

Key Regulatory Topics: Weekly Update

22 November 2019 – 28 November 2019

**CONDUCT**

**FCA guidance on approving financial promotions**

On 26 November, the FCA published guidance on approving financial promotions for unauthorised persons. The guidance sets out some practical implications of the FCA's existing requirements relating to financial promotions, rather than setting out new standards. When approving a financial promotion, a firm must confirm that it complies with all applicable financial promotion rules and in particular, whether the promotion is fair, clear and not misleading. It is for the firm to determine itself on a case by case basis whether this requirement is met and the extent of the analysis required to confirm that the financial promotion complies with the FCA’s rules. A firm's systems and controls should ensure it does not approve financial promotions that it lacks the competence to properly review and consider. If a firm intends to begin approving the financial promotions of unauthorised persons, it needs to consider whether this is something it should tell the FCA about in accordance with Principle 11 (Relations with regulators) of the Principles for Businesses.

[Read More](https://www.fca.org.uk/firms/financial-promotions-and-adverts/approving-financial-promotions).

**CONSUMER/RETAIL**

**FCA paper on temporary intervention on marketing of speculative mini-bonds to retail investors**

On 26 November, the FCA published a paper on a temporary intervention to prohibit the marketing of speculative mini-bonds to retail investors. The FCA believes that further steps are necessary to protect consumers and reduce harm from the on-going mass marketing of ‘speculative illiquid securities’ – i.e. unlisted debentures and preference shares where the issuer uses the funds raised to lend to a third party, invest in other companies or purchase or develop property. As such, the FCA is: (i) restricting the marketing of speculative illiquid securities to ensure that they can only be promoted to individual retail investors who have been pre-categorised as sophisticated or high net worth and where the product has been initially assessed as likely to be suitable for them; and (ii) mandating a specific risk warning and disclosures of any costs or payments to third parties that are deducted from the money raised by an issuer in any financial promotion for these products. The prohibition will not apply to unlisted securities where a company uses the funds raised to buy or construct property used by them for their own commercial or industrial purpose, and investment vehicles that only invest in a single UK-based property. These rules will apply to any promotion approved or communicated by an authorised firm from 1 January 2020 (and will apply for 12 months) but will not apply to promotions approved by authorised firms before 1 January 2020, which can still be communicated by an unauthorised person on or after that date.

[Read more](https://www.fca.org.uk/publication/tpi/temporary-intervention-marketing-speculative-mini-bonds-retail-investors.pdf)

**FINANCIAL CRIME**

Please read our Investigations Insight publication, ['From 'enabler' to 'game changer': fighting financial crime with technology](http://www.aoinvestigationsinsight.com/from-enabler-to-game-changer-fighting-financial-crime-with-technology/)

Please see the Markets and Markets Infrastructure section for an update on the SME growth market reform regulation.

**Payment Service Providers (PSPs) extend code for reimbursement of victims of Authorised Push Payment (APP) scams**

On 28 November, UK Finance announced that the seven PSPs that have provided interim funding for the reimbursement of victims to APP scams in a ‘no-blame’ scenario have agreed to extend the duration of the voluntary code under which the reimbursements are made. The code, which was due to expire on 31 December, will now continue until at least 31 March 2020 to allow more time to consider long-term funding arrangements.

[Read more](https://www.ukfinance.org.uk/press/press-releases/app-scams-voluntary-code-seven-launch#summary)

**FUND REGULATION**

Please see the Prudential Regulation section for an update on the Investment Firms Regulation and Investment Firms Directive.

**INSURANCE**

**FCA on Insurance Distribution Directive (IDD) general good requirements**

On 27 November, the FCA published a table that is intended to provide the information required under article 11 of the IDD, and sets out certain FCA Handbook rules which are applicable to incoming firms exercising a passport right under the IDD, so called ‘general good’ rules. The FCA states that for an incoming EEA firm that has permission for cross-border services only, many parts of the Handbook apply only if the firm carries on regulated activities in the UK. Those parts of the Handbook will therefore not apply if the firm's activities fall within the overseas persons exclusions in article 72 of the Regulated Activities Order, or if they would not be regarded as carried on in the UK.

[Read more](https://www.fca.org.uk/firms/insurance-distribution-directive/idd-general-good-requirements)

**Commission Delegated Regulation on adapting base euro amounts for professional indemnity insurance and financial capacity of intermediaries published in OJ**

On 22 November, Commission Delegated Regulation (EU) 2019/1935 amending the Insurance Distribution Directive with regard to regulatory technical standards on adapting the base euro amounts for professional indemnity insurance and for financial capacity of insurance and reinsurance intermediaries was published in the OJ. The EC adopted the Delegated Regulation in May. The Delegated Regulation will come into force on 12 December (20 days after its publication in the OJ) and will apply from 12 June 2020.

[Read more](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1935&from=EN)

**MARKETS AND MARKETS INFRASTRUCTURE**

**Covered Bonds Directive and Regulation signed in Strasbourg**

On 27 November, the texts of the Covered Bonds Regulation and Covered Bonds Directive were signed in Strasbourg, and will now be published in the OJ.

[Text of Covered Bonds Regulation](https://data.consilium.europa.eu/doc/document/PE-85-2019-REV-1/en/pdf)

[Text of Covered Bonds Directive](https://data.consilium.europa.eu/doc/document/PE-86-2019-REV-1/en/pdf)

**SME growth market reform regulation signed in Strasbourg**

On 27 November, the text of the SME growth market reform regulation was signed in Strasbourg, and will now be published in the OJ.

[Read more](https://data.consilium.europa.eu/doc/document/PE-89-2019-REV-1/en/pdf)

**FSB updates regulatory framework for haircuts on non-centrally cleared securities financing transactions (SFTs)**

On 26 November, the FSB published an updated version of its regulatory framework for haircuts on non-centrally-cleared SFTs. The framework consists of 18 policy recommendations for addressing financial stability risks relating to SFTs. Annexes 2, 3 and 4 have been updated and the text has been revised to take account of the revised deadlines that were announced in July.

[Read more](https://www.fsb.org/wp-content/uploads/P261119-1.pdf)

**BoE: Minutes of the London FXJSC Legal Sub-Committee Meeting**

On 22 November, the BoE published minutes from the September 2019 meeting which considered: (i) the FX Global Code and what topics the FX Joint Standing Committee (FXJSC) would propose for the three year review taking place next year; (ii) the role of CLS in the FX market; and (iii) the measures being taken by HM Treasury and the FCA in relation to FX as a result of Brexit.

[Read more](https://www.bankofengland.co.uk/-/media/boe/files/minutes/2019/fxjsc-legal-sub-committee-september-2019.pdf)

**BoE: Minutes of the Working Group on Sterling Risk-Free Reference Rates**

On 22 November, the BoE published minutes from September which considered: (i) an update on OIS quote streaming; (ii) the working group priorities for the remainder of 2019; and (iii) an update on the ISDA consultation process in relation to pre-cessation triggers and parameterisation.

[Read more](https://www.bankofengland.co.uk/-/media/boe/files/minutes/2019/rfr-september-2019.pdf)

**PAYMENT SERVICES AND PAYMENT SYSTEMS**

Please see the Financial Crime section for an update on the Payment Service Providers (PSPs) extend code for reimbursement of victims of Authorised Push Payment (APP) scams.

Please see the Other Developments section for an update on the EBA’s final report on guidelines regarding ICT and security risk management.

**ECB speech on the re-launched retail payments strategy**

On 26 November, the ECB published a speech by Benoît Cœuré, ECB executive board member, on the objectives of pan-European market initiatives for retail payments. Mr Cœuré states that due to a lack of attention from policymakers, there is considerable fragmentation in relation to point of sale and online payments and no EU-wide card payment scheme. The ECB is concerned at the potential risks in relation to investor protection and financial resilience and competitiveness of European systems arising from a dependence on non-European systems. It has therefore re-launched its retail payments strategy, focusing on fostering market initiatives for payment systems that are: pan-European, user-friendly, cost-efficient, safe, secure and accessible to non EU merchants.

[Read More](https://www.ecb.europa.eu/press/key/date/2019/html/ecb.sp191126~5230672c11.en.html#footnote.3)

**PRUDENTIAL REGULATION**

Please see the Markets and Markets Infrastructure section for an update on the Covered Bonds Directive and Regulation.

Please see the Other Developments section for an update on the EBA’s final report on guidelines regarding ICT and security risk management.

**BCBS consultation on changes to credit valuation adjustment (CVA) risk framework**

On 28 November, the BCBS published a consultative document in relation to its CVA risk framework. The BCBS is seeking views on a set of limited, targeted and final adjustments to the CVA risk framework, which comprise two revisions: (i) proposing adjustments to the risk weights in the CVA standardised approach for interest rate risk, foreign exchange risk and certain exposures subject to counterparty credit spread risk and reference credit spread risk. The BCBS also proposes to introduce a new approach to calculate capital requirements for instruments with market values depending on credit and equity indices; and (ii) the introduction of additional targeted revisions to the CVA risk framework, including adjusting the scope of portfolios subject to CVA risk capital requirements by excluding some securities financing transactions where the CVA risks stemming from such positions are not material, and exempting certain client-cleared derivatives. The deadline for comments is 25 February 2020.

[Read more](https://www.bis.org/bcbs/publ/d488.pdf)

**Investment Firms Regulation and Investment Firms Directive signed in Strasbourg**

On 27 November, the texts of the Investment Firms Regulation and the Investment Firms Directive were signed in Strasbourg, and will now be published in the OJ.

[Text of the Investment Firms Directive](https://data.consilium.europa.eu/doc/document/PE-79-2019-REV-1/en/pdf)

[Text of the Investment Firms Regulation](https://data.consilium.europa.eu/doc/document/PE-80-2019-REV-1/en/pdf)

**BCBS guiding principles for operationalisation of a sectoral countercyclical capital buffer (SCCyB)**

On 27 November, the BCBS published its guiding principles for the operationalisation of a SCCyB. The BCBS believes that the SCCyB may be a useful complement to both the Basel III CCyB and existing targeted instruments in the macro-prudential toolkit, and the guiding principles are intended to support those jurisdictions that are willing to implement an SCCyB. Among other things, the guiding principles cover: (i) objectives – the primary objective of the SCCyB is to ensure that the banking sector in aggregate has the capital available to maintain the flow of credit in the economy without its solvency being questioned; (ii) target segments – national authorities should define a small number of target segments that should be potentially significant from a financial stability perspective and prone to cyclical imbalances; and (iii) interaction with the Basel III CCyB – national authorities may wish to either activate the SCCyB or the CCyB, or both simultaneously.

[Read more](https://www.bis.org/bcbs/publ/d487.pdf)

**BCBS-BCG joint statement on proportionality in the implementation of the Basel framework**

On 26 November, the BCBS and Basel Consultative Group (BCG) published a joint statement on the use of proportionality in the implementation of the Basel framework. The BCBS and BCG support the use of proportionality, and explain that it can take different forms, including, but not limited to: (i) implementing the most appropriate approaches among those available in the Basel Framework for internationally-active banks in member jurisdictions - there is no expectation that they must use internally modelled approaches; and (ii) implementing standards for banks in non-BCBS member jurisdictions that are broadly consistent with the principles of the applicable Basel standards. The statement confirms that a proportionate regulatory framework should not reduce the resilience of banks or dilute the prudential regulatory framework, but reflect the relative differences in risk and complexity across banks and the markets in which they operate.

[Read more](https://www.bis.org/publ/bcbs_nl23.htm)

**ECB letter to Board of banks with an update on Targeted Review of Internal Models (TRIM)**

On 22 November, the ECB published a letter sent to the Board of banks with its third update on TRIM outcomes. The letter states that a significant milestone has been reached with the successful conclusion of the last set of on-site investigations for the TRIM project, and the ECB is now in the process of finalising analysis for the last set of investigations. The ECB intends to discuss its key achievements and next steps for internal models in Q2 2020.

[Read more](https://www.bankingsupervision.europa.eu/press/letterstobanks/shared/pdf/2019/ssm.TRIM_information_leteter_201911.en.pdf)

**EBA consultation paper on draft ITS regarding disclosure and reporting of MREL and TLAC**

On 22 November, the EBA published a consultation paper on draft implementing technical standards on disclosure and reporting of MREL and TLAC. The consultation paper includes proposals for templates and tables implementing the TLAC/MREL Basel Pillar 3 disclosure requirements and the supervisory reporting requirements. The EBA is also consulting on two recommended reporting templates covering the forecast of MREL and TLAC positions and funding structures and a file mapping disclosure and reporting requirements. The deadline for comments is 22 February 2020.

[Read More](https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Consultations/2020/CP%20on%20ITS%20on%20disclosure%20and%20reporting%20of%20MREL%20and%20TLAC/Consultation%20paper%20on%20the%20ITS%20on%20disclosure%20and%20reporting%20of%20MREL%20and%20TLAC.pdf)

**SUSTAINABLE FINANCE**

**Sustainable finance legislation signed in Strasbourg**

On 27 November, the texts of two sustainable finance regulations relating to low carbon benchmarks and sustainability-related disclosures were signed in Strasbourg, and will now be published in the OJ.

[Text of Low Carbon Benchmarks Regulation](https://data.consilium.europa.eu/doc/document/PE-90-2019-REV-1/en/pdf)

[Text of Disclosure Regulation](https://data.consilium.europa.eu/doc/document/PE-87-2019-REV-1/en/pdf)

**OTHER DEVELOPMENTS**

**EBA final report on guidelines regarding ICT and security risk management**

On 28 November, the EBA published a final report with guidelines on ICT and security risk management.

The guidelines provide details on how financial institutions should comply in order to address ICT and security risks, in accordance with Article 94 of CRD IV and Article 95 of PSD2. Among other things, the guidelines outline expectations regarding governance, risk assessment processes, information security requirements, ICT operational management and security in the change and development processes. The guidelines will come into force on 30 June 2020, when the EBA's December 2017 guidelines on security measures for operational and security risks under PSD2 will be repealed.

[Read more](file:///\\omnia.aoglobal.com\Europe\LN\Home1\BoydCl\My%20Documents\Downloads\Final%20Guidelines%20on%20ICT%20and%20security%20risk%20management.pdf)

**Council of the EU adopts position on new mechanism for out-of-court enforcement for NPLs**

On 27 November, EU ambassadors approved the Council’s position on a proposal for a common framework and minimum requirements for out-of-court mechanism to recover the value from loans guaranteed with collateral in the case where a borrower is not able to pay it back. This will help prevent the accumulation of NPLs, as it provides banks with legal instruments to recover collateral quicker. The mechanism would have to be agreed between a credit institution and a borrower when the loan is granted. Trilogue negotiations can begin once the EP has agreed its position.

[Read more](https://www.consilium.europa.eu/en/press/press-releases/2019/11/27/non-performing-loans-council-adopts-position-on-a-new-mechanism-for-out-of-court-enforcement/)

**Whistleblowing Directive published in Official Journal**

On 26 November, Directive (EU) 2019/1937 of the European Parliament (EP) and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law was published in the OJ. The Directive will enter into force twenty days following publication and Member States will have to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 17 December 2021 (for the majority of the requirements).

[Read more](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2019:305:FULL&from=EN#page=19)

**Council of EU progress report on banking union**

On 25 November, the Council of the EU published a progress report on strengthening the banking union. The report sets out details on progress of ongoing legislative proposals relating to the June 2016 roadmap conclusions, which includes: (i) the European deposit insurance scheme (EDIS) - the report summarises progress on technical issues relating to the legislative proposal for the EDIS Regulation, including a draft updated template for data collection to support the methodology for calculating risk-based contributions under EDIS; and (ii) the Directive on credit servicers and credit purchasers - the report considers progress on the legislative proposal for the proposed Directive on credit servicers and credit purchasers, and states that in October, the EP agreed that the provisions in the legislative proposal for accelerated extrajudicial collateral enforcement should be split off from the Directive.

[Read more](https://data.consilium.europa.eu/doc/document/ST-14354-2019-INIT/en/pdf)

**FCA policy statement on Proxy Advisors (Shareholders’ Rights) Regulations Implementation**

On 25 November, the FCA published a policy statement (PS19/28) on changes to its Decision Making and Penalties Manual (DEPP) and Enforcement Guide (EG) to reflect the implementation of the Proxy Advisors (Shareholders' Rights) Regulations (PA Regulations). The FCA has made the following amendments to DEPP 2 Annex 1 to set out decision-making procedures for: (i) deciding when to publish a statement about a proxy adviser who has breached a relevant requirement; (ii) deciding when to impose a financial penalty; and (iii) deciding when to impose a restitution requirement. The FCA clarifies that it will use its executive procedures when deciding whether to remove a proxy adviser from the public list of proxy advisers. Furthermore, a new section has been added to the EG on non-FSMA powers that explains how the FCA will use its powers under the PA Regulations, which will broadly mirror its approach to conducting investigations, sanctioning and using its regulatory powers under FSMA. Appendix 1 to PS19/28 contains the Proxy Advisers (DEPP and EG) Instrument 2019, which comes into force on 25 November.

[Read more](https://www.fca.org.uk/publication/policy/ps19-28.pdf)

**FCA Handbook Notice No. 71**

On 22 November, the FCA published Handbook Notice No. 71, which outlines changes made to the FCA Handbook on 24 October and 21 November. The Notice reflects changes made to the Handbook by the following instruments: (i) Mortgages (Responsible Lending) Instrument 2019; (ii) Exiting the European Union: Dispute Resolution: Complaints (Amendments) Instrument 2019; (iii) Training and Competence (Amendment No 8) Instrument 2019; (iv) Supervision Manual (Reporting No 12) Instrument 2019; and (v) Over-the-Counter Derivatives Central Counterparties and Trade Repositories (No 3) Instrument 2019.

[Read more](https://www.fca.org.uk/publication/handbook/handbook-notice-71.pdf)

**FSB updates list of G-SIBs**

On 22 November, the FSB published an updated list of banks identified as G-SIBs. The overall number of G-SIBs has increased from 29 to 30, to include the addition of Toronto Dominion. There have also been changes in the allocation of the institutions to buckets reflecting the effects of changes in the underlying activity of the banks. The FSB will next publish a new list of G-SIBs in November 2020. At the same time, the BCBS published further information related to its 2019 assessment of G-SIBs, including additional details underlying the scoring methodology. The BCBS' methodology assesses the systemic importance of global banks using indicators that are calculated based on the data for the previous fiscal year-end supplied by banks and validated by national authorities. The final scores are mapped to corresponding buckets, which determine the higher loss absorbency requirement for each G-SIB.

[FSB list](https://www.fsb.org/wp-content/uploads/P221119-1.pdf)

[BCBS methodology](https://www.fsb.org/wp-content/uploads/P221119-1.pdf)