

# ALLEN & OVERY

## *Key Regulatory Topics: Weekly Update*

6 September 2019 – 12 September 2019



### **BREXIT**

Please see the Fund Regulation section for the FCA and Hong Kong MoU addendum on mutual recognition of covered funds in preparation for Brexit.

Please see the Other Developments section for the FCA's quarterly consultation No.25.

#### **FCA steps up efforts to ensure that firms are ready for a no-deal Brexit**

On 11 September, the FCA issued a press release providing additional information for firms on preparations for a no-deal Brexit. To help firms prepare, it will be running a series of digital adverts signposting its Brexit webpages and it has set up a dedicated phone line to answer queries. The FCA is urging all firms to consider the implications of a no-deal exit and finalise their preparations.

[Read more](#)

#### **Financial Services (Implementation of Legislation) Bill 2017-19 fallen through as UK Parliament prorogued**

On 9 September, UK Parliament was prorogued, meaning that the Financial Services (Implementation of Legislation) Bill 2017-19 has fallen, as it had not received Royal Assent in the session in which it was introduced. The Bill was to allow HMT to implement EU financial services legislation that is currently in the pipeline for a period of two years after the UK leaves the EU, in the event of a no-deal Brexit. HMT are confident that major cliff-edge risks have been addressed through the SI onshoring process and therefore the powers within the 'in-flight' Bill are not as urgently required for the period immediately after exit day.

[Read more](#)

#### **Prospectus (Amendment etc.) (EU Exit) Regulations 2019 made**

On 6 September, the Prospectus (Amendment etc.) (EU Exit) Regulations 2019 were published, together with an explanatory memorandum. The Regulations make amendments to the new EU Prospectus Regulation ((EU) 2017/1129), the Official Listing of Securities, the Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019 and other legislation that sets the UK prospectus regime. Among other things, the regulations will: (i) generally transfer the functions currently exercised by ESMA and the European Commission to the FCA and HMT respectively; (ii) require UK issuers to use UK-adopted international accounting standards for historical financial information; and (iii) require EEA issuers wishing to issue securities in the UK to secure approval of their prospectus from the FCA. The majority of the Regulations will enter into force on exit day, although most of the amendments to the Official Listing instrument and certain other amendments came into force on 6 September.

[Prospectus \(Amendment etc.\) \(EU Exit\) Regulations 2019 Explanatory Memorandum](#)

### **Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019 made**

On 6 September, the Financial Services (Electronic Money, Payment Services and Miscellaneous Amendments) (EU Exit) Regulations 2019 were published, together with an explanatory memorandum. The Regulations include amendments to FSMA, the Banking Act 2009, the Electronic Money Regulations 2011 and the Payment Services Regulations 2017. Regulations 2 to 7, 9 to 13, 15, 19(1) and (2), and 22(1) and (2) came into force on 6 September, and the other provisions of the Regulations will come into force immediately before exit day.

[Financial Services \(Electronic Money, Payment Services and Miscellaneous Amendments\) \(EU Exit\) Regulations 2019 Explanatory Memorandum](#)

### **Capital Requirements (Amendment) (EU Exit) Regulations 2019 made**

On 5 September, the Capital Requirements (Amendment) (EU Exit) Regulations 2019 were published, together with an explanatory memorandum. The Regulations aim to correct deficiencies in the retained EU law version of the Capital Requirements Regulation (575/2013) (CRR) (UK CRR) to reflect those provisions of the CRR II Regulation ((EU) 2019/876) that will apply before 31 October. The Regulations will come into force on exit day, with the exception of certain provisions specified in Regulation 1(2), which come into force on the day after the day on which the Regulations were made (that is, 6 September).

[Capital Requirements \(Amendment\)\(EU Exit\) Regulations 2019 Explanatory Memorandum](#)

## **CONDUCT**

### **FCA updated checklists for solo-regulated firms implementing SMCR**

On 11 September, the FCA published information for FCA solo-regulated firms in relation to the extension of the SMCR. The FCA has updated its webpage on checklists for FCA solo-regulated firms to include additional information in relation to Form K, which is the form a firm must submit in relation to the conversion of approved persons to a senior management function. The form must be submitted by 23:59 on 24 November, and a firm's SMFs will show on the financial services register on 9 December.

[Read more](#)

## **CONSUMER/RETAIL**

### **CMA review of Part 6 of Retail Banking Market Investigation Order 2017**

On 12 September, the CMA announced its provisional findings in its review of Part 6 of the Retail Banking Market Investigation Order 2017. The CMA has provisionally concluded that the introduction of the New FCA Rules concerning consumer overdraft alerts represents a change of circumstance relevant to the Order. The introduction of the new FCA Rules would result in firms facing duplication in the regulatory requirements on them. This may result in confusion among providers and consumers and would impose unnecessary costs of compliance with two potentially conflicting regulatory regimes. The CMA's provisional conclusion is that it is appropriate to vary the Order to avoid such duplication by removing Part 6. The CMA would require providers to send one final compliance report in 2020, and would retain the obligation on providers to report any breaches of Part 6 that come to light subsequent to its removal. The CMA are consulting on the provisional decision and draft Variation Order. The deadline for comments is 15 October.

[Read more](#)

### **ECJ Judgment: Consumer's right to a reduction in the total cost of credit on early repayment of loan under Consumer Credit Directive (CCD)**

On 11 September, the ECJ handed down its judgment in a case regarding the interpretation of Article 16(1) of the CCD. The question for the ECJ was whether Article 16(1) is to be interpreted as meaning that the right to a reduction in the total cost of the credit in the event of early repayment of that credit also includes costs which are not dependent on the duration of the contract. The ECJ commented that Article 3(g) of the CCD is the definition of 'total cost of credit', which includes all the costs, including interest, commissions, taxes and any other kind of fees which the consumer is required to pay in connection with the credit agreement and which are known to the creditor, except for notarial costs. As such, that definition does not contain any restriction relating to the duration of the credit agreement at issue. Therefore, the ECJ determined that Article 16(1) of the CCD must be interpreted as meaning that the right of the consumer to a reduction in the total

cost of the credit in the event of early repayment of the credit includes all the costs imposed on the consumer.

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## **FUND REGULATION**

### **FCA and Hong Kong MoU addendum on mutual recognition of covered funds in preparation for Brexit**

On 12 September, the FCA published the first addendum to the MoU that it has entered into with the Hong Kong Securities and Futures Commission concerning mutual recognition of covered funds and covered management companies. The addendum amends the MoU so that the UK-Hong Kong mutual recognition of funds arrangement will continue to operate in a smooth manner after the UK's withdrawal from the EU. It changes the definition of a UK UCITS to, "a collective investment scheme which is authorised as a UK Undertaking for Collective Investment in Transferable Securities by the FCA under Part 17 of FSMA or under the Financial Services and Markets Act 2000 (Open Ended Investment Company) Regulations 2001 (SI 2001/1228) (as amended)."

[Read more](#)

## **MARKETS AND MARKETS INFRASTRUCTURE**

### **Decision of the EEA Joint Committee incorporating the Benchmarks Regulation into EEA Agreement published in OJ**

On 12 September, Decision No 190/2019 of the EEA Joint Committee incorporating the BMR into the EEA Agreement was published in the OJ. The decision states that Annexes IX and XIX to the EEA Agreement should be amended to include the BMR and makes adaptations to the reading of certain provisions in the BMR for the purposes of the EEA Agreement, intended to make it legally effective in the context of the EEA.

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### **IOSCO consultation paper on clock synchronisation**

On 11 September, IOSCO published a consultation paper (CR04/19) on clock synchronisation used to timestamp recordable events with Coordinated Universal Time (UTC). The synchronisation of clocks used to timestamp a recordable event is important for establishing a clear audit trail of when trading events occur in the secondary markets. IOSCO has previously considered clock synchronisation in the context of trading venues – in 2013, recommendation 7 of its final report on "Technological Challenges to Effective Market Surveillance provided that market authorities should consider requiring trading venues and their participants to synchronise business clocks. Since the 2013 Report, there has been widespread adoption of UTC, and IOSCO believes that it may be appropriate to build on this recommendation by stipulating that where jurisdictions have introduced a synchronisation requirement for business clocks, they should be synchronised to UTC. The deadline for comments is 13 November.

[Read more](#)

### **ESMA publishes responses to its Consultation on cost of market data and consolidated tape**

On 11 September, ESMA published responses to its consultation paper on MiFID II/MiFIR review report on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments. MiFID II/MiFIR provide for a number of review reports requiring the European Commission, after consulting ESMA, to present a report to the European Parliament and the Council on various provisions. This consultation paper was published on 12 July and covers the review provisions on the development in prices for pre- and post-trade transparency data from regulated markets, multilateral trading facilities, organised trading facilities, approved publication arrangements and consolidated tape providers as well as the functioning of the consolidated tape for equity instruments as provided for in Articles 90(1)(g) and 90(2) of MiFID II and Article 52(7) of MiFIR. Since these mandates are closely linked, ESMA decided to cover them in one single review report. The consultation closed on 6 September.

[Read more](#)

### **FCA delays Call for Input on accessing and using data in wholesale markets**

On 9 September, the FCA announced that it is delaying its Call for Input on accessing and using data in wholesale markets. The FCA is mindful of the resources that stakeholders are dedicating to preparing for and implementing the change arising from the UK's exit from the EU, and have therefore decided to postpone the Call for Input to allow firms to focus on Brexit.

[Read more](#)

## **PAYMENT SERVICES AND PAYMENT SYSTEMS**

### **European Payments Council (EPC) sets maximum amount per SEPA instant credit transfer transaction**

On 12 September, the EPC published a document revising the maximum amount per instruction that can be processed under the SEPA Instant Credit Transfer (SCT Inst) scheme. The maximum amount an Originator can transfer via a single SCT Inst Instruction is set at EUR15,000, but this is set to increase to EUR100,000 from 1 July 2020.

[Read more](#)

### **PSR response to discussion paper on data in the payments industry**

On 10 September, the PSR published its response (RP19/1) to its discussion paper (DP18/1) on data in the payments industry. In the discussion paper, the PSR asked stakeholders for their views on: (i) data in the payments industry; (ii) payments data usage; (iii) end-users' willingness to share data; (iv) access to scheme-wide datasets; and (v) realising the benefits of enhanced data. The PSR has concluded that the move to the new payments architecture (NPA) provides an opportunity to look at the feasibility of opening access to the data processed over the NPA's central clearing and settlement layer, and building a data-sharing capability into the NPA. The PSR intends to work with Pay.UK to look at the feasibility of opening access to NPA scheme-wide data once it is in operation, including the possibility of first developing and publishing synthetic NPA scheme-wide data for industry use. In addition, RP19/1 highlights a number of areas where the industry needs to manage issues in payments data and clarifies some details from DP18/1.

[Read more](#)

## **PRUDENTIAL REGULATION**

### **PRA policy statement on supervising international banks: Revision of the Branch Return**

On 12 September, the PRA published a policy statement (PS17/19) on the revision of the branch return for international banks. PS17/19 sets out final policy decisions and provides feedback on responses to its April consultation (CP8/19). After considering the responses received to its consultation, the PRA will make two minor changes to the names of data points in the branch return template. The PRA Rulebook instrument comes into force on 1 January 2020, and changes to the return and the reporting guidance will take effect for the reporting of the H1 2020 branch return, that is, for the six-month period ending 30 June 2020. Firms will need to submit their first revised return by no later than 11 August 2020. Firms will be able to submit in Excel format. Further details of the submission mechanism and validation rules will be provided by the end of 2019.

[Read more](#)

### **EBA clarify the prudential treatment applicable to own funds instruments**

On 9 September, the EBA announced its intention to provide clarity on the appropriate treatment of 'legacy instruments' at the end of 2021, when the benefits of the grandfathering period will expire. When the CRR entered into force, grandfathering provisions were introduced. In order to ensure institutions had sufficient time to meet the requirements set out by the new definition of own funds, certain capital instruments that, at that time, did not comply with the new definition of own funds were grandfathered for a transition period, with the objective of phasing them out from own funds. The beneficial treatment provided by the grandfathering provisions ends on 31 December 2021. The EBA intends to provide clarity on the appropriate end-treatment to ensure a high quality of capital for EU institutions and a consistent application of rules and practices and will also clarify the interaction with the new grandfathering provisions introduced by the recent banking package, where relevant for own funds instruments and eligible liabilities. The EBA aims to communicate on the end-treatment of the 'legacy' grandfathered instruments by mid-2020 so that institutions can adequately prepare for the end of the grandfathering period.

[Read more](#)

### **PRA consultation on PIN requirements**

On 9 September, the PRA published a consultation paper (CP20/19) on changes to the pre-issuance notification (PIN) regime applicable to CRR firms. The PRA's PIN rules are intended to enhance and maintain the quality of firms' capital resources by providing the PRA with the opportunity to comment on the terms and conditions of proposed capital instruments prior to the issuance of such instruments. Among other things, the PRA's proposals relate to: (i) improving quality and governance of CET1 issuance; (ii) notification requirements for subsequent issuances of CET1 and AT1; (iii) post-notification regime for Tier 2 instruments;

(iv) notification of amendment to the terms of an existing capital instrument; and (v) amendments to Part Two of the CRR via CRR II. The deadline for comments is 9 December.

[Read more](#)

## **OTHER DEVELOPMENTS**

### **Investment Association (IA) updates its guidance on ensuring authenticity of electronic instructions**

On 12 September, the IA published updated guidance regarding reasonable steps to ensure the authenticity of electronic instructions. The FCA has also updated its industry guidance webpage to include the new version of the IA's guidance.

[Read more](#)

### **House of Commons European Scrutiny Committee seventy-third report**

On 9 September, the House of Commons European Scrutiny Committee published its seventy-third report of the 2017-19 session. Points of interest include: (i) the committee's consideration of the European Commission's proposed Regulation of European crowdfunding service providers for business and the related proposal for a Directive making consequential amendments to MiFID II regarding crowdfunding; and (ii) uncertainty in relation to the potential application of the final legislation in the UK in the context of Brexit.

[Read more](#)

### **FCA quarterly consultation No.25**

On 6 September, the FCA published its 25th quarterly consultation paper (CP19/27). The consultation invites comments on proposed changes to a number of different parts of the FCA Handbook, including: (i) further minor/consequential Brexit related changes to the Handbook and BTS; (ii) proposals on Handbook and BTS changes relating to binary options and contracts for difference, and the Prospectus Regulation; and (iii) changes to Handbook provisions and new BTS in relation to the Securities Financing Transactions Regulation. In addition, the FCA is proposing certain Handbook changes to take into account HMT's changes to the domestic legislation implementing the European Markets Infrastructure Regulation (EMIR). The deadline for comments on some of the Brexit-related proposals is 4 October, and the deadline for the rest is 1 November.

[Read more](#)