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UK

House of Commons Treasury Committee publishes report on IT failures in the financial services sector

On 28 October 2019, the House of Commons Treasury Committee published a report on IT failures in the financial services sector.

The report contains a set of conclusions and recommendations which include:

- Further regulatory intervention is needed to improve the operational resilience of the financial services sector. The regulators must give as much prominence to regulating operational risk and resilience as they do to regulating prudential and conduct risks.

- The regulators should prioritise the publication of final policy and guidance following their July 2018 discussion paper on operational resilience.

- The regulators must use their enforcement tools to hold individuals and firms to account for their role in IT failures and poor operational resilience. In the absence of any successful enforcement action against an individual following an IT failure, the regulators should consider whether there are any barriers to the effective operation of the senior managers regime.

- The regulators should increase financial sector levies to ensure that they can hire the staff with the expertise and experience in operational resilience they need.

- If improvements in firms' management of legacy IT systems are not forthcoming, the regulators must intervene to ensure that firms are not exposing customers to risks.

- Incidents at financial market infrastructure firms can have as much effect on customers as bank incidents. It is therefore vital that senior managers at FMI firms are accountable for their management of operational incidents. The government should expand the SMR to include FMIs.

- The cloud service provider market stood out as a source of concentration risk during the enquiry. The government should urgently consider how best to regulate them to ensure high standards of operational resilience.

Regulation in a changing world: FCA speech

The FCA has published a speech, given by Christopher Woolard, FCA Executive Director of Strategy and Competition, on 21 October 2019, on regulation in a changing world. Mr Woolard discusses the future of financial regulation in the UK. He says that the FCA is keen to open a discussion on what type of regulation we need going forward. The time is right for change in light of: Brexit; the fact that post-crisis regulation has been implemented; the shift in consumer needs and attitudes; and the pace of innovation.

Mr Woolard mentioned that, over the coming months, the FCA will publish:

- an open invitation for the thoughts and ideas of stakeholders on the future of regulation;
- an analysis of future market dynamics;
- a discussion paper on the FCA's principles for business; and
- a consultation paper on the duty of care.

These are hot topics to look out for. For example, Mr Woolard indicates that the FCA is steering towards outcomes-focussed regulation, hinting that it may be considering a principle requiring firms to ensure consumer understanding rather than simply ensuring that communications are fair, clear and not misleading.

Queen's Speech 2019

The Queen's Speech, made to both Houses of Parliament on 14 October 2019, sets out the government's legislative priorities for the next parliamentary session. Published at the same time is a background briefing which elaborates on the content of the Queen's speech. Of interest to financial services is the announcement of a forthcoming Financial Services Bill, intended to ensure that the UK maintains its world-leading regulatory standards and remains open to international markets after the UK leaves the EU. The Bill will build on the extensive secondary legislation brought forward by the government under the European Union (Withdrawal) Act 2018 (EUWA) to ensure effective operation of retained EU law.

FCA publishes FS19/6: Climate change and green finance

On 16 October 2019, the FCA published a feedback statement, FS19/6, to its earlier discussion paper on climate change and green finance, DP18/8. In FS19/6, the FCA summarises the responses it received to DP18/8 and sets out a detailed explanation of its priorities that will provide the basis for the FCA's future work on climate change and green finance. Its key actions and next steps include:

- consulting on new rules to improve climate-related disclosures by issuers and clarifying existing obligations;
- finalising rule changes requiring Independent Governance Committees to oversee and report on firms' environmental, social and governance, and stewardship policies, as well as separate rule changes to facilitate investment in patient capital opportunities;
- publishing a feedback statement in response to a joint discussion paper with the Financial Reporting Council on stewardship, setting out actions to address the most significant barriers to effective stewardship;
- challenging firms in relation to potential greenwashing, clarifying regulatory expectations in this respect, and taking appropriate action to prevent consumers being misled; and
- contributing to several important collaborative initiatives, including the Climate Financial Risk Forum, the Fair and Effective Markets Review working group, the government-led cross-regulator taskforce on disclosures and the European Commission's Sustainable Finance Action Plan.

PRA publishes CP26/19 on adjusting for the reduction of loss absorbency where own fund instruments are taxed on conversion

On 11 October 2019, the PRA published a consultation paper, CP26/19, on amending its expectation on the treatment of restricted Tier 1 own funds (rT1) instruments in the light of recent information from HMRC. The proposals would amend Supervisory Statement 3/15, "Solvency II: the quality of capital instruments". The consultation is relevant to UK insurance firms within the scope of Solvency II, the Society of Lloyd's, and firms that are part of a Solvency II group that will determine and classify capital instruments under the Solvency II own funds regime, together with their advisors.

The PRA states that the purpose of the proposals is to maintain the existing regulatory policy of only recognising rT1 items to the extent that they provide loss absorbency on trigger, and to prevent the amount of loss-absorbency provided by rT1 instruments that convert into ordinary shares on trigger from being overstated.

The PRA sets out the text of the revised SS3/15 in the appendix to CP26/19. The consultation closes on 13 January 2020. The PRA intends to implement the final policy on the date of publication of its final policy.

FCA aligning GI value measures work with GI pricing practices market study

On 7 October 2019, the FCA updated its general insurance ("**GI**") value measures webpage.

The FCA consulted in January 2019, on proposals requiring firms to report GI value measures data to the FCA. Having received feedback, the FCA plans to review the value measures definitions and reporting proposals, and reassess the cost estimates for the cost benefit analysis.

The FCA is keen to ensure that its work on value measures is aligned with any remedies being developed through its GI Pricing Practices Market Study ("**GIPP**"). As a result, it will refine the value measures proposals alongside its work on the GIPP remedies.

The FCA expects to publish any value measures policy statement alongside its final market study report on the GIPP in the first quarter of 2020.

FCA publishes interim report of market study on general insurance pricing practices

On 4 October 2019, the FCA published the interim report of its market study into the pricing of home and motor insurance (MS18/1.2). The FCA launched this market study to understand whether pricing practices in home and motor insurance support effective competition and lead to good consumer outcomes. This followed a thematic review showing that consumers who stayed with the same provider for a long time paid on average significantly more for home insurance than newer consumers. The FCA findings indicate that these markets are not working well for consumers. Read more about the report in our update: FCA Market Study into General Insurance Pricing Practices: time to look at pricing strategies?.

In its report, the FCA sets out its interim findings and potential remedies. It intends to publish a final report and consultation on remedies in Q1 2020.

The FCA invites interested parties to provide views on its interim findings and the potential remedies it is considering by 15 November 2019.

FCA publishes evaluation paper on general insurance renewal transparency intervention

Alongside the interim report of its market study into the pricing of home and motor insurance (see above), the FCA also published on 4 October 2019, an evaluation paper, EP19/1, on its April 2017 intervention to increase transparency at renewal in general insurance markets. This evaluation was announced when the FCA published the terms of reference for its general insurance pricing practices market study in October 2018.

The FCA estimates consumer savings of between £39 million and £330 million a year (with an average estimate of £185 million a year) due to its intervention, set against costs of around £4 million a year. The FCA believes that these benefits have arisen due to two main, inter-related effects, which differ in size between home, motor and pet insurance markets:

- firms' increased focus on renewal practices, such that premiums offered at renewal for home and motor insurance have not increased by as much as they would have done without the FCA's intervention; and
- consumers being prompted to make better informed decisions through engaging and shopping around, leading to changes in consumers negotiating or switching at renewal (increasing in motor and pet insurance and decreasing in home insurance).

The FCA states that it has identified some lessons that it can apply to current and future work.

The evaluation paper has annexes discussing implementation issues, analysis of consumer survey data and insights, econometric analysis and the impact of renewal disclosure legislation on consumer behaviour.

Sustainable finance: BoE speech

The Bank of England (BoE) has published a speech, given by Mark Carney, Governor of the Bank of England, on 8 October 2019, at the inaugural Task Force on Climate-related Financial Disclosures (TCFD) summit in Tokyo, on strengthening the foundations of sustainable finance.

Mr Carney highlighted that the demand for TCFD disclosure is now enormous. He discussed some statistics demonstrating support in this respect. Mr Carney mentioned the steps taken in the UK to embed recommendations by the TCFD in financial decision-making. The BoE has set out its supervisory expectations for institutions relating to:

- governance – firms are expected to embed fully the consideration of climate risks into governance frameworks, including at board level, and assign responsibility for oversight of these risks to specific senior role holders;
- risk management – firms must consider climate change in line with their board-approved risk appetite;
- the regular use of scenario analysis to test strategic resilience; and
- developing and maintaining an appropriate disclosure of climate risks.

Recognising the need for industry to build capacity and develop best practices, the PRA has also established a Climate Financial Risk Forum, jointly with the FCA, to work with firms from across the financial system. However, Mr Carney says that more is required. Over the next few years, companies, their banks, insurers and investors must:

- work to increase the quantity and quality of disclosures by sharing best practice;
- refine the TCFD disclosure recommendations to those that investors consider most useful;
- spread knowledge on how to measure and use information on strategic resilience to manage risks and realise opportunities; and

consider how asset owners could best disclose how well their portfolios are positioned for the transition to net zero.

BREXIT

European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) (No. 3) Regulations 2019

The European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) (No. 3) Regulations 2019 (SI 2019/1423) has been made and published. The statutory instrument (SI) amends the definition of "exit day" in the European Union (Withdrawal) Act 2018 to 31 January 2020 from 31 October 2019 (at 11.00 pm). The SI came into effect on 30 October 2019.

Financial Services (Miscellaneous) (Amendment) (EU Exit) (No 3) Regulations 2019

The Financial Services (Miscellaneous) (Amendment) (EU Exit) (No 3) Regulations 2019 (SI 2019/1390) have been published, together with an explanatory memorandum. The purpose of SI 2019/1390 is to amend primary and secondary legislation and amend and revoke parts of retained EU law to address deficiencies arising from the withdrawal of the UK from the EU. The SI also makes minor amendments to financial services SIs made under the European Union (Withdrawal) Act 2018 (EUWA) to correct minor errors identified in legislation after it was laid before Parliament and update certain references to account for the Article 50 process extension. The following pieces of legislation are amended:

- Criminal Justice Act 1993;
- Insider Dealing (Securities and Regulated Markets) Order 1994;
- Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017;
- Data Reporting Services Regulations 2017;

- Electronic Commerce and Solvency 2 (Amendment etc.) (EU Exit) Regulations 2019;
- Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc.) (EU Exit) Regulations 2019;
- Commission Implementing Decision (EU) 2019/541;
- Financial Regulators' Powers (Technical Standards etc.) (Amendment) (EU Exit) Regulations 2018;
- Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018;
- Money Market Funds (Amendment) (EU Exit) Regulations 2019;
- Solvency 2 and Insurance (Amendment, etc.) (EU Exit) Regulations 2019;
- Securitisation (Amendment) (EU Exit) Regulations 2019;
- Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019;
- Financial Services (Miscellaneous) (Amendment) (EU Exit) Regulations 2019; and
- Revocation of Commission Delegated Regulation (EU) 2019/360.

Regulations 1 and 6 came into force at 11.59 pm on 24 October 2019 and Regulations 4, 5 ,7 and 8 came into force on 25 October 2019. Regulations 9 to 14 come into force immediately before exit day, with the remainder of the Regulations coming into force on exit day.

Article 50 extension: FCA statement

On 29 October 2019, the European Council formally adopted a decision extending the Article 50 period for a third time. It is extended to 31 January 2020 but may end sooner if the EU and the UK ratify the revised withdrawal agreement sooner.
The FCA subsequently published a statement to confirm that:

- due to the delay, firms do not need to take action to implement Brexit contingency plans for 31 October 2019;
- the FCA is extending the deadline for notifications to enter its temporary permissions regime (TPR) to 30 January 2020;
- firms should continue to comply with existing regulatory requirements, including those relating to MiFID transaction reporting and EMIR trade reporting requirements. In particular, the arrangements described in the FCA's press release of 11 October 2019 are suspended and it expects firms to continue to report as normal.

In addition, the FCA has updated a number of its previously published directions on the TPR to update the time period in which notifications can be made to the end of 30 January 2020.

No deal Brexit: FCA update

The FCA has published a press release setting out expectations for firms on Brexit relating to: (a) MiFID transaction reporting; (b) EMIR reporting; and (c) incoming EEA firms and the temporary permission regime (TPR). The FCA is aware that leaving the EU during the working week could pose operational challenges for firms. During this time firms should take reasonable steps to be prepared to comply with post-exit MiFID transaction reporting and EMIR trade reporting requirements. The FCA will take a proportionate and pragmatic approach to supervising reporting around exit day.
In relation to the TPR, after exit, firms that have notified the FCA of their intention to use the TPR will be contacted and given a "landing slot" during which they will need to submit their application for full UK authorisation. The FCA notes that, on authorisation, it will generally expect firms to have a physical presence in the UK to help ensure effective supervision. The FCA will consult on its approach and expectations for these firms shortly.

National Competent Authorities comply or intend to comply with EIOPA's recommendations to the insurance sector on UK withdrawal from the EU

On 31 October 2019, the European Insurance and Occupational Pensions Authority (EIOPA) published the responses from national competent authorities on their compliance, intentions to comply or non-compliance with the recommendations set out in EIOPA's 'Recommendations for the insurance sector in light of the United Kingdom withdrawing from the European Union'.

According to the information received, all national competent authorities comply or intend to comply with almost all recommendations.

The recommendations were addressed to national competent authorities of European Economic Area countries except the UK, with the goal of minimising detriment to policyholders in the event of no withdrawal agreement between the UK and the EU.

The recommendations covered nine different areas including orderly run-off, portfolio transfer, change in the habitual residence or establishment of the policyholder, authorisation of third country branches, lapse of authorisation, cooperation between national competent authorities, communication to policyholders and beneficiaries, and distribution activities.

INTERNATIONAL

Insurance regulation: EIOPA issues call for research proposals

On 21 October 2019, EIOPA launched a call for research proposals. It seeks proposals addressing open questions related to the following topics, with a special emphasis on the policy angles:

- investment allocations of insurers and pension funds;
- liquidity stress testing in the insurance sector;
- early warning systems in insurance;
- systemic relevance of insurance sector and its interlinkages with financial and real sectors; and
- economic valuation of insurers' liabilities, best estimate and risk margin.

Proposals must be submitted by 15 December 2019. The outcome will be announced to those who have submitted proposals by 28 February 2020.

EIOPA single programming document 2020-22 and annual work programme 2020

EIOPA has published its single programming document 2020-22 (SPD), which includes its annual work programme 2020.
The SPD sets out the activities EIOPA will undertake during 2020-22. EIOPA will focus on the delivery of its strategic priorities, as well as two key themes of digitalisation and sustainability.

EIOPA publishes report on travel insurance market thematic review

EIOPA has published a report setting out the findings from its thematic review of consumer protection issues in the travel insurance market, together with a factsheet. EIOPA launched the thematic review in July 2018 to better understand travel insurance products, identify sources of potential conduct risks, and take any required supervisory actions.

During its review, EIOPA identified some "strong potential for poor value for money for consumers", increased conduct risk, and other concerns. Given these findings, EIOPA has issued a warning to insurers and insurance intermediaries to tackle high commissions for travel insurance products. EIOPA considers that such business models are not consistent with the fundamental regulatory principles set out in the Insurance Distribution Directive, such as acting in the best interests of the customer and obligations on product oversight and governance.

EIOPA states that it, and national competent authorities, will intensify their risk-based supervision of insurance undertakings and insurance intermediaries, notably in the national markets where risks are identified, including monitoring the market for ancillary insurance products.

SOLVENCY II

Solvency II 2020 review: EIOPA field testing of reporting templates

On 9 October 2019, EIOPA launched a field test on revised and newly proposed templates, which forms part of its 2020 Solvency II Directive reporting and disclosure review. EIOPA is considering revising both the content and structure of a number of different reporting templates, which are accessible via its surveys webpage. The aim of the field test is to give firms the opportunity to try the revised and proposed templates, so they are able to identify implementation issues and report their findings to EIOPA. The field test will not involve national competent authorities collecting real data.
The field test is open for all solo undertakings and service providers. Participants may test one, some, or all of the templates. EIOPA welcomes feedback until the 31 January 2020. Feedback received after that date, will still be considered in the future development of the ITS on reporting and disclosure.

Solvency II 2020 review: EIOPA consults on technical advice

On 15 October 2019, EIOPA published a consultation paper on a draft opinion that sets out technical advice for the 2020 review of the Solvency II Directive. The draft opinion is in response to the call for advice on the Solvency II 2020 review, which the European Commission published in February 2019. This consultation covers all areas of the call for advice except insurance guarantee schemes and most topics on reporting and disclosure which have been consulted on already.

The call for advice comprises 19 separate topics which are broadly divided into three areas:

- the review of the long term guarantee measures;
- the potential introduction of new regulatory tools in the Solvency II Directive, notably on macro-prudential issues, recovery and resolution, and insurance guarantee schemes; and
- revisions to the existing Solvency II framework including in relation to freedom of services and establishment; reporting and disclosure; and the solvency capital requirement.

The consultation period closes on 15 January 2020. EIOPA will issue its opinion on the 2020 review in June 2020.

Insurance Europe and AMICE call to improve application of proportionality principle

On 30 September 2019, Insurance Europe and AMICE (the Association of Mutual Insurers and Insurance Co-operatives in Europe) published a joint call for the European Commission to improve the use of the principle of proportionality in Solvency II. It notes that the industry reports little or no application of proportionality in practice.
They welcome that the Commission has requested EIOPA, in its call for advice on the Solvency II 2020 Review, to assess whether proportionality in the application of the Solvency II framework could be enhanced. Accordingly, Insure Europe and AMICE have developed a series of recommendations designed to ensure that proportionality works in practice.

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