

# ALLEN & OVERY

## *Key Regulatory Topics: Weekly Update*

17 May 2019 – 23 May 2019



### UPCOMING SEMINARS

#### **New EU prudential regime for investment firms**

On 19 June, 8:30-9:30am, A&O will host a seminar regarding the EU's most ambitious attempt to date to rationalise the prudential regulation of investment firms. There is a new classification regime for firms and significant changes will be required to the calculation of capital and reporting requirements. The seminar will provide an overview of the new regime, highlight the most significant impact points and make practical suggestions on how to approach implementation. Please email [AORegulatorySeminars@allenoverly.com](mailto:AORegulatorySeminars@allenoverly.com) should you wish to attend the seminar.

### CAPITAL MARKETS

#### **ESMA updates Q&As on the Benchmarks Regulation (BMR): May 2019**

On 23 May, ESMA published an updated version of its Q&As on the BMR. The purpose of this document is to promote common, uniform and consistent supervisory approaches and practices in the day-to-day application of BMR. The new Q&As provide clarification on the following issues: (i) the information included in the ESMA register of administrators of benchmarks; (ii) determination of the Member State of reference; and (iii) the role of the International Organization of Securities Commissions' (IOSCO) principles and of external audit in the recognition of third country administrators. ESMA previously last updated the Q&As in January.

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#### **GFXC two-day meeting in Tokyo, Japan**

On 22 May, the Global Foreign Exchange Committee (GFXC) met as part of a two-day meeting in Tokyo, Japan, at which, inter alia, the GFXC selected a new Chair and discussed the progress of its four working groups which have been focusing on the following specific areas: (i) "cover and deal" trading activity; (ii) disclosures; (iii) buy-side outreach; and (iv) embedding the FX Global Code. The GFXC nominated and elected Guy Debelle, Deputy Governor of the Reserve Bank of Australia, as Chair for a two-year term, effective in early July. Mr. Debelle will succeed outgoing GFXC Chair, Simon Potter, Executive Vice President of the Federal Reserve Bank of New York. As part of its governance, the GFXC also agreed to adopt revisions to the Terms of Reference that include an update on member responsibilities and representation to the GFXC, additional detail on the leadership structure and responsibilities of the Secretariat, and new sections on working groups and competition guidelines. In February, the GFXC

published reports on the role of disclosure and transparency, and the role of cover and deal arrangements in the global FX market, together with the results of its 2018 survey.

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## **CONSUMER/RETAIL**

### **John Glen's speech at the Building Societies Association annual conference**

On 23 May, the Economic Secretary to the Treasury, John Glen, delivered a speech at the Building Societies Association annual conference on innovation in the sector. In the speech, Mr. Glen addressed three key issues that will shape the future of the financial sector, namely: (i) trust; (ii) technology; and (iii) talent.

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### **ESMA's consolidated guidelines on the application of the endorsement regime under CRA Regulation**

On 20 May, ESMA published guidelines on the application of the endorsement regime under Article 4(3) of the Credit Rating Agencies Regulation. These guidelines apply to credit rating agencies (CRAs) established in the EU and registered with ESMA, which are endorsing or which intend to endorse credit ratings issued by a third-country CRA in accordance with Article 4(3). The guidelines add a new section (Section 5.3) which highlights a non-exhaustive list of alternative internal requirements that ESMA considers at least as stringent as those set out in Articles 6 to 12 and Annex I of CRA Regulation. The guidelines will apply to credit ratings issued on or after 1 January and to existing credit ratings reviewed after that date.

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## **FINANCIAL CRIME**

### **Adoption of Council Regulation (EU) 2019/796 and the Cyber-Attacks (Asset-Freezing) Regulations 2019 laid before Parliament**

On 17 May, the Council of the EU adopted Council Regulation (EU) 2019/796 concerning restrictive measures against cyber-attacks threatening the EU or its Member States (the Council Regulation). Cyber-attacks constituting a threat to Member States include those affecting information systems relating to, inter alia: (i) critical infrastructure; (ii) services necessary for the maintenance of essential social and/or economic activities, in particular in the sectors of energy (electricity, oil and gas), banking and financial market infrastructures; (iii) critical State functions, in particular in the areas of defence, governance and the functioning of institutions; or (iv) the storage or processing of classified information. The restrictive measures set out in the Council Regulation include: (i) asset-freeze sanctions, under Article 3; and (ii) travel bans, under Article 4. Following the adoption of the Council Regulation, the Cyber-Attacks (Asset-Freezing) Regulations 2019 were laid before Parliament on 21 May. These Regulations enter into force on 11 June. They transpose the new EU sanctions regime into UK law, targeting those responsible for cyber-attacks on EU member states, third-country states or international organisations. Specifically, the measures make provisions relating to the enforcement of the Council Regulation. These measures include the freezing of funds and economic resources of any persons and entities listed in Annex I to the Council Regulation and ensuring that funds and economic resources are not made available to them or for their benefit. Annex I to the Council Regulation does not currently contain any designated persons to whom the new financial sanctions provisions apply. The EU will designate persons by including them in Annex I in due course.

[Council Regulation \(EU\) 2019/796](#)

[Cyber-Attacks \(Asset-Freezing\) Regulations 2019](#)

## **FUND REGULATION**

### **FCA welcomes the CTI's launch of finalised and industry-ready templates for the disclosure of costs and charges to institutional investors**

On 22 May, the FCA published a statement welcoming the launch by the Cost Transparency Initiative (CTI) of finalised and industry-ready templates for the disclosure of costs and charges to institutional investors. Christopher Woolard, Executive Director of Strategy and Competition at the FCA, commented: "This was a key remedy of the FCA's asset management market study and is a positive final step completing the work of the Institutional Disclosure Working Group. Institutional investors are now provided with the tools to give them a clearer and more detailed understanding of the charges of their investments. It is good to see investors working with industry to design a framework that can be a success for all." The FCA previously published a statement in November 2018 when the CTI was launched. The FCA will continue in its role as an observer on the CTI Board.

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### **Delegated Regulation supplementing EuSEF Regulation regarding conflicts of interest, social impact measurement and investor information as well as Delegated Regulation supplementing EuVECA Regulation regarding conflicts of interest published in OJ**

On 22 May, Commission Delegated Regulation (EU) 2019/819 supplementing the European Social Entrepreneurship Funds (EuSEF) Regulation with regard to conflicts of interest, social impact measurement and information to investors in the area of EuSEFs as well as Commission Delegated Regulation (EU) 2019/820 supplementing the European Venture Capital Funds (EuVECA) Regulation with regard to conflicts of interest in EuVECAs, was published in the OJ. The Delegated Regulations identify issues, such as: (i) types of conflicts of interest, for example, where a manager of a qualifying social entrepreneurship or venture capital fund is likely to make a financial gain or avoid a financial loss, at the expense of the qualifying social entrepreneurship or venture capital fund or its investors; (ii) procedures and measures to prevent, manage and monitor these conflicts of interests; (iii) strategies for the exercise of voting rights to prevent these conflicts of interest; and (iv) procedures to measure positive social impact. The Delegated Regulations were adopted by the EC in February, they shall enter into force on the twentieth day following that of their publication in the OJ and they shall apply from 11 December.

[Commission Delegated Regulation \(EU\) 2019/819](#)

[Commission Delegated Regulation \(EU\) 2019/820](#)

### **LEI ROC's policy on fund relationships and guidelines for registration of investment funds in the Global LEI System**

On 20 May, the Legal Entity Identifier Regulatory Oversight Committee (LEI ROC) published its policy on fund relationships in the global legal entity identifier system (GLEIS) and related guidelines for registration of investment funds. The report gives an update on the way relationships affecting investment funds are recorded in the GLEIS, with the objectives of making sure that the implementation of relationship data is consistent throughout the GLEIS and providing a means to facilitate a standardised collection of fund relationship information at the global level. Implementation of the Guidelines is expected within eighteen months after the publication of this document.

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### **Review of principal firms in the investment management sector**

On 20 May, the FCA published a review identifying significant shortcomings in principal firms' (in the investment management sector) understanding of their regulatory responsibilities for their appointed representatives (ARs). The FCA noted that principal firms had weak or under-developed governance arrangements in place, including a lack of effective risk frameworks, internal controls and resources and most principals were not assessing the risks the activities of their ARs posed to their firms. Consequently, the FCA stated that some principals may not be holding adequate financial resources for both liquidity and capital. The FCA concluded that there is a significant risk of harm to consumers and to the market arising from the activities of ARs operating in this sector. The FCA wrote Dear CEO letters to these principal firms with ARs setting out its expectations.

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## **INSURANCE**

### **Solvency II: Maintenance of the transitional measure on technical provisions under Solvency II**

On 22 May, the PRA published a consultation paper which sets out its proposals to update Supervisory Statement SS6/16 'Maintenance of the transitional measure on technical provisions under Solvency II'. The proposals are aimed at: (i) providing additional guidance for firms proposing to use a proportionate approach to the transitional measure on technical provisions (TMTP) recalculation methodology; and (ii) providing further clarity on the consistency of Solvency I and Solvency II methodologies. The proposals contained in the consultation paper build on the 2016 supervisory statement SS6/16 and the update published in April 2017. The deadline for responding to the consultation is 21 August.

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### **PRA report: A framework for assessing financial impacts of physical climate change**

On 22 May, the PRA published a report on a framework for assessing the financial impacts of physical climate change that was written by a cross-industry working group comprised of experts from the (re)insurance industry. The report sets out a six-stage framework that insurers can follow, using existing tools and associated metrics to better assess, manage and report exposure to physical climate risks related to

extreme weather events. The working group is seeking feedback on the framework. The deadline for responding to the report is 22 November.

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## **MARKETS AND MARKETS INFRASTRUCTURE**

### **ESMA updates the CSDR Q&As**

On 23 May, ESMA updated its Q&As regarding the implementation of the Central Securities Depository Regulation (CSDR). The updated Q&As clarify aspects regarding the internalised settlement reporting requirements: (i) matching - the new Q&A clarifies that, in the case of internalised settlement instructions that require matching, a settlement internaliser should only include matched internalised settlement instructions in the reports; (ii) working days - the new Q&A confirms that a settlement internaliser should take into account the working days in the country where it is established and, if applicable, any additional days where the settlement internaliser is open for business; and (iii) late instructions - the new Q&A clarifies that internalised settlement instructions received after the end of the quarter, for settlement in a previous quarter, should be included in the report for the quarter during which the instructions are submitted, and that previously submitted reports should not be updated in such cases. ESMA will continue to develop Q&As on the CSDR in the coming months and will review and update them where required.

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## **PAYMENT SERVICES AND PAYMENT SYSTEMS**

### **Payment Systems Regulator (PSR) consults on approach to merchant survey as part of card-acquiring market review**

On 22 May, the PSR published a consultation on its proposed approach to conducting a market review into the supply of card-acquiring services. The final Terms of Reference for this market review were published on 24 January. The PSR will undertake a survey of small and medium-sized merchants in the UK and examine how competition in the supply of card acquiring services operates, including looking at the fees merchants pay to accept card payments and the quality of service they receive. The deadline for responding to the consultation is 13 June. The PSR also invites stakeholder views on the questionnaire that will be used to survey merchants, which it plans to publish later this year in June/July.

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## **PENSIONS**

Please refer to the Fund Regulation section for an update regarding the CTI's launch of finalised and industry-ready templates for the disclosure of costs and charges to institutional investors.

## **PRUDENTIAL REGULATION**

### **ESAs launch consultation on technical standards on the reporting of intra-group transactions and risk concentration for financial conglomerates**

On 22 May, the Joint Committee of the three ESAs (EBA, EIOPA and ESMA) published a consultation paper on the draft ITS regarding the reporting of intragroup transactions and risk concentration under the Financial Conglomerates Directive. The ITS provide the foundation for the harmonisation of reporting, with one single set of templates and a single embedded dictionary using common definitions and a single set of instructions to fill in the templates. The deadline for responding to the consultation is 15 August. The text of the proposed Implementing Regulation containing the ITS indicates that it is intended to apply from 1 January 2020.

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### **ESAs publish amended technical standards on the mapping of ECAIs under CRR**

On 20 May, the Joint Committee of the three ESAs (EBA, EIOPA and ESMA) published a second amendment to the ITS on the mapping of credit assessments of External Credit Assessment Institutions (ECAIs) for credit risk under the CRR. This amendment reflects the outcome of a monitoring exercise on the adequacy of the mappings, based on the additional quantitative and qualitative information collected after the original Implementing Regulation entered into force. In particular, the ESAs proposed to change the credit quality steps (CQS) allocation for two ECAIs, and to introduce new credit rating scales for ten ECAIs. The ESAs also addressed the mappings of CRAs recently registered in accordance with the CRA Regulation and that are related to previously mapped ECAIs. The ITS will be submitted to the EC for endorsement, following which they will be published in the OJ. The ITS will apply 20 days following their publication in the OJ.

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## **RECOVERY AND RESOLUTION**

### **FSB launches evaluation of too-big-to-fail reforms and invites feedback from stakeholders**

On 23 May, the FSB announced the launch of an evaluation of its too-big-to-fail (TBTF) reforms for systemically important banks (SIBs). The evaluation will assess whether the implemented reforms are reducing the systemic and moral hazard risks associated with SIBs. It will also examine the broader effects of the reforms to address TBTF for SIBs on the overall functioning of the financial system. The FSB invites feedback from banks, other financial institutions, academics, think tanks, industry and consumer associations on a variety of issues, including: (i) to what extent the TBTF reforms are achieving their objectives; (ii) which types of TBTF policies have had an impact on SIBs and how; and (iii) have there been any material unintended consequences from the implementation of these reforms to date. The deadline for responding to the evaluation is 21 June.

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## **SUSTAINABLE FINANCE**

### **ESMA appoints chair for its new coordination network on sustainability**

On 23 May, ESMA published a press release announcing it has established a new co-ordination network on sustainability (CNS). Ana María Martínez-Pina Garcia, Vice-Chair of the Comisión Nacional del Mercado de Valores (CNMV, Spain) has been appointed to chair the CNS for two years with immediate effect. The CNS was created to foster the coordination of NCAs work on sustainability. It will be responsible for the development of policy in this area with a strategic view on issues related to integrating sustainability considerations into financial regulation.

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