of 13 new reject codes identifying the reason.

The IA asks all execution providers to adopt the new reject codes by the end of Q1 2020.

[IA policy document on the standardisation of FX reject codes](#)

[Press release](#)

21. Official Journal of the European Union

- 21.1 EEA Agreement - Decisions amending Annex IX (Financial Services) published in the Official Journal - 30 January 2020** - The following three Decisions of the EEA Joint Committee, amending Annex IX (Financial Services) to the EEA Agreement, have been published in the Official Journal of the European Union:

- Decision 62/2018 of 23 March 2018, amending Annex IX (Financial Services) to incorporate several delegated and implementing regulations relating to the Solvency II Directive (2009/138/EC) into the EEA Agreement;
- Decision 63/2018 of 23 March 2018, amending Annex IX (Financial Services) to incorporate delegated and implementing regulations relating to the Undertakings for the Collective Investment in Transferable Securities Directive (2014/91/EU) (UCITS Directive) into the EEA Agreement; and
- Decision 64/2018 of 23 March 2018, amending Annex IX (Financial Services) to incorporate the European Venture Capital Funds Regulation (345/2013/EU) (EuVECA Regulation), the European Social Entrepreneurship Funds Regulation (346/3013/EU) (EuSEF Regulation) and two related implementing regulations into the EEA Agreement.

[Official Journal: EEA Joint Committee Decision incorporating delegated and implementing regulations relating to the Solvency II Directive into the EEA Agreement](#)

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[Official Journal: EEA Joint Committee Decision incorporating delegated and implementing regulations relating to the UCITS Directive into the EEA Agreement](#)

[Official Journal: EEA Joint Committee Decision incorporating the EuVECA Regulation, EuSEF Regulation and related implementing regulations into the EEA Agreement](#)

22. Financial Conduct Authority

- 22.1 FCA Policy Statement PS20/2: Publishing and disclosing costs and charges to workplace pension scheme members and amendments to COBS 19.8 - February 2020** - The FCA has published a Policy Statement (PS20/2) setting out its final requirements for pension scheme governance bodies to report costs and charges information to members of workplace pension schemes. Under the FCA's Conduct of Business Sourcebook (COBS) Rule 19.8, asset managers have been required to report costs and charges information to the operator, trustee or manager of workplace pension schemes. PS20/2 extends this duty, requiring disclosure to scheme members on an ongoing basis. PS20/2 also makes changes to the calculation of transaction costs.

The final rules apply to pension providers, asset managers, pension scheme governance bodies, scheme members and advisers involved in the FCA-regulated defined contribution workplace pensions market. Firms must comply with the new rules from April 2020.

[FCA Policy Statement PS20/2: Publishing and disclosing costs and charges to workplace pension scheme members and amendments to COBS 19.8](#)

[Webpage](#)

- 22.2 Platform providers - FCA publishes 'Dear CEO' letter - 6 February 2020** - The FCA has published a 'Dear CEO' letter from Debbie Gupta (Director of Life Insurance and Financial Advice Supervision at the FCA) to the CEOs of firms providing platform services, setting 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 firms over the next two years, including:

- ensuring that firms' senior managers understand their roles and responsibilities under the Senior Managers and Certification Regime (SMCR), which was extended to most FCA-authorized solo-regulated firms, including platform providers, on 9 December 2019;
- improving firms' technological and operational resilience and ensuring that clear governance, oversight and risk management arrangements are put in place with third-party outsourcers; and
- firms' implementation of measures to address shortcomings identified in the FCA's investment platforms market study, published in March 2019.

[FCA 'Dear CEO' letter to firms providing platform services on its supervisory expectations](#)

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23. Recent Cases

23.1 *Anderson & others v Sense Network Ltd*, appeal against [2019] EWCA Civ 1395, 31 July 2019

Liability of principal for actions of appointed representative (AR) under section 39 FSMA 2000 - principal only liable to the extent it accepts responsibility for business carried out by the AR - definition of collective investment scheme - section 235 FSMA 2000

The UK Supreme Court has refused to grant a group of appellant investors permission to appeal in this case because the application did not raise an arguable point of law. This follows the Court of Appeal's decision of July 2019, as reported previously in this Bulletin, that Sense Network Ltd was not liable under section 39 of FSMA 2000 for regulatory non-compliance by its appointed representative (AR) on the basis that an authorised person can restrict the permissions it gives to an AR (and therefore its liability under section 39) to particular products, so that an AR is only an exempt person to the extent that an authorised person has accepted responsibility for the business to be carried on by the AR.

[UK Supreme Court permission to appeal results \(December 2019, January, February 2020\)](#)

[Anderson & others v Sense Network Ltd \[2019\] EWCA Civ 1395](#)

Insurance

24. European Insurance and Occupational Pensions Authority

24.1 **IBOR transition - EIOPA publishes discussion paper - January 2020** - The European Insurance and Occupational Pensions Authority (EIOPA) has published a discussion paper addressing the ongoing changes to interbank offered rates (IBORs) and the potential impact of transitioning away from IBORs which may cease to exist or become non-representative. The discussion paper focuses on issues identified with the EIOPA risk-free rates methodology and production. In particular, it highlights the potential impact of IBOR transitions on the definition and use of the credit rate adjustment.

The consultation period closes on 30 April 2020. EIOPA intends to use the feedback received in response to this discussion paper to consult on specific policy recommendations relating to IBOR transitions.

[EIOPA discussion paper on IBOR transition](#)

[Webpage](#)

[Press release](#)

25. Financial Conduct Authority

25.1 **FCA Policy Statement PS20/3: Signposting of travel insurance for consumers with medical conditions - February 2020** - The FCA has published a Policy Statement (PS20/3) setting out its final rules and guidance requiring travel insurance firms to signpost certain consumers with pre-existing medical conditions to a directory of specialist providers to enable them access to suitable travel insurance. This follows the FCA's July 2019 Consultation Paper (CP19/23) on the same matter.

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Firms offering retail travel insurance must implement the new rules by 5 November 2020 and will be required to include the details of the directory on their website within 30 days of the directory becoming operational, which the FCA anticipates to be completed by summer 2020. The FCA also intends to review the changes approximately 18 months post-implementation.

[FCA Policy Statement PS20/3: Signposting to travel insurance for consumers with medical conditions](#)

[Webpage](#)

Financial Crime

26. European Banking Authority

- 26.1 4MLD - EBA publishes consultation on revised Guidelines on AML and CTF risk factors - 5 February 2020** - The European Banking Authority (EBA) has published for consultation revised Guidelines on customer due diligence and anti-money laundering (AML) and counter-terrorist financing (CTF) risk factors under the Fourth Money Laundering Directive (EU) 2015/849 (4MLD). The Guidelines set out various factors to be considered by institutions assessing AML and CTF risks associated with a business relationship or occasional transaction and provide guidance on how institutions can adjust their customer due diligence measures to mitigate risks.

The EBA proposes several amendments to the Guidelines, including: (i) new guidance on compliance with enhanced customer due diligence requirements relating to high-risk third-countries; and (ii) new sectoral Guidelines on crowdfunding platforms, corporate finance, payment initiation services providers (PISPs), account information service providers (AISPs) and currency exchange firms. The revised Guidelines also provide details on customer due diligence measures, including the identification of beneficial owners and the verification of customer identity.

The consultation period closes on 5 May 2020.

[EBA Consultation Paper on revised Guidelines on AML and CTF risk factors under 4MLD](#)

[Webpage](#)

[Press release](#)

27. Joint Money Laundering Steering Group

- 27.1 AML and CTF - JMLSG publishes consultation on revisions to guidance - January 2020** - The Joint Money Laundering Steering Group (JMLSG) has published for consultation several proposed amendments to its guidance on AML and CTF. The proposals amend Chapters 4, 5, 7, 8 and the Glossary in Part I of the guidance, sector 3 (Electronic Money) in Part II of the guidance and Chapter 3 (Equivalent markets) in Part III of its guidance to reflect changes introduced by the Money Laundering and Terrorist Financing (Amendment) Regulations 2019, which came into force on 10th January 2020. The consultation period closes on 3 April 2020.

The JMLSG also proposes to introduce a new sector in Part II of the guidance for cryptoasset exchanges and custodian wallet providers. The JMLSG intends to publish this consultation by the end of February 2020.

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[Press release: JMLSG consults on proposed amendments to its guidance](#)

Please see the **Banking and Finance** section for an item on the EBA's report on NCAs' approaches to the AML and CTF supervision of banks.

Enforcement

28. Prudential Regulation Authority

28.1 Lack of integrity and failure to exercise due skill, care and diligence - PRA bans two and censures three former directors of a credit union - 6 February 2020 - The PRA has published four Final Notices, banning Michael Grimsdale and Richard Nichols and censuring Gillian Birkett and Phil Neale, in relation to the administration, and later liquidation of, Enterprise the Business Credit Union Ltd (EBCU) in 2015 after EBCU failed to satisfy its capital requirements. All individuals were former directors of EBCU and were adjudged to have contributed to the breach of a prohibition on accepting deposits, issuing new loans or varying the terms of existing loans, which the PRA had imposed on EBCU in 2014.

Mr Grimsdale, a non-approved person and director of EBCU's outsourced service provider, has been banned from performing any function relating to any regulated activity by the PRA. The PRA held that Mr Grimsdale is not to be considered a fit and proper person because of his lack of integrity (Statement of Principle 1) and dishonesty deriving from invoicing and concealing improper fees and issuing approximately £650,000 of loans in contravention of the PRA's prohibition. This enforcement action is the PRA's first against a non-approved person and, although Mr Grimsdale was not carrying out a controlled function of EBCU, he was in a position of responsibility and committed breaches which raised serious prudential risks for EBCU.

Mr Nichols has also been banned from performing any function relating to any regulated activity by the PRA for failing to act with integrity and failing to exercise due skill, care and diligence in managing the business of the firm (Statement of Principle 6) for acting recklessly as to the accuracy of information provided to EBCU's auditors and the PRA concerning the credit union's financial position. The PRA states that Mr Nichols has also been censured and would have been fined £20,000 if the financial penalty would not have caused him serious hardship.

Ms Birkett and Mr Neale have also been censured by the PRA for failing to exercise due skill, care and diligence in managing the business of the firm for failing to appreciate and manage a conflict of interest between their directorship of EBCU and another company of which they were directors.

This enforcement action is the PRA's first against individuals involved in a credit union.

[PRA Final Notice against Mr Grimsdale](#)

[PRA Final Notice against Mr Nichols](#)

[PRA Final Notice against Ms Birkett](#)

[PRA Final Notice against Mr Neale](#)

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29. Information Commissioner's Office

- 29.1 Freedom of Information Act 2000 - ICO partially upholds FCA decision to refuse request - 5 February 2020** - The Information Commissioner's Office (ICO) has published a decision notice, dated 31 January 2020, partially upholding the FCA's decision to refuse a freedom of information request under the Freedom of Information Act 2000 (FOIA). The FCA withheld certain information, following a request for information on how the FCA and Financial Ombudsman Service (FOS) had interpreted and implemented the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (SI 2015/542). The FCA withheld the information on the basis of sections 31 (law enforcement), 40(2) (personal information), 42 (legal professional privilege) and 44 (statutory prohibitions on disclosure) of the FOIA.

[ICO decision notice FS50806987 \(dated 31 January 2020\)](#)

30. Office of the Complaints Commissioner

- 30.1 FCA delay in complaints handling - Complaints Commissioner publishes final report - January 2020** - The Financial Regulators Complaints Commissioner has published a final report, dated 20 January 2020, in relation to a complaint made against the FCA about a perceived failure to act on information relating to an anonymous German bank, which the complainant alleged had been manipulating the price of metal markets. Although the Commissioner did not ultimately uphold the client's complaint, he has written to the FCA Board to express serious concerns over delays in reviewing complaints.

[Complaint FCA00590 \(dated 20 January 2020\)](#)

[Webpage](#)

Please see the **Securities and Markets** section for a case on the dismissal of a preliminary issue concerning the construction of a contractual entitlement to a consequential loss claim arising from a basic award for a mis-sold interest rate hedging product.

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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