ALLEN & OVERY

Key Regulatory Topics: Weekly Update

15 March - 21 March 2019

UPCOMING SEMINARS

Conference: Key Issues and Challenges in Sanctions Regulation
On 26 March, A&O will host a conference on sanctions, focusing on the impact of the new UK Sanctions and Anti-Money Laundering Act development and other developments in sanctions enforcement in the US, UK and Asia on corporates and financial institutions. Matthew Townsend, Ken Rivlin and Maura Rezendes will speak at the conference. If you wish to register, discounted tickets are available using the Allen & Overy 30% discount code SREG1AO when booking on the website here. Alternatively, you can send an email directly to bookings@cityandfinancial.com and quote the code.

BREXIT

Please see the product sections for updates on various draft SIs published this week in anticipation of a hard Brexit.

Please see the Markets and Markets Infrastructure section for numerous updates regarding Brexit and regulator statements.

European Economic Area member states' domestic preparations for a "no deal" Brexit
A&O has been tracking legislative developments in preparation for a no-deal Brexit throughout the EU27 member states. On our Financial Services sector-focused Brexit webpage, we have included an "EU27 "no deal" Brexit Law Tracker" to highlight any known developments. The table monitors these developments in each member state and provides a high-level summary of the relevant provisions, particularly as they pertain to the financial services sector. Please note that the table is updated every week. If you would like to discuss the issues raised in the publication, please get in touch with the key contacts or your usual Allen & Overy contact.

FCA identifies residual risks remaining in event of no-deal Brexit
On 21 March, the FCA published a speech given by Nausicaa Delfas, FCA Executive Director of International, on Brexit. Among other things, in her speech, Ms Delfas explains that all of the FCA's activity has been aimed at reducing the impact of Brexit on firms. It has been focused on mitigating cliff-edge risks. Most of the risks to UK financial stability that could arise from a no-deal Brexit have been mitigated. However, some residual risks remain, which could affect households and businesses both in the UK and the EU: (i) UK and global banks are transferring activities to EU-incorporated entities, but are to some extent dependent on their clients agreeing to move contracts to these new entities. The FCA is aware that there is varying progress with this; (ii) the process of migrating businesses, assets and contracts in a short period could pose operational risks; (iii) on the issue of contract certainty, the EU does not have a pan-EU equivalent to the UK's temporary permissions regime and financial services contracts regime. Some member states are taking action, and firms are taking their own action. There are likely to be some areas where the legal risks relating to the ongoing servicing of existing customers have not been fully mitigated. Firms are encouraged to take the steps they can to act lawfully and consistently with local regulators' expectations.

Their decisions should also be guided by what is the right consumer outcome; and (iv) there are implications of a lack of equivalence in certain areas. For example, the EU's trading obligations for shares and derivatives will require EU firms to trade these instruments on EU or equivalent trading venues. In the absence of equivalence, ESMA has published its expectations for the scope of the EU's share trading obligations. The FCA believes that this will create issues of conflicting obligations applying to the same instruments. Where this is the case, firms may be limited to trading certain shares only in either the UK or EU. In some cases, they may be caught by overlapping obligations. This has the potential to cause disruption to market participants and issuers of shares based both in the UK and EU, in terms of access to liquidity. If risks materialise, the FCA will continue to take a pragmatic and practical approach to resolving issues. Firms are encouraged to raise any concerns or issues as early as possible.
Read more

EBA agrees template for no-deal Brexit MoU with FCA and PRA
On 20 March, the EBA published a press release announcing that its board of supervisors has agreed a template for an MoU with the FCA and the PRA on supervisory co-operation and information-exchange, for use in the event of a no-deal Brexit. According to the press release, the template will serve as the basis for bilateral MoUs that are being negotiated and signed by the relevant EU competent authorities and the UK authorities. The template forms part of the authorities' preparations should the UK leave the EU without a ratified withdrawal agreement (the no-deal scenario). The MoUs will, therefore, only take effect in the event of a no-deal scenario materialising. The template covers both general concepts of information exchange and supervisory co-operation and specific aspects of co-operation in performing the most common supervisory tasks. It aims to ensure that there are no breakdowns in the supervision of cross-border financial institutions in the no-deal scenario. The template is similar to the MoUs already concluded between the EU and other non-EU, third country, supervisory authorities.
Read more

Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 made
On 15 March, the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 were published together with an explanatory memorandum. The Regulations amend the Financial Services and Markets Act 2000 (Gibraltar) Order 2001 (Gibraltar Order) and the Financial Services and Markets Act 2000 (FSMA) to ensure that authorised financial services firms in Gibraltar are able to provide services and establish branches in the UK after exit day on current terms. The Regulations came into force on 16 March, with the exception of the amendments to FSMA and the Gibraltar Order, set out in Parts 2 and 3 of the Regulations, which will come into force on exit day. A draft version of the Regulations was laid before Parliament in January. No substantive changes appear to have been made.
Statutory instrument
Explanatory memorandum

CAPITAL MARKETS

FCA Primary Market Bulletin No 22: no-deal Brexit changes to LRs, DTRs and PRs
On 20 March, the FCA published its 22nd Primary Market Bulletin. The bulletin summarises key changes to the Listing Rules, the Disclosure Guidance and Transparency Rules and the Prospectus Rules that will apply from exit day if the UK leaves the EU without an implementation period (a no-deal Brexit), including: (i) the removal of home/host state distinction in DTR 1A (Introduction: Transparency Rules), DTR 4 (Periodic financial reporting), DTR 5 (Vote Holder and issuer notification rules) and DTR 6 (Continuing obligations and access to information), which means that the transparency rules will apply to all issuers with transferable securities admitted to trading on a UK regulated market irrespective of their place of incorporation; (ii) the amendments to DTR 4.1.6R (Audited financial statements) requiring issuers to prepare consolidated accounts using IFRS as adopted by the UK for all financial years commencing on or after exit day, rather than EU-adopted IFRS; (iii) the changes to DTR 6 which require issuers to use a PIP to distribute regulated information after exit day, and remove the option of using an incoming information society service; (iv) the amendments to the free float requirements in LR6.14R, LR14.2.2R and LR18.2.8R, so that holders from any jurisdiction (and not just those in the EEA) will be counted towards the free float; and (v) the changes to the prospectus rules which will remove reciprocity of recognition by the UK of EEA state-approved prospectuses, except for prospectuses passported into the UK before exit day, which will remain valid in the UK until they expire. The FCA notes that while additional transaction review work from EEA issuers may result from these changes, it expects to be able to handle the increased caseload within existing turnaround times. The FCA also indicates that it is equally happy to accept a draft prospectus for review from EEA issuers either at the same time as, or after its approval by, the EEA home member state authority. The FCA indicates that as the

new rules closely mirror the existing requirements issuers are subject to in the UK or their home state, it expects issuers to take reasonable steps to comply with the changes for exit day.
Read more

EC Communication on progress on building the CMU
On 15 March, the EC published a Communication on progress on building the CMU, together with Q&As, a factsheet and a statement made by Vice-President Dombrovskis, European Commissioner for Financial Stability, Financial Services and CMU. The conclusions set out in the report include: (i) the EC has now delivered the measures it committed to, in its CMU action plan and in the mid-term review, to put in place the building blocks of the CMU. The legislative and non-legislative measures are an important step towards more efficient and liquid EU capital markets. Agreement has been reached on ten out of thirteen legislative proposals, and three have been adopted. In addition, agreement has been reached on two of the EC's three legislative proposals on sustainable finance; (ii) the EC has worked closely with the EP and the Council of the EU to make considerable progress on many proposals. It is important that the co-legislators remain committed to ensure that all pending legislation is adopted as soon as possible. In the light of the May 2019 Parliament elections, the EP and the Council need to accelerate work on the pending legislation to ensure all proposals are completed by the end of the legislative cycle. However, legislation alone will not deliver the CMU. Member states, national authorities and private stakeholders all play a vital role; and (iii) although the EC's action has already started to have an effect, it will take time for the full impact to be felt on the ground. More work is clearly needed for a vibrant CMU to be in place in the EU. In any event, future action will need to reflect the impact on capital markets of the UK's departure from the EU, and other short or medium-term economic and societal challenges. These include fundamental and likely rapid changes arising from decarbonisation of the economy, climate change and technological developments. As a result, work on the CMU is expected to continue in the next EC. Section 4 of the Communication provides an overview (in table format) of the progress of the CMU legislative measures. The Communication is addressed to a number of bodies, including the EP, the Council and the ECB.
Communication
Q&As
Factsheet
Statement

CONDUCT

FCA updates guide to SM&CR for insurers
On 20 March, the FCA updated its webpage on SM&CR for insurers to include an updated version of its guide to the SM&CR for insurers. According to the webpage, the FCA has corrected information in the guide relating to the compliance oversight function.
Webpage
Guide

CONSUMER/RETAIL

FCA sets out expectations of consumer credit firms
On 21 March, the FCA published a speech by Jonathan Davidson, FCA Director of Supervision: retail and authorisations, on what the consumer credit sector can expect from the FCA. The speech covers matters including the following: (i) business models. The FCA will continue to focus on business models and culture in consumer credit firms, including their systems and controls over affordability. The majority of firms are supervised within a portfolio of firms, each of which share a similar business model. With each portfolio, the FCA determines the inherent harms and agrees a strategy to take pre-emptive action with firms posing the greatest harm. It communicates the risks and its supervision strategy to firms within that portfolio in a letter published on its website. By way of example, Mr Davidson refers to the letter on credit card fees and charges, which was published on 6 March; (ii) relending. In the light of concerns, the FCA is carrying out further work to understand the motivation for, and the impact of, relending on consumer and firms. The levels of relending raise questions about the adequacy of creditworthiness assessments and its appropriateness for consumers. Although the work will be across the high-cost credit sector, it will focus on home-collected credit; (iii) guarantor loans. The FCA is concerned about growing anecdotal evidence that guarantors may not understand how likely it is that they will be called on to make a repayment under a guarantor loan. Therefore, the FCA's work in this area will focus on affordability and on understanding whether potential guarantors have enough information to understand the likelihood and implications of the guarantee being enforced. It will also consider the level of interest rates charged on guarantor loans; and (iv) SM&CR

extension. The SM&CR is being extended to all FCA regulated firms on 9 December. One of the aims of this is to improve culture in firms. Firms are advised to check which tier of the regime applies to them and what steps they need to take in advance of the regime coming into force.
Read more

FCA thematic review on debt management sector
On 15 March, the FCA published its second thematic review on the debt management sector (TR19/01). This review focused on commercial and not-for-profit firms that provide debt advice and administer debt management plans to help customers deal with their debts. The FCA's findings show that improvements have been made since its 2015 review, but firms still need to ensure they are delivering consistently good outcomes. The FCA found that the culture in most commercial firms is now more focused on customer outcomes, acting in customers' best interests, and managing customer risks. However, the FCA did find that in two of the sample firms, the standards of debt advice and debt management services were unacceptably and consistently poor. There was evidence of systematic failings, including poor compliance with FCA rules and a lack of robust governance and controls. The FCA has commenced supervisory action in these cases and opened one enforcement investigation. The FCA also examined the quality of advice given. It found inconsistencies in all firms' practices that had caused, or could cause, harm. Areas of inconsistency included failing to proactively identify or act on information about customers' personal circumstances, and poor explanations of debt solutions. In looking at how firms approach reviews of the appropriateness of debt management plans, the FCA identified two areas where firms need to make significant improvements: (i) some firms routinely fail to consider or discuss what debt solutions are available and suitable for each customer (and therefore fail to comply with requirements in CONC 8.3.2R(1)); and (ii) the majority of the firms in the FCA's sample need urgent improvements to comply with CONC 8.2.7R and the FCA's PRIN in relation to the identification and treatment of vulnerable customers. The FCA states that it will be consulting in 2019 on guidance for the identification and treatment of vulnerable customers. The FCA will also carry out work on developing trends in the sector, including online debt advice.
Read more

CORPORATES/ISSUERS

Please refer to the Capital Markets section for an update regarding the FCA Primary Market Bulletin No 22 on no-deal Brexit changes to LRs, DTRs and PRs.

Four energy statutory instruments made
On 19 March, the following four statutory instruments, which were made on 15 March, were published: (i) the Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations 2019 and explanatory memorandum; (ii) the Electricity Network Codes and Guidelines (Markets and Trading) (Amendment) (EU Exit) Regulations 2019 and explanatory memorandum; (iii) the Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) Regulations 2019 and explanatory memorandum; and (iv) the Electricity and Gas (Market Integrity and Transparency) (Amendment) (EU Exit) Regulations 2019 and explanatory memorandum. These Regulations, which were published in draft in December 2018, form part of a package of legislation that will amend elements of retained EU law in the field of electricity and gas to correct deficiencies and to ensure that the UK's energy systems continue to operate effectively in the event of the UK leaving the EU without an agreement (no-deal Brexit). The Regulations will come into force on exit day.
Security of Supply and Network Codes – explanatory memorandum
Markets and Trading – explanatory memorandum
System Operation and Connection – explanatory memorandum
Market Integrity and Transparency – explanatory memorandum

FINANCIAL CRIME

OECD follow-up report on UK's implementation of anti-bribery convention
On 21 March, the working group on bribery of the OECD published its phase 4 two-year follow-up report on the UK's implementation of the OECD anti-bribery convention. Some of the significant findings of the working group are: (i) there has been partial enforcement of the recommendations regarding the use and protection of whistleblowers in foreign bribery cases; (ii) the reform of the suspicious activity reports system has been promised since 2015 but still not implemented; (iii) the Criminal Finances Act 2017 has provided welcome additional powers in the fight against bribery; (iv) there should be increased collaboration between agencies to improve information sharing, bribery detection and case management; (v) no steps taken regarding non-

compliance with article 3 of the convention on the independence of investigation and prosecution of foreign bribery; (vi) improvements needed to improve the transparency of court decisions regarding foreign bribery cases to ensure routine publication of judgments and sentencing remarks; (vii) measures taken to ensure that public procurement processes filter out those convicted of corruption do not apply to deferred prosecution agreements or settlement agreements; (viii) the UK must continue to engage with crown dependencies and overseas territories to ensure the full application of the convention. There is a glaring hole in foreign bribery enforcement concerning those territories which have not adopted foreign bribery legislation and where legal persons cannot therefore be held liable for foreign bribery; and (ix) the need to update the UK's guidance to commercial organisations regarding foreign bribery.
Read more

UK Finance report Fraud the Facts 2019 shows banking industry prevented £1.66 billion of fraud in 2018
On 21 March, UK Finance published its report Fraud the Facts 2019. The total of £1.66 billion of unauthorised fraud prevented by the banking and finance industry in 2018 comprised of: (i) £1.12 billion in attempted unauthorised card fraud; (ii) £318 million in attempted unauthorised remote banking fraud; and (iii) £218 million in attempted unauthorised cheque fraud. A total of £1.20 billion was stolen by criminals committing fraud last year. This is comprised of: (i) £354 million in authorised fraud; and (ii) £845 million in unauthorised fraud. The finance industry stopped £2 in every £3 of attempted unauthorised fraud but the scale of fraud attempts has increased since 2017. The press release states: "[i]ndustry research suggests that the theft of personal and financial information through social engineering caused by data breaches outside the financial sector was a major contributor to the fraud losses. Stolen data is used to commit fraud both directly and indirectly. There were several high-profile data breaches involving significant brands during 2018".
Read more

Counter-Terrorism (Sanctions) (EU Exit) Regulations: guidance
On 20 March, the Office of Financial Sanctions Implementation published the Treasury Minister's guidance on the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 as required by section 43 of the Sanctions and Anti-Money Laundering Act 2018. The statutory purpose of the guidance is to assist in the implementation of and compliance with the regulations.
Read more

JMLSG consults on revised sectoral guidance on credit unions and brokerage services to funds
On 19 March, the Joint Money Laundering Steering Group announced proposed revisions to the following sectors in Part II of its AML and CTF guidance for the financial services sector: (i) sector 4 (credit unions); and (ii) sector 20 (brokerage services to funds). This is not marked up due to extensive revisions. The revisions aim to describe in more current terms how to assess the risks in these sectors and how to identify who the customers are. Comments can be made on the proposed revisions until 18 April.
Press release

FUND REGULATION

Please refer to the Financial Crime section on an update regarding the revised JMLSG sectoral guidance on credit unions and brokerage services to funds.

INSURANCE

Please refer to the Conduct section for an update from the FCA regarding its guide to SM&CR for insurers.

EIOPA requests information for its fourth long-term guarantees report and Solvency II review
On 18 March, EIOPA published a request that insurance undertakings from the EEA and subject to the Solvency II Directive provide the following details: (i) information on long-term guarantees (LTG) measures; (ii) information on the dynamic volatility adjustment; and (iii) information on long-term illiquid liabilities. The information is needed as part of EIOPA's LTG report, an EIOPA opinion on LTG measures, and the 2020 Solvency II review. Results need to be submitted to national supervisory authorities by 17 May, who will then report to EIOPA by 29 May. The deadline for submitting group dynamic volatility adjustment information is 14 June, and it will be reported to EIOPA by 28 June.
Read more

MARKETS AND MARKETS INFRASTRUCTURE

Please refer to the Corporate/Issuers section for an update regarding four energy statutory instruments made.

EP to consider proposed Directive making consequential amendments to MiFID II Directive at 25 to 28 March plenary session

On 21 March, the EP updated its procedure file on the EC's proposed Directive making consequential amendments to MiFID II. The procedure file indicates that the EP will consider the proposed Directive during its plenary session to be held from 25 to 28 March. It relates to the EC's proposed Regulation on European crowdfunding service providers, which will be considered at the same plenary session.
Read more

ECB withdraws recommendation on giving it power to regulate clearing systems

On 20 March, the ECB published a press release announcing the withdrawal of the ECB recommendation to amend Article 22 of the Statute of the ESCB and of the ECB regarding the extension of its legal competence over clearing and payment systems to CCPs. Alongside the press release, the ECB has published a letter sent to the EP and what looks like an identical letter sent to the Council of the EU. Copies of the letters have been sent to the EC. The ECB adopted the recommendation in June 2017 and it was published in the OJ in July 2017. It allowed the ECB to regulate clearing systems for financial instruments. The ECB considers that the grant to it of the power to regulate clearing systems, in particular CCPs, is necessary for the proper performance of its basic tasks. At that time, the recommendation was sent to the EP and the Council for their consideration. The ECB Governing Council has now withdrawn the recommendation. In its unanimous view, the draft amendments to the text of Article 22 that resulted from discussions between the EP, the Council and the EC do not meet the objectives that informed the ECB's original proposal. It considers that the proposed amendments seriously distort the original proposed recommendation. The detailed reasons for withdrawal are set out in the letters. However, the ECB does not expect the withdrawal of the recommendation to prevent or delay adoption of the proposed Regulation amending the ESMA Regulation and EMIR with regard to the procedures and authorities involved for the authorisation of CCPs and the recognition of third-country CCPs. The ECB welcomes the overall objectives of the proposed Regulation to improve the process for recognising and supervising third-country CCPs, and to make it more rigorous for those CCPs that are systemically important for the EU. The ECB is ready to contribute to implementing the proposed Regulation to the extent legally possible.
Read more

EMMI consultation on EONIA methodology changes

On 20 March, EMMI announced a consultation on changes to the methodology for calculating EONIA. This follows the working group on euro risk-free rates' recommendations to EMMI to take various steps to ensure a smooth transition from EONIA to €STR. The consultation seeks feedback on: (i) modifying the current EONIA calculation methodology for a limited period to use €STR plus a spread. The spread represents the economic difference between the underlying interests the two rates measure (that is, an interbank lending rate versus a wholesale borrowing rate). The spread will be fixed for the period EONIA is calculated using this new methodology and based on data collected over a period of at least 12 months and calculated as a 15% trimmed mean of the observations; (ii) changing the publication time of EONIA from T (7pm CET) to T+1 (11am CET); (iii) publishing EONIA using the new methodology for the first time on 2 October as this will be the first day €STR is published; and (iv) discontinuing publication of EONIA on 3 January 2022, which will reflect the market on 31 December 2021.
Announcement
Consultation

Delegated Regulation under MiFIR relating to systematic internalisers' quote obligations published in OJ

On 20 March, Delegated Regulation (EU) 2019/442 amending and correcting Delegated Regulation (EU) 2017/587 to specify the requirement for prices to reflect prevailing market conditions and to update and correct certain provisions was published in the OJ. The Delegated Regulation explains that: (i) Delegated Regulation (EU) 2016/1033 removes securities financing transactions from the scope of the transparency provisions for trading venues and systematic internalisers. It is therefore necessary to remove references to SFTs from Delegated Regulation (EU) 2017/587 and it should be amended accordingly; and (ii) a number of provisions of Delegated Regulation (EU) 2017/587 diverge from the draft RTS on which it is based. To the

extent that those divergences are errors that affect the substance of those provisions, they should be corrected. The Delegated Regulation enters into force on 9 April.
Read more

Delegated Regulation amending MiFID II tick size regime published in OJ
On 20 March, Commission Delegated Regulation (EU) 2019/443 amending Delegated Regulation (EU) 2017/588 as regards the possibility to adjust the average daily number of transactions for a share where the trading venue with the highest turnover of that share is located outside the EU was published in the OJ. The Delegated Regulation will enter into force on the twentieth day after its publication in the OJ.
Read more

EC consults on draft Implementing Decisions under BMR on equivalence of legal and supervisory framework for certain benchmarks in Australia and Singapore
On 19 March, the EC published, for consultation, draft versions of the following under the Benchmarks Regulation: (i) Implementing Decision on the equivalence of the legal and supervisory framework applicable to benchmarks in Australia; (ii) Implementing Decision on the equivalence of the legal and supervisory framework applicable to benchmarks in Singapore. Related webpages state that comments can be made on the draft Implementing Decisions until 16 April. The draft Implementing Decisions explain that benchmarks such as the Australian Bank Bill Swap Rate and the S&P/ASX 200 Index are administered in Australia and used in the EU by a number of supervised entities. They also explain benchmarks such as the Singapore Interbank Offered Rate and the Singapore Dollar Swap Offer Rate are administered in Singapore and used in the EU by a number of supervised entities. As a result, the EC has carried out an assessment of the benchmark regimes in Australia and Singapore. It has determined that the legal and supervisory framework applicable to the benchmarks in Australia and Singapore that are listed in the Annexes to the draft Implementing Decisions are equivalent to the requirements of the BMR.
Webpage: benchmarks in Australia
Webpage: benchmarks in Singapore

ESMA statement setting out data operational plan under no deal Brexit scenario
On 19 March, ESMA published a statement setting out its data operational plan in the event of a no deal Brexit. ESMA has issued the statement in relation to the impact on ESMA's databases and IT systems of a no deal Brexit scenario. The statement complements ESMA's February statement on the use of UK data in ESMA's databases and performance of MiFID II calculations in the event of a no deal Brexit. It also provides further details relating to the operation of ESMA's data systems during the period following a no deal Brexit. Under a no deal Brexit scenario, the submission of UK data to ESMA will cease with effect from 30 March. As a result, ESMA is currently preparing all of its IT systems and databases so they continue to function for the EU27, without UK data. Several actions will need to be performed by ESMA around 29 March, some of which may have a direct or indirect impact on external stakeholders that exchange data with ESMA. The statement aims to provide information and instructions, where needed, to market participants on operations immediately after this date. It covers actions regarding the following systems: () Financial Instruments Reference Data System; (ii) Financial Instrument Transparency System; (iii) Double Volume Cap System; (iii) Transaction reporting systems; and (iv) ESMA's registers and data. ESMA has highlighted, in grey shaded boxes, the actions that market participants interacting with ESMA's IT systems need to take. In addition, the statement sets out ESMA's further communication plan to external stakeholders. Among other things, ESMA has prepared its IT systems so that all actions in the statement can be either executed during the weekend following 29 March 2019 or at a later date. In the event of a no deal Brexit, ESMA will issue a communication before entering into the maintenance window and commencing the actions. If a no deal Brexit does not take place on this date, ESMA will be able to postpone (as appropriate) implementation of the actions.
Read more

ESMA statement on the impact on the MiFIR trading obligation for shares in no-deal Brexit
On 19 March, ESMA published a statement on the impact on the MiFIR trading obligation for shares (TO) in no-deal Brexit, without an equivalence decision for the UK by the EC. It serves as a "review" of the guidance published by ESMA on 13 November which stated that "the absence of an equivalence decision taken with respect to a particular third country's trading venue indicates that the Commission has currently no evidence that the EU trading in shares admitted to trading in that third country's regulated markets can be considered as systematic, regular and frequent". ESMA state that this did not take account of the possible complications of a hard Brexit and that it cannot be reasonably assumed that all shares admitted to trading on a UK regulated market are traded on a non-systematic, ad-hoc, irregular and infrequent basis in the EU 27. On the contrary, ESMA reports that its data indicates that a number of shares admitted to trading in the UK qualify

as liquid under MiFID II based on trading in the EU 27 only. Therefore, ESMA seeks to provide clarity on what non-systematic, ad-hoc, irregular and infrequent should mean in this context. For this purpose, for shares traded in the EU, Iceland, Liechtenstein, Norway and the UK, ESMA assumes that: (i) EU27 shares i.e. ISINs starting with a country code corresponding to an EU27 Member State and, in addition, shares with an ISIN from Iceland, Liechtenstein and Norway are within the scope of the trading obligation; and (ii) GB shares i.e. ISINs starting with the prefix "GB" are traded on a "non-systematic, ad-hoc, irregular and infrequent" basis in the EU27, unless those shares qualify as liquid in the EU27. ESMA is also publishing a list of EU27/GB ISINs which, following the approach outlined in the statement, would be subject to the TO for shares. It is based in 2018 data. For shares admitted to trading since 1 January, ESMA is of the view that the TO should apply to them based on the ISIN country code as described above. The guidance in the statement should only be applied in case of a no-deal Brexit occurring on 29 March. Should the timing and conditions of Brexit change, ESMA may adjust its approach and inform the public of any changes as soon as possible. In the event of a hard Brexit, it will also review this approach at the latest 12 months after Brexit.
Statement
List

FCA responds to ESMA statement on share trading obligations under MiFIR
On 19 March, the FCA published a statement on share trading obligations (TO) under MiFIR. The FCA's statement responds to an earlier ESMA statement in which ESMA outlined its approach, in the event of a no-deal Brexit, to the application of the TO in the absence of an equivalence decision relating to the UK. The FCA: (i) states that ESMA's statement has made it clear that the EU's TO will apply to all shares traded on EU27 trading venues that are shares of firms incorporated in the EU (EU ISINs), and of companies incorporated in the UK (GB ISINs) where these companies' shares are "liquid" in the EU. This means EU banks, funds and asset managers will not be able to trade these GB or EU ISIN shares in the UK, even where the UK is the home listing of the British or EU company; (ii) acknowledges that clarifying the application of the TO in the event of a no-deal Brexit will help provide certainty. However, it believes that only a comprehensive and co-ordinated approach can provide the necessary certainty to market actors. Without this, it will not be possible to address the issues of conflicting obligations applying to the same instruments. Where this is the case, firms may be limited to trading certain shares only in either the UK or the EU or in some cases be caught by overlapping obligations; (iii) states that the onshoring of EU legislation in preparation for Brexit means that the UK will have a TO as well as the EU. Applying the same approach as ESMA to the scope of the UK TO would, based on current trading data, mean there would be a significant overlap between the UK and EU obligations; and (iv) considers that this could potentially cause disruption to market participants and issuers of shares based in both the UK and the EU, in terms of access to liquidity, and could damage client best execution. It therefore urges further dialogue on this issue to minimise risks of disruption in the interests of orderly markets.
Read more

ESMA results of MiFID II annual calculations of LIS and SSTI thresholds for bonds for 2019/20
On 19 March, ESMA published a press release announcing the results of the annual transparency calculations of the large in scale (LIS) and size specific to the instruments (SSTI) thresholds for bonds. ESMA has performed these calculations on behalf of the competent authorities who have delegated this task to ESMA. The results have been published on a per bond-type basis in a register. Results on a per ISIN basis will be published through the financial instruments transparency system and through a web interface from 30 April. ESMA will also publish records with calculations for each ISIN until 31 May. The transparency requirements based on the results of this annual calculation of the LIS and SSTI thresholds for bonds will apply from 1 June to 1 May 2020.
Read more

FCA technical communication on operation of UK MiFIR transparency regime following no-deal Brexit
On 19 March, the FCA published a technical communication on the operation of the transparency regime under the retained EU law version of MiFIR (UK MiFIR). The document is described as sitting alongside the FCA's supervisory statement on the post-Brexit transparency regime. It contains details about: (i) the FCA's final instrument transparency system; (ii) file format and search capability; and (iii) when the daily delta file be published and the FCA's approach to missing data.
Read more

EP to consider proposed Directive on credit servicers, credit purchasers and recovery of collateral at 15 to 18 April plenary session

On 19 March, the EP updated its procedure file on the proposed Directive on credit servicers, credit purchasers and the recovery of collateral. The procedure file indicates that the EP will consider the proposed Directive (for first reading/single reading) during its plenary session to be held from 15 to 18 April. Earlier in March, ECON published a second version of its draft report on the proposed Directive. The EP will consider the draft report at the plenary session. The EC adopted the proposed Directive in March 2018, with the aim of encouraging the development of secondary markets for NPLs.
Read more

Working Group on Sterling Risk-Free Reference Rates' paper on conventions for referencing SONIA
On 19 March, the Working Group on Sterling Risk-Free Reference Rates published a discussion paper on market conventions for referencing SONIA in new contracts. The paper deals with conventions for referencing SONIA directly rather than a term SONIA reference rate, which many market participants hope will be developed for loans. The paper highlights the following: (i) SONIA is an overnight rate but many products calculate interest by reference to a longer period (for example, a month or a quarter). Accordingly, the daily SONIA rate would need to be aggregated to determine the amount of interest payable. An aggregate rate can be calculated by compounding daily rates or applying a simple averaging methodology. The paper sets out the benefits and potential outcome of using each method; (ii) it would be helpful if a third party published a standard SONIA rate calculator or a SONIA screen rate for a given period; (iii) if a margin needs to be added to the reference rate, it could be included as part of the daily rate calculation or could be added to the already calculated rate. Recent SONIA-referencing bonds have added the margin after calculation of the reference rate; (iv) market participants can achieve some cashflow certainty before an interest payment is due using a "lag" mechanism or a "lock" mechanism. If a lag mechanism is used, the SONIA rate reference period does not match the interest period (for example, it would start five business days before the first day of the interest period and end five business days before the interest payment date). If a lock mechanism is used, a rate from a few days before the end of the interest period is used for the last few days of the period instead of the actual rate for those days. Recent SONIA-referencing bonds have used the lag approach; and (v) appropriate contractual fallbacks for SONIA should be considered. Market participants and infrastructure providers are invited to provide feedback by 30 April.
Read more

Council of EU invites COREPER to approve final compromise text of proposed Regulation amending EMIR supervisory regime for EU and third country CCPs
On 18 March, the Council of the EU published the following two "I" item notes and addenda (dated 19 March) addressed to COREPER: (i) "I" item note on the proposed Regulation amending the EMIR supervisory regime for EU and third-country CCPs, with an addendum containing the final compromise text; and (ii) "I" item note on the proposed Decision amending Article 22 of the Statute of the ESCB and of the ECB, with an addendum containing the final compromise text. The EP and the Council reached provisional agreement on the proposed Regulation and Decision on 13 March. In the "I" item notes, the Council asks COREPER to approve the final compromise texts and confirm that the Council Presidency can indicate to the EP that, should the EP adopt its position on the proposed Regulation and Decision at first reading, as set out in the addenda (and subject, where necessary, to revision of that text by the legal linguists of both institutions), the Council would approve the EP's position.
Proposed Regulation amending the EMIR – addendum
Proposed Decision amending Article 22 – addendum

Financial Regulators' Powers (Technical Standards etc) and Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2019 made
On 15 March, the Financial Regulators' Powers (Technical Standards etc) and Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2019 were published together with an explanatory memorandum. The Regulations, which were made on 14 March, amend the Financial Regulators' Powers (Technical Standards etc) (Amendment etc) (EU Exit) Regulations 2018 (2018 Regulations) to add additional BTS to the Schedule to the 2018 Regulations to enable the FCA, the PRA and the BoE to remove deficiencies in those additional BTS using the powers in the 2018 Regulations. Specifically, the Regulations will add BTS relating to the BMR, the European Long-Term Investment Funds Regulation, MAR, BRRD and the CRR. Part 3 of the Regulations will make minor technical amendments in relation to the powers transferred to HMT and the FCA under the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018. The Regulations were laid before Parliament in January. No substantive changes appear to have been made. The Regulations came into force on 15 March.
Statutory instrument
Explanatory memorandum

FCA and ESMA statements about endorsement of credit ratings in the event of no-deal Brexit
On 15 March, the FCA published a statement about the endorsement of credit ratings from the EU into the UK for regulatory use in the event of a no-deal Brexit. The Credit Rating Agencies (Amendment etc.) (EU Exit) Regulations 2019 will amend the Credit Rating Agencies Regulation (CRA Regulation) to make the FCA become the UK regulator of CRAs. Under the revised regime, any legal person wishing to issue or endorse credit ratings for regulatory purposes will need to be registered or certified with the FCA. The FCA has published a list of CRAs that intend to operate in the UK after Brexit (along with a list of jurisdictions meeting the conditions for endorsement). These CRAs will be eligible to endorse ratings from affiliated EU entities. The endorsement of ratings from third-country affiliate CRAs allows these ratings to be used by market participants for regulatory purposes. The FCA's statement confirms that it has assessed the EU regulatory and supervisory regime to be "as stringent as" the UK's regime for the purpose of the endorsement requirements. The FCA's statement also explains that under a no-deal scenario, ratings issued or endorsed by a CRA established in the EU before exit day and not withdrawn immediately before exit day, will still be available for regulatory use for up to one year after exit. At the same time, ESMA has issued a statement announcing that it has concluded that the UK legal and supervisory framework for CRAs meets the conditions for endorsement. This follows its November 2018 statement about preparing for a no-deal Brexit. ESMA's statement also explains that most UK-based CRAs have taken steps to prepare for the endorsement regime. Four UK-based CRAs were already members of a group comprising a registered EU CRA and two UK-based CRAs have established a CRA in an EU27 member state to prepare for endorsement.
Read more

PAYMENT SERVICES AND PAYMENT SYSTEMS

EBA launches PSD2 central electronic register
On 18 March, the EBA announced the launch of a central electronic register under the revised Payment Services Directive (PSD2). The register provides information about: (i) the identity of authorised payment and electronic money institutions, including payment initiation service (PIS) and account information service (AIS) providers; (ii) the country of establishment of these providers and the services they provide; and (iii) information on passporting. The information is provided by NCAs and is updated on a daily basis. Regulations containing RTS and ITS relating to the register were published in the OJ on 15 March (see below).
Press release
Register

Regulations on EBA electronic central register under PSD2 published in OJ
On 15 March, the following were published in the OJ: (i) Commission Delegated Regulation (EU) 2019/411 supplementing the revised Payment Services Directive with regard to RTS setting technical requirements on the development, operation and maintenance of the electronic central register; and (ii) Commission Implementing Regulation (EU) 2019/410 laying down ITS with regard to the details and structure of the information to be notified, in the field of payment services, by competent authorities to the EBA under PSD2. Both the Delegated Regulation and the Implementing Regulation enter into force on 4 April. Under Article 15(1) of PSD2, the EBA is required to develop, operate and maintain an electronic central register that contains information as notified by competent authorities. The RTS set out the requirements for manual and automated provision of information from competent authorities to the EBA, and the synchronisation between national public registers under PSD2 and the EBA register. They also specify the procedure for accessing the information in the register. The details and structure of the information that will be contained in the electronic central register, including the common format and model in which this information is to be provided, are specified in the ITS.
(EU) 2019/411
(EU) 2019/410

PRUDENTIAL REGULATION

ECB speech on supervisory priorities and annual report for 2018 supervisory activities
On 21 March, the ECB published its annual report on supervisory activities for 2018, which sets out the ECB's key achievements during 2018 under the SSM. The ECB has also published a speech on the annual report given by Andrea Enria, ECB Supervisory Board Chair, at a meeting of ECON. Among other things, the speech sets out the following SSM supervisory priorities for this year: (i) credit risk. ECB banking supervision will continue to promote the reduction of the stock of NPLs. As part of a new initiative, the ECB will assess

banks' credit underwriting criteria with a view to avoiding excessive risk-taking by banks. The quality of specific asset class exposures, such as commercial real estate, residential real estate and leveraged finance, will be closely examined; (ii) risk management. The targeted review of internal models will continue. ECB banking supervision will also continue to push for improvements to banks' internal processes for capital and liquidity adequacy (that is, the ICAAP and ILAAP processes). The 2019 supervisory stress test will also assess banks' resilience to liquidity shocks, while new measures will be taken to examine IT and cyber risks; (iii) 2019 supervisory activities. The supervisory activities planned for this year include work relating to trading risk and asset valuations; and (iv) Brexit. The ECB is closely working with the UK authorities to agree on a solid post-Brexit co-operation framework. It has also assessed multiple licence applications from banks relocating to the euro area, and examined the Brexit contingency plans of banks headquartered within the euro area. Overall, it is finding that banks have prepared reasonably well.
Read more

ESRB Recommendation amending 2015 Recommendation on EU macro-prudential policy framework published in OJ
On 20 March, ESRB Recommendation ESRB/2019/1 amending Recommendation ESRB/2015/2 on the assessment of cross-border effects of, and voluntary reciprocity for, macro-prudential policy measures was published in the OJ. Recommendation ESRB/2019/1 amends Recommendation ESRB/2015/2 by recommending that relevant authorities reciprocate certain specified macro-prudential policy measures that have been adopted by the relevant authorities in Belgium, Estonia, Finland, France and Sweden.
Read more

EBA updates methodological guide on risk indicators and detailed risk analysis tools
On 20 March, the EBA published an updated version of its methodological guide on risk indicators and detailed risk analysis tools (DRATs). It has updated the guide to include additional indicators based on IFRS 9 information, as well as other indicators to better understand institutions' profitability, exposures to sovereign counterparties and own funds requirements for operational risk, among others. The updated guide is based on the EBA reporting framework version 2.8, applicable from December 2018. The main purpose of the guide is to serve EBA compilers of risk indicators and internal users presenting risk indicators and DRATs. To this end, the EBA has also published an updated list of EBA risk indicators and DRATs. In addition, it provides guidance on indicators' concepts, data sources (that is, precise ITS data points involved in their calculation), techniques on which they are computed, and clarity on methodological issues that may assist in their accurate interpretation and use. The guide is not intended to bind competent authorities and, therefore, it is not mandatory, but only aims at supporting computation of indicators, consistent with EBA publications. It is a living document, which may evolve periodically, reflecting new experiences and user needs or changes in EU supervisory reporting (that is, ITS on supervisory reporting).
Read more

EBA reports on Basel III monitoring exercise as of 30 June 2018
On 20 March, the EBA published a report on the latest EU Basel III monitoring exercise, using data as of 30 June 2018. The report: (i) assesses the impact on EU banks of the final Basel III revisions of credit risk, operational risk and leverage ratio frameworks, as well as the impact of the introduction of the aggregate output floor. For the first time, the impact is separately attributed to the standardised approach and internal ratings-based approach to credit risk. It provides a more detailed assessment than the EBA's December 2017 preliminary report; (ii) quantifies the impact of the new standards for the market risk (fundamental review of the trading book) and credit valuation adjustment; (iii) shows European banks' progress in converging towards stricter capital requirements; and (iv) estimates the impact on EU banks of implementing the net stable funding ratio framework. The report is based on a sample of 123 banks, comprising 44 Group 1 banks (that is, internationally active banks that have tier 1 capital of more than EUR3 billion) and 79 Group 2 banks (that is, all other banks). The EBA is preparing a more detailed report on the impact of the final Basel III reforms following the EC's May 2018 call for advice. The EBA has also published a report on liquidity measures under Article 509(1) of the Capital Requirements Regulation. This provides a bi-annual update on the monitoring of liquidity coverage requirements and shows that EU banks have continued to improve their compliance with the liquidity coverage ratio.
Read more

BCBS report on Basel III monitoring exercise as of 30 June 2018
On 20 March, BCBS published a report summarising the aggregate results of the latest Basel III monitoring exercise, based on data as of 30 June 2018. A related press release summarises the results. The report sets out the impact of the Basel III framework initially agreed in 2010, together with the effects of the BCBS'

December 2017 finalisation of the Basel III reforms. However, it does not yet reflect the finalisation of the market risk framework, published in January. The final Basel III minimum requirements are expected to be implemented by 1 January 2022 and fully phased in by 1 January 2027. The report contains data for 189 banks, including 106 large internationally active banks (group 1 banks), which include all 29 institutions designated as global systemically important banks (G-SIBs). 83 group 2 banks (that is, banks with tier 1 capital of less than EUR3 billion or not internationally active) are also included. On a fully phased-in basis, the capital shortfalls at the end-June 2018 reporting date are EUR30.1 billion for group 1 banks. These shortfalls are more than 70% smaller than those in the end-2015 cumulative impact study exercise, mainly due to higher levels of eligible capital. For group 1 banks, the tier 1 minimum required capital (MRC) would increase by 5.3% following full phasing-in of the final Basel III standards. This compares with an increase of 3.2% at end-2017. The BCBS explains that the increases in both shortfalls and the change in MRC over the last six months are driven partly by a higher market risk contribution. The finalisation of the market risk framework is expected to offset the increases to some extent. By excluding all revisions to the market risk framework, the current end-June 2018 data show respective increases in tier 1 MRC of 1.7% (group 1 banks), 1.5% (G-SIBs) and 8.3% (group 2 banks), compared to 1.7%, 1.2% and 5.3% six months earlier. The report also provides data on the initial Basel III minimum capital requirements, total loss-absorbing capacity and Basel III's liquidity requirements.
Report
Press release

Council of EU invites COREPER to approve final compromise texts of proposed Investment Firms Regulation and Directive
On 19 March, the Council of the EU published an "I" item note (7460/19) with accompanying addenda setting out the final compromise texts of the: (i) Proposed Regulation on the prudential requirements of investment firms and amending the CRR, MiFIR and the EBA Regulation (the proposed Investment Firms Regulation (IFR)); and (ii) Proposed Directive on the prudential supervision of investment firms and amending the CRD IV and MiFID II (the proposed Investment Firms Directive (IFD)). In the "I" item note, the Council invites COREPER to approve the final compromise texts. It also asks COREPER to authorise the Council Presidency to confirm in writing to the EP that, should the EP adopt its positions at first reading on the two proposals, as set out in the addenda, (and subject, if necessary, to revisions of the text by the legal linguists of both institutions), the Council would approve the EP's first reading positions and adopt the acts in the wording that corresponds to the EP's positions. The Council and EP reached political agreement on the proposed IFR and IFD on 26 February. The EP has indicated that it plans to consider them at its plenary session of 15 to 18 April.
Read more

PRA consults on Pillar 2 liquidity and updates to the framework
On 19 March, the PRA published a consultation paper on Pillar 2 liquidity and updates to the framework (CP6/19). The consultation is relevant to UK banks, building societies, PRA-designated investment firms, and non-EU EEA banks. In CP6/19, the PRA sets out proposals for regulatory reporting amendments and clarifications to the Pillar 2 liquidity framework. These include: (i) updating the PRA110 template and reporting instructions. Updates will be made to existing rows and columns, and some new rows will be added; (ii) deleting reporting requirements of EEA banks that have permission to accept deposits, and have their registered office outside the EU; and (iii) updating the Regulatory Reporting Part of the PRA Rulebook, the PRA's statement of policy (SoP) on pillar 2 liquidity, and supervisory statement 24/15 on the PRA's approach to supervising liquidity and funding risks. The SoP is being updated to provide further detail on how the PRA sets guidance under the cashflow mismatch risk framework and benchmark stress scenarios. SS24/15 is being updated with details about firms' treatment of collateral, PRA110 reporting frequency in stress, and the postponement of stress scenario guidance. Comments can be made on the consultation until 19 April. Appendix 1 to CP6/19 contains the draft PRA Rulebook: CRR Firms: Liquidity Regulatory Reporting (Amendment) (No 2) Instrument. The proposed implementation date for Annex A of the instrument is 1 July. The proposed implementation date for the updated PRA110 reporting template and instructions, and for Annex B of the instrument is 1 January 2020.
Read more

BCBS report on proportionality in bank regulation and supervision
On 19 March, the BCBS published a report containing the results of a survey it conducted on proportionality practices in bank regulation and supervision. The majority of the 45 jurisdictions covered currently apply proportionality measures. Jurisdictions rely on a number of determinants in identifying proportionality thresholds. These include balance sheet metrics and differentiation by banks' business models. In most

cases, these indicators are combined with supervisory judgment when determining the scope of banks subject to different requirements. Proportionate capital and liquidity requirements generally take the form of a modified version of Basel standards, particularly for the more complex risk categories, or an exemption. Challenges with existing proportionality frameworks include: (i) the trade-off between the benefits of tailoring requirements for different types of banks while also preserving comparability in banks' regulatory ratios; (ii) how to balance the differentiation of requirements to reflect the diversity of banks without triggering unwarranted competitive inequalities; (iii) how to determine proportionality segments; and (iv) ensuring banks do not arbitrage the proportionality thresholds to benefit from less onerous requirements.
Read more

EBA fourth report on convergence of supervisory practices
On 15 March, the EBA published a report of its findings on the convergence of supervisory practices and its activities in promoting convergence in supervision. The report states that a good degree of progress has been made in implementing the guidelines on common supervisory procedures and methodologies for the supervisory review and evaluation process (SREP). However, the EBA has identified areas of the SREP where authorities still face challenges (mainly in the areas of the methodologies for capital adequacy assessments and the articulation of institution-specific additional own funds requirements, and in the link between ongoing supervision, early intervention, and resolution). The continuum between ongoing supervision, recovery and resolution under the BRRD has been observed by the EBA. However, further improvements are still needed on key aspects. In particular, institutions that do not benefit from a waiver should develop a recovery plan. The selection and calibration of recovery indicators still have weaknesses that also need to be addressed. Chapter 7 of the report sets out the key topics identified for the 2019 convergence plan. Specifically, the EBA will review the approach followed by authorities: (i) to monitor and assess the adequacy and the robustness of internal governance arrangements of institutions; (ii) to monitor and assess IT risk and operational resilience, as well as integrating the outcomes of this assessment into the overall SREP; (iii) to monitor and assess the reduction of NPLs in institutions' balance sheets, as well as their coverage; and (iv) relating to the review of the IRB approach and the use of the outcomes of the 2018 benchmarking exercises. The EBA also notes that it will continue to engage with colleges of supervisors by promoting the consistent application of the Single Rulebook, particularly in joint decisions on capital, liquidity and recovery plans, and by drawing supervisory attention to the key topics listed in the convergence plan.
Read more

OTHER DEVELOPMENTS

Council of EU and European Parliament reach political agreement on proposed ESFS reforms
On 21 March, the Council of the EU published a press release announcing that the Council Presidency and the EP have reached political agreement on the proposed legislative reforms to the ESFS. The proposed reforms represent the first fundamental review of the tasks, powers, governance and funding of the ESAs (that is, the EBA, EIOPA and ESMA) and the ESRB to adapt the authorities to the changed context in which they operate. The reforms also include provisions reinforcing the role of the EBA as regards risks posed to the financial sector by money laundering and terrorist financing activities. Pending technical finalisation of the text, the agreement will be submitted for endorsement to the Council. The EP and the Council will be called on to adopt the proposed regulation at first reading.
Read more