

ALLEN & OVERY

Key Regulatory Topics: Weekly Update

9 August – 15 August 2019



BREXIT

Post-Brexit options in the Luxembourg financial sector

Allen & Overy has published a list of available options for UK firms currently passporting their activities to Luxembourg or willing to provide services to Luxembourg-based clients in a post-Brexit environment. The summary focuses on options available to UK firms currently holding a CRD 4, PSD 2, EMI 2 and MiFID 2 licence. The document does not currently address specific Brexit issues in relation to UCIs and investment managers.

[Read more](#)

ECB: Stepping up preparations

On 14 August, the ECB published an article relating to EU banks' need to continue preparing for a no-deal Brexit on October 31. The ECB expects banks to speed up the implementation of their plans in order to minimise execution risk. They should also address operational challenges associated with transferring staff and clients and setting up the necessary internal processes and systems. The ECB sees a risk that, as a result of the delays observed, banks will not be able to fully implement their target operating models within the timelines agreed with their supervisors. The ECB expects banks to follow up on agreed commitments, in particular regarding the build-up of onshore EU risk management capabilities and governance structures. Banks in the euro area are expected to have sufficient onshore capacity (i.e. excluding group entities or branches in third countries) to originate business and access key financial market infrastructures on a continuous basis. In addition, certain banks have yet to align their remote booking practices and back-to-back hedging strategies with supervisory expectations. Amendments should be accurately reflected in banks' booking model policies, which the ECB will continue to monitor closely. The ECB also reminds institutions with UK exposures to consider the implications under CRR / CRD IV and the need to implement effective mitigating actions in the context of continuity of uncleared cross-border derivative contracts.

[Read more](#)

FINANCIAL CRIME

Investigations Insight blog post: new guidance about what to expect if self-reporting to the SFO

Allen & Overy has published an article on its Investigations Insight blog about the new and much-awaited SFO guidance on co-operation. Partner Eve Giles compares the SFO stance with the approach of the DoJ, and discusses timings of self-reports, interviewing witnesses prior to self-reporting, privilege over first witness accounts and the varying approaches of different investigating authorities.

[Read more](#)

CMA: Working with us to tackle cartels

On 9 August, the CMA published a blog on tackling cartels, encouraging more informants to come forward and aid in investigations. In order to do so, the CMA published: (i) an updated campaign page explaining what cartels look like in practice; (ii) an online reporting form aimed at making reporting a cartel quicker and easier; (iii) case studies that lift the lid on real life cases where businesses have broken the law; (iv) an online quiz and a 'cartel checker' to help people understand if what they have seen is illegal; and (v) a reporting video that explains what to expect when you report something.

[Read more](#)

MARKETS AND MARKETS INFRASTRUCTURE

Consultation on Pre-Cessation Issues for LIBOR and Certain Other Interbank Offered Rates

On 9 August, ISDA published the preliminary results of a consultation on pre-cessation issues for LIBOR and certain IBORs. Respondents expressed a wide variety of views regarding whether and how to implement a pre-cessation trigger related to "non-representativeness" for derivatives. In general, the respondents fell into three categories, without a clear majority in any one category: (i) those who supported adding a pre-cessation trigger to the permanent cessation triggers in the "hard wired" amendment to the 2006 ISDA Definitions and related protocol; (ii) those who supported use of the pre-cessation trigger provided that it was implemented with optionality and flexibility (or indicated that their support for the trigger depended on a number of factors); and (iii) those who opposed the pre-cessation trigger. In September, ISDA hopes to publish an anonymised and aggregated summary of the feedback received.

[Read more](#)

PAYMENT SERVICES AND PAYMENT SYSTEMS

FCA agrees plan for a phased implementation of Strong Customer Authentication

On 13 August, the FCA published a press release stating it had agreed an 18-month plan to implement SCA with the e-commerce industry of card issuers, payments firm and online retailers, giving them extra time to implement SCA. The plan reflects the recent opinion of the EBA which set out that more time was needed to implement SCA given the complexity of the requirements, a lack of preparedness and the potential for a significant impact on consumers. The FCA will not take enforcement action against firms if they do not meet the relevant requirements for SCA from 14 September in areas covered by the agreed plan, where there is evidence that they have taken the necessary steps to comply with the plan. At the end of the 18-month period, the FCA expects all firms to have made the necessary changes and to have undertaken the required testing to apply SCA.

[Read more](#)

PRUDENTIAL REGULATION

FAQs on Basel III standardised approach for operational risk

On 14 August, the Basel Committee on Banking Supervision (BCBS) published a document presenting a set of seven FAQs that relate to the new standardised approach for operational risk capital. To promote consistent global implementation of the standard, the BCBS agreed to periodically review FAQs and publish answers along with any technical elaboration of the standards and interpretative guidance that may be necessary. The BCBS expects its members to implement the new standardised approach by 1 January 2022.

[Read more](#)

RECOVERY AND RESOLUTION

Memorandum of understanding between the EC and the Single Resolution Board

On 13 August, the SRB published a MoU signed with the EC in respect of co-operation and information exchange. The MoU is about codifying best practices and making sure that effective working arrangements are in place between the Commission and the SRB. The MoU seeks to establish an efficient, effective and timely mutual cooperation process between the EC and SRB in the performance of their respective tasks within the SRM Regulation. The MoU addresses issues such as: (i) cooperation between the EC and SRB; (ii) communication; and (iii) the exchange and safekeeping of sensitive and confidential information.

[Read more](#)