

ALLEN & OVERY

Key Regulatory Topics: Weekly Update

28 June 2019 – 4 July 2019



BREXIT

Please see our [publication](#) entitled, 'A reflection on the current state of play regarding how EEA firms can provide financial services into the UK post-Brexit'.

CONSUMER/RETAIL

Please see the FinTech section for an update on the FCA's consultation paper on prohibiting sale to retail clients of investment products that reference cryptoassets.

FOS consultation on future funding

On 2 July, the Financial Ombudsman Service (FOS) published a consultation paper on the future of its funding. The FOS proposes to: (i) rebalance the proportion of the income received from its levy compared to that received from case fees. It is aiming to achieve an equal split between the two in order to give greater certainty and stability in its funding; (ii) change the number of "free" cases to 10 per firm, and to 50 for each group within its group account fee arrangement; and (iii) maintain reserves of a minimum of six months' operating income. The deadline for comments is 13 August.

[Read more](#)

CMA launches review of Part 6 of the Retail Banking Market Investigation Order 2017

On 1 July, the Competition and Markets Authority (CMA) announced that it has decided to conduct a review of Part 6 of the Retail Banking Market Investigation Order 2017 (the Order). Part 6 of the Order, which came into force on 2 February 2018, requires banks to automatically enrol all their customers into an unarranged overdraft alert; and to offer, and alert customers to the opportunity to benefit from, grace periods during which they can take action to avoid or reduce charges associated with unarranged overdraft use. On 18 December 2018, the FCA published rules on overdraft alerts, which enter into force on 18 December. Furthermore, on 7 June, the FCA also announced reforms to the way banks charge for overdrafts. As such, the CMA is considering whether, when the FCA's alert rules become active in December, there will be a change in circumstances in relation to Part 6 of the Order as the FCA's rules will be effectively duplicated by other regulatory provisions. The CMA has therefore launched the review to assess whether Part 6 of the Order would have been superseded and should be revoked. The deadline for comments is 22 July.

[Read more](#)

FCA policy statement on restricting CFD products sold to retail clients

On 1 July, the FCA published a policy statement (PS19/18) on restricting contract for difference (CFD) products sold to retail clients. The FCA published its consultation paper CP18/38 on the rules in December 2018. In PS19/18, the FCA requires firms offering CFDs and CFD-like options to retail consumers to: (i) limit

leverage to between 30:1 and 2:1 depending on the volatility of the underlying asset; (ii) close out a customer's position when their funds fall to 50% of the margin needed to maintain their open positions on their CFD account; (iii) provide protections that guarantee a customer cannot lose more than the total funds in their trading account; (iv) stop offering cash or other inducements to encourage trade; and (v) provide a standardised risk warning, telling potential customers the percentage of the firm's retail client accounts that make losses. Firms must comply with the rules from 1 August for CFDs and 1 September for CFD-like options.

[Read more](#)

ESMA opinion on the product intervention measures relating to CFDs proposed by FCA

ESMA published an opinion (dated 24 June) on the product intervention measure relating to CFDs and proposed by the FCA. On 25 January, the FCA notified ESMA of its intention to take a product intervention measure under Article 42 of MiFIR, which consists of a permanent restriction on the marketing, distribution or sale to retail clients in or from the UK of CFDs and CFD-like options. The FCA's proposed measures varied from ESMA's in four ways: (i) they capture products referred to by the FCA as 'CFD like-options', which are not included in ESMA's measures; (ii) they set a leverage limit of 30:1 for CFDs and CFD-like options referencing certain government bonds, instead of the 5:1 leverage limit provided for in ESMA's measures; (iii) they include minor amendments to the initial margin protection requirement in ESMA's measures; and (iv) they include minor amendments to the risk warnings in ESMA's measures.

[Read more](#)

FINANCIAL CRIME

Updated FATF recommendations

On 3 July, the FATF published an updated version (dated June) of its AML and CTF standards. The updated version includes an interpretive note to recommendation 15 (new technologies), where the FATF explains how its standards are applicable to virtual asset service providers (VASPs). The revisions address new and emerging threats, clarify and strengthen many of the existing obligations, while maintaining the necessary stability and rigour in the Recommendations. Among other things, the FATF explains in the interpretive note to recommendation 15, that: (i) VASPs should be required to be licensed or registered. At a minimum, VASPs should be required to be licensed or registered in the jurisdiction(s) where they are created; (ii) countries should identify, assess, and understand the money laundering and terrorist financing risks emerging from virtual asset activities and the activities or operations of VASPs; (iii) countries should ensure that VASPs are subject to adequate regulation and supervision or monitoring for AML/CTF and are effectively implementing the relevant FATF Recommendations to mitigate money laundering and terrorist financing risks emerging from virtual assets.

[Read more](#)

FINTECH

FCA consultation paper on prohibiting sale to retail clients of investment products that reference cryptoassets

On 3 July, the FCA published a consultation paper (CP19/22) on prohibiting the sale of investment products that reference cryptoassets. The FCA considers that retail customers cannot reliably assess the value and risks of derivatives and exchange traded products that reference certain cryptoassets. This is because of: (i) the nature of the underlying assets, which have no inherent value and so differ from other assets that have physical uses, promise future cash flows or are legally accepted as money; (ii) the presence of market abuse and financial crime in the secondary market for cryptoassets; (iii) extreme volatility in cryptoasset prices; and (iv) inadequate understanding by retail consumers of cryptoassets and the lack of a clear investment need for investment products referencing them. The FCA believes that these issues have and will cause harm to retail consumers from sudden and unexpected losses if they purchase such products. The deadline for comments is 3 October. The FCA intends to publish its final rules in a policy statement in early 2020.

[Read more](#)

FCA speech on regulating financial innovation

On 2 July, the FCA published a speech, given by Christopher Woolard, FCA Executive Director of Strategy and Competition, on regulating financial innovation. Mr Woolard talks about Facebook's plan for Libra, a stablecoin that it intends to launch in collaboration with a number of payment and tech firms. The FCA has been discussing these plans with Facebook, alongside other regulators and banks. If the plans come to fruition, Libra could be very significant indeed and pose questions for both the FCA and the BoE working with

international partners. The FCA has attempted to manage tensions surrounding cryptoassets through initiatives such as the regulatory sandbox. However, the FCA is now facing issues that could have a fundamental impact on the financial services system, and therefore needs to ensure that innovation works in the interests of consumers by thoroughly understanding the business models firms are suggesting and how they benefit customers. Mr Woolard goes on to talk about what are and are not stablecoins, and states that such labels are not very helpful. Market participants use 'stablecoin' broadly, which encompasses a variety of different types of cryptoassets. However, the FCA considers that stablecoins could fall under any of the three categories of cryptoasset that it has identified, including exchange tokens, security tokens or utility tokens. The FCA accepts that this is not an easy landscape to navigate, however, it invites firms to consider applying to the FCA's Innovation firm support services, such as direct support or the regulatory sandbox, which provides firms with the opportunity to set up compliant and controlled tests.

[Read more](#)

BIS to set up Innovation Hub for central banks

On 30 June, the BIS announced that it is establishing an innovation hub to foster international collaboration on innovative financial technology within the central banking community. The role of the hub will be to identify and develop in-depth insights into critical trends in technology affecting central banking, develop public goods in the technology space geared towards improving the functioning of the global financial system and will serve as a focal point for a network of central bank experts on innovation. Hub centres will be set up in Basel and Hong Kong, and a third hub will be established in Singapore, subject to the completion of the necessary institutional arrangements. The set-up and ongoing work of the hub centres will be supported by the host central banks: the Swiss National Bank, Hong Kong Monetary Authority and the Monetary Authority of Singapore. There will be a second phase of implementation which will see hub centres set up across Europe and the Americas.

[Read more](#)

INSURANCE

EIOPA consultation paper on the proposal for guidelines on outsourcing to cloud service providers

On 1 July, EIOPA published a consultation paper on guidelines on outsourcing to cloud service providers. The guidelines aim to provide clarification and transparency to market participants to avoid potential regulatory arbitrages, and foster supervisory convergence regarding the expectations and processes applicable to cloud outsourcing. EIOPA's guidelines cover areas including the following: (i) pre-outsourcing analysis – including undertaking due diligence on the prospective cloud service provider; (ii) documentation requirements and the written notification requirement to the supervisory authorities; (iii) risk assessments of cloud outsourcing; (iv) access and audit rights; (v) security of data and systems; and (vi) sub-outsourcing. The deadline for comments is 30 September.

[Read more](#)

IAIS roadmap for 2019

On 28 June, the IAIS published its 2019 roadmap. The IAIS' key activities for 2019 have been categorised into four sections: (i) standard setting – the projects in this area reflect the IAIS' work on supervisory material to finalise the revision of Insurance Core Principles and development of the Common Framework for the Supervision of Internationally Active Insurance Groups, including the Insurance Capital Standard; (ii) financial stability – projects reflect the IAIS' work on developing a holistic framework to mitigate systemic risk in the global insurance sector, recognising that systemic risk may arise from both the collective activities/exposures of insurers at a sector-wide level as well as from the distress or disorderly failure of individual insurers; (iii) implementation and assessment – projects support the IAIS' objective of globally effective implementation of the IAIS' supervisory material through assessing implementation and supporting Members to implement this material through the development of targeted guidance; and (iv) assessing and responding to emerging(ed) risks and opportunities – related projects facilitate sharing of experiences and practices amongst Members to help them better understand emerging supervisory issues and tackle supervisory challenges and opportunities such as FinTech, cyber risk and climate risk and sustainability.

[Read more](#)

MARKETS AND MARKETS INFRASTRUCTURE

ECB Dear CEO letter regarding banks' preparations for interest rate benchmark reforms

On 4 July, the ECB published a Dear CEO letter (dated 3 July) regarding banks' preparations for interest rate benchmark reforms and the use of risk-free rates. The purpose of the letter is to seek assurance that

institutions' senior managers understand the risks associated with the global benchmark reforms and are taking appropriate action to ensure a smooth transition to alternative or reformed benchmark rates, as certain changes in the methodology for relevant benchmark rates will be introduced as early as October this year.

[Read more](#)

Draft ECSDA CSDR Penalties Framework

On 4 July, the European Central Securities Depositories Association (ECSDA) published version 3 of its draft settlement fail penalties framework. The framework is applicable to all CSDs subject to the EU CSDR or similar regulation. The aim of the framework is to ensure that all CSDs implement the provisions in a harmonised way, neutral of whether settlement takes place in or outside of Target 2 Securities, and neutral to the systems that are used by CSDs to process settlement fails penalties.

[Read more](#)

EMMI granted authorisation under BMR for administration of EURIBOR

On 3 July, the European Money Markets Institute (EMMI) announced that it has been granted authorisation by the Belgian Financial Services and Markets Authority (FSMA) under Article 34 (critical benchmark administrator) of the Benchmarks Regulation (BMR) for the administration of EURIBOR. EMMI has conducted in-depth reforms over the last years to meet BMR requirements, strengthening its governance framework, and developing a new hybrid methodology.

[Read more](#)

Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2019 published

On 2 July, the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2019 was published, along with an explanatory memorandum and impact assessment (dated 5 June). The instrument inserts a new article 36FA in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO). This introduces a new exclusion from the scope of article 36A of the RAO, which specifies credit broking as a regulated activity, for introductions by registered social landlords and housing associations (RSLs) of individuals who seek to enter into credit agreements with social and community lenders. This instrument allows RSLs to effect fee-free referrals to tenants, or potential tenants, to these social and community lenders without requiring authorisation by the FCA. The exclusion will come into force on 23 July.

[Read more](#)

ESMA updated Q&As on CSDR

On 1 July, ESMA updated its Q&As on the implementation of the CSDR. The updated Q&As clarify what financial instruments should be covered by the reporting obligation under Article 9 of the CSDR.

[Read more](#)

ESMA ceases renewal of product intervention measure in relation to binary options

On 1 July, ESMA announced that it will no longer renew its product intervention measures relating to binary options. ESMA has put in place product intervention measures regarding binary options, imposing a temporary prohibition on their marketing, distribution or sale in various decisions. If the temporary prohibition is not renewed again, the currently applicable measure in ESMA Decision (EU) 2019/509 automatically expires at the end of 1 July.

[Read more](#)

PAYMENT SERVICES AND PAYMENT SYSTEMS

UK Finance access to payment account services good practice guidelines

On 4 July, UK Finance published good practice guidelines on access to payment account services. The guidelines aim to bring together the most relevant guidance around access to payment account services for applicants and credit institutions in a way that focuses on the responsibilities of both parties. The guidelines are voluntary and have been created to assist the industry in implementing the requirements of proportionality, objectivity and non-discrimination set out in the PSRs. The primary role of the guidelines is to signpost credit institutions and applicants to the relevant rules and guidance, in order to constructively help the provider and applicants by clearly presenting existing requirements for both parties with regards to the provision of payment account services.

[Read more](#)

FCA review of safeguarding arrangements of non-bank payment service providers

On 4 July, the FCA published findings of its review of safeguarding arrangements of non-bank payment service providers (PSPs). In the first six months of the year, the FCA carried out a multi-firm review with 11 non-bank PSPs to assess how well they meet the requirements for safeguarding service users' funds in the PSRs and EMRs. The FCA found examples where firms were meeting the individual components of the requirements effectively, but others where additional work was required to ensure customers' funds were fully protected if the firm became insolvent. Main observations include, among other things: (i) some firms need to be clearer regarding their business models, how they work and which funds are relevant and should be safeguarded; (ii) firms with networks of agents or distributors did not have adequate processes to ensure that relevant funds are segregated on receipt; and (iii) firms need to ensure that they have sufficient oversight of their arrangements for managing the risks to customer funds. The FCA published a Dear CEO letter on 4 July requiring all electronic money institutions and authorised payment institutions to review their safeguarding arrangements, to make sure that they fully meet the requirements. These firms should attest to the FCA that they are satisfied that they meet the requirements by 31 July.

[Press release](#)

[Dear CEO letter](#)

FCA response to EBA's opinion on strong customer authentication

On 28 June, the FCA published a response to the EBA's opinion on strong customer authentication (SCA) under PSD2. The EBA's opinion was published on 21 June and addresses key industry questions about which authentication factors comply with the requirements for SCA. Although the EBA's opinion permits the FCA to give firms additional time to implement SCA, the legal deadline for complying with the regulatory technical standards on SCA remains as 14 September. However, the FCA recognises the challenges in meeting this deadline and has been collaborating with the industry to develop a plan to migrate the industry to implement SCA as soon as possible after this deadline.

[Read more](#)

PENSIONS

EC adopts Delegated Regulation amending PRIIPs to align the transitional arrangements

On 3 July, the EC adopted a Delegated Regulation that amends the PRIIPs Delegated Regulation. The purpose of this Delegated Regulation is to align the transitional arrangement for PRIIP manufacturers offering units of funds referred to in Article 32 of the PRIIPs Regulation as underlying investment options, with the prolonged exemption period under that Article. The Delegated Regulation extends the transitional arrangements for companies and persons in Article 32 of Regulation (EU) No 1286/2014 in relation to certain investment funds by two years, to 31 December 2021. The Delegated Regulation will now be considered by the EP and Council of the EU. It will enter into force 20 days after its publication in the OJ.

[Read more](#)

PRUDENTIAL REGULATION

FSB publishes review of TLAC standard

On 2 July, the FSB published a technical review of the implementation of the TLAC standard. The review concludes that progress in implementation has been steady and significant in both the setting of external TLAC requirements by authorities and the issuance of external TLAC by G-SIBs. The review finds that continued efforts are required to support effective implementation of the TLAC standard. As such, the FSB will: (i) continue to monitor the implementation of the TLAC standard and issuance of TLAC instruments and will report at least annually on progress made; (ii) review the resolvability assessment template to ensure that crisis management groups (CMGs) consider as part of their resolvability assessments for each G-SIB the quantity, quality and group-wide distribution of TLAC resources; (iii) take stock of the range of practice of authorities and CMGs in implementing the TLAC standard; (iv) consider, as part of ongoing work, how resolution-related disclosures could be further strengthened; and (v) work closely with the BCBS to consider any interactions between going and gone-concern perspectives.

[Read more](#)

RECOVERY AND RESOLUTION

SRB paper on public interest assessment

On 3 July, the SRB published a paper on its approach to the public interest assessment (PIA). The PIA looks at whether the resolution of a particular bank that is failing or is likely to fail would be necessary, for example

to ensure one or more of the following objectives: maintaining financial stability, protecting covered depositors and safeguarding public funds by minimising reliance on extraordinary public financial support. If not, resolution actions would not be taken and national insolvency procedures would apply. The paper explains the factors that the SRB takes into account when undertaking a PIA and states how the SRB applies the criteria outlined in EU law.

[Read more](#)

SUSTAINABLE FINANCE

FCA, FRC, PRA and Pensions Regulator statement on climate change

On 2 July, the FCA, Financial Reporting Council, PRA and the Pensions Regulator (the Regulators) published a joint statement on climate change. The Regulators acknowledge that climate change is one of the defining issues of our time, and it presents far-reaching financial risks relevant to their respective mandates. The risks are from both physical factors, such as extreme weather events and transition risks that can arise from adjusting to a carbon neutral economy. The Regulators welcome the action being taken as part of the UK's Green Finance Strategy to ensure a coordinated approach and look forward to further collaboration to advance progress in the near term on climate-related issues.

[Read more](#)

Government publishes Green Finance Strategy

On 2 July, the government published its Green Finance Strategy. The government's objectives are to align private sector financial flows with clean, environmentally sustainable and resilient growth and to strengthen the competitiveness of the UK financial sector. To achieve these objectives, the government intends to use three strategic pillars, which are: (i) ensuring current and future financial risks and opportunities from climate and environmental factors are integrated into mainstream financial decision making, and that markets for green financial products are robust; (ii) accelerating finance to support the delivery of the UK's carbon targets and clean growth, resilience and environmental ambitions, including international objectives; and (iii) ensuring that UK financial services capture the domestic and international commercial opportunities arising from the 'greening of finance', such as climate related data and analytics.

[Read more](#)

TAXES AND LEVIES

FCA policy statement on regulated fees and levies for 2019/20

On 1 July, the FCA published a policy statement (PS19/19) outlining the 2019/20 regulatory fees and levies for the FCA, the FOS, the Money and Pensions Service, the devolved authorities and the illegal money lending levy. The total 2019/20 annual funding requirement (AFR) remains unchanged from CP19/16 at £558.5 million, an increase of 2.7%. The AFR includes the FCA's ongoing regulatory activities budget, the costs it needs to recover for changes to its regulated responsibilities, and the costs associated with EU withdrawal. The rules for the 2019/20 fees and levies are made in: (i) Periodic Fees (2019/20) and Other Fees Instrument 2019 (FCA 2019/76); and (ii) Periodic Fees (2019/20) and Other fees (EU Exit) Instrument 2019 (FCA 2019/77). These instruments were made on 27 June by the FCA board.

[Read more](#)

OTHER DEVELOPMENTS

UKRN Annual Report and 2019/20 Work Plan

On 4 July, the UK Regulators' Network (UKRN) published its Strategy and Forward Work Programme for 2019/20. The UKRN's work programme reflects the challenges facing regulators and is organised around two key pillars: consumers in vulnerable circumstances and infrastructure and investment. The UKRN also reviews its activities over the previous year.

[Read more](#)

FCA Handbook Notice 67

On 28 June, the FCA published Handbook Notice 67. The Notice reflects changes made to the Handbook by the following instruments: (i) Mortgages and Home Finance (Peer to Peer) Instrument 2019; (ii) Operating an Electronic System in Relation to Lending (Peer-to-Peer Lending) Instrument 2019; (iii) Enforcement (EU Securitisation Regulation) (No 2) Instrument 2019; (iv) Personal Current Accounts and Overdrafts Instrument 2019; (v) Buy Now Pay Later Instrument 2019; (vi) Listing and Disclosure Sourcebooks (Shareholder Rights Directive) Instrument 2019; (vii) Shareholder Rights Directive (Asset Managers and Insurers) Instrument

2019; (viii) Conduct of Business (Contracts for Difference) Instrument 2019; (ix) Periodic Fees (2019/20) and Other Fees Instrument 2019; (x) Periodic Fees (2019/20) and Other Fees (EU Exit) Instrument 2019; and (xi) Payment Services and Buy Now Pay Later (Administrative Amendments) Instrument 2019.

[Read more](#)