SLAUGHTER AND MAY/

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FINANCIAL REGULATION WEEKLY BULLETIN

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

QUICK LINKS

SELECTED HEADLINES //

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.

Enforcement

Selected Headlines
General
Asset Management
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Financial Crime

GENERAL //

1 EUROPEAN SUPERVISORY AUTHORITIES

1.1 **DORA - Decision on reporting requirements for designating critical ICT third-party service providers published** - *15 November 2024* - The European Supervisory Authorities (ESAs) have published a decision (ESA 2024 22) on the information that national competent authorities are required to report for the designation of critical ICT third-party service providers (CTPPs) under the Regulation on digital operational resilience for the financial sector ((EU) 2022/2554) (DORA).

The deadline for submission of the first set of information is 30 April 2025.

ESAs decision concerning the reporting by CAs to the ESAs of information necessary for the designation of CTPPs in accordance with Article 31(1)(a) of DORA (ESA 2024 22)

Press release

1.2 **Exchange of information for fit and proper assessments - ESAs finalise guidelines** - *20 November 2024* - The European Supervisory Authorities (ESAs) have published a final report containing final guidelines (JC/GL 2024 88) on the system for the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions, and financial market participants by competent authorities. The system involves a cross-sectoral database (referred to as the ESAs Information System, or EIS) which will hold limited information on persons who are subject to a fitness and propriety assessment under EU sectoral provisions.

ESAs final report: Joint Guidelines on the system established by the European Supervisory Authorities for the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants by competent authorities (JC/GL 2024 88)

Press release

2 EUROPEAN SUPERVISORY AUTHORITIES AND EUROPEAN CENTRAL BANK

2.1 **Fit-for-55 climate scenario analysis - ESAs and ECB publish results** - *19 November 2024* - The European Supervisory Authorities (ESAs), together with the European Central Bank (ECB), have published a report (ESA 2024 21) on the results of the Fit-for-55 climate risk scenario analysis (the first EU-wide climate stress test for the financial sector).

The report finds that, under the three scenarios examined, transition risks alone are unlikely to threaten financial stability (noting that the results are subject to a large margin of uncertainty). An accompanying press release notes highlights the importance of financial institutions integrating climate risks into their risk management processes in a comprehensive and timely manner.

Fit-for-55 climate report

3 HOUSE OF LORDS

3.1 **Property (Digital Assets etc) Bill - House of Lords committee calls for evidence** - *19 November 2024* - A Special Bill Committee established by the House of Lords has published a call for evidence regarding the Property (Digital Assets etc) Bill. The Bill would give effect to the Law Commission's 2023 report on digital assets, which recommended statutory confirmation that a thing should not be deprived of legal status as an object of personal property rights simply because it is neither a thing in possession nor a thing in action. The Bill had its second reading in Grand Committee in the House of Lords on 6 November before being read formally in the House of Lords chamber on 13 November 2024.

The deadline for responses is 20 December 2024.

House of Lords call for evidence: Property (Digital Assets etc) Bill

Webpage

4 HM TREASURY

4.1 **Plans for growth of UK financial services - Chancellor announces measures** - *14 November 2024* - HM Treasury has published a collections page setting out the government's plans for growing the UK financial services sector, as announced by Rachel Reeves, Chancellor of the Exchequer, in her first Mansion House speech last week. The measures include the development of the first Financial Services Growth and Competitiveness Strategy to be published next spring 2025 and the launch of consultations on a UK Green Taxonomy and the regulatory regime for ESG rating providers. Regulatory reforms that are designed to “unlock innovation and growth” have also been proposed: these include next steps for the Advice Guidance Boundary Review and a National Payments Vision, among others.

The various initiatives comprising this collection are further discussed in this bulletin.

Speech

Collections page

4.2 **Regulatory regime for ESG ratings providers - Consultation response and draft SI published** - *15 November 2024* - HM Treasury has published a formal response to its consultation of March 2023 on a future regulatory regime for ESG rating providers, together with a draft version of the legislation that will bring them within the regulatory perimeter. More specifically, a draft statutory instrument - the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2024 - will insert a new article 63U into the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) to specify that providing ESG ratings is a regulated activity. There will be an exclusion for firms that create an ESG rating as part of the development and delivery of a regulated activity for which they are authorised. The deadline for comments on the draft statutory instrument is 14 January 2025.

The FCA will consult on policy proposals for the ESG ratings regime and is considering its approach to overseas ESG ratings providers applying for UK authorisation. HM Treasury envisages that the overall process of designing, developing and commencing the ESG ratings regulatory regime will take approximately four years. Meanwhile, on 19 November 2024, the Council of the EU adopted the Regulation on the transparency and integrity of ESG rating activities (2023/0177(COD)).

HM Treasury consultation response: Future regulatory regime for Environmental, Social and Governance (ESG) ratings providers

Draft statutory instrument

Webpage

Council of the EU press release

4.3 **Financial services growth & competitiveness strategy - HM Treasury calls for evidence** - *15 November 2024* - HM Treasury has published a call for evidence on its financial services growth and competitiveness strategy which is intended to serve as the central framework through which the government will achieve growth for the financial services sector and secure the UK's competitiveness as an international financial centre.

HM Treasury has identified five core policy pillars in this context: innovation and technology, the regulatory environment, regional growth, skills and access to talent, and international partnerships and trade. Several priority growth opportunities are also called out: FinTech, sustainable finance, capital markets (including retail investment), insurance and reinsurance markets, and asset management and wholesale services.

The deadline for responses to the call for evidence is 12 December 2024. HM Treasury intends to publish the strategy in spring 2025.

HM Treasury call for evidence: Financial Services Growth & Competitiveness Strategy

Webpage

4.4 **PRA, FCA and FPC remit and recommendations - HM Treasury publish letters** - *15 November 2024* - HM Treasury has published remits and recommendations for the FCA and PRA, in a letter to Nikhil Rathi, FCA Chief Executive, and a letter to Andrew Bailey, Bank of England Governor. Among other things, they call on the FCA and the PRA to explore opportunities to facilitate innovation and, in the case of the FCA, allow consumers to make informed choices. The government's top priority in respect of the financial services sector, according to the letters, is to promote growth and international competitiveness.

HM Treasury has published a letter addressed to the Bank of England (the Bank) setting out the remit and recommendations for the Financial Policy Committee (FPC) in 2024/25. Among other things, the letter highlights the need for the FPC to play an active role in supporting the growth and competitiveness of the UK's financial services sector and the wider economy.

Letter to the PRA

Webpage

Letter to the FCA

Webpage

Letter to the Bank of England

Webpage

5 HOUSE OF LORDS FINANCIAL SERVICES REGULATION COMMITTEE

5.1 **New approach to publicising enforcement investigations - proposals to be reshaped** - *18 November 2024* - The House of Lords Financial Services Regulation Committee has published the uncorrected transcript of an oral evidence session held on 13 November 2024 as part of its inquiry into the FCA's consultation on a new approach to publicising enforcement investigations (CP24/2). The witnesses at the session were Nikhil Rathi, FCA Chief Executive, and Ashley Alder, FCA Chair.

According to the transcript, the proposals will be subject to an FCA board decision in the first quarter of 2025. The FCA does not plan to move forward with the proposals as constituted; if they are progressed, they will be "fundamentally reshaped". It hopes to come back to the market with an update "within the next week or so". In particular, the FCA will set out case studies describing where it could have publicised investigations, the numbers involved, the types of cases, the trajectory on its operational performance and how the FCA board will oversee it.

Uncorrected transcript

6 BANK OF ENGLAND AND FINANCIAL CONDUCT AUTHORITY

6.1 **Survey on use of AI/ML - published by Bank of England and FCA** - *21 November 2024* - The Bank of England (the Bank) and the FCA have published a report on the Artificial Intelligence and Machine Learning survey for 2024, building on existing work to further their understanding of the capabilities, development, deployment and use of AI in financial services. The results are anonymised and aggregated with respondents grouped into various sectors. The insurance sector reported the highest percentage of firms currently using AI, closely followed by international banks.

Artificial intelligence in UK financial services - 2024

7 FINANCIAL CONDUCT AUTHORITY

7.1 **Advice guidance boundary review - FCA sets out next steps** - *15 November 2024* - The FCA has published feedback to its discussion paper (DP23/5) of December 2023 on the Advice Guidance Boundary Review which had set out proposals to improve how people can access help with their pensions and investments.

Among other things, the feedback indicates that there is interest in further clarifying the boundary between regulated financial advice and unregulated guidance, but recognition that on its own it is unlikely to resolve the support gap. In terms of next steps, the FCA intends to consult in December 2024 on high-level proposals for targeted support in pensions, which would allow FCA-regulated firms to provide support to pension savers in a new way. In the first half of 2025, the FCA intends to consult on rules for better support for consumers in retail investments and pensions. The FCA is also conducting consumer research into retail investments to support its work.

To help firms support their pensions and retail investments customers, the FCA has published a joint statement with The Pensions Regulator (TPR) and the Information Commissioner's Office.

Webpage

Press release

Joint statement from the FCA, ICO and TPR for retail investment firms and pension providers

8 FINANCIAL CONDUCT AUTHORITY AND FINANCIAL OMBUDSMAN SERVICE

8.1 **Modernising the redress system - FCA and FOS call for input** - *15 November 2024* - The FCA and Financial Ombudsman Service (FOS) have published a joint call for input on modernising the redress system. The call for input refers to “several significant mass redress events in the last few years” which have led to operational difficulties as well as delays for consumers. It notes that, in some cases, mass redress events have been precipitated by professional representatives such as claims management companies (for example in relation to high-cost credit, packaged bank accounts and Authorised Push Payment fraud).

The call for input also identifies some challenges with the way in which the FCA and the FOS co-operate with each other; it refers to an industry perception of misalignment between them on the interpretation of certain regulatory requirements. To this end a revised version of the Memorandum of Understanding between the FCA and the FOS has been published, which refers to increased cooperation and provides more detail on the situations in which they will engage with each other and the format for that engagement.

Options to address the issues identified are divided into shorter, medium-term and longer-term options. The call for input closes on 30 January 2025. The FCA and the FOS will summarise the responses they receive and publish next steps (including any consultation proposals) in the first half of 2025.

FCA and FOS call for input: Modernising the Redress System

Webpage

Updated memorandum of understanding

BANKING AND FINANCE //

9 UK PARLIAMENT

9.1 **The Prudential Regulation of Credit Institutions (Meaning of CRR Rules and Recognised Exchange) (Amendment) Regulations 2024 published** - *21 November 2024* - The Prudential Regulation of Credit Institutions (Meaning of CRR Rules and Recognised Exchange) (Amendment) Regulations 2024 have been published, alongside an explanatory memorandum.

The Regulations amend the definition of "CRR rules" in the Financial Services and Markets Act 2000 to include rules made by the PRA as part of Basel 3.1 implementation and a related amendment to the Financial Services Act 2021. They also expand the definition of "recognised exchange" in the UK Capital Requirements Regulation (575/2013) to include UK-based investment exchanges that are considered to be regulated markets; investment exchanges in the register of Recognised Overseas Investment Exchanges; or an investment exchange that meets certain conditions, to be specified in the PRA's rulebook.

The Regulations come into force on 22 November 2024.

Statutory instrument

Explanatory memorandum

Webpage

10 HM TREASURY, FINANCIAL CONDUCT AUTHORITY AND PAYMENT SYSTEMS REGULATOR

10.1 **National Payments Vision and payments remit letter - published by HM Treasury** - *14 November 2024* - HM Treasury has published its National Payments Vision which sets out the government's ambitions for the UK's payments sector; it also responds to the findings of the independent Future of Payments Review (published in November 2023).

The Vision outlines three key pillars designed to guide future activity: innovation, competition and security. In line with these pillars, the government has provided direction on priority initiatives in the retail payments arena, in particular Open Banking and tackling fraud. The government has established a Payments Vision Delivery Committee, supported by an engagement group comprised of varied representatives from across the sector, to drive next steps. The Vision also sets out the government's commitment to explore a potential retail central bank digital currency. The Vision clarifies regulatory responsibilities for Open Banking, calling on the FCA to acting as the relevant regulator in the future, ensuring effective engagement with other authorities as needed.

Alongside the Vision, HM Treasury has published a letter sent to the FCA and the PSR setting out its recommendations for the regulators relating to payments regulation.

National Payments Vision

Terms of reference for Committee

Letter to FCA and PSR

Statement

SECURITIES AND MARKETS //

11 INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS

11.1 **Roadmap for retail investor online safety - launched by IOSCO** - *19 November 2024* - The International Organization of Securities Commissions (IOSCO) has announced the launch of its roadmap for retail investor online safety with the publication of consultation reports on finfluencers, digital engagement practices (DEPs) and online imitative trading practices. The roadmap aims to safeguard retail investors from fraud, excessive risk and misinformation. It will comprise five "waves" of targeted actions planned over the next 12 months.

The deadline for responses to the three consultation reports is 20 January 2025.

Press release

Finfluencers consultation

Digital Engagement Practices report

Online imitative practice report

11.2 **Pre-hedging - IOSCO consults** - *21 November 2024* - The International Organization of Securities Commissions (IOSCO) has published a Consultation Report inviting feedback on its recommendations relating to pre-hedging practices. The Report proposes a definition of pre-hedging and a set of recommendations to guide regulators in determining acceptable pre-hedging practices and managing the associated conduct risks effectively. It notes that existing industry codes and standards relating to pre-hedging mostly target OTC markets and/or only specific asset classes, or do not cover the range of potential issues related to pre-hedging.

The deadline for comments is 21 February 2025.

IOSCO consultation report: Pre-hedging (CR11/2024)

Press release

12 EUROPEAN SECURITIES AND MARKETS AUTHORITY

12.1 **Shortening the settlement cycle in the EU - ESMA publishes its assessment** - *18 November 2024* - The European Securities and Markets Authority has published a report containing its assessment of the shortening of the settlement cycle in the EU (ESMA74-2119945925-1969).

Overall, it appears clear to ESMA that the settlement cycle should be shortened to the first business day after the transaction has been executed (T+1). The migration to T+1 should be achieved in the fourth quarter of 2027. A settlement cycle shorter than that (that is, T+0) may be envisaged in the longer term.

ESMA report

12.2 **EMIR 3 - ESMA consults on active account requirement** - *20 November 2024* - The European Securities and Markets Authority (ESMA) has published a consultation paper (ESMA91-1505572268-3856) on the conditions of the active account requirement (AAR) under the legislative proposal amending the European Market Infrastructure Regulation (648/2012) (2022/0403(COD)) (EMIR 3). Briefly, the AAR requires certain financial and non-financial counterparties to hold, for certain categories of derivative contracts, at least one active account at an EU CCP and the clearance of at least a representative number of trades in that account. In the consultation paper, ESMA seeks feedback on several key aspects of the AAR, including the operational conditions to ensure that the clearing account is active and functional. The scope of the AAR is not part of ESMA's mandate and is therefore not subject to consultation.

The deadline for comments is 27 January 2025. An open hearing will be held on 20 January 2025.

ESMA consultation paper: Conditions of the AAR (ESMA91-1505572268-3856)

Webpage

Press release

Selected Headlines

General | Asset Management | Enforcement

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13 HM TREASURY

13.1 Next steps for UK MiFID - HM Treasury publishes policy paper - *15 November 2024* - HM Treasury has published a policy paper setting out its plans for reforming the UK version of the Markets in Financial Instruments Directive (2014/65/EU) (UK MiFID).

The paper refers to HM Treasury's commitment to amending legislation to give the FCA fuller powers of direction relating to the reporting of OTC positions. HM Treasury will also use powers under the Financial Services and Markets Act 2023 (FSMA 2023) to commence the revocation of firm-facing requirements in the UK Markets in Financial Instruments Regulation (600/2014) (UK MiFIR) relating to transaction reporting and delegate the setting of a new regime to the FCA. The FCA has separately published a discussion paper on changes to the transaction reporting regime (see item below). Finally, the firm-facing regulations in the onshored version of Commission Delegated Regulation (EU) 2017/565 (the MiFID Org Regulation) will be revoked and will instead be set out in the FCA Handbook.

HM Treasury policy paper: Next steps for reforming the UK MiFID

Webpage

13.2 Private Intermittent Securities and Capital Exchange System (PISCES) - HM Treasury publishes consultation response and draft statutory instrument - *6 March 2024* - HM Treasury has published its response to its consultation paper on the regulatory framework for the proposed new Private Intermittent Securities and Capital Exchange System (PISCES) (published in March 2024 as previously reported in this bulletin), together with a draft statutory instrument and accompanying policy note illustrating how the government intends to legislate to set up the PISCES sandbox.

PISCES will operate as a secondary market, facilitating the trading of existing shares, and firms wishing to run a PISCES platform will have to apply to the FCA. PISCES will now not include a public market style market abuse regime, and the FCA will instead be given rule-making powers to create a new and bespoke disclosure regime.

The deadline for comments on the statutory instrument is 9 January 2025. HM Treasury intends to lay the statutory instrument before Parliament by May 2025.

HM Treasury consultation response: PISCES

Policy note

Draft statutory instrument

14 BANK OF ENGLAND

14.1 Fundamental rules for FMIs and approach to FMI supervision - Bank of England consults - *19 November 2024* - The Bank of England has published a consultation paper introducing fundamental rules for certain financial market infrastructures (FMIs) which will apply to central counterparties (CCPs), central securities depositories (CSDs), recognised payment service operators (RPSOs) and specified service providers (SSPs).

The fundamental rules are high level overarching requirements applying to the FMIs in scope. They will only apply to entities that are incorporated in the UK. They are intended to form the foundation of a pending broader rulebook for FMIs, as the Bank of England uses its new rulemaking power over UK CCPs and CSDs to replace detailed firm-facing requirements that currently sit in UK primary legislation. The Bank is also consulting on a draft supervisory statement on the fundamental rules, set out in Appendix 1 to the consultation.

The deadline for responses is 19 February 2025. There will be a six-month implementation period between the publication of the final rules and the application of the fundamental rules to FMIs.

The Bank has separately published an updated version of its approach to FMI supervision, replacing the version published in April 2013.

Consultation paper

Approach document

15 FINANCIAL CONDUCT AUTHORITY

15.1 **Market cleanliness statistic methodology - revised by FCA** - 19 November 2024 - The FCA has announced that it is revising its methodology for calculating the market cleanliness statistic (MCS) which looks for abnormal share price movements before takeover announcements.

The limitations of the existing MCS methodology are explained in a related FCA research note. The updated methodology is intended to, among other things, detect abnormal price movements that happen on the same day as an announcement and will also introduce a market comparison test to ensure that the statistic is less affected by market volatility.

Press release

Research note

15.2 **Observations on UK MAR - latest edition of Primary Market Bulletin published by FCA** - *15 November 2024* - The FCA has published Primary Market Bulletin 52 (PMB 52) which covers three main topics related to the application of the retained EU law version of the EU Market Abuse Regulation (Regulation 596/2014) (UK MAR).

First, it sets out the FCA's observations on issuers' ability to identify and make public information that is inside information under UK MAR. This includes steps that issuers can take to make sure they are prepared to correctly identify inside information. Second, it addresses the dissemination of information by issuers during shareholder calls and meetings (in particular, the use of communication apps to interact with groups of smaller private shareholders). Finally, it covers the dissemination of regulatory information by issuers during interruptions to Primary Information Provider (PIP) services. This follows the FCA's observations during the July 2024 Crowdstrike-related IT outage which affected a number of PIPs.

Primary Market Bulletin 52

15.3 **Future options for the transaction reporting regime - FCA publishes discussion paper** - *15 November 2024* - The FCA has published a discussion paper (DP24/2) setting out options for developing transaction reporting and instrument reference data requirements in the UK.

The FCA is seeking feedback on the benefits of simplification of the regime on the one hand, balanced against the cost of change on the other. It is also considering other specific topics such as, among others, the improvement of data quality through new technologies; the application of requirements to collective portfolio management investment firms; and reporting obligations for OTC derivatives. The FCA will consult in due course on changes to requirements in Commission Delegated Regulation 2017/580 (RTS 24), which relate to data maintenance for orders in financial instruments.

The deadline for comments is 14 February 2025.

FCA discussion paper: Improving the UK transaction reporting regime (DP24/2)

Webpage

ASSET MANAGEMENT //

16 UK PARLIAMENT

16.1 **The Consumer Composite Investments (Designated Activities) Regulations 2024 published** - *21 November 2024* - The Consumer Composite Investments (Designated Activities) Regulations 2024 (SI 2024/1198) have been published, alongside an explanatory memorandum. The Regulations replace assimilated law in relation to the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation, establishing a new legislative framework for the regulation of Consumer Composite Investments (CCIs), formerly PRIIPs. They also specify activities relating to CCIs as designated activities for the purposes of the Financial Services and Markets Act 2000 and provides the FCA rule-making and certain supervision and enforcement powers to enable the FCA to set the regulatory provisions that apply to persons carrying out designated activities relating to CCIs.

The Regulations will come into force on the same day as the revocation of the UK PRIIPs Regulation.

Statutory instrument

Explanatory memorandum

Webpage

INSURANCE //

17 INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS

17.1 **Supervision of AI - IAIS consults on application paper** - *18 November 2024* - The International Association of Insurance Supervisors (IAIS) published for consultation on a draft version of an application paper on the supervision of AI. The paper is designed to support the application of the IAIS' Insurance Core Principles with a view to promoting the appropriate and consistent oversight of the use of AI within the insurance sector.

The deadline for responses is 17 February 2025.

Draft application paper

Webpage

18 HM TREASURY

18.1 **Regulation of captive insurance - HM Treasury consults** - *15 November 2024* - HM Treasury has published a consultation paper on the regulation of captive insurance. The paper notes that, as it stands, UK-resident captive insurers are subject to many of the same application, authorisation, governance and capital requirements as other insurers and reinsurers. HM Treasury has heard representations from some parts of industry that changes could be justified to make the UK a more attractive destination for captive insurance business. The consultation paper does not outline the specific mechanism by which a different approach to regulating captives might be introduced in the UK, but outlines potential general approaches.

The deadline for comments is 7 February 2025.

HM Treasury consultation paper: Captive insurance

Webpage

19 DEPARTMENT FOR WORK AND PENSIONS AND HM TREASURY

19.1 **Pensions Investment Review - DWP and HM Treasury launch consultation on reforms to DC market** - *14 November 2024* - The Department for Work and Pensions (DWP) and HM Treasury have published a consultation paper on proposals to reform the defined contribute (DC) pensions market as part of the UK government's Pensions Review, which was announced in July 2024.

In short, two key measures are proposed: the introduction of minimum size requirements for default arrangements as well as limits on the number of default arrangements in order to achieve scale in workplace schemes; and the overriding individual contracts to allow the bulk transfer of assets for contract-based schemes without individual savers' consent.

The deadline for comments is 16 January 2025.

DWP and HM Treasury consultation paper: Pensions Investment Review: Unlocking the UK pensions market for growth

Webpage

20 PRUDENTIAL REGULATION AUTHORITY

20.1 **Restatement of Solvency II assimilated law - PRA publishes policy statement** - *15 November 2024* - The PRA has published a policy statement on the restatement of assimilated law following the Solvency II review (PS15/24), providing feedback to responses to its April 2024 consultation paper on restating Solvency II assimilated law (CP5/24).

The final policy in PS15/24 is largely unchanged from what was consulted on in CP5/24. PS15/24 contains the PRA's final Solvency II rules, supervisory statements and statements of policy (SoP), reporting and disclosure templates and instructions, insurance special purpose vehicle (ISPV) templates and instructions, annexes and relevant permission application forms that will be effective on 31 December 2024. It also includes a set of mapping tables outlining where all relevant Solvency II assimilated law and other materials have been restated into PRA rules and policy material.

This is the final policy statement implementing the conclusions of the Solvency II regime review. The new reformed Solvency II regime will be implemented in full from 31 December 2024, subject to transitional provisions. This regime will eventually be known as "Solvency UK".

Policy Statement (PS15/24)

Appendices

Press release

20.2 **UK ISPV framework - PRA consults** - *15 November 2024* - The Prudential Regulation Authority (PRA) has published a consultation paper on changes to the UK insurance special purpose vehicles (ISPVs) regulatory framework (CP15/24). The proposals would involve making certain structural changes to the existing framework as well as several procedural changes, such as an 'accelerated pathway' for UK ISPV authorisation. Among other things, the PRA proposes to make clear that UK ISPVs can count realised investment returns that are retained by the vehicle to cover the aggregate maximum risk exposure (AMRE) and that the AMRE may increase over time commensurate with the realisation of investment returns that are retained in the vehicle.

The proposed changes would be made through a combination of amendments to the PRA Rulebook, as well as a new supervisory statement and statement of policy. The PRA advises that CP15/24 should be read in conjunction with its policy statement on the restatement of Solvency II assimilated law (PS15/24) (see further below).

The consultation closes on Friday 14 February 2025. The implementation date for the changes resulting from this CP would be mid-2025.

Consultation Paper (CP15/24)

21 RECENT CASES

21.1 *Compass Banca SpA v AGCM* (Case C-646/22) EU:C:2024:957, 14 November 2024

The European Court of Justice (ECJ) has ruled that when determining the effect of a potentially unfair commercial practice on the average consumer under the Unfair Commercial Practices Directive (2005/29/EC), a court can take into account the influence of cognitive biases. This may make it easier to establish that a practice has caused the "average consumer" to take a transactional decision they would not otherwise have taken. In addition, the ECJ held that simultaneously offering a loan and an (unrelated) insurance product did not of itself amount to an aggressive practice for the purposes of that Directive.

Compass Banca SpA v AGCM (Case C-646/22) EU:C:2024:957

FINANCIAL CRIME //

22 UK PARLIAMENT

22.1 The Sanctions (EU Exit) (Miscellaneous Amendments) (No. 2) Regulations 2024 published - *14 November 2024* - The Sanctions (EU Exit) (Miscellaneous Amendments) (No. 2) Regulations 2024 (SI 2024/1157) (the Regulations) have been published, together with an explanatory memorandum.

Among other things, the Regulations clarify that the prohibitions on the making available of funds or economic resources to any person for the benefit of a designated person extend to legal persons owned or controlled by that designated person. They also amend provisions relating to the notification requirements for licensing, to provide that written notice must be given to the licence applicant when a licence which authorises acts by a particular person is issued, varied, revoked or suspended. They also make clear that the duty on relevant firms to report a breach of certain sanctions is not simply to report a suspected offence but a suspected breach of sanctions or licensing requirements.

Most of the provisions under the Regulations come into force on 5 December 2024.

Statutory instrument

Explanatory memorandum

Webpage

23 HM TREASURY

23.1 ML/TF controls in high-risk third countries - HM Treasury updates advisory notice - *19 November 2024* - HM Treasury has updated its Money Laundering Advisory Notice: High Risk Third Countries to align with changes to the lists of "jurisdictions under increased monitoring" and "high-risk jurisdictions subject to a call for action" made by the Financial Action Task Force at its plenary meeting in October 2024.

Updated advisory notice

ENFORCEMENT //

24 FINANCIAL CONDUCT AUTHORITY

24.1 Further temporary changes to handling rules for motor finance complaints - FCA consults - 19 and *21 November 2024* - The FCA has published a consultation paper (CP24/22) seeking feedback on proposals to extend the time that firms have to respond to motor finance complaints where a non-discretionary commission arrangement was involved. This follows the Court of Appeal's judgment on 25 October in *Hopcraft v Close Brothers Ltd*, *Johnson v FirstRand Bank Ltd*, and *Wrench v FirstRand Bank Ltd*.

The FCA is proposing two options for extending the time firms have to provide final responses to relevant complaints. The first would involve an extension until 31 May 2025, reflecting how long it may take to hear whether the Supreme Court has granted permission to appeal. The FCA would plan to set out its next steps on DCA complaints in May 2025. The second option would involve a longer extension until 4 December 2025, to align with the current rules for motor finance firms dealing with discretionary commission complaints.

The consultation closes on 5 December 2024. The FCA hopes to publish a policy statement by 19 December 2024.

The House of Commons Treasury Select Committee has separately published a letter it has received from the FCA regarding the judgment in *Johnson v FirstRand Bank Ltd (London Branch) (t/a MotoNovo Finance)* [2024] EWCA Civ 1282. Among other things, the letter refers to guidance from the Finance and Leasing Association on what its member firms can do to ensure they have received informed consent. It also notes uncertainty around whether the judgment applies beyond motor finance.

Consultation Paper (CP24/22)

Webpage

Press release

Letter

24.2 **Breach of asset management requirements - FCA publishes final notices and fines partners** - *15 November 2024* - The FCA has published final notices (both dated 14 November 2024) issued to two former partners of MedDen Financial Services LLP. The FCA imposed an asset requirement on MedDen in December 2020 to safeguard the firm's assets for the benefit of its customers who were owed redress for financial losses suffered because of advice they had received. The day after the requirement was imposed, the individuals recklessly withdrew funds from MedDen's bank account for their own benefit and also failed to report the breach of the asset requirement to the FCA.

According to the FCA, both individuals acted with a lack of integrity in breach of individual conduct rule 1 under the Senior Managers and Certification Regime.

Final notice: Craig Buchan

Final notice: Martin Paul Cooke

Press release

25 RECENT CASES

25.1 ***Price and another v FCA* [2024] UKUT 00357 (TCC),** 13 November 2024

The Upper Tribunal (Tax and Chancery Chamber) has dismissed references made by Toni Fox-Bryant (formerly Fox) and David Price in relation to the FCA's decision to fine and ban the individuals after discovering failings in their firm (CFP Management Limited) in relation to pension transfer business. The failings resulted in pension transfer specialists at the firm routinely providing unsuitable or otherwise non-compliant advice. The Tribunal, while agreeing that there should be financial penalties, has remitted the decision on the amount of the fines back to the FCA.

Price and another v FCA [2024] UKUT 00357 (TCC)

Webpage

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**.

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