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UK

Firms' preparations for the UK's withdrawal from the EU: Dear CEO letter on planning assumptions

On 20 December 2017, the PRA published the text of a Dear CEO letter from its CEO and Bank of England Deputy Director, Prudential Regulation, Sam Woods. The letter is relevant to those banks, insurers and designated investment firms that undertake cross-border activities between the UK and the rest of the EU.

The letter refers to Mr Woods' 7 April 2017 letter to firms which asked them to set out a summary of their contingency plans for the UK's withdrawal from the EU, ensuring that they had considered a full range of scenarios. Mr Woods says that it is apparent from firms' responses that there are a number of cross-cutting concerns that are likely to present complications for UK and EU firms alike.

Specifically, many firms have highlighted risks to the continuity of existing cross-border contracts, and to the cross-border flow of personal data, following UK withdrawal. Firms may choose to solve these issues through their own actions where appropriate, and the PRA will work with firms on those actions. However, the PRA thinks it will be difficult, ahead of March 2019, for firms on their own to mitigate fully the risks of disruption to financial services, and the PRA is also therefore seeking appropriate mitigations from the UK Government and its EU counterparts.

The PRA welcomes the announcement from HM Treasury that the Government will act if necessary to mitigate risks to the continuity of EEA firms' outstanding contracts in the UK. More broadly, firms will need to move forward based on prudent planning assumptions until details of the UK's new trading relationship with the EU and any implementation period are finalised. The letter sets out the PRA's views on those assumptions.

The PRA also welcomes the Government's announcement regarding its intention to provide the means for the UK authorities, should they consider it necessary, to create a temporary permissions regime for their firms. The PRA encourages firms to begin preparing for authorisation in line with the approach set out in the letter, and will consider use of the temporary permissions regime only as a fall-back.

UK withdrawal from the EU: FCA statement

On 20 December 2017, the FCA published a statement on the UK's withdrawal from the EU. This follows the European Council's confirmation, on 15 December 2017, that sufficient progress had been made to move to the second phase of negotiations related to transition (the implementation period) and the framework for the future relationship between the UK and the EU.

The FCA welcomes the intention to provide for an implementation period to ensure a smooth and orderly exit from the EU, although the final nature of any implementation period is yet to be agreed. The FCA anticipates that firms will be able to continue to benefit from passporting between the UK and the EEA during this period. The FCA will monitor the negotiations and provide further information to firms as appropriate.

The FCA refers to HM Treasury's announcement that, if necessary, the Government will legislate for a temporary permissions regime. This regime will enable relevant firms and funds to undertake new business within the scope of their permissions, enable them to continue performing their contractual rights and obligations, manage existing business, and mitigate risks associated with a sudden loss of permission.

The FCA says that firms and funds that are solely regulated in the UK by the FCA would need to notify the FCA, before the day that the UK leaves the EU, of their wish to benefit from the regime but this notification for temporary permission will not require submission of an application for authorisation. The FCA will set out further details of its approach in the new year. To support this, and to provide consistent and effective supervision, the FCA will continue to co-operate closely with the home state regulators of EEA firms and the European Supervisory Authorities.

Firms based in the UK servicing clients in the EEA should continue to prepare for a range of scenarios, and should discuss these arrangements and the implications of an implementation period with the relevant EU regulators. The FCA will keep these expectations under review as negotiations on an implementation period progress and communicate to firms accordingly.

HM Treasury has also announced that it will provide the FCA with functions and powers relating to UK and non-UK credit rating agencies (CRAs) and trade repositories (TRs). The FCA will work closely with the Government and UK CRAs and TRs with the aim of ensuring a smooth transition to the new UK regime.

The FCA reminds firms that the UK remains a Member State of the EU and therefore all rights and obligations derived from EU law continue to apply. Firms must abide by their obligations and continue with implementation plans for legislation that is still to come into effect.

Financial services update: Chancellor of the Exchequer written statement in the House of Commons

On 20 December 2017, a written statement made in the House of Commons by the Chancellor of the Exchequer, Philip Hammond, on behalf of HM Treasury, relating to the Bank of England's plans to ensure continuity in financial services in the unlikely event of no deal with the EU, was published

Among other things, the Government will:

- if necessary, bring forward legislation which will enable EEA firms and funds operating in the UK to obtain a "temporary permission" to continue their activities in the UK for a limited period after withdrawal from the EU;
- alongside the temporary permissions regime, legislate, if necessary, to ensure that contractual obligations, such as insurance contracts which are not covered by the regime, can continue to be met.
- bring forward secondary legislation to ensure that UK authorities are able to carry out functions currently undertaken by EU authorities. It proposes to give the Bank functions and

powers in relation to non-UK central counterparties and non-UK central securities depositories. If necessary, the Government will also provide for a temporary regime to enable the Bank to permit these firms to continue to operate in the UK for a limited period after exit;
- provide the Financial Conduct Authority (FCA) with functions and powers in relation to UK and non-UK credit rating agencies and trade repositories, and any powers necessary to manage the transition post-exit. HM Treasury will work with the Bank and the FCA as they determine how they will use these powers, consistent with their statutory objectives.

See also the item above for the related FCA statement relating to the UK's withdrawal from the EU, also published on 20 December 2017.

PRA publishes consultation on its updated approach to authorisation and supervision of insurers in light of Brexit

On 20 December 2017, the PRA published a consultation paper containing its proposals for an updated approach to the way it authorises and supervises insurers in the light of Brexit.

CP30/17 sets out the PRA's proposed new approach to authorising and supervising third-country insurers that carry on (or are considering carrying on) insurance business in the UK through a branch or by forming a subsidiary. The purpose of the proposals is to support the interpretation of the PRA Rulebook on third-country branches and to explain the PRA's policy towards authorising and supervising third-country insurers or those contemplating establishing a branch or subsidiary in the UK.

The proposals are relevant to all existing and prospective insurance firms carrying out regulated activities, but not headquartered, in the UK that are not able to benefit from passporting rights. The PRA's approach to branch supervision for EEA firms that are currently branching into the UK under the passporting arrangements remains unchanged until the UK withdraws from the EU. At the time of this consultation, the proposals do not apply to Swiss General Insurers, as defined in the PRA Rulebook, to which different requirements apply pursuant to the Swiss Treaty Agreement (No. 91/370/EEC).

The PRA proposes to publish a supervisory statement to set out factors that would be considered relevant when considering authorisation as a third-country branch or a subsidiary (see appendix). Supervisory Statement 44/15 "Solvency II: third-country insurance and pure reinsurance branches" will remain unchanged.

Comments are requested by 27 February 2018.

UK financial services regulation following the UK's withdrawal from the EU: HM Treasury letter to House of Commons Treasury Select Committee

On 19 December 2017, the House of Commons Treasury Select Committee published the text of a letter from the Economic Secretary to the Treasury, Stephen Barclay, to the Chair of the Select Committee, Nicky Morgan, on UK financial services regulation following the UK's withdrawal from the EU.

The letter, which is dated 12 December 2017, followed a meeting, between Mr Barclay and Mrs Morgan on 11 December 2017, in which they discussed how HM Treasury intends to use the European Union (Withdrawal) Bill to domesticate the body of EU financial services legislation, and the responsibilities of the European Commission and the European Supervisory Authorities, in order to provide a UK regulatory regime which delivers financial stability and certainty for firms and consumers from the first day that the UK is no longer in the EU. In the letter, Mr Barclay summarises HM Treasury's proposed approach.

HM Treasury believes that the approach outlined in the letter is an appropriate allocation of responsibilities which respects the regulatory framework set by Parliament, ensures democratic

accountability for legislation which sets the direction of policy, and fits with the existing responsibilities of UK regulators.

Mr Barclay says that he will update Mrs Morgan in the new year on HM Treasury's timetable for the legislation.

FCA publishes PS17/27: Insurance Distribution Directive implementation - feedback to CP17/23 and near-final rules

On 15 December 2017, the FCA published a feedback statement, PS17/27, which responds to the feedback it received to its July 2017 consultation paper, CP17/23, on implementation of the Insurance Distribution Directive (IDD). CP17/23 was the second of three consultation papers on the IDD and covered the implementation of most IDD Level 1 directive matters, including the remaining conduct requirements for life policies and information disclosure in relation to noninvestment insurance contracts, that were not covered in the FCA's first consultation paper, CP17/7, which was published in March 2017.

PS17/27 summarises the FCA's approach to making:

- changes to its rules to implement the IDD requirements for life insurance business generally, including additional requirements related to the distribution of insurance-based investment products (see chapters 2 to 6);
- changes to its rules to implement IDD requirements that apply to life and non-investment insurance business (see chapters 7 to 10);
- additional Handbook changes relating only to non-investment insurance business, including information disclosure requirements and the insurance product information document (IPID) (see chapter 11);
- consequential amendments to other parts of the Handbook (see chapter 12).

The FCA says that most respondents supported its proposals or asked for further guidance. In general, the FCA plans to implement the consultation proposals with only minor changes. The minor changes reflect amendments it has made to implement the MiFID II Directive and the Financial Advice Markets Review.

Many respondents raised concerns about the lack of time available for firms to implement the IDD requirements, particularly in relation to the new IPID, which firms have emphasised will require IT system changes. The FCA says that as the timetable is set by the European Commission it cannot offer an extension to it in the UK alone. It has sought to give as much time as possible to firms by consulting in stages, rather than waiting for the delegated acts to be adopted. The European Parliament has suggested a delay to implementation and this is being considered at EU level. In the meantime the FCA continues to work on the assumption that the implementation date remains 23 February 2018.

Appendix 1 to the policy statement contains the FCA's near-final rules in the areas covered by PS17/27, the Insurance Distribution Directive (Conduct of Business for Life Policies, Non-Investment Insurance Product Information, Organisation and Other Requirements) Instrument 2018, which comes into force on 23 February 2018.

The FCA says that a number of proposals in CP17/23 were subject to additional proposals in its third IDD consultation paper, CP17/33, which was published in September 2017 and which discussed its approach to the IDD delegated acts. It needs to consider some of these issues, which include conflicts of interest, inducements and product governance, in light of feedback to CP17/33, so it is not including near-final rules or a detailed response to feedback for these matters in this policy statement. The FCA will cover these issues in its third policy statement, which will take account of relevant feedback both from CP17/23 and CP17/33. This will avoid it providing near-final rules which are then subject to additional changes in the third policy statement.

The FCA aims to publish its third and final IDD policy statement, together with its final rules, in January 2018. Firms affected by these changes will need to ensure compliance from 23 February 2018.

FCA publishes final rules and statement on authorisation and supervision of ISPVs

On 1 November 2017, the FCA published a policy statement, PS17/24, setting out the near final rule changes required to the FCA Handbook to incorporate the new regulated activity of insurance risk transformation. At the time of publication, the Risk Transformation Regulations 2017, SI 2017/1212, (RTR) which were laid before Parliament on 12 October 2017 had not yet become law. The policy statement therefore contained the FCA's near-final, draft material because its rules must refer to that domestic legislation. The FCA said that it would finalise its rules when the RTR had become law.

On 13 December 2017, the FCA updated its webpage on PS17/24 to give the information that the RTR came into force on 8 December 2017 and so it has finalised its rules in the Risk Transformation Regulations 2017 (Consequential Amendments) Instrument 2017, FCA 2017/81 and FOS 2017/8. Except for the amendment to SYSC 1 Annex 1 3.2ER which comes into force on 3 January 2018, this instrument came into force on 13 December 2017.

The FCA has also published a statement which sets out its approach and expectations when authorising and supervising insurance special purpose vehicles (ISPVs) in line with its objectives and Threshold Conditions. This statement should be read in conjunction with PS17/24 and the RTR.

PRA updates SS8/17: Authorisation and supervision of ISPVs

On 8 December 2017, the PRA published an updated version of supervisory statement (SS) 8/17 on authorisation and supervision of insurance special purpose vehicles (ISPVs).

SS8/17 was originally published on 1 November 2017 and has been updated to insert the statutory reference to the Risk Transformation Regulations 2017, SI 2017/1212 and include a reference to the Financial Conduct Authority's statement on authorising and supervising ISPVs.

The PRA has also published an updated version of appendix 6 to its November 2017 policy statement, PS26/17, on the authorisation and supervision of ISPVs, containing the text of PRA Rulebook: Solvency II Firms: Non Solvency II Firms: Transformer Vehicles Instrument 2017, PRA 2017/36, which came into force on 8 December 2017.

The PRA says that firms may also find it useful to refer to its dedicated ISPVs webpage.

FCA consults on how firms and individuals will transition to the senior managers and certification regime

On 13 December 2017, the FCA announced the publication of three consultation papers containing a package of proposals on how firms and individuals will move to the senior managers and certification regime (SM&CR). This follows the FCA's July 2017 consultation papers, CP17/25, on extending the SM&CR to all FCA firms and CP17/26 on extending the SM&CR to insurers.

Details of the three consultation papers are given in the next three items below.

CP17/40: Individual accountability: transitioning firms and individuals to the SM&CR

CP17/40 (which is 1243 pages long) explains the FCA's proposals for how firms and individuals will be transitioned to the new regime, and includes the forms needed to achieve this. Chapter 3 sets out proposed transitional arrangements for moving from the approved persons regime (APR) to the SM&CR. The FCA's proposed approach to conversion of relevant individuals is set out in chapters 4 and 5. The proposals are different for core, limited scope or enhanced firms under the criteria set out

in CP17/25. Paragraph 1.3 of the consultation paper contains a firm checker tool for firms to work out which category applies to them.

The FCA is proposing:

- to automatically convert most of the approved persons at core and limited scope firms into the corresponding new senior management functions (SMF);
- that enhanced firms need to submit a conversion notification (Form K) and accompanying documents.

Chapter 6 sets out the proposed changes to regulatory forms. These reflect the move to the SM&CR, while keeping APR for appointed representatives (ARs), and some consequential changes, including applying the late returns fee to late or non-submitters of REP008 (the annual report of Conduct Rules breaches).

In chapter 7, the FCA sets out several consequential amendments to the FCA Handbook to make sure that the move to the new regime is effective. These include:

- changes necessary to keep the APR for ARs;
- changes to SUP 10C, to reflect the extension of the SM&CR to FCA solo-regulated firms, and insurers;
- some changes to clarify how the regime applies to different types of firms;
- consequential changes to the Enforcement Guide and the Decision Procedure and Penalties Manual;
- additional guidance on the SMF24 (chief operations function);
- changes to the Glossary.

Chapter 8 contains proposals that are directly relevant to firms subject to the banking regime (banks, building societies, credit unions and Prudential Regulation Authority-designated investment firms). The FCA says that banking firms will need to note its proposal to apply the late returns fee to non-submitters of REP008.

Comments are requested by 21 February 2018. The FCA plans to publish the rules, including its final approach to transition and conversion, in a policy statement in summer 2018.

The FCA says that firms may wish to think about whether they have the appropriate people in the correct approved functions before the conversion of approved individuals from the APR to the SM&CR takes place. This will help to make their transition to the new regime as easy as possible.

CP17/41: Individual accountability: Transitioning insurers and individuals to the SM&CR

CP17/41 (which is 1242 pages long) sets out how the FCA proposes to move insurers and individuals to the SM&CR, as well as associated changes to the FCA Handbook. This consultation should be read with the Prudential Regulation Authority's related consultation paper, see item 2.6 below.

The FCA says that, given the differences in the size and nature of the firms covered by the extended regime, it recognises that it would not be appropriate to approach moving individuals into the SM&CR in the same way for all insurers. With this in mind, it proposes:

- to automatically convert most of the approved persons at small non-Directive firms (NDFs), small run-off firms and insurance special purpose vehicles into the corresponding new senior management functions;
- that Solvency II firms and large NDFs need to submit a conversion notification (Form K) and accompanying documents.

Chapter 3 of the consultation paper sets out proposed transitional arrangements for moving from the revised approved persons regime (APR) to the SM&CR. The FCA's proposed approach to converting approved individuals from the revised APR to the SM&CR is set out in chapters 4, 5 and 6. The proposals differ according to the type of firm and the extent to which the SM&CR applies to that firm, under the criteria proposed in CP17/26.

Chapter 7 sets out the FCA's proposed changes to regulatory forms. These reflect the move to the SM&CR and the retention of APR for appointed representatives (ARs). There are also a number of consequential changes, including applying the late returns fee to late or non-submitters of REP008 (the annual report of Conduct Rules breaches).

Chapter 8 of the consultation paper sets out several consequential changes to the FCA Handbook to ensure that the move to the new regime is effective. These include:

- changes necessary to keep the APR for ARs;
- changes to SUP 10C, to reflect the extension of the SM&CR to insurers and FCA solo-regulated firms;
- changes to SYSC 2.1 (apportionment of responsibilities);
- some changes to SYSC 2.2 (recording the apportionment);
- consequential changes to the Decision Procedure and Penalties Manual and to the Enforcement Guide;
- changes to the Glossary.

Comments are requested by 21 February 2018. The FCA plans to publish the rules, including its final approach to transition and conversion, in a policy statement in summer 2018.

The FCA says that firms may wish to think about whether they have the appropriate people in the correct approved functions before the conversion of approved individuals from the APR to the SM&CR takes place. This will help to make their transition to the new regime as easy as possible.

CP17/42: The duty of responsibility for insurers and FCA solo-regulated firms

Since May 2016, the duty of responsibility has applied to senior managers of banking firms. It will also apply to senior managers of insurers and FCA solo-regulated firms when the senior managers and certification regime (SM&CR) is extended.

Under the duty of responsibility, the FCA can take enforcement action against senior managers if:

- there was a contravention of a relevant requirement by the senior manager’s firm;
- at the time of the contravention or during any part of it, the senior manager was responsible for the management of any of the firm’s activities in relation to which the contravention occurred;
- the senior manager did not take such steps as a person in their position could reasonably have been expected to take to avoid the contravention occurring or continuing

In consultation paper CP17/42, the FCA sets out how it plans to apply the duty of responsibility to insurers and solo-regulated firms once the SM&CR is extended.

The FCA says that its Decision Procedure and Penalties Manual (DEPP) already sets out (in DEPP 6.2.9-A G to 6.2.9-F G) guidance as to:

- the circumstances in which it will apply the duty;
- a non-exhaustive list of considerations that may be relevant when determining whether a senior manager was responsible for the management of any of a firm’s activities in relation to which a contravention of a relevant requirement by the firm occurred; and

- a non-exhaustive list of considerations it will keep in mind when determining whether a senior manager took the steps such a person in their position could reasonably have been expected to take to avoid the firm's contravention occurring or continuing.

The FCA says that definitional changes to the FCA Handbook already proposed in the July 2017 consultation papers, will have the effect of applying the guidance in DEPP 6.2, to senior managers of insurers and FCA solo-regulated firms. It does not believe that it needs to amend that guidance to reflect the extension of the duty to such senior managers. Chapter 2 of the consultation paper summarises some of the important factors the FCA took into account when producing the guidance in DEPP 6.2.

The guidance is not prescriptive about the steps that a senior manager should take to avoid a firm contravention occurring or continuing, as the steps reasonably expected, will vary from case to case depending on the circumstances. Nor, for this reason, does it set out examples of the steps reasonably expected of senior managers at specific types of firms.

Comments are requested by 21 February 2018. The FCA will publish a policy statement in 2018, setting out whether any further changes to the FCA Handbook, beyond those proposed in the July 2017 consultation papers, need to be made to reflect the extension of the duty of responsibility to insurers and FCA solo-regulated firms.

PRA publishes CP28/17: Strengthening accountability: implementing the extension of the SM&CR to insurers and other amendments

On 13 December 2017, the PRA published a consultation paper, CP28/17, which sets out the proposed changes to forms and other consequential changes and minor administrative amendments related to the extension of the senior managers and certification regime (SM&CR) to insurers.

The consultation paper should be read in conjunction with CP8/17, which proposed optimisations to the existing senior insurance managers regime (SIMR), and CP14/17, which proposed the extension of the SM&CR to insurers. It should also be read in conjunction with the Financial Conduct Authority's consultation paper CP17/41, also published on 13 December 2017, which contains the FCA's equivalent proposals to implement the extension (see item 1.8 above).

The consultation paper includes proposals on:

- the rationalisation of the existing SM&CR/SIMR forms to produce a streamlined set of forms, and amendments to Part 4A Permission forms (see chapter 2);
- implementing the extension to insurers, including some transitional arrangements and changes to references to the existing SIMR and senior insurance management functions (see chapter 3);
- the process for transferring from a senior management function at an insurance firm to a banking firm (see chapter 4); and
- the removal of gendered language from the SM&CR (see chapter 5).

The consultation paper includes the following appendices:

- the draft PRA Rulebook: CRR Firms, Non-CRR Firms, Solvency II Firms, Non-Solvency II Firms: Senior Managers Regime Amendment (No 2) Instrument (see appendix 1);
- draft Part 4A permission forms (see appendix 2);
- draft SM&CR forms (see appendix 3).

Comments are requested by 21 February 2018. The extended SM&CR for insurers will not come into effect until a commencement date has been set by HM Treasury, at which point the PRA proposes to publish the final policy and rules. This is currently expected during 2018.

PRA publishes CP27/17: Solvency II: internal models update

On 12 December 2017, the PRA published a consultation paper, CP27/17, which proposes updated expectations of firms in respect of the model change process set out in supervisory statement (SS) 12/16 " Solvency II: changes to internal models used by UK insurance firms" and internal model change policies set out in SS17/16 "Solvency II: internal models - assessment, model change and the role of non-executive directors". The consultation paper also proposes a process for quarterly model change reporting.

CP27/17 is relevant to all UK Solvency II firms, the Society of Lloyd's and its managing agents. It is most relevant to firms that have an internal model approval. It may also be of interest to UK Solvency II firms seeking approval to use an internal model and to UK Solvency II firms that are part of the EEA or non-EEA groups with a group internal model.

Comments are requested by 20 March 2018. The PRA proposes that the updated guidance on the model change process and model change policies would be implemented in the second quarter of 2018. It considers that the proposed change to the model change process would result in the need for firms to modify their model change policies. The PRA proposes that the changes in relation to minor model change reporting would take effect from June 2018.

Alongside the publication CP27/17, the PRA has also published a statement setting out its review of the time it had taken to assess model change applications approved since the implementation of Solvency II on 1 January 2016; how firms had completed the common application package when making model change applications; and how firms have defined model changes in model change policies.

General insurance stress test 2017 results: PRA Dear CEO letter

On 7 December 2017, the PRA published the text of a Dear CEO letter sent by the PRA's Insurance Director, Anna Sweeney, to the CEOs of firms who participated in the PRA's general insurance stress test exercise which was launched in April 2017. The letter gives feedback on the exercise.

The PRA's main findings were:

- **resilience**: the UK general insurance sector in aggregate, and regulated firms at an individual level, are resilient to those scenarios within the regulatory threshold of Solvency II;
- **reinsurance interconnectedness**: there is no evidence that the level of interconnectedness, reflected by the concentration to specific reinsurers, has increased. The results indicate that concentration to individual reinsurers has fallen marginally since 2015 (when the last stress test took place), with alternative capital remaining an important part of reinsurance panels.

The PRA says that the results suggest potential areas for improvements that impact underwriting, finance and risk functions in relation to exposure management, natural catastrophe modelling weaknesses, post loss planning and accounting.

The annex to the letter contains high-level results and observations on the exercise. The PRA says that these results will inform supervision, for instance where firms are identified as outliers or have results which appear inconsistent with their stated risk appetite or the output of their internal model. The PRA is following up with these firms as part of its normal supervision. It anticipates the next stress test exercise will be in 2019.

Risk Transformation Regulations 2017 and Risk Transformation (Tax) Regulations 2017

The Risk Transformation Regulations, SI 2017/1212, which were made on 5 December 2017, have been published, together with an explanatory memorandum. A related explanatory memorandum has also been published. The Risk Transformation (Tax) Regulations 2017, SI 2017/1271, were made on 12 December 2017. A related explanatory memorandum has also been published. These

Regulations, which come into force three days after the day on which they were made, implement a new regulatory and supervisory framework for insurance linked securities (ILS) in the UK.

Part 2 of the Regulations makes provision for the authorisation and supervision of transformer vehicles which assume certain risks from insurance or reinsurance companies. A new regulated activity is introduced into the Financial Services and Markets Act 2000 (Regulated Activities) Order 2011, which has the effect of bringing transformer vehicles carrying on that activity within the scope of regulation under the Financial Services and Markets Act 2000 (FSMA). An amendment to the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 means that this activity is a Prudential Regulation Authority (PRA) regulated activity for the purposes of FSMA.

Part 3 of the Regulations restricts the type of investors to whom transformer vehicles may issue investments.

Part 4 of the Regulations enables the creation of a new type of body corporate, called a "protected cell company", for transformer vehicles. Protected cell companies are comprised internally of different parts which, whilst being part of a single legal entity, are segregated from each other. This enables the protected cell company to ring-fence different contractual arrangements, so that the liabilities of the protected cell company arising in respect of a contractual arrangement are only payable out of assets held by the protected cell company in respect of that arrangement.

Packaged Retail and Insurance-based Investment Products Regulations 2017

The above Regulations, SI 2017/1127, which come into force on 1 January 2018, have been published together with a related explanatory memorandum.

The Regulations implement in part certain provisions of the Regulation on key information documents for packaged retail and insurance-based investment products (PRIIPs) (PRIIPs Regulation). The PRIIPs Regulation requires those manufacturing a PRIIP to draw up a key information document (KID) containing standard information, and requires persons advising on or selling PRIIPs to provide the key information document to retail investors.

Among other things, the Regulations:

- designate the Financial Conduct Authority (FCA) as the competent authority for the purposes of the PRIIPs Regulation;
- implement Article 24(2)(a), (b) and (d) of the PRIIPs Regulation by providing the FCA with the power to prohibit or suspend the marketing of a PRIIP, to prohibit the provision of a KID or to require the publication of a new version of a KID document where certain requirements of the PRIIPs Regulation have been infringed;
- give the FCA the power to impose penalties and make a statement in relation to a contravention of the PRIIPs Regulation. In doing so, the Regulations implement requirements in Article 24(2)(c) and (e) of the PRIIPs Regulation in relation to persons upon whom the PRIIPs Regulation imposes requirements and who are not authorised for the purposes of the Financial Services and Markets Act 2000;
- implement Article 24(4) of the PRIIPs Regulation regarding the notification of the retail investors concerned where an Article 24(2) penalty or measure has been imposed;
- implement Article 26 of the PRIIPs Regulation by providing a right to refer FCA decisions under the Regulations to the Upper Tribunal;
- make consequential amendments to primary and secondary legislation.

INTERNATIONAL

FSB publishes consultation document on key attributes assessment methodology for the insurance sector

On 21 December 2017, the Financial Stability Board (FSB) published a consultation document on a methodology for assessing the implementation of the key attributes of effective resolution regimes for financial institutions in the insurance sector.

The methodology sets out criteria for assessing the compliance of a jurisdiction's insurance resolution frameworks with the key attributes. It is designed to promote consistent assessments across jurisdictions and to provide guidance to jurisdictions when adopting or reforming insurance resolution regimes to implement the key attributes. It will be used by the International Monetary Fund and the World Bank as part of the regulatory assessments they undertake.

Comments are requested by 28 February 2018.

2017 G-SII identification process: IAIS report

On 19 December 2017, the International Association of Insurance Supervisors (IAIS) published a report on the 2017 global systemically important insurers (G-SIIs) identification process.

EIOPA opinion on service continuity in insurance following the UK withdrawal from the EU

On 21 December 2017, the European Insurance and Occupational Pensions Authority (EIOPA) published an opinion on service continuity in light of the UK's withdrawal from the EU.

The opinion is addressed to insurance undertakings and national supervisory authorities and underlines the importance of sufficient preparation so that undertakings can continue to service contracts following the UK's withdrawal from the EU and prevent insurance activities without authorisation.

EIOPA urges insurance undertakings to take necessary steps in good time to ensure service continuity. Steps will depend on the particular situation of the affected undertaking. They may include, for example:

- the transfer of contracts of UK undertakings with policyholders in the EU27 to an insurance subsidiary established in an EU27 Member State;
- the transfer of insurance contracts of EU27 undertakings with UK policyholders to an insurance subsidiary established in the UK;
- the establishment of a third country branch in the UK or in the EU27 Member State of the policyholder; and
- for UK undertakings in the legal form of a European company, the change of domicile of the company to an EU27 Member State.

EIOPA advises insurance undertakings to have contingency plans for the eventuality that there is no political agreement between the EU and the UK at the date of withdrawal. Supervisory authorities are also recommended to take appropriate steps to ensure that insurance undertakings are adequately prepared and have, for example, conducted realistic impact assessments and developed adequate contingency plans, allowing sufficient time to implement the plans.

EIOPA will monitor the development and implementation of the contingency plans, in close co-operation with national supervisory authorities.

IDD: Commission Delegated Regulations on product oversight and governance and IBIPs published in the Official Journal

On 20 December 2017, the texts of the following Commission Delegated Regulations made under the Insurance Distribution Directive (IDD) were published in the Official Journal of the European Union:

- Commission Delegated Regulation (EU) 2017/2358 of 21 September 2017 supplementing the IDD with regard to product oversight and governance requirements for insurance undertakings and insurance distributors;
- Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017 supplementing the IDD with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products (IBIPs).

Both Delegated Regulations will enter into force on the twentieth day following that of their publication in the Official Journal.

IDD: European Commission adopts legislative proposal to delay application date

On 20 December 2017, the European Commission adopted a legislative proposal for a Directive amending the Insurance Distribution Directive (IDD) as regards the date of application of Member States' transposition measures. The Commission is proposing to delay the IDD application date by seven months, to 1 October 2018 in order to give firms more time to prepare. The legislative proposal gives the background to the Commission's decision.

The Commission is not proposing to change the transposition date of the IDD, which Member States. are still required to transpose into national law by 23 February 2018.

To align application dates, on 20 December 2017, the Commission also adopted a proposed amending Delegated Regulation postponing the application of Delegated Regulation (EU) 2017/2358 supplementing the IDD with regard to product oversight and governance requirements for insurance undertakings and insurance distributors and Delegated Regulation (EU) 2017/2359 supplementing the IDD with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products. These Delegated Regulations, which were published in the Official Journal of the European Union on 20 December 2017 (see item 6.1 above) currently state that they will apply from 23 February 2018.

The European Parliament and the Council of the European Union will need to agree on the new application date in an accelerated legislative procedure.

Comprehension alert in KID for insurance-based investment products: EIOPA Q&A

On 19 December 2017, the European Insurance and Occupational Pensions Authority (EIOPA) published a question and answer (Q&A) on the comprehension alert in the key information document (KID) for insurance-based investment products (IBIPs).

The Q&A asks which conditions should be used to determine whether a comprehension alert needs to be included in the KID for an IBIP.

An activities-based approach to systemic insurance risk: IAIS consultation paper

On 8 December 2017, the International Association of Insurance Supervisors (IAIS) published an interim consultation paper on an activities-based approach to systemic risk in the insurance sector.

The interim consultation paper is intended to provide an opportunity for stakeholders to give input into the development of an activities-based approach and feedback on the proposed steps that the IAIS

will follow in its work on deriving activities-based policy measures. The paper does not include conclusive proposals on policy measures as this will be the subject of the next phase of work in 2018.

The IAIS plans to launch a second consultation on its final proposals by the end of 2018, after considering comments on the interim consultation and completing further work on the development of policy measures to address potential systemically risky activities in the insurance sector and the review of its assessment methodology for the identification of global systemically important insurers.

Comments are requested by February 2018. The IAIS will hold a public background call on the interim consultation paper on 19 December 2017.

Index-based insurances: IAIS consultation on draft issues paper

On 1 December 2017, the International Association of Insurance Supervisors (IAIS) published for consultation a draft issues paper on index-based insurances. The IAIS says that index-based insurance is a relatively new, innovative and increasingly popular approach to insurance provision (sometimes also referred to as parametric insurance).

The draft issues paper provides background on this product, describes practices and actual examples, and identifies related regulatory and supervisory issues and challenges. The paper focusses on the insurances usually directed at weather related or natural catastrophe event risks. The paper does not address products where the index is solely a function of capital markets, asset prices or other economic measures, or where payouts are determined by the value of underlying assets in an investment portfolio, nor does it address products that are based on an index related to mortality rates particularly directed at long term longevity risk.

Comments are requested by 29 January 2018.

IPID: EIOPA editable template

On 11 December 2017, the European Insurance and Occupational Pensions Authority (EIOPA) published an editable template for the insurance product information document (IPID) which must accompany all non-life insurance policies from February 2018.

EIOPA has worked with the European Commission to develop an electronic and editable version of the IPID template in all official languages of the EU. The files follow the layout shown in the annex to the Commission Implementing Regulation (EU) 2017/1469 laying down a standardised presentation format for the IPID under the Insurance Distribution Directive and are consistent with the relevant colours, fonts and logos required by the Regulation itself.

These files are intended to provide a technical aid to manufacturers of non-life insurance products developing IPIDs. Manufacturers of non-life insurance products are not obliged to use these specific files and may choose instead to develop their own IPIDs that meet the requirements of the IPID Implementing Regulation.

EIOPA opinion on monetary incentives and remuneration between providers of asset management services and insurers

On 11 December 2017, the European Insurance and Occupational Pensions Authority (EIOPA) published an opinion on monetary incentives and remuneration between providers of asset management services and insurers.

The opinion is a follow-up to EIOPA's April 2017 thematic review which assessed potential risks for consumers due to monetary incentives and remuneration payments from asset managers to insurance undertakings in the unit-linked market. The thematic review concluded that monetary practices between asset managers and insurance undertakings are significant and widely spread across the EU. In this regard, EIOPA identified risks of consumer detriment relating to unmitigated conflicts of interest and to how the assets of unit-linked policies are managed by insurers.

The opinion aims to aims to promote consistent supervisory practices covering:

- how existing and upcoming EU law applies to conflicts of interest arising from the monetary practices; and
- the practical application of the principles set out in the Insurance Distribution Directive (IDD) and the Solvency II Directive in managing assets of unit-linked policies.

The opinion says that national competent authorities should take the necessary and proportionate supervisory actions to:

- emphasise to insurance undertakings that monetary incentives received from asset managers may be a source of conflicts of interest and that appropriate steps to prevent, identify, mitigate and manage the resulting conflicts of interest should be taken, considering the principles set out in the IDD;
- provide guidance to insurance undertakings on possible organisational or administrative arrangements to prevent conflicts of interest from adversely affecting the interests of policyholders;
- provide guidance on measures to manage assets of unit-linked policies in the best interest of policyholders considering the principles set out in the IDD and Solvency II;
- ensure that customers are provided with appropriate information on the nature and criteria used by insurance undertakings for the selection of underlying funds on offer.

SOLVENCY II

EIOPA publishes supervisory statement on solvency and financial condition reports

On 18 December 2017, the European Insurance and Occupational Pensions Authority (EIOPA) published a supervisory statement based on an analysis of Solvency II solvency and financial condition reports (SFCRs) of (re)insurance undertakings and insurance groups. The aim of the statement is to improve future disclosure of these reports.

The analysis is based on a sample of publicly disclosed 2016 SFCRs published by (re)insurance undertakings and insurance groups in the EEA. EIOPA's analysis shows that the majority of reports were published on time and in general complied with the Solvency II requirements. Most of the reports were easily accessible on undertakings' websites.

However, EIOPA has identified the areas where further improvement as regards the quality of the content of future reports is needed, such as:

- a more fit-for-purpose summary;
- undertaking/group specific information about the own-risk and solvency assessment;
- better structured and more comprehensive information on risk-sensitivity to different scenarios or stresses;
- more relevant information on bases, methods and main assumptions used for the valuation of assets, liabilities and technical provisions and addressing the uncertainties around valuation;
- more comprehensive information of eligible own funds.

EIOPA encourages (re)insurance undertakings and insurance groups to take into account the recommendations outlined in the supervisory statement, considering the principle of proportionality, in the preparation of future reports.

For the first time the 2018 reports will require the provision of the comparative information. EIOPA outlines its expectations for the mandatory areas and how this information should be presented in the reports.

EIOPA publishes opinion on the supervisory assessment of internal models including a dynamic volatility adjustment

On 21 December 2017, the European Insurance and Occupational Pensions Authority (EIOPA) published an opinion on the supervisory assessment of internal models including a dynamic volatility adjustment (DVA).

The opinion, which is dated 30 November 2017, is addressed to national supervisory authorities and stresses the importance of common supervisory practices and approaches throughout the EU as regards the use of internal models.

The volatility adjustment (VA) is one of the measures of the long-term guarantee package linked with the Solvency II valuation of insurance contracts with long-term guarantees. It aims at stabilising the Solvency II balance sheet during short periods of high market volatility by adding an extra spread component to the discount rate used for the calculation of technical provisions.

The opinion considers internal models making use of a DVA by allowing the VA to move in line with the modelled credit spreads during the 1-year forecast of basic own funds. According to EIOPA's assessment, the DVA modelling is an area where supervisory convergence needs to be reinforced. When using the DVA, undertakings should ensure a prudency principle, meaning that the internal model should produce a solvency capital requirement guaranteeing a level of policyholder protection that is at least as high as if replicating the EIOPA VA methodology.

EOPIA says a holistic view should be taken in the supervisory assessment of modelling and risk-management aspects. This means on the one hand that all tests and standards on internal models apply and on the other hand that no undesirable risk management incentives should be allowed.

Insurance undertakings have to provide the explanation of the DVA methodology in their solvency and financial condition reports in order to fulfil the Solvency II disclosure requirements.

EIOPA annual reports for 2017 on the use of exemptions and limitations from regular supervisory reporting and use of capital add-ons by NCSa

On 21 December 2017, EIOPA published annual reports on the use of limitations and exemptions from the regular supervisory reporting, and on the use of capital add-ons by national competent authorities (NCAs).

The report on capital add-ons is published for the first time. The report on exemptions and limitations covers reporting on exemptions for the whole of 2016 and on limitations for the first quarter of 2017. Further details are given in this EIOPA press release.

EIOPA annual report 2017 on the use of long-term guarantees measures and measures on equity risk

On 21 December 2017, EIOPA published its 2017 annual report to the European Parliament, the Council of the European Union and the European Commission, on long-term guarantees measures and measures on equity risk.

The results show, similar to the 2016 analysis, that most of the measures are widely used. 783 (re)insurance undertakings in 23 countries with a European market share of 74% use at least one of the following voluntary measures:

- the matching adjustment;
- the volatility adjustment;
- the transitional measures on the risk-free interest rates;
- the transitional measures on technical provisions;
- the duration-based equity risk sub-module.

The average solvency capital requirement ratio of undertakings using the voluntary measures is 217% and would drop to 148% if the measures were not applied which EIOPA says confirms their importance for the financial position of (re)insurance undertakings.

EIOPA also assessed stakeholders' perception about the relevance, comprehensibility, completeness and comparability of the information on the measures disclosed by (re)insurance undertakings. The outcome highlights the importance of the transparency on the use and impact of the measures as well as their preference for disclosure of additional information.

European Commission report on the exercise of the power to adopt delegated acts

On 7 December 2017, the European Commission published a report to the European Parliament and the Council of the European Union on the exercise of the power to adopt delegated acts conferred on the Commission under the Solvency II Directive.

This report is required under Article 301a(2) of the Solvency II Directive. This provision requires the Commission to draw up a report in respect of the delegation of power referred to in Articles 17, 31, 35, 37, 50, 56, 75, 86, 92, 97, 99, 109a, 111, 114, 127, 130, 135, 143, 172, 210, 211, 216, 217, 227, 234, 241, 244, 245, 247, 248, 256, 258, 260 and 308b of the Solvency II Directive. These powers are conferred on the Commission for a period of four years from 23 May 2014. The Commission is required to draw up a report in respect of these delegated powers at the latest six months before the end of that four-year period.

The report says that the vast majority of empowerments in the Solvency II Directive were exercised by the Commission in 2014.

The Commission concludes the report by saying that it has exercised its delegated powers in a timely and correct manner to ensure that the required delegated acts were in place for insurance and reinsurance undertakings and national supervisory authorities to apply the rules on the date the Solvency II Directive became fully applicable. Targeted amendments since then have ensured that the prudential framework is appropriately calibrated to allow insurers to contribute to the capital markets union as long-term investors. Going forward, the Commission considers that all delegations of power should be retained.

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