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Corporate Insurance Newsletter October 2018

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UK

PRA publishes CP27/18: Solvency II: adjusting for the reduction of loss absorbency where own fund instruments are taxed on write down

On 31 October 2018, the Prudential Regulation Authority (PRA) published a consultation paper, CP27/18, which sets out its proposals to amend Supervisory Statement SS3/15: "Solvency II: the quality of capital instruments".

The consultation paper proposes an expectation that insurers will deduct the maximum tax charge generated on write-down, when including items listed in Articles 69(a)(iii) and (b) of the Solvency II Regulation or certain items approved under Article 79 of the Solvency II Regulation to be recognised as restricted tier 1 own funds (rT1) in their own funds.

This is in the light of the proposed tax changes introduced by HM Revenue & Customs in the Budget 2018 relating to hybrid capital instruments. The consultation paper specifically addresses the implications of those proposed tax changes on rT1.

The consultation paper 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.

Comments are requested by 2 January 2019. The intended implementation date for the final policy is 1 February 2019.

The PRA's approach to insurance supervision document updated

On 31 October 2018, the PRA published an updated version of its approach to insurance supervision document, which also was last updated in March 2016. The annex to the document (see pages 39 to 40) gives an outline of the key changes made to the document.

FCA publishes DP18/9: Fair pricing in financial services

On 31 October 2018, the FCA published a discussion paper, DP18/9, on fair pricing in financial services.

The FCA says that the fairness of certain pricing practices in financial services is a complex issue and it wants to take into account stakeholder views on its approach so that it is confident that whatever action it takes on difficult cases is in the public interest.

The FCA is focusing the debate on the following pricing practices:

- firms charging different prices to different consumers based solely on differences in consumers' price sensitivity;
- firms charging existing customers higher prices than new customers.

The FCA has concerns that these pricing practices can potentially disadvantage some consumers significantly, in particular the most vulnerable and least resilient consumers.

Comments are requested by 31 January 2019.

The discussion paper is published alongside the findings of the FCA's diagnostic work on pricing practices in the retail general insurance sector and the terms of reference for a market study on general insurance pricing practices (see below).

FCA publishes TR18/4: Pricing practices in the retail general insurance sector: household insurance

On 31 October 2018, the FCA published a report setting out the key findings of its thematic work on the pricing practices of household insurance firms.

The FCA's work focussed on home insurance pricing practices as it believed that this market would provide a good illustration of the range of customer outcomes arising from current pricing practices. The FCA says that the firms included in the review enabled it to consider a broadly representative sample of insurers and intermediaries with different types of business models.

The FCA identified the following issues relating to firms' current pricing practices:

- firms failing to have appropriate and effective strategies, governance, control and oversight of their pricing practices and activities, such that they are unable to reliably assess and evidence whether they are treating their customers fairly;.
- differential pricing leading to some identifiable groups of consumers paying significantly higher prices than other identifiable groups of consumers with similar risk and cost to serve characteristics;
- the risk of discriminating against consumers through using rating factors in pricing based (directly or indirectly) on data (including third party data) relating to or derived from protected characteristics.

The FCA regards pricing as one of the most significant business activities for general insurance and for those intermediaries undertaking this activity, with the potential to cause significant harm to consumers. It expects all firms to comply with FCA rules in overseeing and carrying out pricing activities, and to take reasonable care to establish and maintain such systems and controls as are appropriate to enable them to do so.

The FCA says it will use its supervisory powers to require firms to tackle evidence of harm and expects firms to take immediate steps where necessary to address the issues identified through its diagnostic work and included in the report.

The FCA has also published the text of a Dear CEO letter sent to the CEOs of insurance firms involved in pricing activities to set out its expectations of them and their firms.

The FCA says that it will conduct a market study (see below) to identify issues at the level of the market as a whole and design remedies where appropriate. Alongside the market study, it will initiate a public debate on the broader issue of fair pricing and the related possible harms within financial services markets (see above).

FCA launches market study on charges for home and motor insurance

On 31 October 2018, the FCA announced the launch of a market study into how general insurance firms charge their customers for home and motor insurance. The terms of reference for the market study have also been published.

The market study will focus on the following key issues:

- the consumer outcomes from pricing practices;
- the fairness of outcomes from pricing practices;
- the impact of pricing practices on competition;
- remedies to address any harm that the FCA finds.

The FCA's supervisory work on home insurance found other issues which could cause harm to customers, including firms failing to have appropriate or clear pricing strategies, governance and controls. The FCA expects firms to look after the interests of all customers and treat them fairly, whether they are new or long-standing and has written to CEOs of firms about its expectations.

The FCA has also identified potential non-compliance by some firms with its rules on transparency at renewal. Where the FCA has concerns about conduct by firms, it will explore all options to address this using the full range of its powers.

Alongside launching the market study, the FCA has published a discussion paper on fair pricing in financial services markets (see above).

The FCA is seeking input on the issues discussed in the market study terms of reference and accompanying evidence by 3 December 2018. It aims to publish an interim market study report in summer 2019 setting out preliminary conclusions including, where practicable and appropriate, a discussion of potential remedies. It aims to publish its final report and, where required, consultation on proposed remedies by the end of 2019.

Alongside the FCA's programme of work on general insurance pricing, it is working closely with the Competition and Markets Authority as it investigates the Citizens Advice super-complaint on excessive prices for disengaged customers.

PRA extends implementation date for equity release mortgages

In July 2018, the PRA published a consultation paper, CP13/18, on equity release mortgages. The consultation period ended on 30 September 2018 and the proposed implementation date for the proposals in the consultation paper was 31 December 2018.

On 25 October 2018, the PRA updated the webpage on the consultation paper to give the information that based on feedback to the consultation, it has decided that the implementation date will not be before 31 December 2019. The PRA says that it is making this announcement now in order to clarify the position for insurers planning their year-end 2018 processes.

The PRA is currently giving careful consideration to the consultation responses and the impact, if any, of the updated implementation date to the proposed phase-in period. The PRA will publish final policy and supervisory statements in due course.

PPI complaints deadline progress report

On 24 October 2018, the FCA published an update on the progress of its consumer communications campaign and supervisory work in support of the 29 August 2019 deadline for payment protection insurance (PPI) complaints.

The FCA launched a package of measures with regard to PPI on 29 August 2017. These included a large scale communications campaign funded by firms at a cost of £42.2m, to inform consumers of the deadline and help prompt them to decide whether to act and rules and guidance on the fair handling of PPI complaints.

The progress report covers:

- the PPI campaign so far and how consumers are responding to it: the FCA says that it is encouraged by the results of the first year of its campaign;
- the FCA's supervisory work to ensure firms are helpful and accessible to consumers who have decided to act, and are dealing fairly and consistently with them: the FCA says that firms have responded positively to its aims and measures;
- the actions consumers have taken since the start of the campaign and the outcomes they are getting: the FCA has found that there has been an increase in consumer action since the launch of the campaign and more consumers are complaining themselves, rather than using claims management companies.

The FCA also sets out its plans leading up to the 29 August 2019 PPI complaints deadline and beyond. Following the deadline, the FCA will publish its final report in early 2020. It will provide a definitive review of the overall impact of its measures and draw the PPI issue to a close.

HM Treasury publishes response to consultation on mutual deferred shares

On 23 October 2018, HM Treasury published its response to its August 2016 consultation on mutual deferred shares (MDS).

HM Treasury consulted on a draft version of the Mutuals' Deferred Shares Regulations 2016, which were intended to allow friendly societies and mutual insurers to issue MDS, a new type of capital created by the Mutual Deferred Shares Act 2015.

The response summarises the responses received. The Government has considered the issues raised by respondents carefully. Since the consultation closed it has held a number of meetings with mutual insurers and their representatives. Those meetings considered the essential features that MDS needed in order for issuance to be a viable proposition for mutual insurers. During these meetings, industry representatives informed the Government that mutual insurers would only issue MDS both if they qualified as tier 1 regulatory capital and would not alter the tax treatment of any mutual that issued MDS. Following extensive work, HM Treasury says that it has not been possible to design MDS which meet both these criteria.

The Government has, therefore, decided not to lay the regulations. It says that it would reconsider its position if any material factors changed in the future.

PRA publishes PS26/18: Strengthening accountability: implementing the extension of the SM&CR to insurers

On 18 October 2018, the PRA published a policy statement, PS26/18, which provides feedback to responses to its July 2018 consultation paper, CP18/18 "Strengthening accountability: implementing the extension of the senior managers and certification regime (SM&CR) to insurers".

The policy statement also provides a rule instrument, the PRA Rulebook: CRR Firms, Non CRR Firms, Solvency II Firms and Non Solvency II Firms: Senior Managers Regime and Senior Insurance Managers Regime (Amendment) (No 2) Instrument 2018, PRA 2018/21, with amendments to the final

rules for the implementation of the extension of the SM&CR to insurers; along with a technical correction to the Insurance General Application Part of the PRA Rulebook. The final rules in will come into force on 10 December 2018.

In a change to the draft policy as consulted on in CP18/18, the PRA has proceeded with the inclusion of the individual conduct standards applicable to small non-Directive firms (NDFs) in the definition of "individual conduct requirements". This is consistent with the published policy in the PRA's July 2018 policy statement PS15/18 to extend the full set of regulatory reference requirements to small NDFs. The PRA has decided not to proceed with the proposal to delete from this definition references to parts of the PRA Rulebook and Financial Conduct Authority Handbook that are no longer in force. This is consistent with, and clarifies, the requirement that breaches of individual conduct requirements must be disclosed for the past six years.

The extension of the regime to insurers is being introduced by amendments to the Financial Services and Markets Act 2000 (FSMA) through the Bank of England and Financial Services Act 2016 (the 2016 Act). The extended SM&CR for insurers will come into effect on 10 December 2018, through the application of the commencement regulations that have been published by HM Treasury for the relevant amendments to FSMA in the 2016 Act.

Following the publication of the commencement regulations by HM Treasury, in September 2018 the PRA published a consultation paper, CP20/18, with some further proposed consequential technical amendments to its rules to take effect on 10 December 2018. The PRA says that these further consequential changes are not intended to make any substantive change to the final policy and rules in this policy statement. A further policy statement containing the final rules following the consultation in CP20/18 will be published before the commencement of the regime.

PRA publishes PS25/18: Solvency II: external audit of the public disclosure requirement

On 17 October 2018, the PRA published a policy statement, PS25/18 which provides feedback to responses to its April 2018 consultation paper, CP8/18, in which the PRA proposed to remove the external audit requirement for the solvency and financial condition reports (SFCRs) of certain small Solvency II firms, and certain small Solvency II groups (collectively small insurers). The SFCR is the key public disclosure under Solvency II.

Appendix 1 to the policy statement contains amendments to the External Audit Part of the PRA Rulebook and appendix 2 contains an updated version of Supervisory Statement 11/16 on Solvency II external audit. These changes take effect from 15 November 2018.

The PRA says that respondents to the consultation paper generally welcomed its proposals to remove the audit requirement for small insurers. However, a number of observations and requests for clarification were made. Responses to comments are set out in chapter 2 of the policy statement. Following consideration of respondents' comments, the PRA has made changes to the proposals consulted on. One of these, the introduction of a two year smoothing mechanism to reduce volatility in application of the rule, is significant in the opinion of the PRA. Further details on this change as well as an impact assessment on firms, and specifically mutuals, are set out in paragraphs 2.23-2.26 of the policy statement.

The PRA has made minor changes to the draft version on which it consulted:

- to clarify that the currency of reported figures used to determine firms' scores is to be GBP (converted where necessary);
- to correct a minor inconsistency in the definition of "life insurance gross written premium" compared to other definitions;
- to add definitions for "corporate pensions business" and "annual quantitative reporting template", as defined in the Fees Part of the PRA Rulebook.

The PRA has also made minor clarifications and typographical changes to Supervisory Statement 11/16, to improve the clarity of its expectations. These changes were not consulted on as part of CP8/18 and the PRA does not consider them to be significant.

PRA publishes PS24/18: Solvency II: updates to internal model output reporting

On 17 October 2018, the PRA published a policy statement, PS24/18, which provides feedback to responses to its April 2018 consultation paper, CP10/18, on updates to internal model output reporting under Solvency II.

The policy statement also contains the PRA's final policy, which is contained in an updated version of updated Supervisory Statement (SS) 25/15 "Solvency II: regulatory reporting, internal model outputs"; and an updated version of SS26/15 "Solvency II: Own risk and solvency assessment and the ultimate time horizon - non-life firms". The policy will take effect for all financial year-ends on, or after, 31 December 2018.

In CP10/18 the PRA proposed to make changes to the life, counterparty and non-life templates and the associated instructions (LOG files in SS25/15 and SS26/15). The proposals followed the analysis of the year-end 2016 PRA internal model output, feedback from individual firms and the PRA's package of insurance reporting reforms, with the intent of clarifying and reducing the overall reporting burden.

After considering the responses, the PRA has made a number of minor amendments to the expectations and LOG files. The PRA considers that the changes continue to reduce the overall reporting burden on firms and provide further clarity on completion of the relevant templates.

The links to the templates and LOG files have been updated and are available on the PRA's Regulatory reporting - insurance sector webpage. They are available in section (g), which contains links to internal model output templates and LOG files. The updated versions take effect from 31 December 2018.

PRA publishes PS23/18: Solvency II: Internal models - modelling of the volatility adjustment

On 17 October 2018, the PRA published a policy statement, PS23/18, which provides feedback to responses to its April 2018 consultation paper, CP9/18 "Solvency II: Internal models - modelling of the volatility adjustment".

The policy statement also contains the PRA's final Supervisory Statement (SS) 9/18 "Solvency II: Internal models - modelling of the volatility adjustment" which sets out the PRA's expectations of internal model firms when determining the risks that might arise from the dynamic volatility adjustment (DVA) when calculating the solvency capital requirement (SCR). It also contains an amended version of SS17/16 "Solvency II: internal models - assessment, model change and the role of non-executive directors". The expectations set out in the supervisory statements came into effect on the publication of the policy statement.

In CP9/18 the PRA consulted on the possibility of allowing firms to apply DVA in internal models when calculating the SCR and the adoption of a new supervisory statement. The consultation paper highlighted the areas that the PRA proposed firms considered in their internal model and model change applications when seeking approval to apply the DVA.

All of the respondents welcomed the PRA's proposal to allow internal model firms to apply a DVA into the SCR calculation and many of the remaining comments made a number of observations and requests for clarification which are set out in chapter 2 of the policy statement, along with the PRA's final decisions. After considering the responses, the PRA has made some changes to the draft policy. The PRA does not consider these to change the substance of its expectations, but rather to provide

additional clarification where requested and therefore considers neither that the impact of the changes for firms as significant, nor that the impact is any different in respect of mutuals.

PRA publishes PS22/18: Solvency II: Supervisory approval for the volatility adjustment

On 17 October 2018, the PRA published a policy statement, PS22/18, which provides feedback to responses to its November 2017 consultation paper, CP22/17 "Solvency II: Supervisory approval for the volatility adjustment".

The policy statement also contains an updated version of Supervisory Statement (SS) 23/15 "Solvency II: supervisory approval for the volatility adjustment". The expectations set out in the supervisory statement came into effect on the publication of the policy statement.

In CP22/17 the PRA proposed to clarify its expectations in respect of insurance and reinsurance firms seeking approval to apply a volatility adjustment (VA). In the course of reviewing firms' VA applications the PRA identified particular areas of prudential risk that may have arisen from use of the VA, and which have had to be addressed in the review process. The consultation paper aimed to alert all firms considering applications to use the VA to those risks and to help them to produce high-quality applications that successfully address those risks.

After considering the responses to the consultation paper, the PRA has made some changes to the draft policy. Details of the changes are included in chapter 2 of the policy statement. The PRA does not consider these to change the substance of its expectations. They provide additional clarification where requested, with one more substantive change to the endorsement of the application of the VA to make the process more streamlined. The PRA does not consider the impact of changes for firms as significant, or that it is any different in respect of mutuals.

PRA publishes Bank of England insurance XBRL taxonomy v1.0.0

On 17 October 2018, the PRA updated its regulatory reporting - insurance sector webpage to give the information that it has published v1.0.0 of the Bank of England insurance XBRL taxonomy (zip file). More information is given in the taxonomy section of the webpage.

This version covers the requirements for the reporting of internal model output, market risk sensitivities, national specific templates, and standard formula reporting for firms with an approved internal model.

FCA publishes DP18/8: Climate change and green finance

On 15 October 2018, the FCA published a discussion paper, DP18/8, on climate change and green finance.

The FCA says that the effects of climate change and the associated transition to a low carbon economy may have a major impact on financial markets and on products that serve those markets. The discussion paper sets out how the impacts of climate change are relevant to the FCA's statutory objectives of protecting consumers, protecting market integrity and promoting competition.

The discussion paper seeks input on four areas in which the FCA considers a greater regulatory focus is warranted:

- climate change and pensions - ensuring that those making investment decisions take account of risks including climate change;
- enabling competition and market growth for green finance;
- ensuring that disclosures in capital markets appropriately give adequate information to investors of the financial impacts of climate change;
- the scope for the introduction of a new requirement for financial services firms to report publicly on how they manage climate risks.

Comments are requested by 31 January 2019.

In a related press release, the FCA welcomes the Prudential Regulation Authority's (PRA) consultation paper, also published on 15 October 2018 (see below), on enhancing banks' and insurers' approaches to managing the financial risks from climate change. The FCA and PRA have been working closely together to develop a joined-up approach to enhance the resilience of the UK financial system to climate change.

To co-ordinate action and share best practice, the FCA and the PRA are setting up a climate financial risk forum which is designed to help the financial sector manage the financial risks from climate change and support innovation for financial products and services in green finance. The forum will involve representatives from industry as well as technical experts and other stakeholders. The FCA and the PRA expect to finalise membership of the forum by the end of November 2018 and to have a first meeting in early 2019.

PRA publishes CP23/18: Enhancing banks' and insurers' approaches to managing the financial risks from climate change

On 15 October 2018, the PRA published a consultation paper, CP23/18, on a draft supervisory statement (SS) which sets out expectations regarding firms' approaches to managing the financial risks from climate change. These centre on how managing the far-reaching and foreseeable risks from climate change requires a strategic approach which considers how actions today affect future financial risks.

The supervisory statement sets out proposed expectations in respect of the embedding of firm's management of financial risks arising from climate risk in a number of areas:

- **governance**: there should be clear board -level engagement and responsibility for managing the financial risks from climate change. This includes identifying the relevant senior management function holder(s);
- **risk management**: risks should be addressed through firms' existing risk management frameworks, in line with their board-approved risk appetite, while recognising that the nature of financial risks from climate change requires a strategic approach;
- **scenario analysis**: this should be conducted (where proportionate) to inform a firm's strategic planning and determine the impact of the financial risks from climate change on its overall business strategy;
- **disclosure**: firms should consider the relevance of disclosing information on how financial risks from climate change are integrated into governance and risk management processes. This includes firms engaging with the wider initiatives on climate related financial disclosures, such as the task force on climate-related financial disclosures.

Comments are requested by 15 January 2019.

FCA publishes GC18/4: SM&CR - proposed guidance on statements of responsibilities for FCA firms

On 11 October 2018, the FCA published a guidance consultation, GC18/4, on guidance for FCA solo-regulated firms preparing for the senior managers and certification regime (SM&CR).

The FCA is extending the SM&CR to all FSMA authorised firms on 9 December 2019. The extended regime will help make it clear who has ultimate and overall responsibility for each business area. Under the SM&CR, all senior managers must have a statement of responsibilities (SoR). In addition, all enhanced firms must have a responsibilities map.

The purpose of the proposed guidance is to give FCA solo-regulated firms practical assistance and information on preparing the SoR and responsibilities maps. The guidance sets out the purpose of SoRs and responsibilities maps, provides some questions for firms to ask themselves and outlines

examples of good and poor practice. It is designed to be read alongside the FCA's July 2018 guide to the SM&CR for FCA solo-regulated firms as well as applicable rules and guidance in the FCA Handbook. Chapter two of the guidance consultation deals with SoRs and chapter three deals with responsibilities maps.

Comments are requested by 10 December 2018. The FCA plans to publish a response in December 2018.

Draft Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018 published

On 9 October 2018, a draft version of the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018 was laid before Parliament and published, together with a draft explanatory memorandum.

The draft Order supplementing provision made in the Financial Guidance and Claims Act 2018 transfers the regulation of claims management activities from the Claims Management Regulation Unit in the Ministry of Justice to the FCA. The Order sets out the types of claims management activities that will be regulated by the FCA and the restrictions on the promotion of those activities. It also specifies those activities which will be excluded from regulation by the FCA.

The draft Order is due to come into force on the day after it is made to enable the FCA and the Financial Ombudsman Service to undertake tasks, such as making and approving rules and giving guidance ahead of the transfer, so that they apply from the date of transfer. It comes into force on 1 April 2019 for all other purposes. It extends to England and Wales and Scotland, except for Articles 90, 93, 95, 96, 101, 102 and 103, which extend to England and Wales only.

The Financial Guidance and Claims Act 2018 (Commencement No. 4) Regulations 2018

The above Regulations, SI 2018/1045, which were made on 5 October 2018 and published on 8 October 2018, brought the following provisions of the Financial Guidance and Claims Act 2018 into force on the day after the day on which the Regulations were made:

- Section 27(1) to (14) (transfer to the Financial Conduct Authority of regulation of claims management services); and

Schedule 4 (regulation of claims management services: transfer schemes).

BREXIT

Bank of England and PRA publish documents on their approach to financial services legislation under the European Union (Withdrawal) Act 2018

On 25 October 2018, the Bank of England announced the publication of a package of documents updating firms on its regulatory and supervisory approach in relation to its work on EU withdrawal. The package sets out changes to the Bank's and the PRA rules and binding technical standards (BTS) arising out of EU Withdrawal. The Bank has also updated its website so that there is now a single webpage that brings together previous communications to firms on EU withdrawal.

The package of documents includes the following:

(1) Bank of England consultation paper and PRA CP25/18: The Bank of England's approach to amending financial services legislation under the European Union (Withdrawal) Act 2018

A joint consultation paper on the general approach they propose to adopt to ensure a functioning legal framework when the UK leaves the EU.

Chapters 2 and 3 of the consultation paper set out how the Bank proposes to use the delegated power to amend deficiencies within onshored binding technical standards (BTS) and regulators' rules. Chapter 4 of the consultation paper sets out the Bank's proposed approach to the use of the temporary transitional power to grant transitional relief in respect of onshoring changes, including those changes described in the accompanying consultation papers. Chapter 5 of the consultation paper sets out the Bank's proposed approach to interpreting the existing body of EU guidelines and recommendations in light of the UK's withdrawal from the EU.

The consultation paper provides the background to, and should be read in conjunction with, the other three consultation papers and supporting documentation in the package published on 25 October 2018 (see item 2.2 above).

In drafting amendments to onshored BTS and rules, the consultation papers says that the Bank and PRA have followed the approach taken by the Government to onshoring changes under the European Union (Withdrawal) Act 2018. Most individual changes proposed in the consultation package reflect onshoring changes being made by Government as set out in its published Statutory Instruments. Such changes, which are consequential to Government's changes, are generally not described in the consultation papers, but draft EU exit instruments showing all of the Bank's and PRA's proposed changes are appended to the relevant consultation paper.

In general, the Bank and PRA do not, at this stage, propose to amend their existing set of supervisory statements, statements of policy, and reporting requirements for firms or financial market infrastructures. Instead, as part of the consultation package, the Bank and PRA are consulting on draft supervisory statements and draft statements of policy which explain how these materials should be interpreted in light of the UK's withdrawal from the EU.

Comments are requested by 2 January 2019.

(2) PRA CP26/18: UK withdrawal from the EU: Changes to the PRA Rulebook and onshored BTS

On 25 October 2018, the PRA published a consultation paper, CP26/18, which sets out its proposals to fix deficiencies arising from the UK's withdrawal from the EU in the PRA Rulebook, and in relation to binding technical standards (BTS) within the PRA's remit that will be converted, or onshored into UK law. It also sets out the PRA's proposals on how existing non-binding PRA materials, including supervisory statements, statements of policy and the PRA approach documents should be read by firms when the UK leaves the EU.

The consultation paper forms part of the package of material on EU withdrawal published by the Bank of England and the PRA on 25 October 2018 (see item 2.2 above).

The consultation paper is structured as follows:

- chapter 2 is relevant to all PRA-regulated firms and explains how existing PRA non-binding materials should be interpreted after exit day;
- chapter 3 is relevant to all PRA-regulated firms and sets out the PRA's proposed approach to reporting and disclosure requirements;
- chapter 4 sets out proposals relating to PRA-regulated banks, building societies and designated investment firms;
- chapter 5 sets out proposals relating to PRA-regulated insurers;

- chapter 6 sets out proposals relating to credit unions;
- chapter 7 sets out proposals relating to firms in the TPR;
- chapter 8 sets out proposals relating to Financial Services Compensation Scheme coverage;
- chapter 9 sets out the PRA's obligations under the Regulations;
- appendix 1 contains a draft supervisory statement: "Non-binding PRA materials: the PRA's approach after the UK's exit from the EU";
- appendix 2 contains a draft supervisory statement: "Approach to interpreting reporting and disclosure requirements after the UK's exit from the EU";
- appendix 3 contains a draft update to Supervisory Statement SS18/15 "Depositor and dormant account protection";
- appendix 4 contains the Draft PRA Rulebook EU Exit Instrument;
- appendix 5 contains a list of onshored BTS in the PRA's remit and draft BTS EU exit instruments.

Comments are requested by 2 January 2019.

Draft Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 laid before Parliament

On 18 October 2018, a draft version of the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, was laid before Parliament and published, together with a related draft explanatory memorandum. HM Treasury had published an earlier draft version of the draft Regulations, with an explanatory information, on 5 October 2018.

The draft Regulations aim to ensure that the regime established by the MiFID II Directive and the Markets in Financial Instruments Regulation (together known as MiFID II) will function effectively after Brexit.

Regulations 2, 3, 15(5), for the purpose only of inserting regulation 47B into the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017(1), and regulation 20 come into force on the day after the day on which the draft Regulations are made.

The other provisions in the draft Regulations come into force on exit day.

Existing contracts letter from European Parliament Brexit co-ordinator to House of Commons Exiting the EU Select Committee

On 15 October 2018, the House of Commons' Exiting the European Union Select Committee published the text of a letter from the European Parliament's Brexit co-ordinator, Guy Verhofstadt MEP, to Seema Malhotra MP, a member of the Select Committee, on the impact of Brexit on existing contracts.

Mr Verhofstadt appeared before a hearing of the Select Committee on 20 June 2018 and has written to Ms Malhotra to respond to a question she raised at the hearing.

In his letter, Mr Verhofstadt says that with regard to ensuring the continuity of contracts concluded before Brexit, such as insurance and over-the-counter (OTC) derivatives contracts, the assessment made by the EU so far indicates that "issues are likely to be linked to a far more limited set of contracts than initially feared by some".

For cross-border insurance contracts, the vast majority are one-off or short-term year contracts, such as travel insurance. For these contracts there are no cliff-edge risks. The limited number of these contracts that would still be in place post-Brexit would be valid, and the performance of existing obligations under the contract could generally continue to take place.

Mr Verhofstadt points out that, under the Solvency II Directive, insurance firms are required to take measures to ensure that contracts can continue to be serviced. As stated by the European Insurance

and Occupational Pensions Authority, the customer should be clearly informed about the possible impact of Brexit on their insurance contracts and on the relevant measures taken by insurance firms.

Mr Verhofstadt says that the draft withdrawal agreement provides for a transition period until the end of 2020, during which the economic status quo, including passporting rights, would be maintained. There is, however, no legal certainty about a transition period so long as the withdrawal agreement is not concluded and ratified.

Sanctions policy if there is no Brexit deal: Foreign and Commonwealth Office paper

On 12 October 2018, the Foreign and Commonwealth Office published a technical notice explaining how the UK would implement sanctions if the UK leaves the EU without a deal.

Sanctions, often known in the EU as restrictive measures, are a foreign policy and national security tool which impose immigration, trade, financial and transport restrictions.

If there is no deal, the guidance says that:

- as international law requires, the UK will continue to implement UN sanctions after the UK leaves the EU;
- the UK will look to carry over all EU sanctions at the time of departure, and will implement sanctions regimes through new legislation made under the Sanctions and Anti-Money Laundering Act 2018;
- the new legislation will be put before Parliament before March 2019. Any sanctions regimes that are not addressed would continue as retained EU law under the European Union (Withdrawal) Act 2018. This means there will be no gaps in implementing existing sanctions regimes;
- the UK's sanctions regulations will include the purposes of the sanctions regime, the criteria to be met before sanctions can be imposed on a person or group, details of sanctions, such as trade and financial sanctions, details of the exemptions that may apply and enforcement measures. Regulations would be published as normal.

After the UK leaves the EU, in addition to implementing UN sanctions, and looking to carry over existing EU sanctions, it will also have the powers to adopt other sanctions under the Sanctions Act. The UK will work with the EU and other international partners on sanctions where this is in its mutual interest.

The guidance also gives details of Individuals and companies concerned with the implementation of sanctions need to do.

FCA publishes CP18/29: Temporary permissions regime for inbound firms and funds

On 10 October 2018, the Financial Conduct Authority (FCA) published a consultation paper, CP18/29, on the temporary permissions regime which will allow EEA firms and funds passporting into the UK to continue operating here for a limited period after Brexit while seeking full UK authorisation.

The consultation paper sets out:

- details of the regime for both firms and fund marketing activities, including which firms and investment funds can use the regime (see chapter 2);
- how the regime will operate for firms including what the FCA expects from firms and how it will supervise them (see chapter 3);
- the rules the FCA proposes to apply to firms and fund marketing activities during the regime (see chapter 4);

- additional information for electronic money institutions, payment institutions and registered account information service providers (see chapter 5);
- how the regime will operate for investment funds (see chapter 6);
- the FCA's proposals for how the regime will be funded (see chapter 7).

Generally, temporary permissions firms will need to continue to comply with the rules which currently apply to them based on the activities they carry on, either in the UK or in their country of authorisation (home state) or, if different and where relevant , the country from which they provide services into the UK.

As a result of this approach, the FCA would become responsible for the supervision of these home state rules after Brexit in relation to the firm's UK business. However, the FCA does not propose to take on responsibility for supervising rules that apply to an investment fund or its manager in their home state.

Comments are requested by 7 December 2018. The FCA intends to give feedback on the consultation paper in early 2019 and publish final versions of the material before exit day.

FCA publishes CP18/28: Brexit: proposed changes to the Handbook and binding technical standards - first consultation

On 10 October 2018, the FCA published a consultation paper, CP18/28, setting out proposed changes to the FCA Handbook and to binding technical standards (BTS) as a result of Brexit.

The consultation paper principally addresses amendments to the Handbook and BTS which relate to those Statutory Instruments (SIs) made under the European Union (Withdrawal) Act 2018 which have been published by the Government. Annex 2 to the consultation paper contains a list of these SIs. The consultation paper also explains the FCA's proposed approach to EU non-legislative material which the FCA has set out in draft non-Handbook guidance.

Examples of changes include removing references to EU institutions, such as the European Commission or the European Supervisory Authorities, which will be replaced with the relevant UK equivalent. In a small number of cases, the FCA is proposing other types of changes that reflect the UK's new position outside of the EU. Feedback is invited on the approach taken to all of the amendments. The FCA is not proposing policy changes unrelated to Brexit.

The FCA particularly welcomes feedback on whether compliance with changes to regulatory requirements by exit day would be a particular challenge for firms. However, the FCA does not expect firms and others subject to its proposals to prepare now to implement any new requirements.

Comments are requested by 7 December 2018. The FCA intends to give feedback in early 2019 and publish final versions of these materials before exit day. It says that it may publish further amendments to the proposals in this paper in later publications.

The FCA intends to publish a second consultation paper later in autumn 2018 covering the BTS and parts of the Handbook affected by SIs which are due to be published later.

Draft Solvency II and Insurance (Amendment etc) (EU Exit) Regulations 2018 published by HM Treasury

On 11 October 2018, HM Treasury published a draft Statutory Instrument (SI), the Solvency II and Insurance (Amendment etc.) (EU Exit) Regulations 2018, together with explanatory information.

The underlying EU law is the Solvency II Directive, as implemented in UK law by the Solvency II Regulations 2015, the Solvency II Delegated Regulation and the PRA Rulebook.

Consistent with the Government's onshoring policy of providing continuity to businesses and consumers, the policy approach of Solvency II and the key prudential requirements set out in Solvency II legislation will not change after the UK has left the EU. However, to ensure that the Solvency II regime continues to operate effectively once the UK is outside of the EU, certain deficiency fixes to the legislation will be necessary. These deficiency fixes relate to:

- regulation of cross-border EEA groups of insurance/ reinsurance companies;
- equivalence;
- risk weights for EU assets;
- transfer of functions;
- information sharing and co-operation requirements between UK and EEA regulators;
- binding technical standards.

HM Treasury intend to lay the SI before Parliament in autumn 2018.

Proposal for a temporary transitional power to be exercised by UK regulators published by HM Treasury

On 8 October 2018, HM Treasury published a paper explaining its intention to provide the Bank of England, the PRA and the FCA (the UK regulators) with a temporary transitional power to phase in requirements for UK regulated firms that will change under onshoring legislation.

The power will be delegated to the UK regulators by secondary legislation under the European Union (Withdrawal) Act 2018 (the Act) and will only be used in the no-deal scenario. The power could be used where, in the judgement of the UK regulators, transitional provision would be appropriate to enable firms to adjust to the post-exit regulatory framework in an orderly way. Transitional provision could include, for example, delaying onshoring changes so that firms could comply with pre-exit standards for a limited time after exit, rather than needing to implement the relevant onshoring changes by 29 March 2019. Transitional relief could not be granted if this would undermine the UK regulators' statutory objectives. The power could not be used for any purpose other than facilitating firms in adjusting to the UK's post exit regulatory regime. As such, it could not be used to waive or modify a firm's pre-exit obligations where they are unaltered by legislation made under the Act.

The power to make transitional provision would be available to the UK regulators for two years from exit. Transitional provision made using the power would cease to have effect after two years from exit.

The power could be used to grant transitional relief in relation to changes under the Act which have been made to regulatory requirements where UK regulators are responsible for supervising compliance, including regulatory requirements which form part of:

- PRA and FCA rules made under the Financial Services and Markets Act 2000;
- onshored binding technical standards;
- onshored EU financial services regulations or delegated regulations;
- relevant UK primary or secondary legislation.

Transitional relief could be granted to particular firms, classes of firms, or all firms to which a particular onshoring change applies, including firms that have entered into one of the transitional regimes referred to above. Firms would not need to apply for transitional relief in order to benefit from it. Rather, the UK regulators will issue "directions" that set out the terms of the proposed transitional relief. The directions would normally be published on the UK regulators' websites, except where this was inappropriate or unnecessary.

HM Treasury proposes to confer this power on the Bank of England, the PRA and the FCA in an affirmative procedure Statutory Instrument under the Act. The SI will be laid before Parliament in due course.

INTERNATIONAL

IDD: EIOPA decision on supervisory co-operation

On 10 October 2018, the European Insurance and Occupational Pensions Authority (EIOPA) published a decision of its Board of Supervisors, together with related appendices, on the co-operation of national competent authorities (NCAs) with regard to the supervision of cross-border insurance distribution activities of insurance undertakings and insurance intermediaries.

The decision replaces the former Luxembourg Protocol which had to be substantially revised as a result of the new regulatory framework for insurance distribution activities under the Insurance Distribution Directive (IDD) and the recent supervisory experience with cross-border insurance distribution activities.

The decision aims to strengthen cooperation between NCAs and in particular to enhance the exchange of all relevant information, enabling NCAs to fulfil their supervisory tasks and to protect customer interests.
