

Key Regulatory Topics: Weekly Update

1 November 2019 – 7 November 2019

**BREXIT**

**UK EMIR validation rules released alongside update guidelines for reporting derivatives**

On 7 November, the FCA announced the publication of UK EMIR validation rules. With regards to the reporting of derivatives the FCA states that, should a no-deal Brexit occur, UK reporting counterparties and UK trade repositories (TRs) should use these rules when submitting derivative transactions from 11pm on 31 January 2020 onwards. Post-Brexit, UK counterparties will need to report details of their derivative trades to an FCA-registered, or recognised, TR. UK TRs will also need to grant UK authorities access to data reported to them by UK counterparties. The FCA has decided not to grant transitional relief in relation to these requirements.

[Read more](https://www.fca.org.uk/news/statements/fca-statement-reporting-derivatives-under-uk-emir-regime-no-deal-scenario)

**Amendments to the Prospectus Directive and Transparency Directive Equivalence Directions 2019**

On 6 November, the Prospectus Directive and Transparency Directive Equivalence (Variation) Directions 2019 were published which make a number of minor amendments to the Prospectus Directive and Transparency Directive Equivalence Directions 2019. The changes are to reflect the repeal and replacement of the Prospective Directive (2003/71/EC) by the Prospectus Regulation (Regulation 2017/1129) with effect from 21 July. The amending Directions are made by HMT in exercise of the powers conferred by regulation 2(1) and paragraph 9 of Schedule 1 of the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/541).

[Read more](https://www.legislation.gov.uk/uksi/2019/541/resources)

**FMLC consider issues of uncertainty arising from the UK’s third-country status post-Brexit**

On 5 November, the Financial Markets Law Committee (FMLC) published an addendum to its July 2017 report on issues of legal uncertainty arising in the context of the UK withdrawal from the EU. The addendum builds on an assessment of the application of EU legislation to UK-based financial services providers should a Brexit, which removed the UK’s access to the single market, occur. The addendum discussed the following; (i) key developments relating to the UK’s resulting potential status as a third county, following an exit from the single market; (ii) the impact on firms on these developments, particularly the impact of a tighter equivalence regime that is seemingly being favoured by the Commission and; (iii) proposals for a widened framework for equivalence decisions, alongside increased transparency for equivalence determinations, in order to create a stable platform for cross-border relations.

[Read more](http://fmlc.org/wp-content/uploads/2019/11/Third-Country-paper.pdf)

**FINANCIAL CRIME**

**NCA’s Suspicious Activity Reports Annual Report**

On 7 November, the NCA published its Suspicious Activity Reports (SARs) Annual Report. A record number of SARs were recorded between 2018 and 2019 and the UK Financial Intelligence Unit’s (UKFIU) headcount has grown to allow for these increasing volumes of reports. The report also outlined the 2019-2020 strategy for the SARs reform programme. In the coming year, the UKFIU aims to, among other things: (i) further enhance its international position and status; (ii) increase its presence on terrorist finance activity domestically and internationally; and (ii) ensure that all UKFIU officers have the correct skills and capabilities in place to perform their roles effectively.

[Read more](https://www.nationalcrimeagency.gov.uk/who-we-are/publications/390-sars-annual-report-2019/file)

**Report on economic crime and the impact on consumers**

On 1 November, the Treasury Select Committee published a report on economic crime, focusing on: (i) the scale of economic crime; (ii) ways that financial firms are combating this; (iii) how economic crime is investigated, and; (iv) consumers’ rights and responsibilities. The report made a number of findings and recommendations. These recommendations include; (i) using statutory powers to implement Confirmation of Payee by March 2020, a tool which flags discrepancies between account names and names provided by consumers in order to prevent unauthorised fraud; (ii) creating a 24-hour delay to initial payments in order to counteract the high pressure tactics used by fraudsters; (iii) reviewing the stolen funds legislation to assess its suitability; (iv) ensuring all frauds are reported by the financial sector and ensuring transparency for consumers who report fraud regarding how their report will be used, and; (v) making the Contingent Reimbursement Model, which creates a clear framework for when financial firms should reimburse funds, compulsory.

[Read more](https://publications.parliament.uk/pa/cm201920/cmselect/cmtreasy/246/246.pdf)

**FINTECH**

Please see the Other Developments section for an update on the FSB’s Plenary in Paris.

**Council of EU and European Commission’s draft joint statement on stablecoins**

On 6 November, the Council of the EU released a draft joint statement of the Council and the EC on stablecoins. The statement highlights that whilst the Council and the EC recognise the global potential of the stablecoin initiative alongside the opportunities it provides, there is a definite need to assess risks from a legal, regulatory and oversight perspective. Consequently the statement issues a call for a united approach to create a necessary regulatory framework which would apply to all stablecoin arrangements. The Council and EC are prepared to act quickly, with their approach involving the creation of a consultation and evidence base in order to develop legislation outlining a common approach to the regulation of cryptoassets. The statement also recognises the need to ensure current payment arrangements are developed at a pace that can manage the growth of stablecoins. The draft statement will be submitted to the Council's Permanent Representatives Committee (COREPER) for approval at its meeting on 5 December.

[Read more](https://data.consilium.europa.eu/doc/document/ST-13571-2019-INIT/en/pdf)

**IOSCO statement on study of emerging global stablecoin initiatives**

On 4 November, the International Organization of Securities Commissions (IOSCO) published a statement regarding a study (conducted by the IOSCO’s FinTech Network), of stablecoin initiatives with a potential global reach (global stablecoins). The Network assessed how IOSCO principles and standards applied to global stablecoin initiatives. The similar characteristics between stablecoins and regulated securities meant that IOSCO principles could apply to stablecoins. This however, depends on the structure of these stablecoins. Consequently a case-by-case approach would be desirable to determine which IOSCO principles and standards, and nation regulatory regimes, would apply. IOSCO agrees that global stablecoins with potential systemic footprints give rise to a set of serious public policy and regulatory risks. A collaborative approach to identifying and combating the risks relating to stablecoins is therefore needed in order to ensure that the benefits are realised.

[Read more](https://www.iosco.org/news/pdf/IOSCONEWS550.pdf)

**FUND REGULATION**

**FCA publishes letter outlining steps to ensure effective fund liquidity**

On 4 November, the FCA published a letter addressed to the Chairs of Authorised Fund Managers (AFMs) in relation to good practices for effective liquidity management. The letter highlights the responsibility of AFMs in ensuring effective fund liquidity. Whilst the FCA recognises that open-ended funds may not be able to liquidate assets sufficiently in light of increased redemption requests from investors, firms can mitigate against this by; (i) having a suitable portfolio composition; (ii) effective fund governance; (iii) understanding their investor base and investors’ redemption rights, and; (iv) using liquidity tools appropriately, especially in times of market volatility and stress. The FCA also emphasised that firms should recognise that “effective liquidity management is an irreducible, core function for all open-ended funds”. Therefore the letter encourages firms to consider adopting some measures outlined in the 30 September policy statement on illiquid assets and open-ended funds (PS19/24), which aims to increase regulation in this area, despite the fact that the rules do not come into force until September 2020. Other requests in the letter include asking Chairs to; (i) consider their obligations outline in the Collective Investment Schemes sourcebook; (ii) review their liquidity management arrangements against the 2016 FCA good practice paper and; (iii) consider whether these arrangements are in line with the 2018 recommendations made by the International Organisation of Securities Commission. The FCA has asked Chairs to carry out these reviews “as soon as practicable”.

[Read more](https://www.fca.org.uk/publication/correspondence/letter-effective-liquidity-management-good-practice-authorised-fund-managers.pdf)

**Investment Association principles of remuneration for 2020**

On 1 November, the Investment Association published a revised version of its principles of remuneration for 2020. The updated version introduces discretion to limit vesting outcomes if specific monetary limits are exceeded.

[Read more](https://uk.practicallaw.thomsonreuters.com/w-022-7103?source=updateemail&utm_campaign=EMFINSRVD&utm_source=PLC&utm_medium=email&telephone=-&email=Kay.Ogunade%40allenovery.com&__lrTS=20191106132011787&transitionType=Default&contextData=%28sc.Default%29)

**INSURANCE**

**UK government and insurance industry associations renew agreement on age and insurance**

On 6 November, the British Insurance Brokers' Association (BIBA) published a press release announcing that it, the Association of British Insurers (ABI) and the UK government have renewed their agreement on age and insurance. The agreement applies to motor and travel insurance contracts entered into in Great Britain on or after 5 November that are private, voluntary and separate from an employment relationship. The update introduces the following duties; (i) Providing customers with alternative providers in cases where they are above a maximum age limit used by an insurer and; (ii) Publishing data used in the assessment of risk for insuring older customers.

[Read more](https://www.biba.org.uk/press-releases/signposting-hailed-a-great-success-as-review-of-age-agreement-is-concluded/)

**PRA publishes letter on reserving reviews in 2019**

On 5 November, the PRA published a letter setting out feedback on reserving reviews carried out by the PRA in 2019. Key issues, which are set out in the letter include; (i) Bias in reserve assessment; (ii) weakening in the case reserving basis; (iii) inadequate claims inflation allowance; (iv) attritional loss deterioration, and; (v) transparency over key judgements and assumptions in management information (MI). The PRA also sets out other relevant areas of uncertainty that it expects firms to consider actively as part of their year-end reserving. The PRA seeks to challenge firms that demonstrate weakness in the areas outlined above.

[Read more](https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/letter/2019/letter-from-james-orr-feedback-from-recent-pra-reserving-reviews.pdf)

**PRA publish Dear CEO letter outlining priorities for GI sector**

On 5 November, the PRA published a letter, sent to the CEOs of general insurance (GI) firms, outlining the PRA's priorities in the coming year, whilst also providing feedback from supervisory activity across the sector over the last year. The PRA's priority areas of focus are: (i) Reserving adequacy and associated reserving governance and controls, particularly in the light of emerging risk developments; (ii) Challenging firms who lack discipline in underwriting strategies, remediation activity and controls; (iii) Reviewing firms’ exposure management approaches to assess the suitability of said plans under a backdrop of natural catastrophe and man-made accumulations; (iv) Understanding UK retail general insurers' responses to the FCA's pricing practices review, once the review is finalised and; (v) Ensuring firms develop and maintain a culture where staff feel able to speak up and raise concerns, with effective mechanisms in place to support them in doing so. The PRA encourages firms to assess the issues identified in the letter and consider whether they are relevant.

[Read more](https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/letter/2019/letter-from-gareth-truran-pra-current-areas-of-focus-for-general-insurance-firms.pdf)

**MARKETS AND MARKET INFRASTRUCTURE**

**RTS on the homogeneity of the underlying exposures in securitisation published in the OJ**

On 6 November, the Delegated Regulation (EU) 2019/1851 which establishes the requirements for underlying exposures of a securitisation to be considered homogenous (the Regulation) was published in the OJ. Homogeneity of the underlying exposures is one of the requirements for simple, transparent and standardised securitisation under the new EU securitisation framework. To be considered homogenous, underlying exposures must, inter alia: (i) correspond to a specific listed asset type; (ii) be underwritten with standards that apply similar approaches for assessing associated credit risk; and (iii) for most asset types, satisfy one or more of the homogeneity factors specified in the Regulation for the applicable asset class. The Regulation applies to both asset-backed commercial paper (ABCP) and non-ABCP securitisations and will enter into force on the twentieth day following its publication in the OJ.

[Read more](http://email.practicallaw.com/c/11uFNEGpO6yu8sqvbZcbtz76gza)

**Recommendations for fallback provisions in transactions referencing EURIBOR introduced by the ECB working group**

On 6 November, the ECB working group on euro risk-free rates published a report setting out high level recommendations for fallback provisions in contracts for cash products and derivatives transactions referencing EURIBOR. In January, the working group published a paper containing guiding principles for fallback provisions in new contracts for euro-denominated cash products and set out an overview of the legal frameworks and market practices applicable to cash products that reference EURIBOR and EONIA, with a specific focus on fallback clauses. This new paper serves to remind market participants of key messages from the paper published in January and, where relevant, it provides updates that reflect market developments and practices related to cash products and derivatives transactions referencing EURIBOR. [Read more](https://www.ecb.europa.eu/pub/pdf/other/ecb.wgeurofr_highlevelrecommendatioseuriborfallbacks~abc6ca6268.en.pdf)

**ESMA conducts an analysis on position limits, position management controls and position reports under MiFID II**

On 5 November, ESMA published a consultationpaper (ESMA70-156-1484) on commodity derivatives position limits, position management controls and position reports under the MiFID II Directive (*2014/65/EU*).

The paper analyses the impact of position limits and position management on commodity derivatives markets, specifically looking at the effects on market abuse, orderly pricing and settlement and less liquid commodity derivative contracts. ESMA are also exploring viewpoints for the following amendments to the current legal framework; (i) only allowing commodity derivatives subject to position limits in key contracts; (ii) introducing a limited position limit exemption for financial counterparties; (iii) moving towards a singular approach in implementation of position management regimes by trading venues. Part II of the consultation paper proposes to revise the technical advice provided to the Commission on the delegated acts to be adopted under Article 58(6) of the MiFID II Directive on position reporting by categories of position holders. ESMA aims to increase transparency within commodity derivative contracts traded in the EU27. Proposals for doing so are set out in section 7 of the consultation paper. Comments can be made on the proposals until 8 January 2020.

[Read more](https://www.esma.europa.eu/sites/default/files/library/esma70-156-1484_cp_position_limits.pdf)

**PAYMENT SERVICES AND PAYMENT SYSTEMS**

**ECB amending Decision and Guideline relating to TARGET2 published**

On 5 November, Guideline (EU) 2019/1849 (which amends Guideline ECB/2012/27) and Decision (EU) 2019/1848 of the ECB (which amends Decision ECB/2007/7) relating to TARGET2 were published in the Official Journal of the EU. The Guideline clarifies the conditions under which investment firms may participate in TARGET2, including the requirement for a legal opinion regarding investment firms established outside the EEA and applying for direct participation in a TARGET2 component system. The new Guideline takes effect on the day of its notification to the national central banks of member states whose currency is the euro. The deadline for complying with the guideline is 17 November. The changes made by the Decision reflect the amendments outlined above with regards to the Guideline. The new Decision enters into force on 6 November (the day following its publication in the OJ) and applies from 17 November.

[Guideline (EU) 2019/1849](http://email.practicallaw.com/c/11uDt4nOKXFztaWsthBysJdABwH)

[Decision (EU) 2019/1848](http://email.practicallaw.com/c/11uDt55HxLpChFAeFo6PMAclmwg)

**PENSIONS**

**Government responds to report on pension costs and charges**

On 2 November, the House of Commons Work and Pensions Committee published a report containing (in Appendix 2) the FCA's response to its August report on pension costs and charges. Remarks on the committee's key recommendations are as follows; (i) The FCA will consider expanding its list of unauthorised firms into a widely publicised and regularly updated database to act as a co-ordinated early warning system; (ii) the FCA are testing approaches regarding rules about the process by which a consumer indicates they have received or opted out of pension guidance. The committee’s recommendation of an opt out approach through an active decision communicated to an impartial body, will be considered; (iii) a report on the review of independent governance committees (IGCs) body is expected in spring 2020; (iv) there are plans to issue a policy statement setting out rules and guidance in relation to the consultation on the extension of IGC’s remit and; (v) the FCA have not yet decided what the charge cap on decumulation products available through its decumulation pathway will be as the investment pathways have not yet been created. However, they will monitor any fees above the maximum fee (0.75%) for default arrangements in accumulation.

[Read more](https://publications.parliament.uk/pa/cm201920/cmselect/cmworpen/292/292.pdf)

**PRUDENTIAL REGULATION**

**IFSB seeks views on revised version of IFSB-15**

On 4 November, the Islamic Financial Services Board (IFSB) published for consultation an exposure draft of a revised capital adequacy standard for institutions offering Islamic financial services (ED-RCAS). In the exposure draft, the IFSB seeks comments on a revised version of IFSB-15, the current guideline for capital adequacy for institutions that offer Islamic financial services. The revised version reflects; (i) the final Basel III reforms agreed by the Basel Committee on Banking Supervision (BCBS) in December 2017; (ii) developments in the Islamic financial services industry (IFSI) and; (iii) other changes to the global regulatory framework since December 2013. The deadline for responses is 2 January 2020.

[Read](http://email.practicallaw.com/c/11uCxGYwCB1qbepxbZUOjtKI2oG) more

**RECOVERY AND RESOLUTION**

**Launch of Banking Business Resolution Service live pilot**

On 1 November, the Banking Business Resolution Service (BBRS) launched its live pilot, in preparation for its full launch in early 2020. The BBRS is made up of representatives from business groups and financial institutions and aims to resolve disputes between eligible small and medium sized enterprises (SMEs) and participating banks. The intention of the pilot, for which the BBRS are seeking volunteers, is to test how the scheme works in practice whilst pinpointing any potential issues. SME customers are encouraged to register their interest in using the service to resolve a complaint. The establishment of the BBRS follows on from an independent review of the scale and complexity of banking complaints conduct by Simon Walker. This review highlighted the need for an independent body to manage historic and current complaints from SMEs that have not previously had access to independent review. Once the BBRS is fully operational, it is expected that 99% of SMEs will have access to either the BBRS or the Financial Ombudsman Service (FOS).

[Read more](https://thebbrs.org/live-pilot/)

**OTHER DEVELOPMENTS**

**FSB Plenary meets in Paris**

On 7 November, the FSB met in Paris to review vulnerabilities in the global financial system, discuss FinTech developments and ongoing work and agree its work programme for 2020. Issues that were discussed include: (i) the implications of structural changes in the interest rate environment, particularly looking at the impact on financial stability; (ii) the development of a new surveillance framework which would help address risks to financial stability; (iii) endorsing an augmented framework for monitoring financial stability risks in crypto-asset markets to take account of the development of global stablecoin systems; and (iv) the International Association of Insurance Supervisors framework for mitigating systemic risk in the insurance sector.

[Read more](https://www.fsb.org/wp-content/uploads/R071119.pdf)

**EC provides analysis on EU supervisory reporting requirements**

On 7 November, the EC published the results of its fitness check of EU supervisory reporting requirements alongside an executive summary. The purpose of the fitness check to was to assess the criticisms of the EU-level supervisory reporting requirements, determining whether these requirements were fit for purpose. The EC concludes that the requirements are broadly effective and have improved the ability to monitor systemic risk. However, various inefficiencies were found including: (i) a lack of clarity; (ii) a lack of use of the standards; (iii) inconsistent wording in legislation which lead to a reduced consistency in applying the reporting frameworks. The EC identified the following areas for improvement: (i) introducing clear and consistent empowerments for the European Supervisory Authorities (ESAs) in developing technical standards in secondary legislation; (ii) assess to what extent data supervisors are adequately provided with the information needed to perform their role to a sufficient standard; (iii) increasing the use of standards and introducing common definitions in order to improve consistency; and (iv) introducing new technology that improves efficiency in the data collection process.

[European Commission’s full publication](https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/191107-fitness-check-supervisory-reporting-staff-working-paper_en.pdf)

[Executive Summary](https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/191107-fitness-check-supervisory-reporting-executive-summary_en.pdf)

**EBA announces details outlining the 2020 EU-wide banking sector stress test**

On 7 November, the EBA announced the publication of the final version outlining the 2020 EU-wide stress test. The aim of the test is to provide a framework which analyses the ability of EU banks and the EU banking system with regards to sustaining shocks in the market. The test will be carried out on a sample of banks covering broadly 70% of the banking sector in the euro area, each non-euro area EU member state and Norway. Whilst the UK is included in this sample, should the UK leave the EU prior to the completion of the test, the UK banks will be removed from the sample. The EBA intends to launch the stress test at the end of January 2020, aiming to submit results between April 2020 and mid-July 2020. The EBA intends to publish the results by the end of July 2020.

[Read more](https://eba.europa.eu/eba-publishes-2020-eu-wide-stress-test-methodology-and-draft-templates)

**General election causes closure to financial-services inquiries**

On 5 November, the House of Commons Treasury Select Committee announced that all inquiries (including the inquiry looking at the future of financial services in the UK after Brexit) have been closed due to the dissolution of Parliament (on 6 November) ahead of the general election on 12 December. The Committee, however, may refer to the evidence given in these enquiries should a similarly inquiry on the subject occur in the future.

[Read more](https://www.parliament.uk/business/committees/committees-a-z/commons-select/liaison-committee/news-parliament-2017/parliament-dissolution-election-19/)

**FCA change approach to updating financial services register following complaints**

On 5 November, the Office of the Complaints Commissioner published a final report regarding a complaint about the FCA not keeping the financial services register up-to-date. Historically, the FCA’s policy has stated that unless a firm provided notice of changes to the register by submitting the relevant form, they were under no obligation to make these changes. The Commissioner took the view that such an approach increased the risk of consumers falling victim to a scam firm potentially seeking to exploit the register’s deficiencies. Consequently the Commissioner has recommended that the FCA reviews its policy, aiming to take active steps to update their register. The FCA has confirmed it is implementing various improvements for gathering information from firms, also accepting that it should not wait for firms to provide notice of changes when the FCA is already aware of such changes.

[Read more](http://frccommissioner.org.uk/wp-content/uploads/FCA00609-FR-for-publication-2-October-2019.pdf)

**FCA issues policy development update for November**

On 1 November, the FCA updated its policy development update (PDU) webpage, which sets out information on recent and future FCA publications. This update summarises the FCA's proposed future publications. However, the update does not cover upcoming publications relating to the Office for Professional Body Anti-Money Laundering Supervision (OPBAS).

[Read more](https://www.fca.org.uk/news/policy-development-update)

**PRA publish CEO letter on reliability of regulatory returns**

On 1 November, the PRA published a Dear CEO letter on the reliability of regulatory returns. This was done under the backdrop of an independent review that suggested implementation of formal third-party review of information supplied by PRA supervised firms. Firms are expected, if asked, to be able to respond promptly to a request from the PRA to: (i) demonstrate how they ensure regulatory reporting is conducted to a sufficient standard; (ii) provide details of the key metrics used to validate the quality of their regulatory reporting; (iii) provide the PRA with information relating to any material regulatory reporting errors identified, alongside detail of the actions taken to remediate them. Firms are expected to take steps to ensure the integrity of its returns. Doing so may involve: (i) regular reviews assessing the effectiveness of governance and; (ii) conducting deep dives to look at the accuracy of returns. The PRA also intends to commission reports focusing on the common reporting framework and will also incorporate other related returns, including newly introduced returns.

[Read more](https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/letter/2019/reliability-of-regulatory-returns.pdf)