

Being better informed

FS regulatory, accounting and audit bulletin



PwC FS Risk and Regulation Centre of Excellence

October 2017

In this month's edition:

- Investment firms: EBA proposes new prudential framework
- EU supervision: EC puts forward plans to change role of ESAs
- PSD2: FCA and PSR finalise implementation plans
- Insurance: Government proposes new change to Ogden rate method

Executive summary



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'Welcome to this edition of 'Being better informed', our monthly FS regulatory, accounting and audit bulletin, which aims to keep you up to speed with significant developments and their implications across all the financial services sectors.'

After a quiet summer, regulators picked up the pace of regulatory developments in September with important updates on PSD2, the bank levy, consumer credit and the prudential regime for investment firms.

The EBA published its opinion on the design of a new prudential regime for investment firms. The proposed framework will change the capital and liquidity calculations for investment firms, as well as their reporting, disclosure, governance and risk management obligations. So it's important that impacted firms review the EBA's proposals. The EC will now review the EBA's opinion and decide whether or not to endorse it. We expect the EC to publish a legislative proposal in early December 2017, followed by final rules in 2019.

The final pieces of PSD2 implementation are falling into place. The FCA and PSR published their approaches to regulating the Payment Services Regulations (PSRs) 2017, which implement PSD2. The FCA confirmed changes it will make to its handbook following earlier consultation. The PSRs 2017 widen the scope of the FCA's authority, bringing account aggregation and payment initiation services within the scope of regulated activity. PSD2 takes effect from 13 January 2018, so firms have just three months to complete their preparations.

Meanwhile banks and building societies should consider how changes to the scope of the bank levy and the way it's calculated will affect them, as the Government has now confirmed these changes. Under the new methodology, only UK balance sheet equity and liabilities will be subject to the levy - overseas branches of UK entities will no longer be included. This revision and others to the scope and calculation of the levy will apply from 2021, while administrative simplifications will apply from 2018.

Insurers will want to review a proposed change to the methodology used to calculate the Ogden rate, which is used to calculate compensation for personal injury claims. In February 2017, the Government cut the rate from 2.5% to -0.75%, which significantly increased expected compensation payments. Following a consultation and lobbying by insurers, the Government's now proposing a methodology that would result in a rate of between 0% and 1%. The rate cut earlier this year forced insurers to set aside additional provisions and raise premiums. The proposed change may allow insurers to release some of these provisions and keep premium rates stable, but it's not clear when the change will come into effect so insurers should keep a watching brief for now.

The FCA continues to be busy in the consumer credit sector, issuing a Dear CEO

letter to firms following a review of their complaint handling practices. The FCA identified a number of issues, including firms providing unclear explanations to customers and failing to carry out root cause analysis of complaints. It expects firms to review their complaint processes and systems and take action to remedy any problems identified.

Changes are afoot in EU supervision. The EC put forward its proposals to change the role of the ESAs last month, which look set to increase the ESAs' powers and further alter the balance between financial supervision at the national and EU level. In our feature article we take an in-depth look at how these proposals are likely to impact firms and the future shape of EU legislation.

Looking ahead, in the next few weeks, we expect the FCA to issue a strategy document on its approach to consumers, and the PRA to issue a supervisory statement on recovery planning that sets out additional expectations of firms. For now though we hope you enjoy reading the latest updates.

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Contents

<i>Executive summary</i>	1
<i>EC eyes overhaul of ESAs</i>	3
<i>Cross sector announcements</i>	6
<i>Banking and capital markets</i>	17
<i>Asset management</i>	22
<i>Insurance</i>	25
<i>Monthly calendar</i>	28
<i>Glossary</i>	34
<i>Contacts</i>	41

How to read this bulletin?

Review the Table of Contents the relevant Sector sections to identify the news of interest. We recommend you go directly to the topic/article of interest by clicking in the [active links](#) within the table of contents.

EC eyes overhaul of ESAs



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Proposed changes to the role of the ESAs look set to further alter the balance between financial supervision at the national and EU level. The EC proposed amendments to the ESAs' governance and powers last month, which would likely diminish the role of national discretion in developing future legislation. ESMA could directly supervise more firms, and the ESAs may be given a greater role in making equivalence decisions. So what do the proposals mean for future EU legislation, and for firms' Brexit contingency planning?

The proposals are wide ranging. If implemented, they will significantly increase the roles and responsibilities of the ESAs, significantly impacting the ongoing supervision and regulation of financial services firms in the EU. In many areas the EC proposes enhancing the ESAs' powers, but in some aspects the proposals are less ambitious than previously consulted on. A number of them will have a bearing on the UK post-Brexit, and on UK firms' plans to develop optimal group structures for accessing EU markets and customers post-Brexit.

The path to change

The ESAs comprise the EBA, EIOPA and ESMA. They have played a central role, since being established in 2011, in developing common technical standards, supervisory guidance and embedding

supervisory consistency across the EU. The EC first consulted on the operations of the ESAs in March 2017, to gather evidence from interested parties on their:

- tasks and powers
- governance
- supervisory architecture
- funding.

The EC has now put forward its proposals, which will be discussed by the EP and the Council with the aim of agreeing a common position. Gaining political agreement on the proposals may be challenging, given the various financial services priorities competing for attention within the legislative 'window' before the next European Parliamentary elections in May 2019.

Enhancing the ESAs' powers

It was widely expected that the EC would take the opportunity posed by the review to concentrate more supervisory powers at the EU-level. In the EC's discussion papers accompanying the consultation, it proposed some substantial expansions to the ESAs' roles, and the possibility of merging the EBA and EIOPA. In the event, its post-consultation proposals are more modest. In a recent proposal to amend EMIR the EC

proposed one of the most significant changes included in its consultation by asking ESMA to take responsibility for supervising CCPs. The depth of concern in a number of EU Member States about the way greater centralisation would remove national discretion to deal with localised financial stability concerns is reflected in the balance struck by the EC in its proposal. Many commentators also question whether it's possible to replicate the NCAs' collective expertise, and their understanding of local conditions, at an EU level.

Despite these revisions, the proposals would represent an increase in the ESAs' supervisory and enforcement powers. For example, the EC suggests that ESMA's direct supervisory role should be expanded from its current powers over CRAs and trade repositories to include supervision of venture capital and infrastructure funds. The EC also proposes giving ESMA the roles of approving certain prospectuses and supervising third country benchmark administrators.

The EC's overarching goal of further strengthening the role of the ESAs is significant, but its actual proposals to grant them additional powers are relatively limited. That said, it's unlikely that these proposals represent the last attempt to centralise more supervisory powers at the EU level. It's worth noting that the EC is

contemplating a legislative overhaul of the key UCITS and AIFMD fund regimes to ensure greater consistency of marketing, fees and distribution rules. Revising those measures could lead to the EC giving ESMA further powers.

Reforming the ESAs' governance

In its review the EC found that the ESAs had performed well since their inception. But despite this the EC is proposing a number of changes to the way the ESAs are governed. The EC intends to make the ESAs' decision making process more seamless and to put EU-wide considerations at the heart of the decisions the ESAs take, as opposed to national specificities. With this in mind the EC proposes that the ESAs establish independent executive boards, comprised of full-time members, to support 'effective, impartial and EU-oriented decision-making' on matters of regulatory and supervisory convergence. These boards would be given authority over some key powers, such as:

- monitoring of outsourcing
- delegation
- risks transfers to third countries
- stress tests, requests for information
- NCA review.

Ultimately though, changes to the ESAs' governance structures will only impact firms if they actually change the core ESA

outputs of technical standards and guidance. Given the reliance the ESAs place on the expertise of NCAs, both in the finalisation of rules and how such rules are to be understood, any material change to the NCAs' influence in that process could be significant. NCAs have historically played a key role in contributing market-specific expertise (e.g. in the UK in the fixed income, currencies and commodities markets, and in Luxembourg in fund administration). If that input were to be lost, we could see standards that fail to account for important market particularities. Firms obviously benefit from regulation that accounts for market complexity and local characteristics. While the EC's current proposals should not dilute such input significantly, future consolidation of a strictly EU perspective could result in less nuanced standards and guidance.

More positively, in its proposals the EC notes the importance of the ESAs sticking to their remit when issuing guidelines and recommendations. The ESAs will be required to carry out cost-benefit analyses on their guidelines and recommendations. This will require the ESAs to consider in more detail the costs and benefits of regulatory initiatives.

Further, the ESAs will be empowered to push the broader agendas of sustainability and technological innovation, with the aim of driving a more consistent regulatory approach. In the long term, their efforts could lead to improved integration of the

FinTech market and reduced opportunities for arbitrage of sustainability standards. But it's important the ESAs continue to take into account local market factors in this work. For example, national legislators and regulators have taken steps to encourage innovation, such as establishing regulatory start-up 'sand boxes'. These initiatives have been widely praised and if greater EU harmonisation in this area hampered their efforts, it would represent a backwards step.

Likewise, the EC's goal of a 'deep re-engineering of the financial system...to create the right regulatory and supervisory framework to mobilise and orient capital flows towards sustainable investment' will only be successful if it's substantively integrated with areas such as tax policy and environmental standards which often remain Member State prerogatives.

How do the proposals interact with Brexit?

Certain elements of the proposals are particularly relevant in the context of Brexit. For example, the ESAs would take a greater role assisting the EC in preparing equivalence decisions. They would be entrusted with on-going monitoring of the regulatory, supervisory and enforcement developments in third countries where the EC has taken an equivalence decision (negative or positive).

The ESAs would also scrutinise EU financial services firms' plans to outsource functions, including delegating fund management and

risk transfer (e.g. back-to-back booking models) to third country entities. If a NCA intended to approve a firm's plans for outsourcing, delegation or risk transfer to the third country, and the relevant ESA did not believe the plans comply with EU requirements (including ESA opinions) the ESA would be able to issue a 'comply or explain' objection.

Many financial institutions are currently planning on restructuring to continue serving EEA clients post-Brexit, and are considering the use of outsourcing, delegation or risk transfer from their EU entity to the UK. So this proposed new power for the ESAs could be very significant depending on how restrictive an approach the ESAs apply.

What should firms do now?

Firms will want to closely monitor progress of the political discussions on the EC's proposals, bearing in mind that they could be subject to change. Firms that are currently considering their optimal group structure in the EU post-Brexit will need to ensure that their planned use of outsourcing, delegation and risk transfer are consistent with existing and emerging EU requirements, as well as recent opinions from ESMA and EIOPA on the use of these practices post-Brexit. Most firms are not relying on the possibility that the EU may allow UK firms to access the Single Market based on equivalence post-Brexit, due to the significant political uncertainty around the

process. But if increased ESA involvement speeds up what has been a prolonged process in the past, their increased role may bring some benefits.

Those firms that are likely to come under the direct supervision of ESMA should engage with the authority early. The experience of CRAs and trade repositories has been that moving from NCA to ESMA supervision has entailed some changes in approach and focus, and so understanding ESMA's plans at an early stage will be beneficial.

Over the longer term, if the proposed governance reforms in the ESAs result in further harmonisation of EU regulation, firms may benefit from greater consistency of standards across the trading bloc. But equally, concentrating decision making in the ESAs risks creating outputs that don't have the full benefit of NCAs' expertise and local knowledge, or that fail to reflect local market conditions. It remains critically important that firms continue to monitor EU regulatory developments, and engage with supervisors, policy makers and trade bodies to ensure rules take into account the nuances of local markets.

Cross sector announcements

In this section:

Regulation	6
Advice	6
Brexit	6
Capital and liquidity	7
Competition	7
Conduct	7
Consumer issues	8
Corporate governance	8
Data	8
Financial crime and enforcement	9
Financial stability	9
Market infrastructure	9
MiFID II	10
Operational resilience	12
Our publications	12
Pensions	12
Supervision	13
Wholesale markets	13
Accounting	14
IFRS 9	14
Also this month	15
<i>A brief round up of other regulatory developments</i>	

Regulation

Advice

FCA streamlines advice

The FCA finalised guidance on streamlined advice and fact finds in *FG17/8: Streamlined advice and consolidated guidance* on 28 September 2017. The FCA is responding to FAMR's recommendations to develop a clear framework giving firms the confidence to provide streamlined advice for simple consumer needs, and clarify the standard types of information required as part of the fact find process.

Streamlined advice is limited to a client's specific needs. It can include robo advice as well as face-to-face and telephone advice. The FCA's guidance covers designing streamlined advice services, filtering processes to determine which clients would be compatible with the service, ongoing monitoring, designing the client interface, risk profiling, and disclosing the nature of the service. The FCA also explains how firms can make the fact find process more efficient and discusses the opportunities for 'porting' a fact find from one adviser to another, and using technology to speed up the process.

Simultaneously, the FCA issued further FAMR guidance, setting out what help employers and trustees can provide to staff

on financial matters without being subject to regulation, in *Guide for Employers and Trustees on providing support with financial matters without needing to be subject to regulation*.

Brexit

PM calls for Brexit transition

UK Prime Minister Theresa May proposed a 'status quo' transitional deal of around two years in a major *speech* in Florence which she hopes will break the deadlock in Brexit negotiations. In the speech on 22 September 2017, May proposed that the transitional period will mean trading 'on current terms', with continued access to the Single Market and continued freedom of movement but with a registration system for new arrivals. Under May's plans the UK will make an ongoing contribution to cover its 'fair share' of the costs during the transitional period. It's understood this means the UK will pay at least €20bn to the EU over the proposed transitional period. The length of the transitional period will depend on how long it takes to implement the new arrangements of the future deal, but it could be around two years.

In a further offer to the EU, May vowed to strengthen legal protections for EU citizens living in the UK by guaranteeing their rights in UK law, and requiring UK courts to take into account the rulings of the European Court of Justice. May also repeated her

assertion that the UK will seek a bespoke trade deal with the EU, but failed to provide details on what the UK Government wants this to look like.

Chancellor sets out post-Brexit vision

Philip Hammond, Chancellor of the Exchequer, provided further details on the Government's vision for financial services post-Brexit on 13 September 2017. *Speaking* at the inaugural dinner of trade body UK Finance, he reiterated his view that a transitional period post-Brexit will be necessary.

Hammond argued that the negotiations between the EU and UK should focus on agreeing a 'flexible and innovative approach' that protects the provision of financial services whilst addressing the EU's legitimate concerns over financial stability and supervision.

Lords committee to examine Brexit transition

The House of Lords EU Select Committee launched an inquiry, entitled *Brexit: deal or no deal?* on 26 September 2017. The inquiry will examine the key components of any transition period after Brexit and the institutional structures that will be needed to support the transitional period. The inquiry will also examine the likely cost to the UK, particularly in the form of ongoing budgetary contributions during the

transitional period. In addition, the Committee will consider the implications of the UK and EU failing to reach agreement on a transitional period – a ‘no deal’ scenario. Written submissions to the inquiry are due by **26 October 2017**.

Capital and liquidity

Comparing EU Member States’ prudential approaches

The EBA published a consultation, *Draft ITS amending Regulation (EU) No 650/2014 on the format, structure, contents list and annual publication date of the supervisory information to be disclosed by NCAs in accordance with Article 143(3) of CRD IV* on 22 September 2017.

The EBA proposes changes to an ITS, originally finalised in June 2014, which aim to support the comparison of prudential supervisory approaches by EU Member State NCAs. The amendments reflect changes to the EU prudential supervisory framework since 2014 including the LCR delegated act, EBA guidelines on SREP and the establishment of SSM. It also clarifies the level of consolidation and the approach to be taken when aggregating data.

The EBA currently discloses the information provided by NCAs on its *website*. The consultation closes on **22 December 2017**.

Competition

CMA reveals comparison tool study findings

The CMA published the *Digital comparison tools market study final report* on 26 September 2017. The study focused on six sectors - car insurance, home insurance, credit cards, energy, broadband and flights – but the CMA says much of its analysis applies more broadly. It found a mostly positive picture of consumers’ use of digital comparison tools, but also identified concerns around tools’ transparency, accessibility and clarity on their use of personal information. While most sites explained their role and provided useful results, the CMA identified some instances where tools appeared to be inaccurate, clear or misleading. The CMA also found that some providers may not be doing all they could or should to make their sites user-friendly for vulnerable people.

Most concerning to the CMA is its finding that some types of contract between suppliers and digital comparison tools, which prevent suppliers from offering better prices on one tool than on another, could reduce competition. The CMA has opened an *investigation* into the use of these clauses in relation to home insurance products.

The CMA sets out four high-level principles for how digital comparison tools should behave: they should be clear, accurate, responsible and easy to use. It recommends

that regulators have regard to these principles when assessing compliance by comparison tool providers in their sectors.

In addition, the CMA recommends the FCA considers whether and how it could make it easier for consumers to get quotes from multiple sites. It also suggests the FCA builds on its work to facilitate accurate like-for-like comparison that incorporates non-price factors, and the FCA considers how firms capture information on consumer preferences on insurance excesses and how this may affect consumers’ choice of product.

In a *statement*, the FCA says it’s considering what action to take in response to the CMA’s recommendations. The FCA is also working with the CMA to support its investigation into supplier contracts.

Conduct

Reviving retirement interest-only mortgages

The FCA consulted on various proposals in *CP17/32: Quarterly Consultation No 18* issued on 1 September 2017. It sets out the most significant proposal in chapter nine: plans to bring back retirement interest-only mortgages. These are interest-only mortgages for older consumers where the loan is only repaid on a specified life event (usually the customer’s death or move into residential care). The FCA redefined retirement interest-only mortgages as lifetime mortgages when it implemented the MCD, but it’s now revisiting this position.

Unlike lifetime mortgages, retirement interest-only mortgages do not feature the roll-up of interest.

The FCA also proposes a number of relatively minor changes in the consultation. It sets out proposals for charging authorised payment institutions and authorised electric money institutions which wish to vary their permissions to provide payment initiation services and account information services. These services are being brought into the scope of FCA regulation under PSD2.

It is also consulting on:

- changes to its enforcement guide and decision procedure and penalties manual to implement the PRIIPs Regulation
- what projections firms can provide in addition to the PRIIPs KID
- changes to a number of forms and parts of the supervision manual to implement the IDD
- a change to the prudential sourcebook for investment firms to implement the CRD
- revising the economic assumptions in its requirement for firms to provide a key features illustration for packaged products
- changes to regulatory reporting returns.

The consultation on the IDD implementation, changes to IFPRU 2.2 and the PRIIPs KID closed on 2 October 2017. Comments are due by **1 November 2017** for all other topics.

Consumer issues

FCA reflects on ageing population

The FCA issued *Occasional Paper 31: Ageing Population and Financial Services* on 21 September 2017, which explores the impact of the ageing population on financial services. This is the first of a series of papers which the FCA will issue as part of its focus on consumers, including an overarching strategy document due later this autumn. Alongside the paper, the FCA issued two research reports: *Ageing mind literature review report* and *Coping mechanisms and third party access*.

The FCA wants firms to identify the specific needs, characteristics and preferences of older consumers, and hopes to help firms recognise the potential vulnerabilities associated with older consumers and to act with appropriate care.

The FCA believes there are risks that older consumers' financial services needs are not being fully met, resulting in exclusion and potential harm. It says firms could do more, and sets out some ideas it wants firms to consider as part of how they treat customers fairly. It suggests firms consider the needs of older consumers in product and service design, and continuously review strategies and business models to ensure they remain

appropriate in light of demographic change. While the FCA is not proposing rules or guidance, it may do at a later stage.

It anticipates reviewing in three to five years' time how the financial services industry is adapting to meet the needs of older consumers. The FCA says this will allow time for firms to respond to the issues discussed in this paper, and for it to consider whether further rules are needed.

ICOs carry high risks for investors

The FCA *warned* consumers on the risks of initial coin offerings (ICOs) in an update on 12 September 2017. ICOs are increasingly being used for digital public fund-raising, using virtual currencies (also known as cryptocurrencies). The majority of ICOs are not regulated by the FCA, and it views them as high risk investments. Investors should be wary of ICOs because of a lack of investor protection, price volatility and the potential for fraud, according to the FCA.

Corporate governance

New governance and management guidance

The EBA and ESMA issued two sets of guidelines relating to the governance and management of credit institutions and investment firms on 26 September 2017. The EBA published final *Guidelines on internal governance under CRD IV* and the EBA and ESMA published final *Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the*

management body and key function holders under CRD IV and MiFID II.

The Joint Guidelines cover issues for all firms to consider in assessing the suitability of members of the management body. These include requirements for members to:

- have sufficient time to cover matters in depth, particularly material risks
- possess up to date knowledge, skills and experience of the firm's activities and risks
- display independence of mind in decision making.

Firms must take diversity into account when selecting members of the management body. They also need to provide sufficient resources for induction of new members and ongoing training of existing members to ensure up to date knowledge of legal, regulatory and business risks.

CRD firms must assess all key function holders that have a significant influence over the direction of the firm. In particular, significant CRD firms should always treat the heads of the internal control functions and the chief financial officer as key function holders even if they are not members of the management body.

Similarly, the EBA guidelines emphasise the importance of the management body in internal governance. The management body must promote a strong conduct and culture

policy setting the tone from the top, and promote professional standards and corporate values. It must also ensure that the risk management function has sufficient authority, status and access to management to be effective.

Both sets of guidelines apply to firms from 30 June 2018.

Data

Removing barriers to non-personal data

The EC proposed a new *regulation on a framework for the free flow of non-personal data* in the EU on 19 September 2017. To make the most of the data economy, the EC believes it is essential to enable data to flow across national borders. In combination with the EU rules on personal data protection introduced by GDPR, the EC says the new measures create a common European data space – a key element of its Digital Single Market strategy. It argues this will abolish data localisation requirements while ensuring access rights to competent authorities for regulatory control.

The EC also identified four types of obstacles to data mobility within the EU: data localisation restrictions, obstacles to movement of data across IT systems, legal uncertainty and lack of trust. The EC considers removing data localisation restrictions is the most important factor for the data economy to unlock its full potential.

Financial crime and enforcement

Clarifying MAR

An updated Q&A [document](#) published by ESMA on 1 September 2017 clarifies the scope of firms subject to the MAR provision to detect and report suspicious orders and transactions. It also provides new detailed answers on the scope of the financial instruments subject to the market sounding regime under MAR and the persons subject to the insider list requirements.

The Q&A document promotes common supervisory approaches and practices in the application of MAR and its implementing measures.

FCA explains rise in investigations

The FCA's Director of Enforcement and Market Oversight Mark Steward delivered a speech entitled [A Better View](#) on 20 September 2017. Steward discussed a recent 75% increase in the volume of FCA investigations, identifying three key reasons for the rise:

- more investigations into capital market disclosure issues
- the MAR-related extension in the scope of reporting regimes for firms
- shifting attitudes at the FCA around opening investigations.

He also set out thoughts on MiFID II and how he believes the directive will allow the FCA to uncover instances of misconduct

earlier and more accurately. Interestingly, Steward revealed the FCA intends to act proportionately in its approach to enforcement action against firms that don't meet the MiFID II deadline of 3 January 2018. He stated the FCA has no intention of taking enforcement action where firms can evidence sufficient steps to meet new obligations.

Financial stability

European financial market risks remain high

ESMA published [TRV report on trends, risks and vulnerabilities](#) and the [ESMA risk dashboard](#) on 12 September 2017. It is relevant for all financial market participants.

Overall, the assessment for the second half of 2017 remains unchanged from the first half of this year. ESMA highlights high asset price valuations as the major risk. Other issues such as market risk, credit risk, liquidity and contagion risks are also high, as is operational risk due to cybersecurity concerns.

Uncertainty around geo-political developments, economic growth, Brexit and debt sustainability are the main risk drivers. ESMA identifies increased capital inflow into high yield investments as a sign of growing market confidence in the future economic outlook of the EU. But it says economic growth needs to prove resilient and Member States must address structural issues to sustain market performance.

Specific vulnerabilities ESMA highlights are the challenges of implementing distributed ledger technology, which it says are governance, privacy and interoperability. ESMA outlines some solutions currently prevalent in the market to address these challenges.

ESRB highlights systemic risks

The ESRB highlighted a number of systemic risks to the EU financial system following a meeting of its General Board, in a [press release](#) on 28 September 2017. The ESRB flags risks such as the repricing of global financial markets due to geopolitical and policy uncertainties, both in Europe and globally. It believes this could lead to a rise in yields and impact debt sustainability in the public and private sectors.

Market infrastructure

ECB announces new interest rate

The ECB [announced](#) on 21 September 2017 the development of a new transaction-based unsecured overnight interest rate. Central banks are transitioning from judgment-based interbank overnight rates (IBORs) to transaction-based risk-free reference rates because IBORs are no longer viewed as reflective of the underlying market realities. The ECB will consult on the features of the new benchmark in 2018, and it is expected to go live in 2020.

ESMA updates BMR Q&As

ESMA updated its [BMR Questions and Answers](#) on 29 September 2017, covering scope and definitions. Although EU and

third country central banks are exempt from BMR, supervised users and contributors must still comply with their obligations under BMR with respect to benchmarks such as SONIA.

BMR exempts a single reference price provided for a single instrument. Calculations based on complex methodologies, input data and discretion are indicators that a single reference value, such as an equity basket, is a benchmark. By contrast, simple calculations, averages or the 'setting and reviewing of weights in a combination of benchmarks' are out of scope because they do not require discretion.

BMR permits benchmarks based on similar methodologies to be grouped into one family with a single code of conduct. Administrators may group their critical, significant and non-significant benchmarks into one family. Families can also be based on input data of the same nature, market or economic reality, or by sector benchmark (i.e. interest rate, commodity, regulated data).

In addition, ESMA clarifies the definition of use under Article 3(1)(7)(b): determination of the amount payable under a financial instrument or a financial contract by referencing an index or a combination of indices. Supervised users in this example include trading venues or systematic internalisers that trade or CCPs that clear a

derivative which contains a benchmark that they chose.

ESMA's non-significant benchmark guidelines

ESMA consulted on *Draft Guidelines for non-significant Benchmarks* on 29 September 2017. NCAs and market participants 'must make every effort to comply', with NCAs notifying ESMA on a 'comply or explain' basis. Administrators and contributors are not required to report compliance.

In keeping with the proportionality principle, ESMA's Guidelines provide administrators of, and supervised contributors to, non-significant benchmarks a measure of discretion compared to the technical standards which only apply to critical and significant benchmarks. Where BMR technical standards or delegated acts permit administrators of non-significant benchmarks not to apply a specific provision, the related guideline will not apply either.

ESMA's proposals cover:

- procedures, characteristics and positioning of oversight function
- appropriateness and verifiability of input data
- transparency of methodology
- governance and control requirements for supervised contributors.

Comments are due by **30 November 2017**. ESMA will publish the final guidelines once the EC publishes the RTS/ITS applicable to critical and significant benchmarks. ESMA submitted draft RTS/ITS to the EC in March 2017.

Harmonising Unique Product Identifiers

CPMI-IOSCO published *Technical Guidance: Harmonisation of the Unique Product Identifier (UPI)* on 28 September 2017. CPMI-IOSCO outlines the benefits of such an identifier and provides guidance to national regulators so that their UPI specifications for transaction reporting align with global standards. The guidance covers:

- the technical principles applicable to the UPI
- the UPI reference data elements required for each OTC derivative asset class
- the identification of underlying assets
- the UPI code structure.

CPMI-IOSCO's work does not cover governance arrangements or broader implementation.

MiFID II MiFID II interim transparency calculations

ESMA published its *MiFID II Transitional Transparency Calculation* on 11 September 2017. It gives more detail on data availability, file structures and content for

the purposes of transparency requirements in respect of bonds, structured finance products, emission allowances and derivatives under MiFID II. ESMA also published *FAQs on MiFID II - Interim Transparency Calculations* on 11 September 2017, which provides more information on interpreting ESMA's transparency work to date.

ETDs will be part of MiFID II access regime

The EC published a *Report from the EC to the EP and the Council on the need to temporarily exclude exchange-traded derivatives from the scope of Articles 35 and 36 of the Regulation (EU) No 600/2014 on markets in financial instruments* on 11 September 2017. It considers whether exchange traded derivatives (ETDs) should be excluded from CCP and trading venue access provisions under articles 35 and 36 of MiFIR.

The EC explores operational, concentration and interoperability risk posed by including ETDs within its access regime. It concludes temporary exclusion is unnecessary and finds prospective risks are mitigated by the ability of a CCP or trading venue to deny access if risks posed by access are too high.

FCA publishes MiFID II notification guide

The FCA published its *MiFID II Systematic Internaliser and Electronic Trading Notification Guide* on 11 September 2017. The FCA provides firms impacted by MiFID

II systematic internaliser and e-trading requirements with guidance on how to notify it of engagement in these activities. It gives detailed guidance on the location of notification forms and how to complete them.

ESMA updates MiFID II market structure Q&As

ESMA published new *Questions and Answers on MiFID II and MiFIR market structures topics* on 12 September 2017. It updates existing Q&As with new information on:

- DEA providers' controls and suitability checks for non-EEA clients
- responsible competent authorities in instances where instruments are dual listed
- mandatory trading in financial instruments for OTFs
- MiFID II provisions applicable to OTFs trading REMIT wholesale energy products
- OTF best execution obligations with respect to third-party brokers
- further detail on instances where SIs can trade at better prices than prevailing conditions.

FCA publishes position limits exemption guide

The FCA published a *Commodity position limits exemption application guide* on 26 September 2017. The FCA provides the

guide to help non-financial entities (NFEs) request an exemption from MiFID II's commodity position limits regime. It asks NFEs to give detail on how their commodities derivatives activity is risk reducing and justifies an exemption from the MiFID II regime.

ESMA agrees MiFID II waiver workplan

ESMA published a policy statement entitled *ESMA and NCAs agree Work Plan on MiFID II Pre-Trade Transparency Waivers and Position Limits* on 28 September 2017. ESMA sets out a revised work plan for delivering its opinions on pre-trade transparency waivers and commodities position limits under MiFID II. ESMA notes it has received over 700 requests for pre-trade transparency waivers and roughly 110 for commodity position limits.

It has worked with NCAs to plan for instances where it has been unable to deliver an opinion before 3 January 2018. It will prioritise approval of equity instrument waivers until the end of 2017. For non-equity waivers, ESMA states it will allow NCAs to approve temporary waivers where it has not delivered an opinion. These waivers will then be reassessed and ESMA opinions delivered at a later date.

For commodities position limits, ESMA agrees to rely on initial limits proposed by NCAs before delivering its opinions at a later date. If its opinion ends up differing

from temporary limits, the position limit will need to be adjusted.

ESMA sets management body guidelines

ESMA released *Guidelines on the management body of market operators and data reporting services providers* on 28 September 2017. ESMA aims to help clarify a number of themes for market operators and data reporting services providers in line with Articles 45 and 63 of MiFID II. The Guidelines cover:

- expectations on sufficient time commitments
- calculating the number of allowable directorships
- knowledge, skills and experience
- honesty and integrity
- independence of mind
- induction and training resources for members of the management body of market operators
- diversity
- record keeping.

Market operators and data reporting services providers may wish to review the guidelines as part of their MiFID II preparations. The Guidelines will apply from 3 January 2018.

Details on derivatives trading obligation

ESMA published its *Final Report Draft RTS on the trading obligation for derivatives under MiFIR* on 28 September 2017. ESMA's draft RTS give detail for on-venue trading of interest rate and credit default swaps as required under MiFID II's derivatives trading obligation.

ESMA notes the trading obligation must apply to derivatives which are sufficiently liquid and available to trade on at least one trading venue. It takes the decision to initially require the following asset classes to be traded on-venue:

- EUR fixed-to-float interest rate swaps
- USD fixed-to-float interest rate swaps
- GBP fixed-to-float interest rate swaps
- iTraxx Europe main and crossover index CDS.

It has submitted its draft RTS to the EC for approval. ESMA expects a 3 January 2018 application date for the derivatives trading obligation requirements.

FCA updates MiFID II notifications page

The FCA provided an *Update to its MiFID II notifications obligation for firms* page on 11 September 2017. The FCA provides links to notification forms and user guides for firms wishing to make MiFID II notifications for:

- making use of the ancillary activity exemption

- acting as a general clearing member
- operating as a systematic internaliser
- providing DEA or trading algorithmically.

MiFID II is effective from 3 January 2018.

FCA: Check your MiFID II status

The FCA updated its *MiFID II: authorisation and variation of permissions* web page on 18 September 2017. It reminds firms to check their regulatory permissions and authorisation status remain adequate in light of changes to the regulatory boundary under MiFID II.

It specifically asks proprietary trading firms and direct electronic access providers to confirm they do not need to be authorised under MiFID II. The FCA advises firms to apply for permissions as soon as possible.

EC delivers MiFID II indirect clearing RTS

The EC published *COMMISSION DELEGATED REGULATION (EU) .../... supplementing Regulation (EU) No 600/2014 of the EP and of the Council with regard to RTS on indirect clearing arrangements* on 22 September 2017.

The EC drafts RTS to simplify default management of clients providing indirect clearing services. It also aims to impose protections throughout clearing chains to ensure indirect clearing does not result in heightened risk. In addition, the EC wants

to align standards for OTC and exchange-traded derivatives.

To achieve these goals, the EC covers:

- requirements for providing indirect clearing services by clients
- obligations for CCPs, clearing members and clients
- requirements for the provision of indirect clearing services by indirect clients and second indirect clients.

The regulation will enter into force 20 days after publication in the Official Journal, and will apply from 3 January 2018.

AFME offers firms post-trade reporting advice

AFME published a report on *MiFID II / MiFIR post-trade reporting requirements* on 21 September 2017. AFME provides practical advice for investment firms impacted by post-trade reporting under MiFID II. It covers:

- which firms need to report
- what impacted firms need to report
- where reports need to be delivered
- regulatory reporting options
- common challenges firms are facing with respect to post-trade reporting.

Firms impacted by MiFID II post-trade reporting requirements may wish to review AFME's guide to aid them with MiFID II reporting preparations.

Operational resilience

EC gets tough on cyber crime

The EC set out its plans to increase the EU's resilience to cyber attacks, in *State of the Union 2017: The Commission scales up its response to cyber-attacks* on 19 September 2017. The EC plans to strengthen the EU Agency for Network and Information Security (ENISA), create an EU-wide cybersecurity certification framework, develop a blueprint for how to respond to major cybersecurity incidents, and establish a European Cybersecurity Research and Competence Centre. In addition, it reveals a proposal for a new directive on the combatting of fraud and counterfeiting of non-cash means of payment. This will strengthen the ability of law enforcement authorities to tackle this form of crime, introduce common rules on penalty levels, and clarify the scope of Member States' jurisdiction.

The EC says it plans to reform ENISA into a stronger EU Cybersecurity Agency with a permanent mandate and greater operational resources. The agency's main aim will be to support Member States in implementing the NIS Directive. In addition, the EC hopes the cybersecurity certification framework will provide clarity on the security requirements that products, systems and services need to meet.

In 2018, the EC plans further work to tackle cyber crime. It intends to present proposals for cross-border access to electronic

evidence in early 2018, and to report on the role of encryption in criminal investigations by October 2018.

Our publications

Government response on corporate governance reform

Our publication *Government response to Green Paper on corporate governance reform* considers the Government's response to the Green Paper consultation on corporate governance reform issued in November 2016. The Government response also incorporates comments on the recommendations of the Department for Business, Energy and Industrial Strategy Select Committee inquiry which reported in April 2017. It sets out a number of proposals for reform regarding executive pay, strengthening stakeholder voice and corporate governance in large, privately held businesses.

The Government plans to lay the relevant secondary legislation before Parliament before March 2018 and bring the reforms into effect by June 2018, to apply to company reporting years commencing on or after that date.

FRC consults on strategic report Guidance

Our publication *FRC consults on revised Guidance on the strategic report* looks at the impact and issues surrounding the FRC's *consultation on amendments to its Guidance on the Strategic Report*. The

FRC is consulting on revisions to its Guidance on the strategic report to:

- emphasise the connection between section 172 of the Companies Act and the purpose of the strategic report
- reflect changes arising from the UK implementation of the EU Non-Financial Reporting Directive
- incorporate a number of other recent developments and hot topics in reporting.

The comment period ends on **24 October 2017**.

Pensions

FCA confirms pension charges disclosure

The FCA confirmed that firms managing money on behalf of defined contribution pension schemes must disclose charges information to governance bodies, in *PS17/20: Transaction cost disclosure in workplace pensions* on 20 September 2017. From 3 January 2018, firms must provide to the governance body of pension schemes:

- information about transaction costs, calculated according to the 'slippage cost' methodology (this matches the methodology required under the PRIIPs Regulation)
- information about administration charges
- appropriate contextual information.

Where firms do not hold the relevant information, they must seek it from other firms. Those firms must provide the information, as long as they are authorised by the FCA. The FCA also published *Handbook rules* setting out the new requirements.

By requiring firms to provide this information in a consistent way, governance bodies are able to meet their obligations to review the value for money of transaction costs and administration charges. The FCA is also working with the Department for Work and Pensions (DWP) on further transparency measures. DWP is planning to consult on proposals on how costs and charges for occupational pension schemes should be disclosed to scheme members. Following that, the FCA plans to consult in Q2 2018 on proposals to achieve similar outcomes for workplace personal pension schemes.

Supervision

ISDA joins equivalence debate

ISDA published a *white paper* on extraterritoriality on 18 September 2017. ISDA argues that the extraterritorial reach of US derivatives rules should be circumscribed. It believes that when overseas firms are directly regulated by the CFTC, they should benefit from principles-based equivalence determinations as opposed to the current approach requiring detailed alignment.

ISDA argues that Dodd-Frank Title VII is concerned about the risk posed to US market participants when facing foreign counterparties, and so overseas firms should only be subject to those parts of Title VII that regulate such risk. These include transactional economic risk through margin requirements or counterparty risk through risk management governance and capitalisation. Notably, ISDA does not feel it is appropriate to regulate overseas transparency requirements on this basis, thereby advocating that foreign firms should not be subject to the Dodd-Frank transaction reporting rules.

The ISDA paper contributes to a broader global dialogue about the appropriate scope and application of extraterritorial rules and equivalence determination, especially relevant in the UK because of Brexit. The CFTC has already signalled an interest in revisiting its substituted compliance framework and so ISDA's arguments could well enjoy a receptive audience with US regulators.

EC proposes reforms of ESRB

The EC proposed a number of changes to the role of the ESRB, in *Proposal for a Regulation of the EP and of the Council amending Regulation (EU) No 1092/2010 on EU macro-prudential oversight of the financial system and establishing a ESRB* on 20 September 2017. The proposals include provisions which would make the ECB President the permanent chair of the ESRB, and make representatives of the SSM

and the SRB voting members of the ESRB General Board.

The EC also proposes to include the ECB as a possible addressee of ESRB warnings and recommendations for supervisory tasks not related to the conduct of monetary policy. Finally it would require the ESRB's advisory committees to consult interested parties such as market participants, consumer bodies and experts when they issue opinions, recommendations and decisions.

EC sets out ESAs reform

The EC *proposed* significant changes to the roles of the ESAs on 20 September 2017. If implemented, the EC's proposals will significantly increase the ESAs' roles and responsibilities, which will impact UK financial institutions accessing the EU Single Market, both in the near term and post-Brexit.

The EC proposes giving the ESAs an enhanced role in preparing third country equivalence decisions. It suggests entrusting the ESAs with monitoring, on an on-going basis, the regulatory and supervisory developments as well as enforcement practices in third countries that the EC has taken an equivalence decision on (both positive and negative).

In addition, the EC sets out plans to give the ESAs a role in scrutinising EU financial institutions' plans to outsource functions, delegation of fund management and risk transfer (such as back-to-back booking models) to third country entities. And

it suggests that ESMA's direct supervisory role should be expanded from its current powers over CRAs and trade repositories to include supervision of venture capital and infrastructure funds. The EC further proposes giving ESMA the roles of approving certain prospectus and supervising third country benchmark administrators.

On the ESAs' governance, the EC intends to make the ESAs' decision making process more seamless. It wants to put EU-wide considerations at the heart of the decisions the ESAs take, as opposed to national specificities. With this in mind the EC proposes that the ESAs establish independent executive boards, comprised of full-time members, to support 'effective, impartial and EU-oriented decision-making' on matters of regulatory and supervisory convergence.

The EP and Council will now discuss the proposals with the aim of finding a common position.

For more detail see our feature on p. 3.

Wholesale markets

FMSB publishes annual report

The Fixed Income, Currencies and Commodities Markets Standards Board (FMSB) published its *Annual Report* on 20 September 2017. It outlines 2017 achievements as well as identifying emerging vulnerabilities in FICC markets. Interestingly, it identifies electronic

wholesale FICC markets as a key emerging vulnerability and identifies high risk areas as:

- governance around E-trading venues
- system development discipline
- algorithm governance
- market structure and infrastructure
- increase in order types
- parallel market pricing
- data management
- post-trade processes.

Best practice for your front office

The Fixed Income, Currencies and Commodities Market Standards Board (FMSB) published *Front Office Supervision - Statement of Good Practice for FICC Market Participants* on 15 September 2017. The FMSB gives examples of good practice in the following areas:

- organisation and responsibilities - clearly delineated responsibilities for supervisors and escalation procedures supported by supervisors with adequate experience
- supervisory hierarchy - defined control frameworks, reasonable span of supervisory activities and clarity for employees over identity of their supervisor
- location of supervisors - specific controls around instances of remote supervision

and establishment of a global supervisory framework

- control environments - control frequency should be aligned to specific risks, tools should support supervisors and controls must be supported by monitoring of effectiveness.

The FMSB highlights that firms are embedding the good practice set out above and looking to use technology to supplement their efforts.

FMSB outlines good practice for monitoring

The Fixed Income, Currencies and Commodities Market Standards Board (FMSB) published *Monitoring of written electronic communications Statement of Good Practice for FICC Market Participants* on 15 September 2017. The FMSB provides the statement of good practice to support front office and control personnel to undertake effective monitoring in FICC markets. The FMSB sets out examples of good practice in the following areas:

- organisation, roles and responsibilities - independent monitoring which is proportionate to business size and which ensures compliance with data privacy laws
- processes for maintaining effective lexicons - regular review of lexicons with a clear process for tracking changes made

- reactive controls and processes - surveillance processes for real-time monitoring and assessment of alerts
- proactive controls and processes - risk-based reviews and random checks.

The FMSB also provides an overview of emerging practices with respect to monitoring electronic communications. It covers advanced analytical techniques, near and offshoring of surveillance and integration across surveillance areas.

Harmonising securitisation supervision

The EBA published a *discussion paper* on supervisory harmonisation of securitisation risk transfers on 19 September 2017. It explores further specifications for supervision of amortisation structures, excess spreads, cost of credit protection and call options. The EBA also covers significant risk transfer in securitisation of non-performing loans (NPL), one of the key features of NPL resolution.

The utilisation of significant risk transfer is a central part of the EC's new regime to encourage increased investment in securitisations by reducing the capital requirements for 'high quality' securitisations. Achievement of significant risk transfer allows originator institutions to exclude securitised exposures from risk-weighted exposure calculations and apply beneficial risk weights to the retained securitisations.

The EBA welcomes comments by **19 December 2017**.

Accounting

IFRS 9

PRA warns on IFRS 9 capital impact

The PRA published a Dear CEO letter concerning *Transitional arrangements for capital impact of IFRS 9 expected credit loss (ECL) accounting* on 25 September 2017. This concerns firms within the scope of CRD IV which are applying IFRS 9 from 1 January 2018. It encourages these firms to take advantage of the transitional provisions but highlights the compressed timescale firms may have to make a final decision on this towards the end of 2017.

These transitional provisions are currently going through the EU legislative process as an amendment to CRR. They are set to allow firms to phase-in the impact on regulatory capital of the implementation of IFRS 9 over a five-year period. Alternatively firms may choose to recognise the effect in full on 'day one' or at a future date during the transition period.

The PRA is supportive of these transitional arrangements. It recognises that ECL provisioning is completely new and there is currently little insight into how sensitive ECLs may be to changes in economic conditions. This gives rise to a risk that capital ratios could be significantly more volatile than anticipated. The PRA considers

that these provisions should provide time for firms and the PRA to consider, through the capital planning process, how to maintain sufficient resilience, both during and at the end of the transition period.

The PRA asks firms to inform their PRA supervisors of their intentions. It expects firms which plan not to apply the transitional provisions to provide ‘a full explanation of how your firm’s board has satisfied itself that the firm will have adequate financial resources, including in stressed scenarios’.

IASB compares accounting policies and estimates

The IASB published *ED Accounting Policies and Accounting Estimates (Proposed amendments to IAS 8)* on 12 September 2017. It proposes amendments to help companies distinguish accounting policies from accounting estimates. The distinction is important because changes in accounting estimates often affect a company’s profit or loss, but changes in accounting policies generally do not. The comment period ends on **15 January 2018**.

IASB consults on definition of materiality

The IASB published an exposure draft *Definition of material (Proposed amendments to IAS 1 and IAS 8)* on 14 September 2017. It proposes amendments to IAS 1 (Presentation of financial statements), IAS 8 (Accounting

policies, changes in accounting estimates and errors) and other IFRSs to:

- use a consistent definition of materiality throughout IFRSs and the Conceptual Framework for Financial Reporting
- clarify the explanation of the definition of material
- incorporate some of the existing guidance in IAS 1 about immaterial information.

The comment period ends on **15 January 2018**.

The IASB also issued a *Making Materiality Judgements - Practice Statement 2*. It aims to assist management to present financial information about the entity that is useful to existing and potential investors, lenders and other creditors in making decisions. The practice statement does not have an effective date and can be applied with immediate effect.

See our publication *Definition of material and guidance on making materiality judgements* for further details.

Also this month

EC

- EC President Jean-Claude Juncker gave his *State of the Union* address on 13 September 2017, setting out his positive vision for the EU for the year ahead and

calling for closer economic union between Member States.

- The EC issued a *Delegated Regulation* on 26 September 2017, amending the published version of the RTS 13 on the authorisation, organisational requirements and the publication of transactions for data reporting services. The amendment expands the scope of non-equities consolidated tape providers (CTPs). The provisions will apply to CTPs in phases, starting in 3 January 2018, 1 January 2019 and 3 September 2019.

ECB

- The ECB published its *economic bulletin* on 21 September 2017, highlighting the economic and monetary developments in the Eurosystem.
- Vítor Constâncio, Vice-President of the ECB, gave a speech on *macroprudential stress-tests and tools for the non-bank sector* on 22 September 2017. Constâncio highlighted the tools available for European policy makers and regulators to address the systemic risks in the non-bank sector, particularly shadow banking.
- In an *introductory statement* at the ECON on 25 September 2017, Mario Draghi, President of the ECB, discussed two topics related to the ECB’s monetary policy: the corporate sector purchase

programme and monetary policy implementation across the euro area.

ESAs

The ESAs published the *joint committee report on risks and vulnerabilities in the EU financial system* on 21 September 2017. They highlight the risks from Brexit, an uncertain yield outlook, low profitability of financial firms and developments in FinTech, as well as policy actions to address these risks.

FCA

The FCA published the *cooperation agreement* it signed with the Hong Kong Insurance authority on 21 September 2017. Under this agreement, the authorities will share information on innovation and referrals of innovative firms seeking to enter each other’s market.

IMF

The IMF published *central banking and FinTech—a brave new world*, a speech by its Managing Director Christine Lagarde on 29 September 2017. Focussing on how FinTech will change central banking in future, she highlighted the possible impacts of virtual currencies, new models of financial intermediation and artificial intelligence.

PRA

- The PRA published consultation paper *CP17/17: Regulated fees and levies: Adjustment to rates for 2017/18* on 12

September 2017. It outlines the corrected fee rates to the PRA's annual funding requirement for 2017/18. This consultation is relevant for all PRA regulated firms and closes on **12 October 2017**.

- The PRA published the *capital+ reporting requirements – timeline of onboarding activity* on 27 September 2017. It indicates the timeline for onboarding activities for the BoE's electronic data submission portal leading up to firms' submission deadline. It is relevant for all CRD firms supervised by the PRA.

Banking and capital markets

In this section:

Regulation	17
Capital and liquidity	17
Consumer credit	17
Financial crime and enforcement	18
Payments	18
Recovery and resolution	19
Supervision	19
Accounting	20
Accounting	20

Also this month **20**

A brief round up of other regulatory developments



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Regulation

Capital and liquidity

Global banks exceed Basel minimum requirements

The Basel Committee published the *Basel III monitoring report* on 12 September 2017. It highlights the regulatory performance of banks in Basel member jurisdictions.

A total of 200 banks participated in the monitoring exercise, of which 105 were large internationally active banks ('Group 1'), and the 95 other banks were classed as 'Group 2' firms. The results are based on data as of 31 December 2016.

All participating banks met the minimum CET1 requirement of 4.5% and their average leverage ratio is above the minimum requirement of 3%. Similarly, their average LCR and NSFR ratios are comfortably above the target minimum requirement of 100%. Only the TLAC measure indicated a shortfall of €116bn against the 2022 minimum requirements for 12 of the 25 G-SIBs.

Banks well capitalised, liquidity still short

The EBA published the *CRD IV – CRR/Basel III monitoring exercise* on 12 September 2017. It applies to all EEA banks.

The EBA used the CRD IV/CRR rules as the basis for monitoring capital, leverage and liquidity ratios. It based the NSFR on the Basel rules because of the pending finalisation of the EU rules. A total of 164 banks participated in the exercise, of which 45 were internationally active banks ('Group 1') and the rest were other banks ('Group 2'). The data used for the exercise was as of 31 December 2016.

The average CET1, Tier 1 and total capital ratios of all banks are above the minimum EU requirements. While the average leverage ratio is also above the minimum requirements, a very small number of banks exhibited potential shortfalls.

The EBA found that all banks meet the transitional minimum LCR requirement of 70% and a majority of the banks have an LCR above 100%. In relation to the 100% LCR threshold, there is a €0.1bn shortfall in high quality liquid assets. On average, all banks have their NSFR above 100%, but with an overall shortfall in stable funding of €116bn.

Consumer credit

Dear CEO on consumer credit complaints

The FCA published a *Dear CEO letter* on 13 September 2017 for the attention of all consumer credit firms regarding complaints handling. The FCA recently reviewed the

handling of customer complaints by a range of consumer credit firms and found evidence of material non-compliance.

The FCA is concerned that firms are failing to:

- give customers notice of their FOS referral rights
- explain clearly to customers the outcome of their complaints and the reasons for the outcome
- undertake root cause analysis to identify recurring or systemic problems
- record and report accurate complaints data to the FCA.

Consumer credit firms should now review their complaints processes and systems, giving particular attention to these issues. They are also encouraged to review the FCA's findings on complaints handling in its recent *follow up* to its review of packaged bank accounts. This follow up recommends specific improvements for firms to make to their final response letters.

Whilst firms do not need to notify the FCA of their reviews or any outcomes, they can expect the FCA to ask for evidence of compliance in any future contact. The FCA also warns that any serious failings may lead to enforcement action.

Financial crime and enforcement

ESAs guidelines guard against money laundering

The ESAs published *Final Joint Guidelines under Article 25 of Regulation (EU) 2015/847 on the measures payment service providers should take to detect missing or incomplete information on the payer or the payee, and the procedures they should put in place to manage a transfer of funds lacking the required information* on 22 September 2017. The joint guidelines are designed to guard against the transfer of funds for the purpose of terrorist financing and money laundering. They set clear, common standards around the information that should be included with the electronic funds transfer. They also explain in practical terms what PSPs should do when they receive a funds transfer that lacks the requisite information.

Payments

Implementing PSD2

The FCA and PSR published *Payment Services and Electronic Money – Our Approach: The FCA's role under the Payment Services Regulations 2017 and the Electronic Money Regulations 2011 and the PSR's approach to monitoring and enforcing PSD2* - their approaches to regulating the Payment Services Regulations (PSRs) 2017 and implementing PSD2 - on 19 September 2017.

In *PS17/19 - Implementation of PSD2: Approach Document and final Handbook changes*, published at the same time, the FCA confirms changes it will make to its handbook and approach document following earlier consultation. Minor changes have been made to the FCA's perimeter guidance, its guidance on the new AIS and PIS services, complaints handling and reporting, monthly statements and conduct of business requirements.

The FCA is the NCA for most of the PSRs 2017 and is responsible for authorising and registering PSPs and firms providing electronic money services. The PSR is responsible for regulating practices in relation to ATM withdrawals and ensuring PSPs have and give access to payment systems. Jointly with the FCA, the PSR is responsible for granting PSPs access to customer bank accounts.

The PSRs 2017 widen the scope of the FCA's authority and bring account aggregation and payment initiation services within the scope of regulated activity. Firms providing these services must seek permission from the FCA to operate. In addition, existing PSPs must re-authorise and re-register with the FCA by 13 July 2018 and 13 January 2019 respectively to continue to provide payment services. The FCA *published* new application forms and will accept applications from 13 October 2017.

The FCA also published a *direction under regulation 38 of the Payment Services*

Regulations 2017 (Notification of use of limited network exclusion) and a *direction under regulation 39 of the Payment Services Regulations 2017 (Notification of use of electronic communications exclusion)* requiring PSPs taking advantage of exemptions to authorisation and registration in the PSRs 2017 to comply with information requirements. And in a joint *Payment Services Instrument*, the FCA and the FOS outlined changes made to the FCA handbook and complaints handling rules by the PSRs 2017.

The PSRs and the changes outlined take effect in the UK from 13 January 2018.

ECB clarifies TARGET2

The ECB amended its guideline *ECB/2012/27* on a Trans-European Automated Real-time Gross Settlement Express Transfer system (TARGET2), the payment system which facilitates large-value payments, on 22 September 2017.

In a *guideline* addressed to all Eurosystem national central banks, the ECB clarifies the definitions of ancillary systems (in the context of TARGET2) and guarantee funds. It also provides directions on processing transactions by suspended TARGET2 participants (paragraph 3a). NCAs should comply with the revised guideline from 13 November 2017.

EC sets common payment terms

The EC published *Commission Delegated Regulation (EU) .../... of 28.08.2017*

supplementing Directive 2014/92/EU of the EP and of the Council with regard to RTS for the Union standardised terminology for most representative services linked to a payment account on 28 September 2017. It lists eight services commonly associated with payment accounts and gives them standardised terms and definitions. The regulation will come into force 20 days after its publication in the Official Journal.

Recovery and resolution

EBA clarifies MREL reporting

The EBA published final draft ITS on the procedures and templates for the identification and transmission of information by resolution authorities to the EBA on MREL on 5 September 2017. It separately published the templates contained in the annexes to the ITS.

Resolution authorities are required under Article 45(16) of BRRD to inform the EBA of the MREL set for each institution under their jurisdiction so the EBA can monitor the consistency of MREL implementation across the EU.

Supervision

Agreeing cross-border bank resolution cooperation

The EBA announced on 29 September 2017 that it's signed a Framework Cooperation Arrangement with US financial regulatory agencies to support cross-border cooperation on resolution planning. The EBA has powers under BRRD to conclude such arrangements with supervisors and

resolution authorities in non-EU jurisdictions.

Cooperation arrangements under the framework may cover topics such as resolution planning, resolvability assessments, early intervention, crisis management processes and the sharing of confidential information. The US agencies participating in the framework are the Board of Governors of the Federal Reserve System, FDIC, the Office of Comptroller of the Currency, the SEC and the New York State Department of Financial Services. On the EU side, the framework covers the ECB, the SRB, NCAs and resolution authorities. The BoE and the PRA are the relevant UK authorities.

Consolidation needed for EU banks?

Daniele Nouy, Chair of the Supervisory Board of the ECB, gave a speech on 27 September 2017 examining the need for consolidation in the European banking sector. She indicated that the sector is probably overbanked, referring to a widespread lack of profitability. Nouy called on banks to review their business models to find ways to prosper even when interest rates are low. She identified that they need to deal with digitalisation, stronger rules, tougher supervision and to clean up the legacy assets on their balance sheets. This may lead to smaller banks exiting the market.

Nouy observed that one exit mechanism, mergers, is currently running at its lowest

level since 2000. She offered various types of uncertainty and level playing field issues as possible causes for this. Nouy also stressed that the role of regulators in helping the banking sector to shrink is limited to creating the conditions that allow the market to function effectively.

She highlighted that the SRM now in place provides the means for failing banks to exit the market in an orderly fashion. In terms of removing barriers to mergers relating to uncertainty over asset quality, she referred to the ECB's work in this area and its initiative around non-performing loans. Nouy also acknowledged the importance of finalising Basel III promptly to create regulatory certainty.

Assessing SSM bank licence applications

The ECB published consultations, Guide to assessments of licence applications and a supplementary Guide to assessments of FinTech credit institution licence applications on 21 September 2017. Through these guides, the ECB aims to provide more harmonisation and transparency over the general process and requirements for the assessment of such applications. Under the SSM, Eurozone Member States' NCAs are the first point of contact for bank licensing applications. The ECB and NCAs assess them jointly but the ECB makes the final decision to grant, extend or withdraw them.

In the FinTech guide the ECB refers to FinTech banks as those with business models in which the production and delivery of banking products and services are based on technology-enabled innovation. But the ECB indicates that this guide is not exclusively applicable to FinTech banks and may be equally relevant to banks with more traditional models. It also stresses that FinTech banks must be held to the same standard as other banks.

The ECB says it's likely to update the guides regularly to reflect new developments and practice. It also signals that it plans a further consultation on the assessment of capital and the programme of operations. Those are intended components of the guide currently under development but not included in this consultation. This consultation closes on **2 November 2017**.

Harmonising the banking rulebook

Member of the ECB's executive board and Vice-Chair of its supervisory board, Sabine Lautenschläger, gave a speech on 28 September 2017. She discussed the rulebook for banks and how it relates to supervision, the toolbox that supervisors have at their disposal and finally the role of the market. Lautenschläger particularly highlighted the importance of harmonising the rulebook and relying more on EU regulations, than on EU directives, as they can be directly applied in all Member States.

She emphasised the need for SREP which provides a common yardstick to compare

banks across the euro area and helps to identify best practices and spot common problems. By referring to the SREP, Lautenschläger stressed the need to develop specific supervisory requirements and measures for each bank. Finally she elaborated on the SRM as a tool to resolve banks in an orderly manner and reiterated the ways to improve the SRM such as precautionary recapitalisation and defining solvency.

Accounting

Accounting

Changing bank levy calculations

The UK Government published a policy paper, *Bank Levy: changes to the scope and administration* on 13 September 2017. It confirms changes to the scope of the bank levy and the way it's calculated, which impact UK-based banks and building societies.

The Government states that revisions to the scope and calculation of the levy will apply from 2021, while the administrative simplifications to the bank levy will come into force in 2018.

It confirms that under the new methodology, only UK balance sheet equity and liabilities will be subject to the levy - the overseas branches of UK entities will no longer be in scope. A simplified calculation will allow firms to calculate the equity and liabilities of a sub-group member either as

part of the whole sub-group or on a standalone basis. Firms will also be able to deduct their holdings in certain types of loss absorbing investments in an overseas subsidiary from the levy. The Government adds that netting rules will undergo changes too, meaning amounts owed to any member of the group can be a part of the netting agreement.

Administrative simplifications include automatic renewal of an entity's responsible member status and an update to the joint and several liability rules. In line with the ring-fencing rules, this last change will limit the liabilities of the ring-fenced entities to the bank levy debts attributable to non-ring-fenced entities.

Also this month

Basel Committee

- The Basel Committee and the IFRS Foundation announced they've signed an *MoU* on 5 September 2017. The organisations plan to share information to help develop the IFRS Standards, and to support interaction between the IFRS Standards and the Basel Committee Framework.
- The Basel Committee published *FAQs on Basel III definition of capital* on 19 September 2017 with the aim of promoting consistent implementation of Basel rules globally. It is relevant for internationally active banks.

BoE

- The BoE and PSR *announced* the formation of a new payment systems operator (NPSO) on 13 September 2017. The NPSO consolidates three payment systems: Bacs Payment Schemes Ltd, Cheque and Credit Clearing Company and the Faster Payments Scheme Ltd.
- The BoE announced it will publish its stress test rules on 28 November 2017, in a *press release* 22 September 2017. The results will be relevant for all UK-based banks and building societies, particularly the seven major firms that participated in the tests.

CMA

In its *final report* published on 22 September 2017, the CMA concluded that competition concerns arising from the acquisition by independent ATM provider Cardtronics plc of DirectCash Payments Inc had been mitigated.

EC

- The EC published the *Regulation (EU) 2017/1538 of the ECB of 25 August 2017 amending Regulation (EU) 2015/534 on reporting of supervisory financial information (ECB/2017/25)* on 19 September 2017. This publication is relevant for all firms subject to the SSM, which have to report the supervisory financial information to their NCA and the ECB.

- The EC published *Regulation (EU) 2017/1539 of the ECB of 25 August 2017 laying down the date of application of Regulation (EU) 2017/1538 amending Regulation (EU) 2015/534 on reporting of supervisory financial information (ECB/2017/25) to less significant supervised entities subject to national accounting frameworks (ECB/2017/26)* on 19 September 2017. It applies to less significant supervised entities subject to national accounting frameworks based on Directive 86/635/EEC and established in Germany or France from 1 January 2019. The regulation enters into force 20 days after publication in the Official Journal.
- The EC published a proposal for a *Regulation amending Regulation (EU) No 1092/2010 on EU macro-prudential oversight of the financial system and establishing a ESRB* on 20 September 2017. As a result of recent changes relating to the Banking Union and CMU, the EC proposes amendments concerning the voting members of the ESRB General Board and Technical Committee.

ECB

The ECB published *decisions taken by the Governing Council of the ECB (in addition to decisions setting interest rates)* on 22 September 2017. The Governing Council aims to produce a new euro unsecured overnight interest rate before 2020 to serve

as a backstop reference rate to the existing benchmark rates.

FSCS

The FSCS has agreed with banks and building societies to extend their obligations to include the FSCS badge in their communications, it announced in a [press release](#) on 20 September 2017. Firms have 18 months to add the FSCS logo to their websites, mobile banking apps and customer information sheets.

ISDA

ISDA published a paper on the [Proposed Moratoria under the BRRD: A step backwards in efforts to end 'Too big to fail'](#) on 28 September 2017. It considers the implications for EU financial institutions with global operations in light of the EC's proposals for amending moratoria provisions in BRRD. ISDA believes the proposals could trigger opt-out rights for entities that have adhered to the ISDA 2015 Universal Resolution Stay Protocol.

PRA

- The PRA published [drafts of the taxonomy, data point model dictionary, annotated templates and validation rules for reporting ring-fencing data](#) on 18 September 2017. Firms and software vendors can provide feedback by 6 October 2017. The PRA plans to publish final versions in spring 2018. It also confirms that the GABRIEL system will

be used to collect ring-fencing reporting data.

- The PRA published the [Supervisory Statement SS6/17 Compliance with the EBA's Guidelines on disclosure](#) on 27 September 2017. It waives the pillar 3 guidelines requirement to disclose the template 'EU CCR5-B – composition of collateral for exposures to CCR', to reduce the risk of central bank liquidity assistance being deduced. This waiver applies to those PRA supervised firms whose fair value of collateral in the form of debt securities is less than £100bn.

PSR

Paul Smith, Head of Policy at the PSR, [spoke](#) at the International Cards and Payments Conference on 19 September 2017 about the work of the PSR to improve direct access and support the Payments Strategy Forum, as well as the implementation of PSD2 and open banking.

Asset management

In this section:

Regulation	22
Capital and liquidity	22
Competition	23
Supervision	23



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Regulation

Capital and liquidity

Reshaping EU investment firm prudential framework

The EBA published its second *Opinion in response to the EC's call for advice on investment firms* on 29 September 2017, addressing the design and calibration of a new prudential framework for investment firms in the EU. Alongside this it also published its *final report* on this recommended new regime. This follows the EBA's *first opinion* in October 2016 and its November 2016 *discussion paper*.

The EBA's recommendations retain the initially proposed framework of three classes of investment firms: systemic/'bank-like' firms (class 1), non-systemic firms (class 2), and small and non-interconnected firms (class 3). Class 1 firms should continue to apply CRD IV/CRR regulatory requirements.

It suggests a capital requirements regime for class 2 firms structured around risk to customers, risk to market and risk to firm, based on eight proxies (K-factors with corresponding coefficients). The EBA proposes that class 3 firms apply a fixed

overhead requirement (FOR) regime. The EBA suggests that this class should initially comprise firms designated as G-SII or O-SIIs but recommends an RTS is developed to specify the threshold. The EBA sets out a range of quantitative categorisation thresholds, many based on K-factors, for the determination of firms as class 2 or 3.

The EBA indicates that class 2 and 3 firms should hold liquid assets at least equal to one third of their FOR. The definition of eligible liquid assets should be aligned to the CRR LCR one. But class 3 firms can also use trade debtors and fees or commissions receivable within 30 days too, subject to limits.

The EBA's recommendations cover consolidated supervision, concentration risk, pillar 2, regulatory reporting and pillar 3 disclosure. It also considers this framework suitable for commodity derivative investment firms in the scope of MiFID, subject to appropriate tailoring and phase-in arrangements. Finally, the EBA covers the applicability of CRD IV remuneration requirements and corporate governance rules to these firms.

Competition

Investigating investment consultancy competition

Following the FCA's *referral*, the CMA published an *issues statement* on 21 September 2017 outlining the scope and approach of its investigation into the competitiveness of the investment consultancy market. Investment consultants provide institutional investors with advice in relation to strategic asset allocation and manager selection and the FCA was especially concerned about their role in the pensions market given the size of the assets under management and the reliance of pension trustees on external advisers.

The CMA has built upon the issues raised by the FCA's Asset Management Market Study by proposing initial hypotheses and remedies to be validated initially by stakeholder input and by the CMA's ongoing investigation. These include that investors lack sufficient information to determine whether they are receiving value for money and that there are uncompetitive barriers to entry. Conflicts of interest are a heightened focus as investment consultants are moving into the fiduciary management market and so are in a position to recommend their own products and services to clients.

The preliminary proposed remedies would significantly increase the regulatory

obligations on consultants and, in some cases, on pension trustees. These include:

- introducing mandatory tendering of both investment consulting and fiduciary management services
- imposing requirements on the tendering process itself, including requiring multiple bidders
- consolidating smaller trusts
- mandating professional expertise on boards
- prohibiting investment consultants from providing both consulting and fiduciary management services to the same client
- bringing investment consultancy services within the FCA's regulatory perimeter
- requiring firms to divest their investment consultancy services if these firms offer asset management services as well.

These remedies will only be implemented if the CMA determines that there has been an adverse effect on competition, and that such remedies would be reasonable and proportionate. The CMA will produce a Provisional Decision Report subject to stakeholder input before it issues a final report.

The consultation period for the issues statement closes on **12 October 2017**.

Supervision

Outlining FCA asset management supervisory priorities

The FCA's Executive Director for Asset Management Supervision, Megan Butler, outlined the regulator's near-term supervisory priorities and initiatives in a *speech* at the FT's Investment Management Summit on 28 September 2017.

She took the opportunity to discuss the launch of the regulator's asset management authorisation hub that will assist start-ups as they move from pre-authorisation and authorisation to supervision. The hub will facilitate increased personalised engagement between the FCA and new market entrants through pre-application meetings, dedicated case officers, quarterly surgeries as well as a dedicated portal for asset management start-ups.

In addition, Butler expressed the FCA's commitment to open markets post-Brexit, observing that any narrowing of the EU's delegation opportunities would hinder efficient business models and have a negative impact on European and global markets.

Regulatory implementation unsurprisingly remains an ongoing priority, and the FCA will be finalising proposals under the competition market study regarding fund governance. Acknowledging the magnitude of MiFID II implementation, she said the FCA will be understanding if firms haven't fully completed the implementation by the 'go-live' date as long as sufficient steps have already been taken and there are plans in place to complete the process. Finally, Butler emphasised the importance of firm culture and accountability. She discussed the implementation of SM&CR and the approach firms should take to achieving positive customer outcomes and basic integrity.

Minister addresses asset management delegation concerns

HMT's City Minister Stephen Barclay outlined the Government's policy priorities to keep the UK asset management sector strong post-Brexit in a *speech* at the FT Investment Management Summit on 28 September 2017. By expressing the Government's commitment to the 'global delegation model', Barclay signalled it will push back against any EU proposals that would tighten delegation rules, especially for third country firms, in an effort to target UK asset management post-Brexit.

He also expressed the Government's commitment to 'gold standard' regulation, confirming that the UK Government does not intend to pursue a deregulatory approach post-Brexit. In addition, Barclay discussed the importance of supporting FinTech, nurturing innovative approaches to sustainable investment and fostering domestic skills through a strengthened apprenticeship levy.

Insurance

In this section:

Regulation	25
Brexit	25
Capital and liquidity	25
Disclosure and distribution	25
Retail products	26
Solvency II	26
Supervision	26

Also this month 27

A brief round up of other regulatory developments



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Regulation

Brexit

Brexit cliff edge looms for insurance contracts

Nicky Morgan, Chair of the TC, warned on the impact of a Brexit cliff edge on the ability of insurers and pension providers to pay out claims and pensions on a cross-border basis post-Brexit. In a letter to Chancellor Philip Hammond on 14 September 2017, Morgan warns that unless action is taken, insurers will lose the legal authorisation to service contracts which were sold under passporting arrangements and extend beyond 29 March 2019. Morgan asks Hammond what proposals the Treasury is considering to preserve stability and certainty in respect of these contracts.

Commenting on this letter, the TC website notes: 'The Committee will no doubt want to examine the scale of the problem with the regulators, and may take evidence from the insurance industry'.

Capital and liquidity

EC publishes infrastructure investments regulation

The EC published Delegated Regulation (EU) 2017/1542 of 8 June 2017 amending

Delegated Regulation (EU) 2015/35 concerning the calculation of regulatory capital requirements for certain categories of assets held by insurance and reinsurance undertakings (infrastructure corporates) in the Official Journal on 14 September 2017. It introduces lower equity risk and spread risk charges for the new category of 'qualifying infrastructure corporate investments'. It also relaxes some of the conditions for infrastructure project investments to be eligible for existing reduced capital charges.

Disclosure and distribution

Getting ready for IDD

The FCA made significant progress towards IDD implementation in the UK by publishing its third and last consultation, and a policy statement and feedback to its first consultation. It issued CP17/33: IDD implementation – Consultation Paper 3 and PS17/21: IDD implementation – Feedback to CP17/7 and near-final rules on 25 September 2017. The IDD will come into effect on 23 February 2018.

In PS 17/21 the FCA confirms it's going ahead with all the proposals included in CP 17/7 which covered professional and organisational requirements, complaints, conduct of business for non-life insurers

and requirements for ancillary insurance intermediaries. The FCA is considering issuing more guidance on the application of the best interest of customer principle.

In CP17/33 the FCA sets out proposals for life distributors of insurance-based investment products (IBIPs) around inducements, suitability and appropriateness requirements and disclosures. It also consults on its approach to conflicts of interest and product oversight and governance (POG) for all firms subject to IDD. In the case of POG requirements, FCA is proposing alignment to MiFID II which will set the regulatory bar higher than at present. Also firms distributing IBIPs will have to demonstrate that any inducements are enhancing the service rather than being non-detrimental as part of MiFID II alignment. The FCA is considering issuing further guidance on POG to help firms comply with the new rules. Lastly, EIOPA launched a *survey* to gather IDD related questions from stakeholders in preparation for a formal Q&A exercise.

Firms should familiarise themselves with the near final rules published as part of PS17/21, be aware of the areas where future guidance on application of the rules might be forthcoming and consider responding to CP17/33.

CP17/33 is open for comments until **25 November 2017**.

Retail products

MoJ eyes change to Ogden rate

The MoJ proposed a change to the way the personal injury discount rate (PIDR) or 'Ogden' rate is calculated, in *The Personal Injury Discount Rate - How it should be set in future* on 7 September 2017. It recommends reforms to how compensation pay-outs for personal injury victims should be calculated in the future including draft legislation specifying how it intends to set the PIDR. It comes after the Lord Chancellor cut the rate from 2.5% to -0.75% in March 2017 and announced plans to review the framework used to set the rate. The MoJ also includes a summary of its feedback on responses to its *March 2017 consultation*, as well as *proposed draft legislation* to implement the proposed changes and an accompanying *impact assessment*.

The PIDR is the percentage used to adjust compensation awards for victims of serious personal injury, according to the amount they can expect to earn by investing it. The MoJ proposes that the PIDR is set by reference to 'low risk' rather than 'very low risk' investments as at present, to better reflect the investment habits of claimants. The Lord Chancellor estimates that if the

new system were to be applied today the rate might be in the region of 0% to 1%.

The MoJ also proposes that:

- the PIDR will be reviewed after the legislation comes into force and then at least every three years
- the rate will be set by the Lord Chancellor with advice from a new independent expert panel
- HMT will continue to be consulted for all reviews
- it will continue to be possible to set different rates for different types of cases, including by reference to the length of the award.

The MoJ plans to introduce the legislative changes 'as soon as parliamentary time permits'. The MoJ is not proposing to change the law relating to PPOs at present.

The Government Actuary's Department also published a *Technical Bulletin on the PIDR*. It sets out some background to the PIDR and summarises the proposals.

Solvency II

PRA updates Solvency II disclosures

The PRA updated its *April 2017 public disclosures with templates A and B, as required under Solvency II* on 1 September 2017. It updates statistics shown in:

- *Template a for the disclosure of aggregate statistical data with regard to insurance and reinsurance undertakings*
- *Template B for the disclosure of aggregate statistical data with regard to insurance groups.*

The PRA intends to continue to update these disclosures on a regular basis.

EIOPA publishes EU insurance sector statistics

EIOPA published a *new set of Solvency II statistics on the European insurance sector* and an *Accompanying note* on 18 September 2017. This second set of data continues EIOPA's series of quarterly statistics on solo undertakings launched in June 2017.

It contains country breakdowns and distributions of key variables based on reporting from solo insurance and reinsurance undertakings for the fourth quarter of 2016. The publication also includes a set of indicators based on financial stability reporting for the largest EU insurance groups and undertakings on an aggregated level.

Supervision

EU and US sign bilateral agreement

The EU and the US signed a bilateral agreement on insurance and reinsurance

and issued a *joint statement* on 22 September 2017. Following more than 20 years of discussions and a year of formal negotiations, this agreement is intended to give EU and US insurers and reinsurers greater regulatory certainty, while maintaining robust consumer protections. Amongst other things, the agreement is expected to:

- help EU reinsurers active in the US by progressively removing collateral requirements
- facilitate the exchange of information between EU and US supervisors
- bring prudential benefits as EU insurers and reinsurers will have to prepare only one ORSA for their risk profile to be used by both EU and US supervisors.

Certain parts of the agreement, such as on group supervision and the establishment of a Joint Committee, will be ‘provisionally applied’ swiftly following the signature. Following the consent of the EP and Council, the full agreement will apply 60 months after it’s signed.

EIOPA sets out priorities until 2019

EIOPA published its *Single Programming Document 2017-2019* setting out its key objectives and priorities over the 2017 to 2019 period as well as a more detailed annual work programme for 2018. As

expected, EIOPA’s conduct programme will be dominated by work around supervisory consistency of IDD implementation. EIOPA highlights implementation of product oversight and governance requirements as an area of focus and will consider producing more guidelines. EIOPA plans to perform thematic reviews as part of its supervisory role (e.g. over claims handling procedures).

On prudential matters EIOPA is supporting the review of Solvency II and will be instrumental in delivering technical advice to the EC. It will also focus on assessing the consistency of implementation and calibration of internal models. For 2018, as well as focusing on its four strategic objectives, EIOPA introduces the cross-cutting theme of InsurTech to its annual work plan and will work to promote supervisory convergence and a level playing field through a cross departmental taskforce.

Finally, EIOPA says it will work on further aspects and implications of Brexit for the insurance and pensions sector as well as on consumer protection. At the end of 2018, EIOPA indicates it will be prepared for, have assessed the impact and taken measures to facilitate the UK’s exit from the EU by March 2019 without major implications for firms and consumers.

Also this month

EIOPA

EIOPA updates Q&As

In September 2017, EIOPA updated its questions and answers on: *(EU) No 2015-2450 with regard to the templates for the submission of information to the supervisory authorities*, *(EU) No 2015-2452 with regard to the procedures, formats and templates of the solvency and financial condition report* and *Answers to questions on Commission Delegated Regulation (EU) 2015/35 supplementing Directive 2009/138/EC*.

Monthly calendar

Open consultations

Closing date for responses	Paper	Institution
16/10/17	<u><i>CP17/31: Market infrastructure providers - 2017/18 fee rates</i></u>	FCA
16/10/17	<u><i>Regulatory Reporting and Public Transparency in the Secondary Corporate Bond Markets</i></u>	IOSCO
20/10/17	<u><i>Consultation on the development of secondary markets for non-performing loans and distressed assets and protection of secured creditors from borrowers' default</i></u>	EC
20/10/17	<u><i>CP17/23: Insurance Distribution Directive implementation – Consultation Paper II</i></u>	FCA
23/10/17	<u><i>GC17/7: Proposed guidance on a sourcebook for professional body supervisors on anti-money laundering supervision</i></u>	FCA
24/10/17	<u><i>CP16/17: PRA fees and levies: model transaction fees, fees and FSCS levies for insurers and fees for designated investment firms</i></u>	PRA
30/10/17	<u><i>Consultation on transparency and fees in cross-border transactions in the EU</i></u>	EC
31/10/17	<u><i>Implications of FinTech developments for banks and bank supervisors</i></u>	Basel Committee
31/10/17	<u><i>CP17/27: Assessing creditworthiness in consumer credit</i></u>	FCA
01/11/17	<u><i>CP17/29: Client money and unbreakable deposits</i></u>	FCA
01/11/17	<u><i>CP17/32: Quarterly Consultation Paper No. 18</i></u>	FCA
02/11/17	<u><i>Guides concerning the assessment of licence applications and FinTech credit institution licence applications</i></u>	ECB
03/11/17	<u><i>CP17/25: Individual accountability - extending the SM&CR to all FCA firms</i></u>	FCA
03/11/17	<u><i>Consultation Paper on Draft Guidelines on fraud reporting requirements under Article 96(6) of PSD2</i></u>	EBA
03/11/17	<u><i>CP17/26: Individual accountability - extending the SM&CR to insurers</i></u>	FCA

Closing date for responses	Paper	Institution
03/11/17	<i>CP14/17: Strengthening individual accountability in insurance: extension of the SM&CR to insurers</i>	PRA
15/11/17	<i>Consultation on post-trade in a Capital Market Union: dismantling barriers and strategy for the future</i>	EC
15/11/17	<i>Proposal for a regulation: Second data package</i>	EC
17/11/17	<i>Proposed policy on valuation capabilities to support resolvability</i>	BoE
19/11/17	<i>Review of the ESAs</i>	EC
19/11/17	<i>Revision of the ESRB establishing regulation</i>	EC
25/11/17	<i>IDD Implementation – Consultation Paper 3</i>	FCA
30/11/17	<i>Draft guidelines on non-significant benchmarks</i>	ESMA
10/12/17	<i>CP17/17: Regulated fees and levies: Adjustment to rates for 2017/18</i>	PRA
11/12/17	<i>Proposal for a regulation: Cybersecurity package</i>	EC
19/12/17	<i>Discussion Paper On the Significant Risk Transfer in Securitisation</i>	EBA
22/12/17	<i>Amending ITS on Supervisory Disclosure</i>	EBA

Forthcoming publications in 2017

Date	Topic	Type	Institution
Accounting			
TBD 2017	RTS on consolidation methods	Technical standards	EBA
TBD 2017	Developments in the market with regard to providing statutory audit services to public interest entities	Advice	EBA
TBD 2017	Accounting for expected credit losses	Guidelines	EBA
TBD 2017	Policy statement to CP46/16 – IFRS 9: changes to reporting requirements	Policy statement	PRA
Asset management			
TBD 2017	UCITS V Level 2 Regulation, SFTR and consequential changes to the Handbook – PS to CP16/14	Policy statement	FCA
Authorisations			
TBD 2017	ITS and RTS on authorisation of credit institutions under CRD IV	Technical standards	EBA
CASS			
TBD 2017	Asset segregation under AIFMD	Guidelines	ESMA
Conduct			
Autumn 2017	Mortgage market study interim report	Report	FCA
November 2017	FCA response to MiFID II implementation consultation VI	Policy statement	FCA
December 2017	FAMR implementation part 2 – PS to CP17/28	Policy statement	FCA

Date	Topic	Type	Institution
TBD 2017	Consultation on new rules for firms running crowdfunding platforms	Consultation	FCA
TBD 2017	Remuneration benchmarking and high earners data under Articles 75(1) and (3) CRD IV	Report	EBA
TBD 2017	The collection exercise of approved higher maximum ratios for variable remuneration under Article 94(1)(g)(ii) CRD IV	Guidelines	EBA
TBD 2017	Suitability of members of the management body and key function holders under Article 91(12) CRD IV	Guidelines	EBA
Q1 2018	Mortgage market study final report	Report	FCA
<i>Financial crime, security and market abuse</i>			
TBD 2017	Enhanced due diligence under AMLD4	Guidelines	EBA
TBD 2017	Simplified due diligence under AMLD4	Guidelines	EBA
TBD 2017	RTS on central contract points under AMLD4	Technical standards	EBA
TBD 2017	MAR	Technical standards	ESMA
<i>Insurance</i>			
Autumn 2017	Policy statement to CP38/16 Solvency II: group supervision	Policy statement	PRA
Autumn 2017	FCA regulated fees and levies: insurers' tariff data for 2018/19	Consultation	FCA
Q4 2017	Proposed Handbook changes to reflect the new regulatory framework for insurance-linked securities – PS to CP17/3	Policy statement	FCA
December 2017	IDD implementation – PS to CP17/23	Policy statement	FCA
TBD 2017	Policy statement to CP47/16: Maintenance of the 'transitional measure on technical provisions' under Solvency II	Policy statement	PRA

Date	Topic	Type	Institution
January 2018	IDD implementation – PS to CP17/33	Policy statement	FCA
<i>Market infrastructure</i>			
December 2017	Market infrastructure providers 2017/18 fee rates – PS to CP17/31	Policy statement	FCA
TBD 2017	The supervision of delegated credit institutions and central securities depositories authorised to provide banking type of ancillary services	Guidelines	EBA
<i>Pensions</i>			
TBD 2017	Secondary annuity market – PS to CP16/13	Policy statement	FCA
<i>Prudential</i>			
TBD 2017	Disclosure of LCR	Guidelines	EBA
TBD 2017	Incremental default and migration risk	Guidelines	EBA
TBD 2017	Stress in correlation trading portfolios	Guidelines	EBA
TBD 2017	Integrity of the modelling process	Guidelines	EBA
TBD 2017	Incremental default and migration risk	Guidelines	EBA
TBD 2017	ITS amending the Commission Implementing Regulation with regard to the LCR	Technical standards	EBA
TBD 2017	Stressed VaR	Guidelines	EBA
TBD 2017	Netting	Guidelines	EBA
TBD 2017	The Supervisory Formula Method on securitisation under Article 262(3) of CRR	Guidelines	EBA

Date	Topic	Type	Institution
TBD 2017	Intraday liquidity risk	Guidelines	EBA
<i>Securities and markets</i>			
TBD 2018	Technical standards on Securitisation Regulation	Technical standards	ESMA
TBD 2018	Technical advice and standards on Prospectus Regulation	Technical standards	ESMA
TBD 2018	Technical standards under EuSEF, EuVECA, ELTIF and SFTR	Technical standards	ESMA
TBD 2018	Technical standards on revised Short Selling Regulation	Technical standards	ESMA
<i>Supervision, governance and reporting</i>			
October 2017	FCA regulatory fees and levies: policy proposals for 2018/19	Consultation	FCA
Q4 2017	Reviewing the funding of the FSCS – PS to CP16/42 and further consultation	Policy statement	FCA
H2 2017	Supervision of significant branches	Final guidelines	EBA
TBD 2017	ITS and RTS on the authorisation of credit institutions	Technical standards	EBA
TBD 2017	Credit Rating Agencies Regulation	Technical standards	ESMA

Main sources: ESMA work programme; EBA work programme; EC work programme; FCA policy development updates.

Glossary

ABC	Anti-Bribery and Corruption	BBA	British Bankers' Association
ABI	Association of British Insurers	BCR	Basic capital requirement (for insurers)
ABS	Asset Backed Security	BIBA	British Insurance Brokers Association
ACER	Agency for the Cooperation of Energy Regulators	BIS	Bank for International Settlements
AIF	Alternative Investment Fund	BoE	Bank of England
AIFM	Alternative Investment Fund Manager	BMR	EU Benchmarks Regulation
AIFMD	Alternative Investment Fund Managers Directive 2011/61/EU	BRRD	Bank Recovery and Resolution Directive 2014/59/EU
AIMA	Alternative Investment Management Association	CASS	Client Assets sourcebook
AML	Anti-Money Laundering	CCA	Consumer Credit Act 1974 (as amended)
AMLD3	3rd Money Laundering Directive 2005/60/EC	CCB	Countercyclical capital buffer
AMLD4	4 th Money Laundering Directive 2015/849/EU	CCD	Consumer Credit Directive 2008/48/EC
AMLD5	5 th Money Laundering Directive	CCPs	Central Counterparties
AQR	Asset Quality Review	CDS	Credit Default Swaps
ASB	UK Accounting Standards Board	CEBS	Committee of European Banking Supervisors (predecessor of EBA)
Banking Reform Act (2013)	Financial Services (Banking Reform) Act 2013	CESR	Committee of European Securities Regulators (predecessor of ESMA)
Basel II	Basel II: International Convergence of Capital Measurement and Capital Standards: a Revised Framework	CET1	Common Equity Tier 1
Basel III	Basel III: International Regulatory Framework for Banks	CFTC	Commodities Futures Trading Commission (US)
Basel Committee	Basel Committee of Banking Supervision (of the BIS)	CGFS	Committee on the Global Financial System (of the BIS)

CIS	Collective Investment Schemes	CRR	Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms
CMA	Competition and Markets Authority	CSD	Central Securities Depository
CMU	Capital markets union	CSDR	Central Securities Depositories Regulation (EU) 909/2014
COBS	FCA conduct of business sourcebook	CSMAD	Criminal Sanctions Market Abuse Directive 2014/57/EU
CoCos	Contingent convertible securities	CTF	Counter Terrorist Financing
Co-legislators	Ordinary procedure for adopting EU law requires agreement between the Council and the European Parliament (who are the ‘co-legislators’)	DEPP	The FCA’s Decision Procedure and Penalties Manual
COREP	Standardised European common reporting	DFBIS	Department for Business, Innovation and Skills
Council	Generic term representing all ten configurations of the Council of the European Union	DG FISMA	Directorate-General for Financial Stability, Financial Services and Capital Markets Union
CRA1	Regulation on Credit Rating Agencies (EC) No 1060/2009	DG MARKT	Internal Market and Services Directorate General of the European Commission
CRA2	Regulation amending the Credit Rating Agencies Regulation (EU) No 513/2011	DGS	Deposit Guarantee Scheme
CRA3	Proposal to amend the Credit Rating Agencies Regulation and directives related to credit rating agencies COM(2011) 746 final	DGSD	Deposit Guarantee Schemes Directive 2014/49/EU
CRAs	Credit Rating Agencies	Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act (US)
CRD	‘Capital Requirements Directive’: collectively refers to Directive 2006/48/EC and Directive 2006/49/EC	DPM	Data point model
CRD II	Amending Directive 2009/111/EC	D-SIBs	Domestic Systemically Important Banks
CRD III	Amending Directive 2010/76/EU	EBA	European Banking Authority
CRD IV	Capital Requirements Directive 2013/36/EU	EC	European Commission
		ECB	European Central Bank
		ECJ	European Court of Justice

Executive summary	EC eyes overhaul of ESAs	Cross sector announcements	Banking and capital markets	Asset management	Insurance	Monthly calendar	Glossary
ECOFIN	Economic and Financial Affairs Council (configuration of the Council of the European Union dealing with financial and fiscal and competition issues)			EuVECA	European Venture Capital Funds Regulation (EU) 345/2014		
ECON	Economic and Monetary Affairs Committee of the European Parliament			FAMR	Financial Advice Market Review		
EDIS	European Deposit Insurance Scheme			FASB	Financial Accounting Standards Board (US)		
EEA	European Economic Area			FATCA	Foreign Account Tax Compliance Act (US)		
EEC	European Economic Community			FATF	Financial Action Task Force		
EIOPA	European Insurance and Occupations Pension Authority			FC	Financial counterparty under EMIR		
ELTIF	European long-term investment fund			FCA	Financial Conduct Authority		
EMIR	Regulation on OTC Derivatives, Central Counterparties and Trade Repositories (EU) No 648/2012			FDIC	Federal Deposit Insurance Corporation (US)		
EP	European Parliament			FiCOD	Financial Conglomerates Directive 2002/87/EC		
EPC	European Payments Council			FiCOD1	Amending Directive 2011/89/EU of 16 November 2011		
ESA	European Supervisory Authority (i.e. generic term for EBA, EIOPA and ESMA)			FMI	Financial Market Infrastructure		
ESCB	European System of Central Banks			FMLC	Financial Markets Law Committee		
ESEF	European Single Electronic Format			FOS	Financial Ombudsman Service		
ESMA	European Securities and Markets Authority			FPC	Financial Policy Committee		
ESRB	European Systemic Risk Board			FRC	Financial Reporting Council		
EU	European Union			FSA	Financial Services Authority		
EURIBOR	Euro Interbank Offered Rate			FSB	Financial Stability Board		
Eurosystem	System of central banks in the euro area, including the ECB			FSBRA	Financial Services (Banking Reform) Act 2013		
				FS Act 2012	Financial Services Act 2012		
				FSCP	Financial Services Consumer Panel		

FSCS	Financial Services Compensation Scheme	IDD	The Insurance Distribution Directive (EU) 2016/97 – also known as IMD2
FSI	Financial Stability Institute (of the BIS)	IFRS	International Financial Reporting Standards
FSMA	Financial Services and Markets Act 2000	ILAA	Internal Liquidity Adequacy Assessment
FSOC	Financial Stability Oversight Council	ILAAP	Internal Liquidity Adequacy Assessment Process
FTT	Financial Transaction Tax	ILS	Insurance-Linked Securities
G30	Group of 30	IMAP	Internal Model Approval Process
GAAP	Generally Accepted Accounting Principles	IMCO	The European Parliament’s Committee on Internal Market and Consumer Protection
G-SIBs	Global Systemically Important Banks	IMD	Insurance Mediation Directive 2002/92/EC
G-SIFIs	Global Systemically Important Financial Institutions	IMF	International Monetary Fund
G-SIIs	Global Systemically Important Institutions	IORP	Institutions for Occupational Retirement Provision Directive 2003/43/EC
HCSTC	High Cost Short Term Credit	IOSCO	International Organisations of Securities Commissions
HMRC	Her Majesty’s Revenue and Customs	IRB	Internal Ratings Based
HMT	Her Majesty’s Treasury	ISDA	International Swaps and Derivatives Association
IA	Investment Association	ITS	Implementing Technical Standards
IAIS	International Association of Insurance Supervisors	JCESA	Joint Committee of the European Supervisory Authorities
IASB	International Accounting Standards Board	JMLSG	Joint Money Laundering Steering Committee
IBA	ICE Benchmark Administration	JURI	Legal Affairs Committee of the European Parliament
ICAAP	Internal Capital Adequacy Assessment Process	KID	Key Information Document
ICAS	Individual Capital Adequacy Standards	KYC	Know your client
ICOBS	Insurance: Conduct of Business Sourcebook	LCR	Liquidity coverage ratio

Executive summary	EC eyes overhaul of ESAs	Cross sector announcements	Banking and capital markets	Asset management	Insurance	Monthly calendar	Glossary
LEI	Legal Entity Identifier			MPC	Monetary Policy Committee		
LIBOR	London Interbank Offered Rate			MREL	Minimum requirements for own funds and eligible liabilities		
MA	Matching Adjustment			MTF	Multilateral Trading Facility		
MAD	Market Abuse Directive 2003/6/EC			NBNI G-SIFI	Non-bank non-insurer global systemically important financial institution		
MAR	Market Abuse Regulation (EU) 596/2014			NCA	National competent authority		
Material Risk Takers Regulation	Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the EP and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile			NDF	Non-Directive Firms – firms that do not fall within Solvency II		
MCD	Mortgage Credit Directive 2014/17/EU			NFC	Non-financial counterparty under EMIR		
MCOB	Mortgages and Home Finance: Conduct of Business sourcebook			NIS Directive	Proposal for a directive of the EP and Council concerning measures to ensure a high common level of network and information security across the EU		
MCR	Minimum Capital Requirement			NSFR	Net Stable Funding Ratio		
Member States	Countries which are members of the European Union			NST	National specific template		
MiFID	Markets in Financial Instruments Directive 2004/39/EC			NURS	Non-UCITS Retail Scheme		
MiFID II	Markets in Financial Instruments Directive (recast) 2014/65/EU – also used to refer to the regime under both this directive and MiFIR			OECD	Organisation for Economic Cooperation and Development		
MiFIR	Markets in Financial Instruments Regulation (EU) No 600/2014			Official Journal	Official Journal of the European Union		
MLRO	Money Laundering Reporting Officer			OFSI	Office of Financial Sanctions Implementation		
MMF	Money Market Fund			OFT	Office of Fair Trading		
MMR	Mortgage Market Review			Omnibus II	Second Directive amending existing legislation to reflect Lisbon Treaty and new supervisory infrastructure (2014/51/EU). Amends the Prospectus Directive (Directive 2003/71/EC) and Solvency II (Directive 2009/138/EC)		
MoJ	Ministry of Justice			ORSA	Own Risk Solvency Assessment		
MoU	Memorandum of Understanding						

O-SIIs	Other systemically important institutions	RONIA	Repurchase Overnight Index Average
OTC	Over-The-Counter	RRPs	Recovery and Resolution Plans
OTF	Organised trading facility	RTS	Regulatory Technical Standards
PAD	Payment Accounts Directive 2014/92/EU	RWA	Risk-weighted assets
PIFs	Personal investment firms	SCR	Solvency Capital Requirement (under Solvency II)
PPI	Payment Protection Insurance	SCV	Single customer view
P2P	Peer to Peer	SEC	Securities and Exchange Commission (US)
PERG	Perimeter Guidance Manual	Securitisation Regulation	Proposal for a Regulation of the EP and Council laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (COM(2015)472/F1)
PRA	Prudential Regulation Authority	SEPA	Single Euro Payments Area
Presidency	Member State which takes the leadership for negotiations in the Council: rotates on 6 monthly basis	SFT	Securities financing transaction
PRIIPs	Packaged retail and insurance-based investment products	SFTR	Securities Financing Transactions Regulation (EU) 2015/2365
PSD2	The revised Payment Services Directive (EU) 2015/2366	SFO	Serious Fraud Office
PSP	Payment service provider	SIMF	Senior Insurer Manager Function
PSR	Payment Systems Regulator	SIMR	Senior Insurer Managers Regime
QIS	Quantitative Impact Study	SM&CR	Senior Managers and Certification Regime
RAO	Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544)	SME	Small and Medium sized Enterprises
RDR	Retail Distribution Review	SMF	Senior Manager Function
REMIT	Regulation on wholesale energy markets integrity and transparency (EU) 1227/2011	SOCA	Serious Organised Crime Agency
RFB	Ring-fenced bank		

Solvency II	Directive 2009/138/EC
SONIA	Sterling Overnight Index Average
SPV	Special purpose vehicle
SREP	Supervisory Review and Evaluation Process
SRB	Single Resolution Board
SRF	Single Resolution Fund
SRM	Single Resolution Mechanism
SSM	Single Supervisory Mechanism
SSR	Short Selling Regulation (EU) 236/2012
SUP	FCA supervision manual
T2S	TARGET2-Securities
TC	Treasury Committee
TLAC	Total Loss Absorbing Capacity
TR	Trade Repository
TPR	The Pensions Regulator
UCITS	Undertakings for Collective Investments in Transferable Securities
UCITS V	UCITS V Directive 2014/91/EU
UKLA	UK Listing Authority
UTI	Unique Trade Identifier
XBRL	eXtensible Business Reporting Language

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170927-160101-TN-OS