

ALLEN & OVERY

Key Regulatory Topics: Weekly Update

20 September 2019 – 26 September 2019



BREXIT

FCA updates its draft transitional directions under the Temporary Transitional Power

On 26 September, the FCA published updated versions of the draft directions that it intends to make using its no-deal Brexit temporary transitional powers. It has published revised draft versions of the main FCA transitional direction, the FCA prudential transitional direction and the explanatory note to the directions. These are intended to replace the 28 March 2019 directions previously made. The main draft updates relate to the following areas: (i) the FCA has extended the proposed duration of the directions issued under the temporary transitional power from 30 June 2020 to 31 December 2020; (ii) the FCA has updated the provisions relating to prudential requirements in its directions to reflect new HMT legislation and FCA exit instruments published since 29 March 2019; (iii) the new main FCA transitional direction revokes certain directions in relation to payment services, provided by EEA credit institutions in the financial services contracts regime, as these are no longer needed, because of legislative amendments made by the Government; and (iv) the FCA has applied the standstill direction to allow EEA Central Banks and the European Central Bank to continue to rely on their status as exempt persons for the duration of the transitional relief.

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CONSUMER/RETAIL

IOSCO's report on suitability requirements for the distribution of complex financial products

On 26 September, IOSCO published its report on suitability requirements with respect to the distribution of complex financial products. The report sets out the findings of the thematic review of the implementation by IOSCO member jurisdictions of the nine principles set out in its 2013 report. The nine principles focused on the application of suitability and related requirements to intermediary services including selling, advising, recommending and managing discretionary accounts/portfolios. The report is based on a review of the legislative, regulatory and policy measures reported as being in place by participating jurisdictions. IOSCO's key findings included that the majority of participating jurisdictions had implemented suitability requirements generally in line with the principles, that most jurisdictions had standards for dealing with customers fairly, and that the robustness of suitability regimes appears to correlate to levels of market development and participation. Most jurisdictions did not have bespoke requirements specifically for complex products and there were differences in what constituted a complex financial product.

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FINANCIAL CRIME

HMT approves the Joint Money Laundering Steering Group (JMLSG) guidance on credit unions, asset finance and brokerage services to funds

On 25 September, the JMLSG confirmed that HMT has approved revisions to three chapters in its AML and CTF sectoral guidance. The amended guidance relates to Sector 4 (Credit Unions), Sector 12 (Asset Finance) and Sector 20 (Brokerage services to funds).

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Provisional EP text on state of implementation of AML legislation

On 20 September, the EP published the provisional edition of the resolution on the state of AML legislation that it adopted on 19 September. In the resolution, the EP called for co-ordinated and speedy implementation of EU AML legislation, including 5MLD. Specifically, the EP states that it is seriously concerned about the lack of implementation of 4MLD by a large number of Member States. It urges those Member States that have not yet done so to properly transpose 4MLD into their national legislation as soon as possible. Moreover, the EP expresses concern that the transposition deadlines for 5MLD will not be met by Member States, and therefore calls on Member States to take urgent action to speed up the transposition process.

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FUND REGULATION

FCA publishes findings from unit-linked funds' governance review

On 24 September, the FCA published its key findings of its multi-firm review of firms' governance practices covering the value provided by unit-linked funds. Among other things, the FCA's findings include observations that: (i) the way in which firms think about value is sometimes too limited - some firms only consider performance net of fees and charges, with limited assessment of how active the manager of a unit-linked fund had been in achieving the net performance; (ii) firms often do not compare the fees and charges of different funds within their unit-linked fund ranges, even where funds have similar mandates; (iii) firms share scale economies with funds only to a limited extent - where firms appoint asset managers within the same corporate group to manage unit-linked funds, the FCA often found less-extensive efforts to negotiate savings in asset management fees as the funds grew in size, compared to where firms appoint external managers. If firms do identify scale economies and other opportunities to achieve efficiency gains, the FCA found that that firms often only pass benefits on to unit holders through reduced fees where they are contractually obliged to do so; and (iv) firms comply with regulatory interventions but tend not to go further - the FCA found that firms have passed on the benefits of default fund workplace pension fund fee caps to unit-linked funds that are within scope of the cap, but they had typically not considered whether they should run other, similarly-managed funds in their range at the same rates to provide better value to all their customers. The FCA will assess the findings from the review alongside those from its continuing work on non-workplace pensions, the governance of unit-linked mirror funds, and the effectiveness and scope of independent governance committees. It will then decide whether further remedies are needed.

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MARKETS AND MARKETS INFRASTRUCTURE

EBA publishes discussion paper on proposals to create STS framework for synthetic securitisation

On 25 September, the EBA published a discussion paper on its proposals to create a simple, transparent and standardised (STS) framework for synthetic securitisation. The discussion paper addresses post-crisis market developments and trends, and invites market participants to put forward their views on whether STS synthetic securitisations should be given special regulatory treatment. A public hearing will take place at the EBA on 9 October, and the deadline for comments is 25 November.

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ESMA confirms delays to review certain MiFID II RTS transparency requirements

On 24 September, ESMA published a letter (dated 19 September) from Steven Majoor, ESMA Chair, to Olivier Guersent, EC Director General for Financial Stability, Financial Services and the Capital Markets Union, on the annual review required by Article 17 of Commission Delegated Regulation (EU) 2017/583 regarding transparency requirements for non-equity instruments (RTS 2). ESMA and the EC agree that due to the uncertainties around a potential no-deal Brexit, it is not advisable to perform the annual review of RTS 2 this year. However, ESMA intends to perform the review by 30 July 2020.

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PAYMENT SERVICES AND PAYMENT SYSTEMS

BoE on the implementation of ISO 20022

On 25 September, the BoE published an update regarding the UK payments industry's move to ISO 20022, which is the emerging global standard for payments messaging. In response to recent market developments and feedback, the BoE is currently revisiting its approach to the introductory phase of the migration, specifically around the early adoption of "enhanced" data. It has published a document outlining two options for the implementation of this phase: (i) current approach – which means the BoE could introduce a separate, optional, closed user group for direct participants that wish to send enhanced data between each other; or (ii) alternative approach – which would allow direct participants to send enhanced data if they were ready to do so. The BoE will outline, at a later date, if and how enhanced data content under the selected option would be validated during phase 2. The deadline for comments is 16 October. The BoE intends to publish its final decision on the approach when it issues the final like-for-like schemas and guidance at the end of the year.

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PRUDENTIAL REGULATION

EBA launches EU-wide transparency exercise

On 23 September, the EBA announced that it has launched its 2019 EU-wide transparency exercise. The EBA expects to publish the results of the exercise in November, together with its risk assessment report for 2019. It will release up to 2.2 million data points on about 130 EU banks. The data will cover capital positions, financial assets, risk exposure amounts, sovereign exposures and asset quality. As of 2019, the transparency exercise will disclose data with quarterly rather than semi-annual frequency, to provide users with more granular supervisory data for time series analysis.

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SUSTAINABLE FINANCE

Council of EU agrees position on sustainable investment framework

On 25 September, the Council of the EU announced that it has agreed its position on the proposed Regulation on the establishment of a framework to facilitate sustainable investment. The Council's General Secretariat invited COREPER to approve the final compromise text on 23 September. According to the Council's position, the taxonomy should be established by the end of 2021, to ensure its full application by the end of 2022. The Council and the EP will now begin triologue negotiations.

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Mark Carney's speeches on climate risks and resilience

On 24 September, the BoE published two speeches by Mark Carney, Governor of the BoE in which he states that climate risks and resilience should be brought into the heart of financial decision making, as changes in climate policies, technologies and physical risks in the transition to net zero world will prompt reassessments of the value of almost every asset. Mr Carney states that to achieve this, a step change is required in three areas: (i) reporting - better corporate disclosure of climate-related financial risks is essential and the next few years will be critical; (ii) risk management - regulators and providers of capital must improve their understanding and management of climate-related financial risks; and (iii) return optimisation - there is increasing evidence that sustainable investment can generate excess returns, particularly for investors, like insurers, with longer term horizons. However, Mr Carney notes that one of the biggest hurdles to channelling mainstream finance to sustainable investment is the inconsistent definition and measurement of environmental, social and governance criteria.

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UN and banks launch Principles for Responsible Banking and supporting guidance document

On 22 September, the UN and a group of 130 banks launched the Principles for Responsible Banking and issued supporting guidance. The purpose of the Principles is to help develop sustainable economies and to empower people to build better futures. They were developed by a group of 30 founding banks through a partnership between banks and the UN Environment Programme Finance Initiative (UNEP FI). Signatories to the Principles commit to: (i) aligning their business strategy with the UN's Sustainable Development Goals, the Paris Climate Agreement and relevant national and regional frameworks; (ii) continuously increasing positive impacts while reducing the negative impacts on, and managing the risks to, people and environment

resulting from their activities, products and services; (iii) working responsibly with clients and their customers to encourage sustainable practices and enable economic activities that create shared prosperity for current and future generations; (iv) consulting, engaging and partnering with relevant stakeholders to achieve society's goals; (v) implementing their commitment to the Principles through effective governance and a culture of responsible banking; and (vi) periodically reviewing their individual and collective implementation of the Principles by being transparent about and accountable for their positive and negative impacts. The purpose of the guidance is to support the implementation of the Principles by providing non-binding guidance to banks on measures they can take to implement each principle.

[Principles for Responsible Banking](#)

[Principles for Responsible Banking - Guidance Document](#)

Trade associations urge EC to delay application of Regulation on sustainability disclosures

On 20 September, Insurance Europe published a letter (dated 19 September) sent jointly by it and seven other trade associations to the EC regarding the timings for the application of the proposed Regulation on disclosures relating to sustainable investments and sustainability risks (the Regulation). The Council of the EU and the EP reached political agreement on the Regulation in March, and the agreed text states that the Regulation will enter into force 20 days after its publication in the OJ and will apply 15 months following publication in the OJ. The Regulation requires the ESAs to draft regulatory technical standards (RTS) on a number of issues, some of which are required 12 months after the date of the Regulation's entry into force. The trade associations are concerned that the final versions of the RTS will not be published before the application date of the Regulation, and this will create significant compliance challenges and liability risk for the financial services industry. They suggest that the application date of the Regulation should be changed to 12 months after all the RTS have been published in the OJ.

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OTHER DEVELOPMENTS

FCA appoints new Executive Director of Risk and Compliance

On 20 September, the FCA announced that Sheree Howard has been appointed Executive Director of Risk and Compliance Oversight (R&CO). Ms Howard is currently Interim Director of R&CO having joined the FCA as a Senior Adviser in December 2017. She replaces Barbara Frohn, who left the FCA earlier this year.

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