

# FINANCIAL REGULATION WEEKLY BULLETIN

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

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[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 COUNCIL OF THE EUROPEAN UNION

- 1.1 CSDDD - Council of the EU adopts Directive - 24 May 2024** - The Council of the EU has formally adopted the final text of the Corporate Sustainability Due Diligence Directive (CSDDD). The CSDDD will apply to a range of organisations, including financial undertakings that fall within the general scope criteria (with an exemption for AIFs and UCITS).

The CSDDD will enter into force on the 20<sup>th</sup> day following its publication in the Official Journal of the European Union. A two-year implementation period will then commence for member states, and CSDDD will apply to companies on a staggered basis depending on their size.

[Press release](#)

### 2 OFFICIAL JOURNAL OF THE EUROPEAN UNION

- 2.1 MiCA - Commission Delegated Regulations published in Official Journal - 30 May 2024** - A number of Commission Delegated Regulations supplementing the Regulation on markets in cryptoassets ((EU) 2023/1114) (referred to as MiCA) have been published in the Official Journal of the European Union, including those concerning:

- the criteria for classifying asset-referenced tokens (ARTs) and e-money tokens (EMTs) as significant; and
- the criteria and factors to be taken into account by the European Securities and Markets Authority, the European Banking Authority and competent authorities in relation to their intervention powers.

The Delegated Regulations will enter into force on the 20th day following that of their publication.

[Delegated Regulation \(EU\) 2024/1506 of 22 February 2024 supplementing MiCA by specifying certain criteria for classifying ARTs and EMTs as significant](#)

[Delegated Regulation \(EU\) 2024/1507 of 22 February 2024 supplementing MiCA by specifying the criteria and factors to be taken into account by ESMA, the EBA and CAs in relation to their intervention powers](#)

- 2.2 DORA - Commission Delegated Regulations published in Official Journal - 30 May 2024** - Two Commission Delegated Regulations supplementing the Regulation on digital operational resilience for the financial sector ((EU) 2022/2554) (DORA) have been published in the Official Journal of the European Union which:

- specify the criteria for designating ICT third-party service providers (TTPs) as critical for financial entities; and

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- designate the amount of the oversight fees to be charged to critical ICT TTPs and the way in which those fees are to be paid.

The Delegated Regulations will enter into force on the 20th day following that of their publication.

[Delegated Regulation \(EU\) 2024/1502 of 22 February 2024 supplementing DORA by specifying the criteria for the designation of ICT TTPs as critical for financial entities](#)

[Delegated Regulation \(EU\) 2024/1505 of 22 February 2024 supplementing DORA by determining the amount of the oversight fees to be charged by the Lead Overseer to critical ICT TTPs and the way in which those fees are to be paid](#)

### 3 FINANCIAL CONDUCT AUTHORITY

- 3.1 Operational resilience - FCA publishes webpage on insights and observations for firms - 28 May 2024** - The FCA has published a webpage providing insights and observations on the preparations firms have made towards complying with the FCA's rules on operational resilience, which are contained in the policy statement '*PS23/1: Building operational resilience*'. These rules came into force on 31 March 2022, and the transition period for PS23/1 ends on 31 March 2025.

The FCA intends for firms to use its observations as they review their approaches to operational resilience, and key observations include:

- reviews of self-assessments showed limited evidence of the testing of response plans, and firms primarily relied on recovery to understand if they could remain within their impact tolerance;
- testing of a third party's resilience can be undertaken by the third party themselves, but firms need to be satisfied that their methodology and tested scenarios are appropriate and sufficient for the firm's requirements; and
- the most effective operational resilience frameworks are embedded within firms' overall enterprise-wide risk frameworks, including change management and strategic planning.

#### [Webpage](#)

- 3.2 FCA operations during the election period - FCA publishes update - 30 May 2024** - The FCA has confirmed that it is not planning to publish any major consultation or significant final rules during the election period and while parliament is dissolved, although essential business will continue and will be publicised as normal. In addition, the eighth edition of the Regulatory Initiatives Grid has been delayed. Members of the Financial Services Regulatory Initiatives Forum will consider when best to publish an update later in 2024.

#### [FCA Regulation round-up May 2024](#)

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## BANKING AND FINANCE //

### 4 COUNCIL OF THE EUROPEAN UNION

- 4.1 **CRR III and CRD VI - European Parliament votes to adopt amending Regulation and Directive - 30 May 2024** - The Council of the EU has voted to adopt proposed amendments to the Capital Requirements Regulation (575/2013) (CRR III) and the Capital Requirements Directive (2013/36/EU) (CRD VI). These amendments, among other things, implement the remaining Basel III standards into EU legislation.

CRR III and CRD VI will enter into force on the 20<sup>th</sup> day following their publications in the Official Journal of the European Union. CRR III will apply (with certain exceptions) from 1 January 2025, while member states are expected to apply measures implementing CRD VI 18 months and one day following its entry into force.

[Press release](#)

### 5 EUROPEAN BANKING AUTHORITY

- 5.1 **Securitisation Regulation - EBA publishes final guidelines on STS criteria for on-balance-sheet securitisations - 27 May 2024** - The European Banking Authority (EBA) has published final guidelines on the criteria for on-balance-sheet securitisations to be deemed simple, transparent and standardised (STS) securitisations under the Securitisation Regulation ((EU) 2017/2402).

The main objective of the guidelines is to provide a single point of consistent interpretation of these criteria. The amending guidelines include a limited set of targeted amendments to the existing EBA guidelines for asset-backed commercial paper (ABCP) and non-ABCP securitisations respectively, to ensure that the interpretation provided by the EBA is consistent across all three guidelines.

[EBA Guidelines on the STS criteria for on-balance-sheet securitisation and amending Guidelines EBA/GL/2018/08 and EBA/GL/2018/09 on the STS criteria for ABCP and non-ABCP securitisation \(EBA/GL/2024/05\)](#)

[Press release](#)

### 6 UK PARLIAMENT

- 6.1 **The Building Societies Act 1986 (Amendment) Bill 2023-24 receives Royal Assent - 24 May 2024** - The Building Societies Act 1986 (Amendment) Bill 2023-24 has received Royal Assent, and is to be known as the Building Societies Act 1986 (Amendment) Act (the Act).

The Act will enable building societies across the UK to raise more funds from sources other than member savings, and brings some administrative rules in line with those which apply to banks. In particular, the Act provides for certain types of funding to be excluded from the ‘funding limit’

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under the Building Societies Act 1986. Under the funding limit, building societies must raise at least 50% of their funding (with some qualifications) from customer savings.

[Hansard](#)

## 7 HM TREASURY

**7.1 The Securitisation (Amendment) Regulations 2024 made - 24 May 2024** - HM Treasury has published the Securitisation (Amendment) Regulations 2024 (SI 2024/705) (the Amendment Regulations). The Amendment Regulations amend and supplement the Securitisation Regulations 2024 (SI 2024/102), which replaced the version of the EU Securitisation Regulation (2017/2402/EU) retained in UK law after Brexit and established a new framework for securitisation within which the FCA and PRA can make rules.

The Amendment Regulations continue the project of replacing assimilated EU law requirements pertaining to securitisation. They contain provisions relating to (among other things) due diligence requirements for occupational pension schemes and the restriction on establishment of securitisation special purpose entities in high-risk jurisdictions. The Regulations were made on 22 May 2024 and will fully come into force on 1 November 2024.

### [The Securitisation \(Amendment\) Regulations 2024 \(SI 2024/705\)](#)

**7.2 Access to cash - HM Treasury designates firms under new framework - 24 May 2024** - HM Treasury has published a webpage confirming which firms have been designated as ‘relevant current account providers’ under Part 8B of the Financial Services and Markets Act 2000 (FSMA) for the provision of cash access services. Part 8B FSMA was introduced by the Financial Services and Markets Act 2023 to ensure that cash remains available for those who need it. The webpage further specifies which firms have been designated as operators of cash access co-ordination arrangements.

These designations—which came into effect on 24 May 2024—follow publication by the FCA of a consultation paper in December 2023 (CP23/29) which proposed new rules that will apply to designated firms in order to maintain reasonable access to cash for personal and business customers across the UK. The FCA expects to finalise these rules in Q3 2024 (i.e., after the designations have come into effect).

In CP23/29, the FCA states that designated firms should consider the FCA’s proposed rules when planning closures of cash access facilities or making material changes to the provision of cash access services ahead of their coming into force.

[Webpage](#)

## 8 PAYMENT SYSTEMS REGULATOR

**8.1 Supply of card-acquiring services - PSR publishes changes to Specific Directions 14, 15 and 16 - 29 May 2024** - The Payment Systems Regulator (PSR) has published a policy statement (PS24/1)

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on its proposals to revise Specific Directions 14, 15 and 16 relating to the supply of card-acquiring services following a consultation launched in January 2024 (CP24/1). The changes update the list of directed legal entities and amend the PSR's method for making changes in the future. Based on the responses received to CP24/1, the PSR has elected not to add Checkout Ltd to the list of directed legal entities, but notes that it will keep the list under review.

**PSR policy statement: Card-acquiring market remedies: change to list of directed legal entities - Revisions to Specific Directions 14, 15 and 16 (PS24/1)**

[Press release](#)

## SECURITIES AND MARKETS //

### 9 HM TREASURY

9.1 **The Financial Services and Markets Act 2000 (Commodity Derivatives and Emission Allowances) (Amendment) Order 2024 made - 29 May 2024** - HM Treasury has published the Financial Services and Markets Act 2000 (Commodity Derivatives and Emission Allowances) (Amendment) Order 2024 (the Order) with an explanatory memorandum.

The Order omits amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544) ('RAO') relating to the repeal of Commission Delegated Regulation (EU) 2017/592 ('RTS 20') and revocation of Article 72J RAO, in the Financial Services and Markets Act 2000 (Commodity Derivatives and Emission Allowances) Order 2023 (SI 2023/548) and which were otherwise to take effect on 1 January 2025.

HM Treasury explains that these omissions have been made to provide time to consider significant concerns raised in response to the FCA's consultation paper (CP23/27) on proposed reforms to the commodity derivatives regulatory framework. In particular, respondents raised concerns with a principles-based approach to determining whether a firm requires authorisation for trading in commodity derivatives and emission allowances. The Order was made on 28 May 2024 and will come into force on 31 December 2024.

In line with these changes, the FCA has separately announced that it will delay revoking the UK version of RTS 20 for the time being, and will not be taking forward its proposals in CP23/27. HM Treasury will work with the FCA and engage further with the market to deliver a regime that reflects the conclusions of its Wholesale Markets Review whilst also taking into consideration the concerns raised by industry, with the aim of implementing a new regime by 1 January 2027.

**[The Financial Services and Markets Act 2000 \(Commodity Derivatives and Emission Allowances\) \(Amendment\) Order 2024 \(SI 2024/719\)](#)**

[Explanatory memorandum](#)

**[FCA updated webpage: CP23/27: Reforming the commodity derivatives regulatory framework](#)**

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## ASSET MANAGEMENT //

### 10 EUROPEAN SECURITIES AND MARKETS AUTHORITY

**10.1 AI in retail investment services - ESMA publishes guidance - 30 May 2024** - The European Securities and Markets Authority (ESMA) has published a statement containing guidance to firms using AI when providing investment services to retail clients. The statement outlines key obligations under the Markets in Financial Instruments Directive (2014/65/EU) (MiFID II), and particular emphasis is placed on the need to prioritise clients' best interests at all times.

[ESMA public statement on the use of Artificial Intelligence \(AI\) in the provision of retail investment services \(ESMA35-335435667-5924\)](#)

### 11 UK PARLIAMENT

**11.1 Alternative Investment Fund Designation Bill to make no further progress - 29 May 2024** - Parliament has updated its webpage to reflect that the Alternative Investment Fund Designation Bill will make no further progress following the prorogation of Parliament on 24 May 2024.

The Bill had been intended to recognise a company's share price as having costs included by removing listed investment companies from the scope of the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773).

[Webpage](#)

## INSURANCE //

### 12 FINANCIAL CONDUCT AUTHORITY

**12.1 GAP insurance and fair value to customers - FCA announces recommencement of sales - 24 May 2024** - The FCA has announced that several insurance firms have been permitted to recommence their sales of guaranteed asset protection (GAP) insurance products. This follows an FCA announcement in February 2024 that multiple insurance firms (which account for 80% of the GAP market) had agreed to pause GAP insurance following a request from the FCA, over concerns that the product was failing to provide fair value to some consumers.

To restart sales, the FCA states that firms need to demonstrate that their GAP products provide fair value to customers in line with FCA rules. The FCA confirms that firms which have resumed sales of GAP insurance have done so with materially lower levels of commission being paid out to those selling GAP. The FCA will continue to consider the remaining firms' proposals to improve value for customers.

[Press release](#)



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## FINANCIAL CRIME //

### 13 EUROPEAN SECURITIES AND MARKETS AUTHORITY

**13.1 Sharing information during ‘pre-close calls’ - ESMA publishes reminder of rules and good practices under MAR - 29 May 2024** - The European Securities and Markets Authority (ESMA) has published a statement reminding firms of the legislative framework that applies to ‘pre-close calls’ and that any disclosure of inside information should only take place in accordance with the Market Abuse Regulation (596/2014/EU) (MAR). This reminder follows a number of high volatility episodes in EU share prices, some of which took place shortly after ‘pre-close calls’ between issuers and selected analysts. The media have made a link between these ‘pre-close calls’ and the subsequent volatility, in some cases raising suspicion about possible unlawful disclosure of inside information.

Alongside this reminder, ESMA provides examples of good practice to which issuers should pay attention, which includes public disclosure of pre-close calls with sufficient notice.

[ESMA statement: Good practices in relation to pre-close calls \(ESMA74-1103241886-945\)](#)

[Press release](#)

## ENFORCEMENT //

### 14 HOUSE OF LORDS FINANCIAL SERVICES REGULATION COMMITTEE

**14.1 FCA’s new approach to publicising enforcement investigations (CP24/2) - House of Lords Financial Services Regulation Committee publishes letter summarising concerns - 24 May 2024** - The House of Lords Financial Services Regulation Committee (the Committee) has published a letter summarising its concerns regarding the FCA’s proposed changes to publicising enforcement investigations, which were announced in an FCA consultation published in February 2024 (CP24/2). The letter has been sent in advance of the dissolution of parliament on 30 May 2024.

The concerns summarised in the letter were raised at an oral evidence session held with the FCA on 8 May 2024, and include the point that the FCA already has the power in exceptional circumstances to publicise an enforcement investigation. The Committee notes that it has also been sent the views of organisations who support the measures on the grounds of better protection for consumers, deterring poor conduct from firms, and increasing trust in enforcement against wrongdoing among the public.

[House of Lords Financial Services Regulation Committee letter](#)

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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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