



FIG Bulletin

Recent developments
23 March 2020

**Hogan
Lovells**

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General

COVID-19: BoE and PRA measures

The Bank of England (BoE) and Prudential Regulation Authority (PRA) have [announced](#) a number of measures aimed at alleviating operational burdens on PRA-regulated firms and BoE-regulated financial market infrastructures (FMIs) in response to COVID-19. These measures will provide flexibility to help firms and FMIs maintain their safety and soundness and deliver the critical functions they provide to the economy.

The steps include:

- cancellation of the BoE's **2020 annual stress test** – the annual cyclical scenario (ACS);
- amendments to the **biennial exploratory scenario (BES) timetable**:
 - the BoE had been due to publish the results of the 2019 BES on liquidity in mid-2020. In order to alleviate burdens on core treasury staff at banks, the BoE has paused this exercise until further notice; and
 - the BoE published a discussion paper on the 2021 BES on the financial risks from climate change on 18 December 2019. It will take stock of the responses as well as the evolving COVID-19 situation with a view to announcing the way forward for this exercise in the summer;
- the BoE and the PRA recognise the importance of **IFRS 9** as a forward-looking measure of losses, which were previously not considered in IAS 39. The PRA reminds firms that forward-looking information used to incorporate the impact of Covid-19 on borrowers into the expected credit loss (ECL) estimate needs to be both reasonable and supportable for the purposes of IFRS 9. To the extent that forecasts can be made, the PRA expects firms to reflect the temporary nature of the shock, and fully take into account the significant economic support measures already announced by global fiscal and monetary authorities. In particular, any such forecasts should take into account the relief measures – such as repayment holidays – that will be made available to enable borrowers who are affected by the COVID-19 outbreak to resume regular payments. The PRA's expectation is that eligibility for the policy on the extension of mortgage repayment holidays should not automatically, other things being equal, be a sufficient condition to move participating borrowers into Stage 2 ECL;
- the joint BoE and Financial Conduct Authority (FCA) **survey into open-ended funds** is delayed until further notice, with a subsequent impact on the FCA consultation that would have followed;
- BoE and PRA supervisors will review their work plans so that **non-critical data requests, on-site visits and deadlines can be postponed**, where appropriate. This includes pausing the skilled persons Section 166 reviews relating to the reliability of banks' regulatory returns that were announced in October 2019. In doing so the PRA will have regard to the flexibility provided under the relevant regulatory regimes, for example in the Capital Requirements Regulation and Solvency II;
- the PRA will review its approach for considering and processing **Senior Manager Function (SMF) applications** with a view to reducing the burdens involved during current events;
- the BoE and PRA will also **review its programme of regulatory change**. Where appropriate, they will postpone non-critical work at the current time to allow firms and FMIs to focus on their safety and soundness, the protection of policyholders and delivering their functions. This includes postponing a number of deadlines, including:
 - the deadline for responses to the BoE and PRA consultations on "Building Operational Resilience: Impact tolerances for important business services" and

the PRA consultation on "Outsourcing and third party risk management" will, in line with the FCA, be extended to 1 October 2020;

- Internal Ratings Based (IRB) models: Banks which use the IRB (credit risk modelling) framework are implementing a programme ("the EBA roadmap") that aims to improve the consistency of credit risk modelling across the sector. Proposals on the final phase were published in CP21/19 "Credit Risk: PD and LGD estimation" on 18 September 2019. Implementation of the proposals related to the Definition of Default, Probability of Default, and Loss Given Default estimation, will be delayed by one year to 1 January 2022. The move to "hybrid" IRB models will also be delayed until the same date, 1 January 2022. Firms using the standardised approach to credit risk will also benefit from a delay to changes they need to make as part of guidelines on definition of default; and
- the PRA acknowledges that the existing timetable to implement Basel 3.1 may prove to be challenging, and is coordinating internationally to ensure that implementation will happen alongside other major jurisdictions. The PRA will advise the government on the legislative approach accordingly; and
- the **Financial Services Regulatory Initiatives Forum (RIF)** was established to help regulators identify and manage peaks in operational demands on firms and FMIs resulting from regulatory initiatives and to ensure firms and FMIs have an early and clearer understanding of them. The RIF's first meeting will now take place as soon as possible in April 2020 to assist coordination of regulatory initiatives.

COVID-19: FCA information for firms

The FCA has published a [webpage](#) giving information to firms on COVID-19 expectations and regulator responses. The FCA will add to this page periodically.

The FCA states that it is in regular contact with firms to assess their current position, and expects firms to be taking reasonable steps to ensure they are prepared to meet the challenges COVID-19 could pose to customers and staff, particularly through their business continuity plans.

Among other things, the FCA expects firms to provide strong support and service to customers during this period. They should be clear and transparent and provide support as consumers and small businesses face challenges at this time. The FCA also expects firms to manage their financial resilience and actively manage their liquidity. Firms should report to the FCA immediately if they believe they will be in difficulty.

On operational resilience, the FCA expects firms to take all reasonable steps to meet the regulatory obligations that are in place to protect their consumers and maintain market integrity. For example, if a firm has to close a call centre – requiring staff to work from other locations (including their homes) – the firm should establish appropriate systems and controls to ensure it maintains appropriate records, including call recordings if required. The FCA refers to its recent [consultation paper](#) on operational resilience for further matters that firms should consider in this context.

The FCA also announces that it is extending the closing dates for its open consultations and calls for input to 1 October 2020 as part of its response to COVID-19.

The delayed consultation papers are:

- CP20/4: Quarterly consultation 27;
- CP19/32: Building operational resilience: impact tolerances for important business services;

- CP20/1: Introducing a single easy access rate (SEAR) for cash savings;
- CP20/3: Proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations; and
- CP20/5: Consultation paper on open-ended investment companies – proposals for a more proportionate listing regime.

The delayed calls for input are on open finance and wholesale data.

The FCA has also delayed other publications that were due before the end of June 2020. It plans to provide updates at an appropriate point.

The FCA confirms that it still aims to publish its final market study report on general insurance pricing in the summer, but will keep this under review.

LIBOR contractual triggers: how the FCA will make announcements

The FCA notes that an increasing number of contracts referencing LIBOR include a "pre-cessation trigger" that converts the contract to reference a relevant Risk Free Rate (RFR) plus an appropriate spread if the FCA finds that any LIBOR settings are no longer going to be representative of the underlying market the rates seek to measure. Therefore, the FCA recognises the importance of market participants being aware of its announcements on this issue. The FCA has published a [webpage](#) on which it explains how it would announce LIBOR contractual triggers.

The FCA notes that, due to the agreement it has with LIBOR panel banks to remain on the LIBOR panels until end-2021, the FCA does not expect LIBOR to cease or become non-representative before end-2021.

Markets need to be prepared, however, for potential announcements that some or all LIBOR settings will cease after end-2021, or if the FCA find that they are no longer going to be representative, after end-2021. These announcements may be necessary because the FCA is given notice of the departure of panel banks.

Announcements could be made before end-2021, even if the cessation or loss of representative status would not occur until the panel banks had left at the end-2021 or another applicable date of panel bank departure thereafter.

For both scenarios, the FCA states that the announcement will:

- be made via the Regulatory News Service, at the same time as, or very shortly followed by, a posting of a fuller statement on its website;
- be clear that it is being made in the awareness that it will engage certain contractual triggers that are activated by pre-cessation or cessation announcements made by the FCA;
- be clear about the LIBOR currencies and tenors it relates to; and
- include the date of cessation, or, if applicable, date from which the relevant LIBOR settings are not going to be representative.

FOS Ombudsman News issue 150

The Financial Ombudsman Service (FOS) has published its latest edition of [Ombudsman News](#). Among other things, this edition, in a new online format, includes:

- information for consumers relating to COVID-19;
- statistics about the complaints the FOS received between July and September 2019 and October and December 2019; and
- an insight in-depth report on complaints involving underinsurance, misrepresentation and non-disclosure (reported in our Insurance section).

JMLSG AML and CTF guidance: consultation on cryptoasset exchanges and custodian wallet providers

The Joint Money Laundering Steering Group (JMLSG) is consulting on a new sector chapter in Part II of its anti-money laundering (AML) and counter-terrorist financing (CTF) guidance, for cryptoasset exchanges and custodian wallet providers – [Sector 22](#).

The proposed text takes into account The Money Laundering and Terrorist Financing (Amendment) Regulations 2019 which brings cryptoasset exchange providers and custodian wallet providers into scope of the Money Laundering Regulations (SI 2019/1511).

The consultation period closes on 18 May 2020.

Regulatory framework for cryptoassets: FMLC response to European Commission consultation

The Financial Markets Law Committee (FMLC) has published a [press release](#) indicating that it has responded to the European Commission's consultation on the suitability of the existing regulatory framework for cryptoassets. It attached to the Commission's response form the following two reports:

- "[Taxonomical approaches to cryptoassets](#)", which considers issues raised by the Commission on the classification of cryptoassets; and
- "[The regulation of cryptoassets](#)", which covers issues raised by the Commission on the application of existing regulation to cryptoassets.

Scope of national court's duty to assess fairness of consumer terms of its own motion: ECJ preliminary ruling

In [Lintner v UniCredit Bank Hungary Zrt](#) (Case C-511/17), the European Court of Justice (ECJ) considered whether a national court must assess the inherent fairness of all the terms of a consumer contract before it, even where such terms are not connected to the disputed term. Interpreting the Unfair Contract Terms Directive (UCTD) (implemented in the UK by the Consumer Rights Act 2015), the ECJ held that:

- although the UCTD obliges national courts to review the fairness of consumer terms of their own motion, this obligation only extends to the disputed terms and other terms connected to them; and
- although assessing the fairness of a disputed term involves taking into account all the other terms of the contract (for their cumulative effect), this does not mean that the court must assess whether such terms are fair in and of themselves.

The UCTD allows member states to impose a more wide-ranging assessment duty on their national courts. Section 71 of the CRA provides that where there are proceedings before a court which relate to a term of a consumer contract, the UK courts must consider whether that term is fair, even if none of the parties to the proceedings have raised that issue or indicated that they intend to raise it. It is not clear whether this wording requires UK courts to consider the fairness of undisputed terms and so goes further than the requirements of the UCTD, as determined in this case.

DMD withdrawal rights when member state implementing law inconsistent with EU law: ECJ preliminary ruling

In [*Romano and another v DSL Bank*](#) (Case C-143/18), the ECJ considered a bank's obligations concerning information on withdrawal rights under the Distance Marketing Directive (DMD) when the relevant member state's implementing legislation and case law was inconsistent with the DMD itself.

Article 6 of the DMD requires consumers to be given the right to withdraw from certain distance contracts once they have been concluded. Article 6(2)(c) states that the right of withdrawal does not apply to contracts whose performance have been fully completed by both parties at the consumer's express request before the consumer exercises their right of withdrawal. Article 5 of the DMD requires suppliers to provide information about withdrawal rights, among other things, before the consumer is bound by a distance contract.

The German legislation concerning DMD withdrawal rights for consumer loan agreements did not provide that the right of withdrawal was extinguished where performance of the contract had been fully completed by both parties at the consumer's express request before the consumer exercised their right of withdrawal. The customer sought to withdraw from a mortgage loan agreement where the notice they were sent complied with the DMD but not the German legislation. The German court made a referral to the ECJ on issues arising from the inconsistency between the DMD and German legislation and practice.

In its judgment, the ECJ highlighted that recital 13 of the DMD states that member states should not be able to adopt provisions other than those laid down in the DMD in the fields it harmonises. On that basis, it held that the obligations of a supplier of a financial service under the DMD concerning withdrawal rights, and in particular information on the effect of Article 6(2)(c), would be fulfilled if that supplier complied with the provisions of the DMD even if that information was not consistent with a member state's legislation and case law.

Brexit

COVID-19: Brexit talks put on hold

The second round of negotiations between the UK and the EU, which were due to begin on 18 March in London, [have been put on hold due to COVID-19 concerns](#).

Both sides are considering options for progressing the talks through the summer months, including the usage of video conferencing.

The UK is expected to publish a draft Free Trade Agreement shortly to set out its vision for its future relationship with the EU.

Future UK-EU relationship: European Commission draft agreement

The European Commission, on 18 March 2020, published the [draft legal text](#) of the UK-EU future relationship agreement, based on the EU's negotiating position. The draft legal agreement represents the EU's negotiating position, as set out in the negotiating directives, which the Council of the EU adopted on 25 February 2020.

The Commission has published the [foreign policy, security and defence](#) part of the draft agreement separately, even though the UK has said that it will not negotiate this yet.

Equivalence assessments: European Commission approach to UK

The European Commission has published a [letter](#), dated 13 March 2020, from Valdis Dombrovskis, European Commissioner for Financial Stability, Financial Services and Capital Markets Union (CMU), to Rishi Sunak, Chancellor of the Exchequer, on the Commission's approach on equivalence assessments and decisions.

In the letter, Mr Dombrovskis states that the Commission's approach is in line with the Political Declaration agreed in October 2019. This means that the EU and the UK should start assessing equivalence as soon as possible, endeavouring to conclude their assessments before the end of June 2020.

However, Mr Dombrovskis continues that, "[a]s agreed in the Political Declaration, this means proceeding with the assessments, not taking equivalence decisions by that date".

Mr Dombrovskis states that his teams will reach out to their UK equivalents soon to collect evidence on the UK frameworks that will apply after the transition period. He comments that equivalence assessments will have to be forward-looking and take into account overall developments, including any divergences of UK rules from EU rules.

FOS Brexit-related guidance: instrument defers commencement to IP completion day

The FCA has published the [Exiting the European Union: Deferral of Commencement Instrument 2020 \(FOS 2020/1\)](#). The instrument was made by the board of the Financial Ombudsman Service (FOS) on 30 January 2020. It applies to any information, guidance or advice made by the FOS that was drafted as coming into force by reference to exit day, as defined by the European Union (Withdrawal) Act 2018 (EUWA).

The instrument states that any such information, guidance or advice will come into force by reference to IP completion day, as defined in the European Union (Withdrawal Agreement) Act

2020 (WAA). This means that these materials will come into force at the end of the Brexit transition period (currently, 31 December 2020) and did not come into force on exit day (31 January 2020).

Hogan Lovells Brexit resources

Given the moving Brexit target at the moment we recommend that for an up-to-date take on Brexit impact please look at the Hogan Lovells Brexit Hub, an open resource online.

[Hogan Lovells Brexit Hub](#)

[Twitter](#)

Banking and Finance

Future of Finance: BoE proposals for open data platform for SME financing

The Bank of England (BoE) has published a [paper](#) explaining its proposal for open data for small and medium-sized enterprise (SME) financing. The paper builds on the BoE's response to the Future of Finance Report, in which the BoE proposed an open data platform to boost access to finance for SMEs.

In this paper, the BoE explains the proposal in more detail and provides an update on what it has learnt from research and industry engagement to date. It will guide the BoE's ongoing engagement with public authorities, including as an input to the government's Smart Data Review and Digital Markets Taskforce, as well as the FCA's Open Finance initiative. In particular, this paper will form part of the BoE's input to the government summit announced in the 2020 Budget, looking at what further data needs to be made accessible to make it faster and easier for SMEs to shop around for credit.

Credit unions: PRA PS6/20 on review of capital regime

Following its consultation in CP28/19, the Prudential Regulation Authority (PRA) has published a policy statement, [PS6/20](#), on its review of the capital regime for credit unions.

The PRA consulted on proposed amendments to the Credit Unions Part of the PRA Rulebook and its supervisory statement, SS2/16, on the prudential regulation of credit unions. Its proposals included a graduated rate approach for capital requirements for credit unions with more than £10 million of total assets and additional systems and controls requirements for credit unions with more than 15,000 members.

In PS6/20, the PRA sets out its final policy decisions and provides feedback on responses to CP28/19. It is proceeding with its proposals, although it has revised the proposed text of SS2/16 to include amalgamation and transfer as options where a credit union no longer has a viable future.

The PRA has also published the following appendices to PS6/20:

- [PRA Rulebook: Non CRR Firms: Credit Unions Instrument 2020 \(PRA2020/2\)](#). This contains amendments to the Credit Unions Part of the PRA Rulebook; and
- an [updated version](#) of SS2/16.

The instrument and the updated version of SS2/16 came into force on 16 March 2020.

Central bank digital currency: BoE discussion paper

The BoE has published a [discussion paper](#) on Central Bank Digital Currency (CBDC): opportunities, challenges and design. It has also updated its CBDC [webpage](#) to reflect publication of the paper. The paper sets out the BoE's initial thinking on a CBDC as part of its ongoing work on the future of finance.

The BoE provides physical money in the form of banknotes, which can be used by households and businesses to make payments. It also provides electronic money, but this can only be used by banks and selected financial institutions. A CBDC would make electronic money, issued by the BoE, available to all households and businesses.

The BoE says that, if a CBDC were to be introduced, it would be denominated in pounds sterling, just like banknotes, so £10 of CBDC would always be worth the same as a £10 note.

The BoE has not yet made a decision on whether to introduce CBDC. This discussion paper outlines one possible approach to the design of CBDC and asks for feedback from the payments industry, academics, and other interested parties.

The paper closes to responses on 12 June 2020. The BoE will host a [webinar](#) on the paper on 7 April 2020.

COVID-19: FCA guidance for mortgage providers and for lenders taking part in the Coronavirus Business Interruption Loan Scheme

The FCA has published new guidance for mortgage lenders and administrators, and small business lenders.

Mortgages

The new [guidance](#) makes clear that firms should:

- grant customers a payment holiday for an initial period of three months, where they may experience payment difficulties as a result of COVID-19 and where they have indicated they wish to receive one; and
- ensure that there is no additional fee or charge (other than additional interest) as a result of the payment holiday.

The guidance also sets out the steps firms should take to ensure that the payment holiday does not have a negative impact on the customer's credit score.

The FCA makes it clear that in the current circumstances, it does not consider that repossession will be in the best interests of the customer. As a result, repossession should not be commenced or continued with unless the firm can demonstrate clearly that the customer has agreed it is in their best interest.

The FCA will continue to review these measures as the situation develops and update the guidance appropriately.

Small business lenders

The FCA has issued new [guidance](#) to firms participating in the government's Coronavirus Business Interruption Loan Scheme.

The Scheme, announced by the Chancellor on 17 March 2020, supports lending to small and medium-sized enterprises (SMEs) impacted by coronavirus of up to £5 million. However, loans of up to £25,000 to sole traders and unincorporated enterprises can fall within the scope of FCA regulation.

The FCA has issued guidance on the information and circumstances that are relevant when assessing the affordability of such loans. The fact that the customer may, at the time of the application, be temporarily experiencing exceptional financial pressures does not mean that the firm is prevented from making the loan.

The guidance says that:

- lenders may take into account appropriate evidence, including historic trading figures as well as future forecasts; and

- if forecast income does not materialise, lenders should consider deferring repayments until it does.

EONIA to €STR transition and EURIBOR fallbacks: ECB Working group on euro risk-free rates' publications

The European Central Bank (ECB) working group on euro risk-free rates has published information documents on:

- "[Key messages for the transition from EONIA to €STR](#)"; and
- "[Understanding EURIBOR fallbacks](#)".

The fallbacks factsheet indicates that the working group envisages publishing two consultations in the Q2 2020, with recommendations expected for June 2020. One will be about the credit spread adjustment to be added to EURIBOR fallback rates and related market conventions. The other will be about trigger events and operational considerations.

The working group is also developing guidelines for how to amend existing legacy contracts and financial instruments referencing EURIBOR to embed fallback provisions.

Payment Services

Card-acquiring market review: PSR update on timings

The Payment Systems Regulatory (PSR) has published an [update](#) on when it intends to publish its interim report on the card-acquiring market review.

The PSR is planning to publish an interim report for consultation in June 2020. After the publication of the interim report, as well as considering the written responses it receives, the PSR plans to carry out a programme of stakeholder engagement, such as roundtable discussions. It will consider these views before publishing the final report.

The format and timings of the PSR's engagement will depend on the situation with COVID-19 at the time.

Securities and Markets

COVID-19: FCA Primary Market Bulletin No 27

The FCA has published its latest [Primary Market Bulletin](#), focused on COVID-19. Matters covered include:

Ongoing disclosure under the Market Abuse Regulation (MAR)

The FCA states that issuers should continue to comply with their obligations under MAR and relevant FCA rules, and be aware that their own operational response to coronavirus may itself meet the requirements for disclosure under MAR. While it is conscious that the coronavirus may create challenges in the convening and operation of disclosure committees, it expects listed issuers to make every effort to meet their disclosure obligations. In the short term, it appreciates there may be slight delays as new processes are put in place.

Market volatility and suspension of trading

The FCA will continue to consider requests from issuers to suspend trading in certain securities in line with existing rules and practice, meaning it will challenge the need for suspension where it thinks the situation would be more appropriately addressed by an announcement to the market. Before submitting a request, issuers should ensure they have thoroughly examined the justification.

Transaction notifications

The FCA expects persons discharging managerial responsibility (PDMRs) and "persons (who are) closely associated" to continue to meet notification requirements under MAR within the prescribed time frame.

Delays in corporate reporting

The FCA is conscious that the coronavirus may create logistical issues when producing accounts for upcoming reporting periods, but it expects issuers to put in place contingency plans to minimise the impact. Such planning could consider, for example, whether they could deprioritise non-essential parts of their report and reporting cycle. If an issuer does not believe it is able to meet its continuing obligations it should take appropriate advice and contact the FCA to discuss. Issuers should engage with their auditors, who should contact the Financial Reporting Council (FRC), as appropriate. The FCA notes that the FRC has addressed some of these points in its recent [coronavirus market guidance](#). From the FCA's perspective, for listed issuers, the deadlines under the Disclosure Guidance and Transparency Rules remain unchanged. It will keep this under review, and liaise closely with the FRC and the Department for Business, Enterprise and Industrial Strategy.

Shareholder meetings

The FCA recognises that as a result of the coronavirus the effective exercise of the rights of shareholders may need to involve the use of virtual methods.

Corporate transactions and admissions

The FCA will continue reviewing documentation for corporate transactions in line with its established principles. Where issuers are looking to carry out urgent transactions they should, in the first instance, engage with their relevant sponsor firm or adviser.

Short selling bans and reporting: FCA statements and ESMA Decision

The EU Short Selling Regulation (SSR) provides regulators and the FCA with the power to apply short or long-term bans on short sales in shares, and certain other financial instruments.

FCA statement

The [FCA](#) has indicated that, when considering whether to use its short selling powers following action by an EU regulator, its continuing standard policy is to assist that regulator, unless there are exceptional circumstances. This standard policy helps to avoid short selling activity linked to particular shares moving to other jurisdictions where the relevant shares are also traded and was demonstrated by recent temporary bans on the short selling of certain Belgian, Italian and Spanish stocks issued by the FCA.

On 16 March 2020, the European Securities and Markets Authority (ESMA) lowered the thresholds for the notification of short selling positions to competent authorities under the SSR. The FCA has indicated that it will apply this change in the UK.

However, to receive the data, the FCA must make changes to its technology. While the FCA implements these technological changes, firms should continue to report according to the previous thresholds, until further notice.

ESMA Decision

ESMA's [Decision](#) requires natural or legal persons who have net short positions in relation to a share admitted to trading on an EU regulated market to notify to a competent authority details of any such position if the position reaches or exceeds 0.1% of the issued share capital of a company (and 0.1% thresholds thereafter), or falls below those notification thresholds. This is lower than the 0.2% threshold established in Article 5 of the SSR.

The temporary threshold is effective for three months, from 16 March 2020 to 16 June 2020.

ESMA considers this change is essential to enable regulators to monitor developments in the markets, given the recent exceptional impact of COVID-19. In particular, ESMA hopes that it will improve the capacity of national competent authorities and ESMA to react if the integrity, orderly functioning and stability of the markets require more stringent actions.

The temporary additional transparency obligations do not apply to transactions involving:

- shares admitted to trading on a regulated market where the principal venue for the trading of the shares is located in a third country;
- market making activities; and
- a net short position in relation to the carrying out of a stabilisation under Article 5 of the Market Abuse Regulation (Regulation (EU) 596/2014).

While this temporary threshold is effective for three months, ESMA cannot dismiss the possibility of extending it should the situation worsen.

SFTR: new FCA webpages

The FCA has published three new pages on its website on the Regulation on reporting and transparency of securities financing transactions (SFTR). The webpages are titled:

- [Securities Financing Transactions Regulation \(SFTR\)](#), giving an overview of the SFTR;

- [EU SFTR reporting obligation](#), summarising how to fulfil the SFTR reporting obligation; and
- [SFTR library](#), listing links to EU SFTR legislation and UK SFTR legislation.

IRHP FSA/FCA review: deadline extended until early 2021

John Swift QC, the Independent Reviewer examining the Financial Services Authority (FSA) and Financial Conduct Authority's (FCA's) supervisory intervention in relation to Interest Rate Hedging Products (IRHPs), has [informed](#) the FCA that the deadline for submission of his report in relation to the review must be extended until early 2021 as a result of necessary precautions to be taken in response to COVID-19.

SFTR: ESMA delays phase 1 reporting and TR registration obligations

In response to COVID-19, ESMA has published a [public statement](#) to ensure coordinated supervisory actions on the application of Securities Finance Transactions Regulation (SFTR), in particular, on the requirements regarding the reporting start date and the registration of Trade Repositories (TRs).

The SFTR mandates reporting of all securities finance transactions (SFTs) to a registered trade repository (TR). The reporting obligations under the SFTR apply from 13 April 2020. However, ESMA recognises that the pressures on firms caused by increases in market volatility and volumes, as well as the impact of COVID-19 on personnel within firms, has seriously compromised the SFTR implementation programmes of firms (in particular, the completion of the necessary technical set-up). Accordingly, the statement addresses ESMA's expectations regarding the reporting start date and the registration of TRs.

In summary, ESMA expects:

- competent authorities (CAs) not to prioritise their supervisory actions towards entities subject to SFT reporting obligations as of 13 April 2020 (that is, central counterparties (CCPs), entities responsible for reporting and investment firms) until 13 July 2020. CAs should instead apply their risk-based approach when enforcing the applicable legislation in this area in a proportionate manner; and
- TRs to be registered sufficiently ahead of the next phase of the reporting regime (which is 13 July 2020, for credit institutions, investment firms, CCPs and central securities depositories (CSDs) and relevant third-country entities to start reporting as of this date). ESMA does not consider it necessary to register any TR before 13 April 2020.

ESMA states that it will continue to closely monitor the implementation by the relevant market participants as well as the impact of the relevant measures taken with regards to COVID-19 to ensure alignment of SFT reporting requirements and supervisory practices in the EU.

The International Capital Markets Association (ICMA) and the International Securities Lending Association (ISLA) had [called on](#) ESMA to initiate the procedure for delaying the application of reporting under the SFTR for credit institutions and investment firms.

COVID-19 and MiFID II: ESMA clarifies position on call taping

ESMA has published a [public statement](#) to clarify issues regarding the application by firms of the MiFID II requirements on the recording of telephone conversations.

ESMA reminds firms of the MiFID II requirements in this area. ESMA also recognises that, considering the exceptional circumstances created by COVID-19, some scenarios may emerge

where, notwithstanding steps taken by the firm, the recording of relevant conversations required by MiFID II may not be practicable.

Under these exceptional scenarios, if firms are unable to record voice communications, ESMA expects them to consider what alternative steps they could take to mitigate the risks related to the lack of recording. Firms are expected to deploy all possible efforts to ensure that such measures remain temporary and that recording of telephone conversations is restored as soon as possible.

ESMA says that, in coordination with national competent authorities, it continues to monitor developments in financial markets, and is prepared to use its powers to ensure financial stability, orderly functioning of EU markets and investor protection.

COVID-19 and MiFIR: ESMA approach to tick-size regime for SIs

ESMA has issued a [public statement](#) to ensure coordinated supervisory actions by national competent authorities (NCAs) on the application of the new tick-size regime for systematic internalisers (SIs) under the Markets in Financial Instruments Regulation (MiFIR) and the Investment Firms Regulation (IFR). This approach is needed in response to developments related to COVID-19 and the related actions taken by the EU member states.

ESMA expects competent authorities not to prioritise their supervisory actions in relation to the new tick-size regime from 26 March, the application date, until 26 June 2020, and to generally apply their risk-based supervisory powers in their day-to-day enforcement of applicable legislation in this area in a proportionate manner.

ESMA, in coordination with national competent authorities, continues to monitor developments.

COVID-19: ESMA extends consultation response dates

ESMA has [announced](#) that it has extended by four weeks the response date for all ongoing consultations with a closing date on, or after, 16 March 2020 due to COVID-19.

This announcement concerns the following consultations:

- [Consultation on Guidelines on Internal Controls for CRAs](#);
- [Consultation on MiFIR report on SI](#);
- [Guidelines on securitisation repository data completeness and consistency thresholds](#);
- [Consultation on MiFID II/ MiFIR review report on the transparency regime for equity](#);
- [Draft Regulatory Technical Standards under the Benchmarks Regulation](#);
- [Draft technical standards on the provision of investment services and activities in the Union by third-country firms under MiFID II and MiFIR](#); and
- [Consultation paper on MiFIR Review Report on Transparency for Non-equity TOD](#).

The revised dates are reflected on the relevant page where the answers must be uploaded.

Impact of transition to €STR on swaptions: ECB working group on euro risk-free rates' consultation

The European Central Bank (ECB) working group on euro risk-free rates is [consulting](#) on whether to issue recommendations to address specific issues for swaption products as a result of the proposed transition from EONIA to the euro short-term rate (€STR).

The CCP discounting switch from EONIA to the €STR, planned for June 2020, will raise specific issues for such swaption products. If the exercise date of these contracts is after the CCP transition date, their valuation may change as a result of the discounting switch from EONIA to the €STR. However, the CCP compensation mechanism will not apply to them because the contracts are bilateral, not cleared.

This consultation from the working group on euro risk-free rates seeks views on whether it should issue recommendations regarding the voluntary exchange (or lack thereof) of a cash compensation between bilateral counterparties to such swaption contracts.

While this consultation only focuses on euro-denominated contracts, a similar consultation is being carried out by the US Alternative Risk-free Rate Committee (ARRC) for contracts denominated in US dollars containing similar statements and questions to allow market participants to respond in a consistent way.

This consultation follows the publication of a report on the transfer of EONIA's cash and derivative markets liquidity to the €STR, which the working group issued in February 2020.

The consultation closes on 3 April 2020. A summary of the feedback received will be published on the ECB's website and considered by the working group at its meeting on 21 April 2020.

EMIR Refit: ISDA outlines operational considerations for FCs reporting liability for NFC clients

ISDA has published a [document](#) setting out operational considerations relating to the legal liability on financial counterparties (FCs) for reporting on behalf of themselves and their non-financial counterpart (NFC) clients under the EMIR Refit Regulation.

The document has been produced because ISDA members had identified a number of operational considerations and challenges as to how the EMIR Refit Regulation should be implemented that are not fully addressed in Regulation itself. Members of the ISDA Data and Reporting EMEA Working Group met with the intention of coming to a common understanding of the requirements and whether there can be a standard approach for how to implement them. The document summarises their discussions and attempts to address issues arising for FCs, NFCs that are not subject to the clearing obligations (NFC-) and those that are (NFC+).

ISDA states that the document is not an exhaustive list of all the relevant issues that market participants should consider. Nor does the document constitute legal, regulatory or any other form of professional advice, or official guidance, and parties are free to choose alternate means of addressing the specific facts of their situation. ISDA makes it clear that if regulators publish additional guidance on these EMIR Refit reporting requirements, market participants should consider whether such guidance impacts on or supersedes anything contained within the document.

Insurance

COVID-19: FCA expectations for general insurance firms

The FCA has published a [webpage](#) setting out its expectations of general insurance firms in the light of COVID-19. The FCA expects firms to consider very carefully the needs of their customers and show flexibility in their treatment of them. In particular, firms should clearly communicate any policy exclusions that may impact the cover and use of individual policies. This applies both to new sales or changes to existing policies (either mid-term or at renewal). The FCA also comments on:

Operational resilience and business continuity

Firms must have plans in place to manage and mitigate the operational impact of the coronavirus. More generally, the FCA expects firms to:

- have sufficiently robust systems and controls to continue to operate effectively in a stressed situation with business continuity plans to manage this;
- have a senior manager responsible for business continuity and for managing the impact of coronavirus;
- act fairly, honestly and professionally in accordance with the best interests of customers; and
- ensure that all customer communications are clear, fair and not misleading.

Firms should consider, along with other challenges, the impact of staff absences and the need to ensure staff wellbeing on continuity of service. Firms must identify how staff absence or inability to use business premises can be sufficiently mitigated to ensure critical services are provided to customers. Where firms identify gaps through their planning that will, or could, cause harm to customers, they should notify the FCA through their usual supervisory contact.

Travel insurance

Among other things, the FCA notes that there will be some instances where a consumer bought annual travel insurance to cover the risk of cancellation or curtailment and are relying on a policy renewal to cover travel arrangements made before COVID-19 escalated. In these circumstances, the terms of the current policy may allow for a pay-out when the event causing the cancellation or curtailment occurs.

If the claim arises after the renewal date, the FCA expects insurers to treat customers fairly, taking individual circumstances into account. This includes where the policyholder was given a reasonable expectation that cover would continue. Where appropriate, insurers are asked to renew or consider claims under the terms of the original policy for these travel arrangements.

Motor and home insurance

The FCA expects motor and home insurers not to reject claims because of a consumer's understandable temporary change in how they use their vehicle and their home address, in response to government advice.

Product suspension

When firms want to suspend some product offerings, the FCA expects them to:

- consider the needs of their customers carefully, in particular where the customer is relying on a renewal for continuity of cover (taking into account any vulnerabilities). In such circumstances, it may not be treating customers fairly if a firm were to not renew;
- explain policy coverage and exclusions clearly explained to the customer in all circumstances. Any exceptional cases of policyholder needs should be considered by the insurer and all changes need to be clearly communicated; and
- ensure that alternative products are not sold to consumers that do not meet their demands and needs, and are not in their best interest.

Renewals

Firms considering making changes to their existing policies at renewal need to consider the existing requirements for product design. Firms making changes to policies must follow the appropriate processes for making these changes, including making it very clear if COVID-19 is being excluded. When making such changes, firms must be able to demonstrate that they are complying with FCA rules and treating their customers fairly.

The FCA also gives information relating to private medical insurance, mid-term adjustments of insurance policies and the FCA's expectations of brokers. These include encouraging brokers to keep abreast of market developments so they can suitably advise their customers.

Solvency II: PRA PS7/20 Adjusting for the reduction of loss absorbency where own fund instruments are taxed on conversion

Following its consultation in CP26/19, the PRA has published a policy statement, [PS7/20](#), on its approach to adjusting for the reduction of loss absorbency where own fund instruments are taxed on conversion under the Solvency II Directive. It has also published an updated supervisory statement, [SS3/15](#): Solvency II: the quality of capital instruments.

PS7/20 is relevant to UK insurance firms within the scope of Solvency II, the Society of Lloyd's, and firms that are part of a Solvency II group that will determine and classify capital instruments under the Solvency II own funds regime. The expectations introduced by these changes only relate to firms with ordinary share capital and so do not impact on mutuals.

The PRA consulted on proposals to amend SS3/15 with a view to maintaining the existing regulatory policy of only recognising restricted Tier 1 own funds (rT1) items to the extent that they provide loss absorbency on trigger, and to prevent the amount of loss-absorbency provided by rT1 instruments that convert into ordinary shares on trigger from being overstated. The changes were proposed in response to information from HMRC.

The PRA received six responses to its proposals. Some requested clarification on the tax opinion process, others made technical observations on how the maximum tax impact was to be calculated and suggested alternative means for the PRA to achieve its policy objective. The PRA provides feedback to the responses, clarifications, and sets out its final policy decision. The PRA has made minor changes to its proposals to reflect the responses received.

The text of the revised SS3/15 is in the appendix to PS7/20.

The policy changes take immediate effect.

Underinsurance, misrepresentation and non-disclosure: FOS report

The Financial Ombudsman Service (FOS) has published a report, "[Insight in depth: underinsurance, misrepresentation and non-disclosure](#)", in which it describes trends in

complaints it receives that involve the misrepresentation of information relating to people's homes, belongings or vehicles.

The FOS says that complaints arising from people not having the right insurance in place have continued to be a feature of its casework over the years. In preparing this report, the FOS took a closer look at the relevant complaints, with a view to get a better understanding of what is going wrong.

This report summarises its findings and presents a selection of case studies illustrative of the problems consumers commonly bring to the FOS. The case studies highlight the consequences for consumers of giving the wrong information to insurers, and also how insurers can sometimes fail to put things right in a fair and reasonable way, with particular reference to the Consumer Insurance (Disclosure and Representations) Act 2012.

COVID-19: EIOPA statement on actions to mitigate impact on insurance sector

EIOPA has published a [statement](#) on actions to mitigate the impact of COVID-19 on the EU insurance sector. EIOPA acknowledges that insurers are likely to face progressively difficult conditions in the immediate future, both in terms of navigating challenging market conditions and in maintaining operations, while taking steps to protect employees and customers.

On business continuity, EIOPA's key messages include:

- it is particularly important that insurers are able to maintain the services to their clients and should be ready to implement the necessary measures to ensure business continuity;
- in order to offer operational relief in reaction to coronavirus, national competent authorities (NCAs) should be flexible regarding the timing of supervisory reporting and public disclosure regarding end-2019. EIOPA will coordinate the specifics of the approach;
- in the short term, EIOPA will limit its requests for information and the consultations to the industry to essential elements needed to assess and monitor the impact of the current situation in the market; and
- EIOPA is extending the deadline of the Holistic Impact Assessment for the 2020 Solvency II Review by two months, to 1 June 2020. In the coming days, EIOPA will communicate details on postponing additional reporting and information requirements.

On insurers' solvency and capital positions, EIOPA notes that insurers are well-placed under the Solvency II requirements, and the Solvency II framework also includes a number of tools that can be used to mitigate risks and impacts to the sector. EIOPA and the NCAs stand ready to implement these tools, if and when necessary, in a coordinated manner, to ensure that policyholders remain protected and financial stability is safeguarded. Nevertheless, insurance companies should take measures to preserve their capital position in balance with the protection of the insured, following prudent dividend and other distribution policies, including variable remuneration.

EIOPA will continue to monitor the situation and will take or propose to EU institutions any measure necessary in order to mitigate the impact of market volatility to the stability of the insurance sector in Europe and safeguard the protection of policyholders.

Insurance capital standard: IAIS monitoring Level 2 document

The International Association of Insurance Supervisors (IAIS) has published the [Level 2 document](#) relating to the monitoring period for version 2.0 of the insurance capital standard (ICS).

The first phase of the implementation of the ICS consists of the ICS being subject to a five-year monitoring period, which started in January 2020. The purpose of the monitoring period is to monitor the performance of the ICS over a period of time, but not the capital adequacy of internationally active insurance groups (IAIGs).

The Level 2 document contains detailed specifications for the ICS for the purposes of the monitoring period and should be read in conjunction with the [Level 1 document](#) setting out overarching principles and concepts, which was published in November 2019.

Big data analytics in insurance: IAIS paper

The IAIS has published an [issues paper](#) on the use of big data analytics (BDA) in insurance. The scope of the paper focuses on the use of algorithms and advanced analytics capabilities by insurers to make decisions based on patterns, trends and linkages and the availability to insurers of new data sources.

The IAIS notes that supervisors need to consider how to balance the many benefits of technological innovation to the insurance sector with potential risks of poor outcomes to customers as a result of such innovation. To help understand the potential benefits and risks of the use of BDA by insurers, this paper considers the new ways in which insurers are able to collect, process and use data across various stages of the insurance product lifecycle, namely product design, marketing, sales and distribution, pricing and underwriting, and claims handling. In its paper, the IAIS also highlights potential considerations for supervisors relating to the use of BDA in insurance to ensure the fair treatment of customers.

The IAIS will hold a public briefing (via teleconference) on the paper on 31 March 2020.

Funds and Asset Management

Open-ended funds investing in less liquid assets: FCA speech

The FCA has published a [speech](#) by Edwin Schooling Latter, FCA Director of Markets and Wholesale Policy, in which he seeks feedback from investors and industry on the optimal policy response to liquidity mismatch.

Mr Schooling Latter refers to recent examples of open-ended funds needing to suspend dealing in response to the number of redemption requests received. He notes that while suspension can serve investors' best interests in difficult market conditions, these recent examples raise questions about the wisdom and appropriateness of promising daily liquidity to investors when funds invest in illiquid or less liquid assets.

Mr Schooling Latter highlights the risks associated with liquidity mismatch and explains that swing pricing and notice periods can help protect fund investors and reduce risks to the wider financial system, when there is pressure to sell fund assets to meet redemption requests.

The FCA and the BoE are continuing work to evaluate the costs and benefits of possible policy measures to achieve greater consistency of fund redemption terms with the liquidity of funds' assets. The FCA invites industry and stakeholder comment on the best mix of tools to ensure open-ended funds appropriately manage liquidity risks while enabling investments that can benefit fund holders and the wider economy.

COVID-19: FCA statement on property fund suspensions

The FCA has published a [statement](#) on property fund suspensions resulting from COVID-19.

The FCA states that:

- it understands that certain standing independent valuers have determined that there is currently material uncertainty over the value of commercial real estate (CRE). In this situation, it is not possible to establish a fair and reasonable valuation of CRE funds. As a result, some managers of open-ended CRE funds have temporarily suspended dealing in units of those funds and others are likely to follow for the same reason; and
- managers of open-ended funds can use suspensions in line with their obligations under applicable regulations. In these circumstances, suspension is likely to be in the best interests of fund investors.

Financial Crime

Economic crime: government and regulators respond to House of Commons Treasury Committee report

The House of Commons Treasury Committee has published the [responses](#) of the government, the Payment Systems Regulator (PSR) and the Financial Conduct Authority (FCA) to its November 2019 report, Economic crime: consumer view.

In its November 2019 report, the committee made recommendations on measures taken by firms to combat economic crime, the investigation of economic crime and consumers' rights and responsibilities. The government, the PSR and the FCA set out their responses to the committee's recommendations on issues including:

- establishing a public-private steering group;
- placing the Contingent Reimbursement Model Code for the reimbursement of victims of authorised push payments (APP) scams on a compulsory statutory basis;
- monitoring the implementation of confirmation of payee (CoP) by the payment services industry; and
- providing a consistent definition of actions by a consumer that are deemed to be gross negligence.

CSMAD: European Commission report on implementation

The European Commission has published a [report](#) on the implementation of the Directive on Criminal Sanctions for Market Abuse (CSMAD), as mandated under Article 12 of CSMAD. In the report, the Commission assesses the transposition of CSMAD by member states, noting specific issues that have arisen from the transposition of individual Articles.

The Commission also assesses whether there is any need to amend CSMAD. Although it highlights issues concerning the interpretation of serious cases, the level of sanctions and the implementation of optional elements to CSMAD, the Commission does not make any recommendations for revisions to the Directive.

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