

ALLEN & OVERY

Key Regulatory Topics: Weekly Update

13 December 2019 – 20 December 2019



Please note that this is the last update of the year. The weekly updates will resume on the 10th January.

CAPITAL MARKETS

Please see Conduct for an update on the IOSCO report on conflicts of interests and risks during the debt capital raising process

FCA publish Primary Market Bulletin

On 17 December 2019, the FCA published its 26th Primary Market Bulletin (PMB). The PMB contains a number of technical and procedural notes that have been updated to reflect changes driven by the Prospectus Regulation. The updates contained in the PMB are small changes, such as updating terminology and rule references which are a direct consequence of the change of prospectus regime and which do not materially affect the substance of the guidance in the respective notes. The PMB also lists technical notes that have been deleted as they are no longer relevant given the changes in the Prospectus Regulation and new guidelines from ESMA.

[Read more](#)

CONDUCT

IOSCO publish report on conflicts of interests and risks during the debt capital raising process

On 16 December, the International Organisation of Securities Commissions published a consultation report on the conflicts of interest and associated conduct risks during the debt capital raising process. The report proposes guidance to help address these issues, using the responses from a survey conducted in December 2018. The proposed guidance reflects an expectation of the high standards of conduct expected for market intermediaries in the debt capital raising process. The guidance is not binding but IOSCO members are encouraged to consider it carefully in the context of their legal and regulatory framework.

[Read more](#)

FCA updates SM&CR webpage

On 13 December, the FCA published an updated version of its senior managers and certification regime (SM&CR). Alongside a new section outlining ongoing requirements for firms, the FCA has listed 'other considerations' for firms. These include, amongst others, delegating Senior Management responsibility and staying up to date with the FS register

[Read more](#)

CONSUMER/RETAIL

The Official Journal of the EU (OJ) publishes Directive (EU) 2019/2161

On 18 December, the OJ published Directive (EU) 2019/2161 which amends the (i) Unfair Contract Terms Directive (93/13/EEC); (ii) Price Indications Directive (98/6/EC); (iii) Unfair Commercial Practices Directive (2005/29/EC); and (iv) the Consumer Rights Directive (2011/83/EU). The amendments are in regard to better

enforcement and modernisation of Union consumer protection rules. Member States have until 28 November 2021 to transpose the Directive with those national provisions applying no later than 28 May 2022.
[Directive \(EU\) 2019/2161 \(OJ 2019 L 328/7\)](#)

FCA publish call for input on open finance

On 17 December, the FCA published a call for input on open finance. Open finance refers to the extension of open banking-like data sharing and third-party access to a wider range of financial sectors and products. The FCA are seeking feedback on the following issues: (i) whether open banking is on track to achieve its potential; (ii) benefits of open finance in FCA regulated markets; (iii) risks of open finance to FCA operational objectives; (iv) the optimal conditions to develop open finance; and (v) what role should the FCA play in developing open finance. Annex 1 sets out potential use cases for open finance. The deadline for comments is 17 March 2020

[Read more](#)

FINANCIAL CRIME

Sanctions post-Brexit

Please see our digest on the differences between the EU sanctions regime and the new UK sanctions regime in a hard Brexit scenario. Businesses should be alert to these differences in order not to breach any post-Brexit new UK sanctions or existing EU sanctions.

[Read more](#)

Building operational resilience

Please see our digest on building operational resilience in a financial services sector that is heavily reliant on technology and subject to increasing numbers of cyber-attacks. This digest gives key pointers on how firms can avoid operational disruption.

[Read more](#)

Law Society publish updated guidance on reporting suspicious activity

On 17 December 2019, the Law Society published updated guidance on how to report suspicious activity to the National Crime Agency (NCA). It assumes that the person making the suspicious activity report (SAR) is a money laundering reporting officer (MLRO) or their deputy. The guidance covers key areas including identifying money laundering, when to make a SAR, forming a suspicion, failure to disclose, how to submit a SAR, what to include and defence against money laundering SARs.

[Read more](#)

ESAs publish report for guidelines on co-operation and information exchange under MLD4

On 16 December, the Joint Committee of the European Supervisory Authorities (ESAs) published joint guidelines on co-operation and information exchange under MLD4. The aim of the guidelines is to clarify the practical aspects of supervisory cooperation and information exchange, and to create a common framework that supervisors should use to support effective oversight of cross-border groups from an anti-money laundering/counter terrorist financing (AML/CFT) perspective and also from a more general prudential perspective. The guidelines set out the rules for the establishment of AML/CFT colleges for firms operating on a cross-border basis. These colleges will provide a permanent structure for cooperation and information exchange between supervisors from different Member States and third countries that are responsible for the AML/CFT supervision of the same firm. The guidelines apply from 10 January 2020 and also outline the process for bilateral exchanges of information between competent authorities.

[Read more](#)

ESMA publish responses to consultation paper on the MAR review report

On 13 December, the Regulatory Law Committee of the City of London Law Society (CLLS) published its reply form for the Consultation Paper on the Market Abuse Regulation (MAR) review report. The issues discussed included the following: (i) An extension of the scope of MAR to spot FX contracts; (ii) Including administrators of benchmarks and supervised contributors under Article 30 of MAR which refers to "Administrative sanctions and other administrative measures; (iii) The need to modify the reporting mechanism in MAR; and (iv) Difficulties experienced by market participants when identifying what information is inside information and the moment this information becomes insider information under the current MAR definition.

[Read more](#)

ESMA publish report on the application of accepted market practices under MAR

On 13 December, ESMA published a consultation paper on its response to the consultation on the Market Abuse Regulation (MAR). The following issues are discussed in the paper: (i) whether MAR should be extended to spot FX contracts; (ii) the reporting and transparency obligations derived from buy-back programmes; (iii) inside information; (iv) the MAR thresholds and requirements for person discharging managerial responsibilities; (v) different impacts derived from considering collective investment undertakings within the scope of MAR; and (vi) market surveillance by national competent authorities. Based on feedback received from stakeholders, ESMA will develop the final review report. ESMA intends to submit the final report to the EC in the spring of 2020.

[Read more](#)

FINTECH

EC consultation on an EU framework for markets in crypto-assets

On 19 December, the EC published a consultation seeking views on the EU framework for cryptoassets. The EC notes that it is crucial that Europe grasps all the potential of the digital age and strengthens its industry and innovation capacity, within safe and ethical boundaries. With regards to Blockchain, the EC recognises it is a transformative technology and therefore has promoted the exploration of its use across sectors, including the financial sector. Crypto-assets are one of the major applications of blockchain for finance and have the potential to bring significant benefits to both market participants and consumers. The consultation aims to inform the Commission services' ongoing work on crypto-assets. For crypto-assets that are currently not covered by the EU legislation, the EC are considering a possible proportionate common regulatory approach at EU level to address, inter alia, potential consumer/investor protection and market integrity concerns. In order to gain more information on this topic, the EC seeks the views of all EU citizens on the use or potential use of crypto-assets. The EC also seeks the views of stakeholders in order to determine: (i) whether and how to classify crypto-assets; (ii) whether an EU regulatory framework is needed for crypto-assets that fall outside the scope of EU financial services legislation; (iii) whether any changes to EU legislation are needed for crypto-assets that currently fall within the scope of EU legislation. The deadline for comments is [\[19 March 2020\]](#)

[Read more](#)

Commented [A&O1]: Please check

EC issue recommendations on regulation, innovation and finance

On 13 December, the EC published a report by its expert group on regulatory obstacles to financial innovation (ROFIEG) setting out 30 recommendations on how to create an accommodative framework for FinTech in the EU. An accommodative framework would help realise benefits of FinTech, such as the ability to provided financial services at a lower cost, thus helping achieve 'higher efficiency' within the industry. The recommendations provided are not specific to any business model or financial service or product and cut across the whole market. They are regarded as the fundamental issues to be addressed with a view to dismantling obstacles and opening opportunities for FinTech in the EU. The highest priority recommendations are as follows: (i) Ensuring technology, especially AI, can be adequately explained and interpreted in order to protect consumers and businesses; (ii) Creating a regulatory framework built on the principle that activities that create the same risks should be governed by the same rules, with a view to ensuring adequate regulation and supervision and maintaining a level playing field; (iii) The ending of regulatory fragmentation, especially in the area of customer due diligence (CDD)/know your customer (KYC), as an important step towards creating a level playing field; (iv) Preventing unfair treatment of competing downstream services by large, vertically integrated platforms, in order to strengthen innovation and maintain consumer choices; (v) The strengthening of the framework for access to, processing and sharing of data, in order to promote innovation and competition and establish a level playing field amongst actors.

[Read more](#)

FUND REGULATION

Please see Markets and Market Infrastructure for an update on the FCA policy statement on making transfers simpler

FPC discuss vulnerabilities in open-ended funds

On 16 December, the Bank of England published its financial stability report, which contained a section prepared by its Financial Policy Committee on the vulnerabilities in open-ended funds. The FPC established that there should be greater consistency between the liquidity of a fund's assets and its redemption terms. The FPC suggested changes to achieve this, which also promote funds' ability to invest in illiquid

investments, helping to increase the supply of productive finance to the economy through the business and financial cycles.

[Read more](#)

IOSCO publish final report on recommendations for a framework assessing leverage in investment funds

On 13 December, the International Organisation of Securities Commissions (IOSCO) published its final report on outlining a framework for the assessment of leverage in investment funds. IOSCO has developed a two-step framework to facilitate more meaningful monitoring of leverage in funds for financial stability purposes in a consistent manner across jurisdictions. This framework provides a holistic approach to capture various types of leverage-related risks whilst also using proportionality, acknowledging that not all funds need to be captured for financial stability monitoring purposes. Step 1 offers regulators a means of efficiently identifying those funds that are more likely to pose risks to the financial system, using at least one notional exposure metric including debt and synthetic leverage. Step 2 involves a risk-based analysis of the subset of funds identified in Step 1, using relevant and risk-based adjusted metrics that can be employed by regulators. IOSCO also aim to publish an annual report reflecting leverage trends within the asset management industry at a global level. The first report (that will develop over time and be expanded to include more jurisdictions) is scheduled to be published in 2021.

[Read more](#)

INSURANCE

Please see Sustainable Finance for an update on the IAIS consultation on the draft Issues Paper on the Implementation of the Task Force on Climate-related Financial Disclosures (TCFD) Recommendations

EC amends a Delegated Regulation supplementing Solvency II

On 17 December, the EC adopted a Delegation Regulation (C(2019) 8951 final) amending Delegated Regulation 2015/35 as amended by Commission Delegated Regulation (EU) 2019/981. This new Delegated Regulation corrects certain unintended consequences of the amendments made by Commission Delegated Regulation (EU) 2019/981. Once published in the OJ, the Regulation will enter into force 20 days later but will apply retro-actively from 8 July 2019.

[Read more](#)

EIOPA report on long-term guarantees measures and measures on equity risk

On 17 December, EIOPA published their fourth annual report under Solvency II on the impact of the application of the long-term guarantees measures (LTG) and the measures on equity risk to the European Parliament, the Council and the Commission. The report is structured in three main sections: (i) introduction to the review; (ii) overview of the overall impact of the LTG measures and measures on equity risk; and (iii) more detail on the impact of each of the measures. EIOPA plans to submit the opinion on the assessment of the application of the LTG measures and the measures on equity risk to the Commission in 2020, based on the annual reports submitted by then.

[Read more](#)

EIOPA report on insurers' asset and liability management

On 17 December, following a request for information from the EC, EIOPA published a report on insurers' asset and liability management in relation to the illiquidity of their liabilities. The information requested by the European Commission is meant to supplement the information provided in EIOPA's annual reports on long-term guarantee measures. The information contained in this report will also be drawn upon by EIOPA as it develops technical advice. One aspect it will consider is the extent to which the prudential framework acknowledges the treatment of assets that are held against liabilities that are long term and illiquid. The report discusses: (i) the illiquidity of insurance liabilities; (ii) asset management of insurers; (iii) long-term guarantee measures; (iv) market valuation of insurance liabilities.

[Read more](#)

IAIS publish report on 2019 G-SII identification process

On 16 December, the International Association of Insurance Supervisors (IAIS) published a report on the 2019 global systemically important insurers (G-SIIs) identification process. G-SIIs are insurers whose distress or disorderly failure would potentially cause significant disruption to the global financial system and economic activity. In creating this report the IAIS used the same methodology used when creating the 2016 G-SII

assessment. The data submitted by 52 insurers showed increases in, amongst others: (i) total assets; (ii) reinsurance; (iii) short term funding; and (iv) turnover.

[Read more](#)

EIOPA publish report on the use of capital add-ons during 2018

On 13 December, the European Insurance and Occupational Pensions Authority (EIOPA) published its annual report on the use of capital add-ons by national competent authorities (NCAs) during 2018. The analysis in the report is based on 2018 year-end Solvency II data collected under Directive 2009/138/EC. All 31 NCAs reported no changes in the internal process of setting and reviewing capital add-ons for solo undertakings, including solo undertakings that are part of a cross-border group. The use of capital add-ons remains extremely limited, however when used capital add-ons have a material impact on the solvency capital requirement (SCR) of some of the entities, increasing it by more than 10% in all cases (with the exception of five). The report recognises that setting capital add-ons is a complex process and therefore recommends a streamlining/simplification of the process to allow better use of it as a tool.

[Read more](#)

MARKETS AND MARKET INFRASTRUCTURE

Joint associations publish new master regulatory reporting agreement

On 19 December, The Joint Associations (the Association of Financial Markets in Europe (AFME), the Futures Industry Association (FIA), the International Capital Markets Association (ICMA), the International Swaps and Derivatives Association, Inc. (ISDA®) and the International Securities Lending Association (ISLA)) published a new master regulatory reporting agreement (MRRA) intended to simplify reporting across different EU regulatory regimes. The MRRA is a template agreement that market participants may find useful as part of the management of their regulatory obligations under EMIR and/or SFTR and provision of services to their clients relating to the reporting of the details of certain financial transactions to trade repositories. The MRRA consists of: (i) a main body; (ii) sections on both Delegated Reporting and Mandatory Reporting; (iii) two product-specific annexes; and (iv) template schedules within which the parties can specify details relating to Static Data, reporting operations and procedures.

[Read more](#)

EU agrees on rules to boost European crowdfunding platforms

On 19 December, the European Parliament (EP) published a press release announcing that it had reached a deal with the Council on EU-wide rules to help crowdfunding services function smoothly and foster cross-border business funding. The uniform set of criteria will apply to all European Crowdfunding Service Providers (ECSP) up to offers of EUR 5,000,000 calculated over a period of 12 months per project owner. Small companies or start-ups will be able to use the crowdfunding option because the shares of certain private limited liability companies were included in the scope of the legislation. The legislation will be accompanied with additional safeguards and clarification on how investors should be informed of the consequences of their choices. This would be done through a key investment information sheet drawn up by the project owner for each crowdfunding offer. Also, investors identified as non-sophisticated would be offered more in-depth advice and guidance. Prospective ECSPs would need to request authorisation from the NCA of the member state in which they are established. Supervision would also be carried out by NCAs with ESMA facilitating and coordinating cooperation between member states.

[Read more](#)

Commented [A&O2]: Move to markets

FSB report on vulnerabilities associated with leveraged loans and CLOs

On 19 December, the FSB published a report on vulnerabilities associated with leveraged loans and CLOs. The report assesses the vulnerabilities and potential financial stability implications of developments in the leveraged loan and CLO markets. The main conclusions from the report's analysis are that (i) a number of factors suggest that vulnerabilities in the leveraged loan and CLO markets have grown since the global financial crisis; (ii) available data indicates that banks have the largest direct exposures to leveraged loans and CLOs - these exposures are concentrated among a limited number of large global banks and have a significant cross-border dimension; (iii) a number of non-bank investors are also exposed to leveraged loan and CLO markets including investment funds, insurance companies, pension funds, broker-dealers and holding companies; (iv) a comprehensive assessment of the system-wide implications of the exposures of financial institutions to leveraged loans and CLOs is challenging because of data gaps including limited information on indirect linkages between banks and non-banks as well as the fact that the propagation of adverse developments across the financial sector would depend on the behaviour of the holders of leveraged loans and CLOs in stressed scenarios; and (v) more work is needed to close remaining data gaps

and assess in a comprehensive manner the possible financial stability implications associated with leveraged loans and CLOs. The report also discusses vulnerabilities in leveraged loans and CLO markets, including the ways in which these vulnerabilities can impact the holders of loans and CLOs.

[Read more](#)

Commented [A&O3]: Cross refer to this in prudential regulation

FSB fifth progress report on reforming major interest rate benchmarks

On 19 December, the FSB published its fifth progress report on reforming major interest rate benchmarks. It discusses progress made in implementing the recommendations of the FSB report 'Reforming Major Interest Rate Benchmarks' (the 2014 Report), as well as in two additional streams of work aimed at improving contractual robustness to the risk of major interest rate benchmarks' discontinuation and to identify areas in which international coordination on potential accounting, tax and regulatory issues may be useful. The key messages of the report are that (i) benchmark transition is a multi-year international effort that takes into account diverse circumstances prevailing in different markets; (ii) there is a common view that the use of overnight risk-free rates (RFRs) should be encouraged across global interest rate markets where appropriate, and that contracts referencing interbank offered rates (IBORs) should have robust fall-backs; (iii) transition away from London Interbank Offered Rate (LIBOR) requires significant commitment and sustained effort from financial and non-financial firms across jurisdictions to reduce risks to financial stability ahead of the end of 2021; (iv) there has been good progress in many derivative and securities markets, but transition in lending markets has been slower, and needs to accelerate; (v) firms undertaking their transition away from LIBOR should not delay their programmes until the emergence of possible forward-looking term versions of risk-free rates; (vi) the efforts on transition across multiple jurisdictions and currencies is an opportunity to align conventions and other practices across currencies and products; (vii) transition requires significant commitment from the official sector; and (viii) given the degree of risk arising from continued reliance on LIBOR in particular, regulated firms should expect increasing scrutiny of their transition efforts as the end of 2021 approaches.

[Read more](#)

ESMA announces MiFID scheduled publication dates for 2020

On 19 December, ESMA published its 2020 calendar of MiFID II/MiFIR relevant publications for the transparency regime and systematic internalisers' tests. During 2020, ESMA will publish for the first-time transparency and systemic internalisers calculations for derivatives

[Read more](#)

Covered bond reform legislation publish in the Official Journal of the EU

On 18 December, Regulation (EU) 2019/2160 which amends the CRR regarding exposures in the form of covered bonds was published in the OJ. Alongside this, Directive (EU) 2019/2162 which amends on the issue of covered bonds and covered bond public supervision was also published. Both the Regulation and the Directive will enter into force on 7 January 2020 and the Regulation will apply from 8 July 2022. Member States have until 8 July 2021 to transpose the Directive and their national measures must apply from 8 July 2022 at the latest.

[Regulation \(EU\) 2019/2160](#)

[Directive \(EU\) 2019/2162](#)

Commented [A&O4]: Cross refer to the Regulation in prudential regulation.

PRA publish letter on regulatory impediments to IBOR transition

On 18 December, the PRA published a letter responding to the Working Group on Sterling Risk-Free Rates (RFRWG). RFRWG raised a number of important legal and practical issues regarding the regulatory capital impediments to InterBank Offered Rates (IBOR) transition. The main issues flagged by RFRWG were: (i) Amendments to legacy instruments or agreements to deal with benchmark reform may trigger (a) an assessment as to eligibility of AT1 and Tier 2 Capital; (b) bilateral margin requirements for non-cleared derivatives; (c) a requirement to include contractual recognition of bail in or stays under rules related to resolution; and (ii) A number of modelling challenges relevant to counterparty credit risk, market risk and interest rate risk in the banking book. The PRA confirm, as recognised by the RFRWG that a number of the issues need to be solved at European or global level and it has been actively pushing for resolution of these at the BCBS. The PRA suggests that it meets with the RFRWG in Spring 2020 to consider how work on the regulatory interactions of benchmark reforms is progressing.

[Read more](#)

RFRWG consultation on credit adjustment spread methodologies for fallbacks in cash products referencing LIBOR

On 18 December, The Working Group on Sterling Risk-Free Reference Rates (RFRWG) published a

consultation on credit adjustment spread methodologies for fallbacks in cash products referencing GBP LIBOR. The consultation paper is addressed to cash market participants who are considering how to approach the differences between GBP LIBOR and SONIA when considering fallbacks to their contracts. The focus of the consultation is to assist cash market participants that would need to consider the appropriateness of methodologies for credit adjustment spreads in the cash markets, in terms of: (i) fallbacks that operate on the cessation of LIBOR; and (ii) fallbacks that operate before the cessation of LIBOR and trigger as a consequence of a regulatory announcement of non-representativeness of LIBOR. The consultation recognises the importance of the identification of a market accepted methodology in a transparent manner and of raising awareness of the need for such adjustments. The consultation remains open until 6 February 2020.

[Read more](#)

EC adopts Delegated Regulation which amends EMIR Delegated Regulation (EU) 2016/2251

On 17 December, the EC adopted a Delegated Regulation which amends Delegated Regulation (EU) 2016/2251 on the specification of the treatment of OTC derivatives in connection with certain simple, transparent and standardised securitisations for hedging purposes. The draft Delegated Regulation proposes that Securitisation Special Purpose Entities, for OTC derivatives in connection with securitisations that meet the requirements to be classified as securitisations according to the Securitisation Regulation, would be exempted from posting and collecting initial margins and from posting variation margins in the way already implemented for covered bonds.

[Read more](#)

ESMA publish statement on pending applications by EU administrators of benchmarks

On 13 December, ESMA published a public statement on pending applications by EU administrators of benchmarks. The statement includes a table of the information shared by National Competent Authorities with ESMA in relation to the applications for authorisation and registration by EU administrators under Article 51.1 of the benchmark regulation (BMR) for which, as of 1 January 2020, the decision by the relevant competent authority is still pending.

[Read more](#)

ESMA publish consultation paper on procedural rules for penalties imposed on TC-CCPs, TRs and CRAs under EMIR

On 13 December, ESMA published a consultation paper seeking stakeholders' input on procedural rules for penalties imposed on Third-Country Central Counterparties (TC-CCPs), Trade Repositories (TRs) and Credit rating agencies (CRAs) under the European Market Infrastructure Regulation (EMIR). The paper sets out ESMA's preferred options for the procedural rules on penalties imposed on TC-CCPs and TRs as well as ESMA's proposed amendments to the existing procedural rules for penalties imposed on CRAs. The deadline for comments on the proposals is 18 January 2020, after which ESMA will publish a final report by the end of Q1 2020.

[Read more](#)

FCA publish policy statement on making transfers simpler

On 13 December, the FCA published a policy statement summarising the feedback from a consultation on rule changes that aim to make it easier for consumers to transfer their assets from one platform to another. The rules discussed aim to advance the objective of securing an appropriate degree of consumer protection and promoting effective competition in the interests of consumers. The policy statement is relevant to: (i) platform service providers; (ii) fund managers and their service providers; (iii) financial advisers; and (iv) consumers of platform services and consumer organisations. Respondents to the consultation largely agreed in principle with the proposals for in-specie transfers and unit class conversions. Following this feedback, the FCA has decided to implement the rules in the consultation without amendment. The new rules will come into force on 31 July 2020

[Read more](#)

PAYMENT SERVICES AND PAYMENT SYSTEMS

ECB paper on exploring anonymity in central bank digital currencies

On 17 December, the ECB published an in focus paper on exploring anonymity in digital cash. In order to manage the balance between privacy in electronic payments and ensuring compliance with anti-money laundering and counter-financing of terrorism (AML/CFR) regulations, the European System of Central Banks (ESCB) has established a proof of concept for anonymity in digital cash – referred to in the paper as “central

bank digital currency". The paper describes the proof of concept, showing that it is possible to build a simplified payment system that safeguards users' privacy for lower-value transactions, while still ensuring that higher-value transactions are subject to mandatory AML/CFT checks. Nevertheless the ECB also notes various improvements that can be made including: (i) reducing the amount of information visible to parties not involved in the transaction; (ii) adding privacy-enhancing techniques; and (iii) ensuring the proof of concept is scalable.

[Read more](#)

BoE publish documents on ISO 20022 CHAPS migration

On 17 December, the BoE published various documents concerning the introductory phase of the migration to a common global messaging standard for UK payments (ISO 20022 CHAPS migration). *ISO 20022 CHAPS migration: information for direct participants (DPs)* provides information for CHAPS DPs to start planning and executing their approach to migration to ISO 20022 messaging. It includes the final "like-for-like" message set that all DPs will be required to support – as a minimum – for sending payments during the next phase. *Information for Real-Time Gross Settlement (RTGS) account holders on transitioning to ISO 20022 messaging* explains that RTGS is expected to stop using MT messaging by 2023. Information on the benefits of ISO 20022 messaging is explained and the impact of the shift towards this platform on RTGS account holders is explained. The following steps are expected of RTGS account holders during this transition: (i) those who receive a daily statement directly from RTGS, will need to update their internal systems to be able to accept the new camt.053 message before March 2023; (ii) those who receive a daily statement in another form via a service bureau will need to contact their provider to determine how they can ensure that they continue to receive their statements; and (iii) those who do not currently receive account statement information on their reserves or settlement account are encouraged to consider obtaining it in the future, either as a camt.053 message or via an API, once available, to strengthen reconciliation procedures. Finally, *Collaboration between Pay.UK and the Bank of England on ISO 20022 payment messages* provides an update on the work of the BoE and Pay.UK, providing a summary of their joint priorities in 2020. These priorities include: (i) a shared approach to introducing common data enhancements in the CCM, such as Purpose Codes and Legal Entity Identifiers; (ii) high quality documentation, consistent between the two operators, for both participants and end-users; (iii) continued close collaboration on transition plans to help ensure that the overall impact on participants is managed and optimised in this busy period of change; (iv) adopting a view on a shared and coordinated change management process for the CCM and other ISO 20022 messages, enabling Pay.UK and the BoE to jointly assess which future changes would best benefit both payments systems.

[Read more](#)

PENSIONS

FCA publish policy statement on the extending the remit of Independent Governance Committees

On 17 December, the FCA published a policy statement confirming the decision to extend the remit of Independent Governance Committees (IGCs). Independent Governance Committees (IGCs) currently provide independent oversight of the value for money of workplace personal pensions in accumulation. They act on behalf of consumers who are likely to be less engaged with their pension savings. The policy statement summarises the feedback received to the consultation paper on this topic (CP 19/15). The following two new duties are established: (i) a duty for IGCs to consider and report on their firm's policies on environmental, social and governance (ESG) issues, member concerns and stewardship, for the products that IGCs oversee; and (ii) a duty for IGCs to oversee the value for money of investment pathway solutions for pensions drawdown. The final rules will come into force on 6 April by which time firms must have in place an IGC or a Governance Advisory Arrangement.

[Read more](#)

PRUDENTIAL REGULATION

Please see Markets and Market Infrastructure for an update on the FSB report on vulnerabilities associated with leveraged loans and CLOs

Please see Markets and Market Infrastructure for an update on Regulation (EU) 2019/2160 which amends the CRR regarding exposures in the form of covered bonds

EBA publish consultation paper on criteria to identify material risk takers for CRD IV remuneration purposes

On 19 December, the EBA published a consultation paper on Draft Regulatory Technical Standards (RTS) on the criteria to identify material risk takers for CRD IV remuneration purposes. Article 94 (2) of CRD mandates the EBA to develop draft regulatory technical standards (RTS) to set out criteria to define: (i) managerial responsibility and control functions; (ii) material business unit and significant impact on the relevant business unit's risk profile; and (iii) other categories of staff not expressly referred to in Article 92(3) whose professional activities have an impact on the institution's risk profile. The EBA has developed these draft RTS on the basis of the CRD and is now consulting it for a period of two months. These draft RTS replace the EBA's RTS which are set out in Commission Delegated Regulation (EU) No 604/2014. The deadline for comments is 19 February 2020.

[Read more](#)

The ECB publishes its FAQs on the notification process for the recognition of netting agreements

On 19 December, the ECB published its FAQs on the notification process for the recognition of netting agreements, relating to (i) Objective of the notification process; (ii) new types of agreements subject to notification; (iii) consolidation; (iv) triggers for notification; (v) means of notification; (vi) explanation of certain terms used; (vii) meaning of the "type" of agreement; and (viii) meaning of "core netting provision" and "material changes to the core netting provisions of the agreement". A template letter for notification is also included. The notification process will apply from 31 January 2020.

[Read more](#)

EC Implementing Decision on third country equivalence of Serbia and South Korea

On 18 December, Commission Implementing Decision 2019/2166 which adds Serbia and South Korea to the list of third countries considered equivalent for the purpose of the treatment of exposures under the Capital Requirements Regulation was published in the OJ. The Decision enters into force on 7 January 2020.

[Read more](#)

EBA publish final draft RTS on the SA-CRR

On 18 December, the EBA published the final draft regulatory technical standards (RTS) on the standardised approach for counterparty credit risk (SA-CRR) under the Capital Requirements Regulation (CRR) as amended by CRR II. The RTS builds on the method proposed in the Discussion Paper on the implementation in the European Union of the revised market risk and counterparty credit risk frameworks published on 18 December 2017. Following a consultation paper on this method, further feedback was gathered, resulting in a three-pronged method for the assignment of a derivative transaction to a risk category. The three different approaches are: (i) a purely qualitative approach which applies to derivative transactions that have clearly only one material risk driver; (ii) a qualitative and quantitative approach which uses a more detailed assessment for transactions that do not apply to the purely qualitative approach; and (iii) a fallback approach which is performed when the second approach does not make it possible to determine which of the risk drivers are material.

[Read more](#)

EC adopts Delegated Regulation on approach for market risk under CRR

On 17 December, the EC adopted a Delegated Regulation on an alternative standardised approach for market risk under the Capital Requirements Regulation (CRR), following the revised market risk requirements introduced under CRR II. The Council and the Parliament will now consider the Delegated Regulation.

[Read more](#)

PRA publish policy statement on Pillar 2 liquidity: PRA110 reporting frequency threshold

On 17 December, the PRA published a policy statement on Pillar 2 liquidity: PRA110 reporting frequency threshold which provides feedback to the Consultation Paper on this topic (CP 14/19). The policy statement also contains the PRA's final policy which includes: (i) amendments to the Reporting Part of the PRA Rulebook; and (ii) an updated Supervisory Statement on the PRA's approach to supervising liquidity and funding risks. The policy statement is relevant to PRA-authorized UK banks, building societies, and PRA-designated UK investment firms, referred to collectively as 'firms' with total assets of £5 billion or above. Such firms will be required to submit the PRA110 every business day during a liquidity stress affecting them, their branches or group. The amendments will take effect from 1 May 2020.

[Read more](#)

BoE Financial Stability report

On 16 December, the BoE published issue number 46 of its Financial Stability Report. The report covers the following: (i) results of the 2019 stress test of UK banks; (ii) resilience of the UK financial system to Brexit; (iii) overview of risks to UK financial stability; (iv) the UK bank capital framework; (v) the FPC's review of its mortgage market recommendations; (vi) resilience of market-based finance; and (vii) vulnerabilities in payments.

[Read more](#)

BoE publish report on UK banking system stress test

On 16 December, the BoE published the results of the 2019 UK banking system stress test. In the stress test scenario, world GDP falls by 2.6%, UK GDP falls by 4.7%, Bank Rate rises to 4% and the UK unemployment rate rises to 9.2%. Under this scenario, the BoE found that the UK banking system would be resilient and would be able to continue to meet credit demand from UK households and businesses. This resilience relies in part of the ability of banks to cut dividend payments, employee variable remuneration, and coupon payments on Additional Tier 1 instruments.

[Read more](#)

BoE announced UK CCyB rate increase

On 16 December, the Bank of England (BoE) updated its financial stability webpage, announcing an increase in the UK Countercyclical capital buffer (CCyB) rate to 2%. Currently the CCyB rate is 1%. The increase will take effect from 16 December 2020.

[Read more](#)

BCBS publish press release on consolidated Basel Framework

On 16 December, the Basel Committee on Banking Supervision announced the launch of its consolidated Basel Framework which brings together all of the Basel Committee's global standards for the regulation and supervision of banks and presents them on a new section of its website. The framework sets out the changes that the Committee agreed to make relative to the draft version of the framework and lists the new frequently asked questions and answers (FAQs) added to the framework since its publication in draft form in April 2019.

[Read more](#)

EBA publish consultation paper on draft ITS amending Commission Implementing Regulation (EU) 2016/2070

On 13 December, the EBA published a consultation paper on draft implementing technical standards (ITS) amending Commission Implementing Regulation (EU) 2016/2070 with regard to benchmarking of internal models under CRD IV. Under Article 78 of CRD IV, competent authorities are required to conduct an annual assessment of the quality of internal approaches used for the calculation of own funds requirement. To assist competent authorities in this assessment, the EBA calculates and distributes benchmark values against which individual institutions' risk parameters can be compared. For the 2021 benchmarking exercise, changes to the reporting templates and instructions are necessary in particular to integrate the sub-set of templates dedicated to the IFRS 9 benchmarking.

[Read more](#)

ESRB publish report on macro-prudential policy implications of foreign branches relevant for financial stability

On 13 December, the ESRB published a report the macro-prudential policy implications of foreign branches that are relevant for financial stability. The report discusses the financial stability implications of foreign branches and analyses the EU legal framework for the exchange and collection of information for macroprudential purposes. The ESRB concluded that: (i) a framework for the exchange of information on foreign branches for macroprudential purposes is necessary and should be further developed at EU and national level; and (ii) colleges of supervisors and voluntary arrangements between authorities on the exchange of information within the existing legal framework, such as Memoranda of Understanding, are proposed as the vehicles of this framework.

[Read more](#)

RECOVERY & RESOLUTION

SRB extends prior permissions procedure

On 18 December, the SRB announced that the provisional procedure to assess applications to call, redeem, repay or repurchase eligible liabilities instruments under Article 78a of the Capital Requirements Regulation (as amended by CRRII) will remain in place until the relevant EBA Regulatory Technical Standards come into force. The EBA is mandated to develop RTS to specify the procedure for granting permission. CRRII required the EBA to submit such draft RTS to the European Commission by 28 December 2019 but the EBA roadmap published in November flagged that this has been delayed to December 2020. In the meantime, the provisional procedure set out in the SRB's addendum to its 2018 MREL policy applies.

[Read more](#)

SUSTAINABLE FINANCE

IAIS consultation on the draft Issues Paper on the Implementation of the Task Force on Climate-related Financial Disclosures (TCFD) Recommendations

On 19 December, the IAIS published its consultation on the Implementation of the TCFD Recommendations. Recognising the important role of the TCFD Recommendations in establishing a framework for climate risk-related disclosures for the insurance sector, the Sustainable Insurance Forum and IAIS have now developed the Issues Paper. The IAIS is seeking feedback on the draft Issues Paper by 5 February 2020.

[Read more](#)

Commented [A&O5]: Cross refer in insurance

Council of the EU publish final text on sustainable investment framework

On 18 December, the Council of the EU published the final comprise text of the proposed Regulation on the establishment of a framework to facilitate sustainable investment (the EU Taxonomy Regulation). On 17 December, the European Parliament published a press release announcing that political agreement had been reached between it and the Council. The next steps are for the Regulation to be formally adopted by the Council and the Parliament following the review of the text by the jurists linguists.

[Read more](#)

[Read more](#)

PRA and FPC publish discussion paper on the 2021 biennial exploratory scenario on the financial risks from climate change

On 18 December the PRA and the FPC, published a joint discussion paper on the 2021 biennial exploratory scenario (BES) on the financial risks from climate change. The aim of this scenario is to test the resilience of the current business models of the largest banks, insurers and the financial system to the physical and transition risks from climate change. The BES will focus on sizing risks, rather than testing firms' capital adequacy or setting capital requirements. It will also allow the Bank to examine how major financial firms expect to adjust their business models, and what the collective impact of these responses on the wider economy might be. Finally, the BES will provide a vehicle for financial firms to identify and address data gaps and to develop cutting-edge risk management approaches. The discussion paper sets out the Bank's proposed framework for conducting the 2021 BES. The Bank welcomes feedback on any aspect of this proposal. Responses to any aspect of the 2021 should be submitted by 18 March 2020. The Bank anticipates launching the BES in the second half of 2020, and publishing results in 2021.

[Read more](#)

TAXES/LEVIES

ECB publish Regulation and Decision on supervisory fees

On 17 December, the European Central Bank (ECB) published Regulation (EU) 2019/2155 amending the ECB regulation on supervisory fees. Alongside this the ECB also published ECB Decision (EU) 2019/2158 on the methodology and procedures for the determination and collection of data regarding fee factors used to calculate annual supervisory fees.

[Regulation \(EU\) 2019/2155](#)

[ECB Decision \(EU\) 2019/2158](#)

Commented [A&O6]: Is there a fees/levies heading?

OTHER DEVELOPMENTS

Queens Speech December 2019

On 19 December, the Queen's Speech was made to both Houses of Parliament, setting out the governments legislative priorities for the next parliamentary session. The main priority of the government is to deliver Brexit and agreeing a future relationship with the European Union based on a free trade agreement that benefits the UK. The government has also published a background briefing relating to the Queen's Speech, providing a summary of the content and legislation to be brought forward by the government. Amongst others, the government proposes a new financial services legislation which aims to: (i) deliver long-term market access between the UK and Gibraltar for financial services firms; (ii) simplify the process which allows overseas investment funds to be sold in the UK; and (iii) enable the UK to implement the Basel standards to strengthen the regulation of global banks, in line with previous G20 commitments.

[Read more](#)

Commented [A&O7]: Needs some work to bring out what's of interest to our clients. Refer to background briefings and see page 26

EC consultation on a digital operational resilience framework for financial services

On 19 December, the EC published a consultation on a digital operational resilience framework for financial services aiming to make the EU financial sector more resilient and secure. The financial sector is the largest user of information and communications technology (ICT) in the world. Its operational resilience relies to a large extent on ICT. This dependence poses new challenges as the increasing level of digitalisation of financial services makes the financial system vulnerable to operational incidents and cyber-attacks. In order to mitigate this risk financial supervisors' must work together across Member States and across different parts of the financial sector. The public consultation aims to inform the Commission on the development of a potential EU cross-sectoral digital operational resilience framework in financial services by gaining stakeholders views on: (i) strengthening the digital operational resilience of the financial sector, in particular as regards the aspects related to ICT and security risk; (ii) the main features of an enhanced legal framework built on several pillars; and (iii) the impacts of the potential policy options. The deadline for responses is 18 March 2020.

[Read more](#)

FSB work programme for 2020

On 17 December, the Financial Stability Board (FSB) published its work programme for 2020. The FSB aim to reinforce their forward-looking monitoring of developments to identify, assess and address new and emerging vulnerabilities. In addition to this they will continue working to: (i) finalise and operationalise the remaining elements of post-crisis reforms; (ii) monitor and assess the implementation of reforms; and (iii) evaluate their effects in order to ensure that reforms work as intended. The note summarises ongoing and planned FSB initiatives in 2020 in the main areas of FSB work. Bullet points indicate the main scheduled FSB publications. Deliverables to the G20 during the 2020 Saudi Arabian Presidency are marked with an asterisk. The Annex provides an indicative timeline of the FSB's publications planned for 2020.

[Read more](#)

FCA publish changes to FCA Handbook

On 13 December, the FCA published Handbook Notice 72 which outlines changes to the FCA Handbook made by the FCA board on 21 November and 12 December. The following changes were introduced: (i) the Conduct of Business (Speculative Illiquid Securities) Instrument 2019 which makes temporary rules restricting the marketing of speculative illiquid securities to retail investors; (ii) the Conduct of Business Sourcebook (Platform Switching) Instrument 2019, which adds a new section to the Conduct of Business Sourcebook (COBS), titled COBS 6.1H. This introduces new requirements for investment platforms which aim to mitigate barriers for consumers when switching platforms; (iii) the Alternative Investment Fund Managers Directive (Miscellaneous Amendments) Instrument 2019 which introduces changes to the Supervision manual (SUP) to help firms submit full and accurate information to the FCA; (iv) the Listing Rules and Disclosure Guidance and Transparency Rules (Miscellaneous Amendments No 2) Instrument 2019 which makes changes to the Handbook to update references to the UK Corporate Governance Code; (v) the Fees (Office for Professional Body Anti-Money Laundering Supervision) (No 3) Instrument 2019 which sets the fee-rate payable by professional body supervisors in 2019/20 at £37.60 per supervised individual.

[Read more](#)