

ALLEN & OVERY

Key Regulatory Topics: Weekly Update

7 June 2019 – 13 June 2019



BREXIT

PRA Rulebook: (EU Exit) (Amendment) Instrument 2019

On 13 June, the PRA published an updated version of its April policy statement (PS5/19). PS5/19 has been updated to include a new Appendix B.2A, which sets out the PRA Rulebook: (EU Exit) (Amendment) Instrument 2019. The instrument came into force on 13 June and makes an amendment to the PRA Rulebook: (EU Exit) Instrument 2019 (PRA 2019/10) (which can be found in Appendix B.2). The amendment provides that Annex BF to PRA 2019/10 does not come into force on 1 July, (the date on which the instrument itself comes into force), but comes into force on exit day.

[Read more](#)

EC adopts Communication regarding the state of play on preparations of contingency measures for Brexit

On 12 June, the EC adopted a fifth Communication taking stock of preparations for a no-deal Brexit. The Communication has been published ahead of the European Council (Article 50) meeting on 20 June and 21 June. The Communication states that the EU was already prepared for the withdrawal of the UK ahead of the original withdrawal date (30 March). The extensive work which all EU institutions and bodies and the EU27 Member States carried out before that date remains in place. The EC has made 19 legislative proposals to prepare for the UK's withdrawal. The EP and the Council adopted 18 of these and political agreement has been reached on the remaining one, which is expected to be formally adopted in June. The EC has also adopted 63 non-legislative acts in a number of policy areas. There are some areas of concern, including the preparedness of some insurance, payment services and financial services companies. The EC urges all stakeholders to use the extra time to 31 October to ensure they have done all that is needed to prepare for the UK's withdrawal.

[Read more](#)

Financial Services (Miscellaneous) (Amendment) (EU Exit) (No 2) Regulations 2019 made

On 11 June, the Financial Services (Miscellaneous) (Amendment) (EU Exit) (No 2) Regulations 2019 were made and an explanatory memorandum was published. Among other things, the regulations make amendments to: (i) the EEA Passport Rights (Amendment, etc, and Transitional Provisions) (EU Exit) Regulations 2018; (ii) the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018; (iii) the Financial Conglomerates and Other Financial Groups (Amendment) (EU Exit) Regulations; and (iv) the Long-term Investment Funds (Amendment) (EU Exit) Regulations. A draft version of the Financial Services (Miscellaneous) (Amendment) (EU Exit) (No 2) Regulations 2019 were laid before Parliament in April.

[Financial Services \(Miscellaneous\) \(Amendment\) \(EU Exit\) \(No 2\) Regulations 2019 Explanatory Memorandum](#)

CONDUCT

PRA consultation paper: Strengthening individual accountability: Resolution assessments and reporting amendments

On 7 June, the PRA published a consultation, 'Strengthening individual accountability: Resolution assessments and reporting amendments'. In the consultation, the PRA invites comments on proposed changes to the prescribed responsibility for recovery and resolution under the SMCR. The PRA is intending to amend the Allocation of Responsibilities Part so that the senior manager who is assigned the prescribed responsibility for recovery plans and resolution packs would have an additional equivalent responsibility for resolution assessments. This amendment would be applicable only to firms with £50 billion or more in retail deposits on an individual or consolidated basis. The deadline for comments is 7 August.

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CONSUMER/RETAIL

FCA policy statement regarding buy now pay later offers

On 12 June, the FCA published a policy statement on buy now pay later offers (PS19/17). Buy now pay later offers are credit offers with a product feature giving the consumer a promotional period of typically up to 12 months, during which they are not generally required to make repayments. However, if the consumer does not repay the entire amount within the promotional period, interest will be charged on the original credit amount or the unpaid part of that amount from the date of purchase. The FCA intends to proceed with the proposals largely as consulted on in its consultation paper CP18/43, but highlights the following changes to its original proposals: (i) the definition of buy now pay later has been revised to specify that the promotional period should be an initial period of 56 days or more; and (ii) the partial repayment rule will come into force two months after the other measures to give firms additional time to make the necessary changes.

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FCA policy statement on overdrafts

On 7 June, the FCA published a policy statement setting out its final rules and guidance on overdrafts. The final rules include: (i) preventing firms from charging higher prices for unarranged overdrafts than for arranged overdrafts; (ii) requiring firms to advertise arranged overdraft prices with an annual percentage rate APR to help customers compare them against other products; and (iii) requiring firms to ensure the price of each overdraft will be a simple annual interest rate - no fixed daily or monthly charges.

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FINANCIAL CRIME

Please see our Investigations Insight [blog post](#), where Eve Giles, A&O Litigation and Investigations Partner, reflects on her recent interview with Lisa Osofsky, Director of the SFO regarding section 2 interviews.

BoE, MAS and FCA cybersecurity collaboration

On 13 June, the BoE, Monetary Authority of Singapore (MAS) and the FCA announced that they will be working together to strengthen cybersecurity in their financial sectors. The collaboration will involve the authorities identifying effective ways to share information.

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Select Committee condemns the state of UK sanctions policy

On 12 June, the Foreign Affairs Select Committee published, 'Fragmented and incoherent: the UK's sanctions policy'. The report expressed concerns about the UK government's current sanctions policy and its lack of preparedness for the post-Brexit situation. The report identifies steps the government ought to take to address the current failings, including appointing a Senior Responsible Officer for sanctions policy who will be personally accountable to the National Security Council as well as a request for the government to commission a major review of its approach to sanctions.

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FCA review on understanding money laundering risks in capital markets

On 10 June, the FCA published its thematic review on understanding money laundering risks and vulnerabilities in capital markets. The FCA visited 19 participants covering different segments of the market, including investment banks, recognised investment exchanges, trade bodies, a custodian bank, clearing and settlement houses, inter-dealer brokers and trading firms. Among other things, the FCA found that: (i) the money laundering risks identified are mitigated to some extent by the nature of firms in the market, which are predominantly regulated, institutional firms. As such, the nature of the products and markets may be less attractive to money launderers given the barriers to entry and complexity of the products. However, risks

specific to capital markets still remain and some participants need to be more aware of these; (ii) participants were generally at the early stages of their thinking regarding money laundering risks and need to do more to fully understand their exposure; (iii) the nature of transactions in this sector means that undertaking effective customer risk assessments and customer due diligence is crucial so that opportunities for money launderers are reduced; (iv) participants' primary focus was detecting market abuse, and many had overlooked the fact that potential market-abuse suspicions could also be indicative of money laundering suspicions; (v) some participants were unclear on their obligations to submit suspicious activity reports, and again, the focus in relation to capital markets had been on reporting market abuse; and (vi) accountability and ownership of money laundering risk in the first line of defence needs to increase, rather than be viewed as a compliance responsibility. The FCA expects firms to consider their approaches to identifying and assessing money laundering risks in light of this report. The FCA are considering their supervisory approach in response to this work and are reviewing their strategy on how MiFID II data can be used to identify and mitigate money laundering risk.

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FINTECH

House of Commons: Answer to written question regarding cryptocurrencies

On 13 June, the House of Commons answered a question on what the government's recent assessment is of the potential merits of cryptocurrencies as a means of payment. The government responded that it established the Cryptoassets Taskforce last year to explore the risks and benefits of cryptoassets and distributed ledger technology (DLT). The Taskforce published a final report which concluded that benefits may arise in the future, however the immediate priority is to mitigate the risks posed by cryptoassets to consumers and markets, and to prevent the use of cryptoassets for illicit activity. The government intends to consult on its approach to cryptoassets later in the year.

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INSURANCE

Common minimum standards for data revisions agreed between the ECB, EIOPA, National Central Banks and National Competent Authorities

On 13 June, EIOPA and the ECB, published a document outlining common minimum standards for supervisory and statistical reporting by insurance and reinsurance undertakings between the ECB, EIOPA, National Central Banks and National Competent Authorities. The common minimum standards cover: (i) revision of data - when data quality issues are identified and a revision considered necessary, NCAs or NCBs should ask financial institutions to revise the data previously submitted; (ii) synchronisation - the same data must be available at all levels at all times, meaning that any revision of data should take place at all levels of the transmission chain to ensure that all parties involved have the same data; (iii) timeliness - the revisions should be sent by the NCAs and NCBs to EIOPA and the ECB, respectively, in a timely manner; and (iv) historical revisions - when an issue is identified which would lead to significant revisions and which also affects backdata, revisions should be provided at least as far back as technically possible given the operational limitations of the data collection infrastructure.

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MARKETS AND MARKETS INFRASTRUCTURE

FCA updates EMIR notifications and exemptions webpage

On 11 June, the FCA updated its webpage on notifications and exemptions under EMIR to reflect the EMIR Refit Regulation. New sections on notifications and exemptions have been added to the FCA's webpage on, among other things: (i) small financial counterparties: exceeding the clearing thresholds - the EMIR Refit Regulation creates a new category of financial counterparties, small financial counterparties. These are financial counterparties whose derivatives activity is below each of the asset class-specific clearing thresholds currently applicable to non-financials under EMIR; and (ii) intragroup exemption from the reporting obligation - under the EMIR Refit Regulation, any intragroup transaction where one counterparty is a non-financial counterparty (or would be qualified as a non-financial counterparty if it were established in the Union) is exempt from the reporting obligation, provided that specific circumstances are met.

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ESMA final report on frequent batch auctions under MiFID II

On 11 June, ESMA published its final report on frequent batch auctions (FBAs) for equity instruments under MiFID II and MiFIR. FBAs have been rapidly gaining market share since the application of MiFID II. To better

understand FBA systems and to assess whether and to which extent these systems are used to circumvent the double volume cap, ESMA published in November 2018 a call for evidence. This final report presents the feedback ESMA received to the call for evidence and informs stakeholders on the next steps ESMA intends to take. Section 3 of the report sets out the feedback received on the main differences between FBAs and conventional periodic auctions and on the development of FBA, including an updated analysis of market developments up to February 2019. Section 4 provides an overview of feedback received on the four key characteristics of FBAs. ESMA recommends focussing follow-up actions on two areas: (i) pre-trade transparency; and (ii) price determination. Finally, section 5 summarises the feedback received to the general developments in equity trading and includes an updated analysis of market developments up to February 2019.

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ISDA publishes Master Regulatory Disclosure Letter

On 7 June, ISDA published a Master Regulatory Disclosure Letter (MRDL). The MRDL is a form of letter that market participants may find useful as part of the management of their regulatory obligations under the laws of the jurisdictions to which the applicable appendices relate, in regard to clearing over-the-counter derivatives, mitigation of risks associated with uncleared OTC derivatives, reporting of derivative transactions to trade repositories and associated obligations. The MRDL is a method of communicating classification status between counterparties to enable the recipient of the MRDL to determine the application of certain regulatory requirements. By answering a series of questions in one or more of the Appendices to the MRDL, derivatives counterparties can classify themselves according to the relevant taxonomy in the jurisdictions in which they trade derivatives and to which the applicable Appendix relate. As of 7 June, Appendix A (European Union) relating to the regulatory obligations of market participants in respect of EMIR has been published. The documents are available on ISDA's webpage.

[Read more](#)

PAYMENT SERVICES AND PAYMENT SYSTEMS

FCA approach to payment services and electronic money

On 7 June, the FCA published version 4 of its approach document on payment services and electronic money. The updated document includes new guidance (consulted on in CP 18/42) on refused payment fees in relation to categories of costs that may properly be considered when setting the level of fees, which is outlined in paragraphs 8.251 to 8.259. The FCA warns that the approach document has not otherwise been reviewed or updated, and may be out of date.

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PENSIONS

Please see the Other Developments section regarding the CMA's Investment Consultancy and Fiduciary Management Market Investigation Order 2019.

PRUDENTIAL REGULATION

PRA Dear CEO letter regarding its review and findings on fast-growing deposit-taking firms

On 12 June, the PRA published a Dear CEO letter on its review of fast-growing deposit-taking firms. The letter explains that, over the past year, the PRA has undertaken a review of 20 non-systemic deposit-taking firms with different business models and activities, most of which exhibit faster asset growth than the market as a whole. The letter outlines the PRA's wider overall findings, and states that the review has provided reassurance about the overall resilience of the sector as a whole, while identifying some weaknesses in individual fast growing firms' risk management practices, which requires attention. The key findings relate to: (i) ICAAP stress testing - the PRA expects all firms to demonstrate effective engagement and challenge by senior management and boards, with stress testing integrated into the business; (ii) asset quality reviews - the PRA observes that firms benefit from information provided to management and boards which provides sufficiently detailed information on key loan book risk characteristics or combinations of risk characteristics, which could identify potentially vulnerable segments; and (iii) funding and lending analysis - better firms took into account various market pressures as well as their own ability to differentiate pricing on both sides of the balance sheet in both their baseline and stress testing projections. The PRA will provide further feedback at its upcoming conference session for chairs and non-executive directors of non-systemic UK banks and building societies in July.

[Read more](#)

EC fourth progress report on the reduction of NPLs

On 12 June, the EC published a communication on reducing non-performing loans (NPLs) and further risk reduction in the banking union. The report references developments in relation to NPLs since the EC's publication of its third progress report in November 2018. The report outlines ongoing initiatives, including: (i) Directive on credit servicers, credit purchasers and the recovery of collateral - the Council agreed a partial general approach regarding secondary markets but negotiations regarding the recovery of collateral are ongoing; (ii) asset management company blueprint - the EC states that no member state has yet initiated the set-up of an asset management company at a national level; and (iii) European NPL transaction platforms - in November 2018, the EC published a staff working document on the potential set-up of European NPL transaction platforms. It suggests that private stakeholders should develop and issue industry standards for these platforms.

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PRA modification by consent of definition of capital rules

On 10 June, the PRA published a direction for modification by consent which modifies rules 7.1 and 7.5 of the Definition of Capital Part of the PRA Rulebook. Following amendments to Article 26(3) of the CRR, firms may classify as Common Equity Tier 1 (CET1) instruments subsequent issuances as a form of CET1 instruments for which they have already received the competent authority's permission. However, the provisions governing the subsequent issuances must be substantially the same as the provisions governing those issuances for which the firms have already received permission and firms must notify subsequent issuances to the competent authorities sufficiently in advance of their classification as CET1 instruments. The amendment to Article 26(3) of the CRR will apply from 27 June, the date of the entry into force of the CRR II Regulation. The PRA intends to consult on amending chapter 7 of the Definition of Capital Part and on any supervisory expectation relevant to the application of Article 26(3) of the CRR in due course.

[Read more](#)

ESAs consult on amending ITS on mapping credit assessments of ECAIs under CRR

On 7 June, the ESAs published a second consultation paper on draft ITS amending Implementing Regulation (EU) 2016/1799 on the mapping of external credit assessment institutions' (ECAIs) credit assessments under Article 136(1) and (3) of the CRR. The deadline for comments is 10 July.

[Read more](#)

CRR II and CRD V published in OJ

On 7 June, CRR II and CRD V were published in the OJ. They will enter into force on 27 June (20 days after publication in the OJ). CRR II will apply from 28 June 2021, with the exception of measures listed in Article 3. Member States will be expected to adopt measures required to comply with CRD V by 28 December 2020 and to apply those measures from 29 December 2020, with the exception of certain measures listed in Article 2.

[Regulation \(EU\) 2019/876](#)

[Directive \(EU\) 2019/878](#)

RECOVERY AND RESOLUTION

Please see the Conduct section for the PRA's consultation on changes to SMCR prescribed responsibility to reflect resolution assessments.

BRRD II and SRM II Regulation published in OJ

On 7 June, BRRD II and the SRM II Regulation were published in the OJ. They will enter into force on 27 June (that is, 20 days after publication in the OJ). Member states will be expected to adopt measures to comply with BRRD II by 28 December 2020 and to apply those measures from the same date, with the exception of measures set out in Article 3. The SRM II Regulation will apply from 28 December 2020.

[Directive \(EU\) 2019/879](#)

[Regulation \(EU\) 2019/877](#)

TAXES AND LEVIES

PRA policy statement on regulatory fees and levies

On 13 June, the PRA published a policy statement on regulatory fees and levies for 2019/20, which provides feedback to responses following its consultation in April. The policy statement sets out: (i) fee rates to meet the PRA's 2019/20 Annual Funding Requirement for the financial period 1 March to 29 February 2020; (ii) amendments to the Fees Part of the PRA Rulebook (outlined in Appendix 1); and (iii) updates to Supervisory

Statement 3/16 'Fees: PRA approach and application' (outlined in Appendix 2). The implementation date for the PRA Periodic Fees (2019/20) and Other Fees Instrument 2019 and the updated Supervisory Statement 3/16 is 1 July.

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OTHER DEVELOPMENTS

FCA consultation on assessing adequate financial resources

On 13 June, the FCA published a consultation paper on its framework for assessing adequate financial resources. The consultation paper aims to provide more clarity to the industry regarding what the FCA believes is the role of adequate financial resources, and the focus of its approach when assessing the adequacy of a firm's financial resources. The FCA's expectations of firms to reduce potential harm covers: (i) financial resources; (ii) systems and controls, governance and culture; (iii) identifying and assessing the risk of harm; (iv) risks that can lead to harm or impair the ability to compensate for harm done; and (v) wind-down planning. The deadline for comments is 13 September.

[Read more](#)

EC report on progress

On 12 June, the EC published a Communication on deepening the Economic Monetary Union (EMU). The Communication takes stock of the progress made to deepen EMU since the publication of the Five Presidents' Report on 22 June 2015 and discusses its ongoing work which includes the reform of the European stability mechanism and the introduction of a budgetary instrument for the euro area.

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Joint Authorities Cash Strategy (JACS) Group publishes terms of reference

On 11 June, HMT published terms of reference of the JACS Group. The JACS Group consists of HMT, the BoE, the FCA and the PSR. The group's objectives include: (i) bringing members together in a collaborative forum to facilitate co-ordination of their individual responsibilities and activities; (ii) ensuring that the roles and responsibilities of members remains clear and relevant in light of changing payment trends and innovations; (iii) informing the approach of each member through consideration of relevant evidence regarding cash and digital payments and, where appropriate, advising on key developments outside the payments industry; and (iv) co-ordinating the actions taken by members in this area, including responding to the Access to Cash Review recommendations, to ensure alignment with the JACS strategic goal.

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CMA makes Investment Consultancy and Fiduciary Management Market Investigation Order 2019

On 10 June, the Competition and Markets Authority (CMA) made the Investment Consultancy and Fiduciary Management Market Investigation Order 2019. The Order requires fiduciary managers and investment consultants to provide clearer information on what their customers are getting for their money, and incentivises pension scheme trustees to shop around to make sure that they are getting the best deal to suit their needs. Among other things, the order requires: (i) pension scheme trustees who wish to delegate investment decisions for 20% or more of their scheme assets to run a competitive tender when first purchasing fiduciary management services; (ii) pension scheme trustees who have already appointed a fiduciary manager for 20% or more of their scheme assets without a tender to put the service out to tender within 5 years; and (iii) fiduciary management firms to provide potential new customers with additional information on their fees and performance, so they can compare service providers more easily. Trustees, fiduciary managers and investment consultants now have 6 months to ensure their practices are in line with the Order's requirements.

[Read more](#)

G20 communique from June meeting of finance ministers and central bank governors

On 10 June, the G20 published a communique following a meeting of finance ministers and central bank governors held on 9 June in Japan regarding financial sector-related reforms. The communique states that the G20, among other things: (i) continues to monitor and address, where necessary, vulnerabilities and emerging risks to financial stability; (ii) continues to address unintended, negative effects of market fragmentation, including through regulatory and supervisory cooperation; (iii) remains vigilant to risks, including those related to consumer and investor protection, AML and countering the financing of terrorism; and (iv) continues to monitor and address the causes and consequences of the withdrawal of correspondent banking relationships, and issues on remittance firms' access to banking services.

[Read more](#)

FCA quarterly consultation No. 24

On 7 June, the FCA published its 24th quarterly consultation paper. The consultation paper proposes the certain changes to the FCA Handbook: (i) modifications to General Provision (GEN) and fees and levy rate rules (FEES) for 2019/20 in relation to Gibraltar-based firms; (ii) new notification procedures for changes to a firm's management body; (iii) amendments to Handbook Form SUP 10C Annex 10D: Statement of Responsibilities; and (iv) an update of Handbook Form SUP 8 Annex 2: Application form for a waiver or modification of rules. The deadline for comments is 7 August.

[Read more](#)

FSB evaluation of financial regulatory reforms on SME financing

On 7 June, the FSB published a consultative document on the evaluation of the effects of financial regulatory reforms on small and medium-sized enterprise (SME) financing. The FSB's main conclusion of the evaluation is that, for the financial reforms in scope, the analysis to date does not identify material and persistent negative effects on SME financing in general, although there is some differentiation across jurisdictions. The FSB also found some reallocation of credit towards more creditworthy SMEs and improved access to finance for financially-stronger SMEs. The FSB invites comments on specific questions regarding the structure of SME financing, trends and drivers of SME financing, Basel III reforms and cost-benefit considerations. The deadline for comments is 7 August. The FSB intends to publish the final report in November.

[Read more](#)

PRA occasional consultation paper

On 7 June, the PRA published an occasional consultation paper which proposes minor amendments to the PRA Rulebook, supervisory statements, and relevant templates and LOG files. The proposals are in relation to: (i) Solvency II - the quality of capital instruments; (ii) Solvency II – minor updates to supervisory statements; (iii) regulatory reporting – discontinuation of FAS006 return; and (iv) national specific templates, internal model output templates and associated LOG files – minor updates, corrections and clarifications. The deadline for comments is 7 August.

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