ALLEN & OVERY

Key Regulatory Topics: Weekly Update

18 January 2019 – 24 January 2019

UPCOMING SEMINARS

Financial services regulation in 2019 – don't mention the B-word
On 30 January, Allen & Overy will hold a seminar regarding financial services regulation. 2019 promises to be another bumper year for UK and European financial services regulatory change and implementation, irrespective of Brexit. Partners Damian Carolan, Nick Bradbury and Kate Sumpter will consider the regulators' work plans and discuss expected highlights for UK banks and investment banks, including revisions to the resolution and capital frameworks, operational resilience enhancements and developments in the MiFID II regime. Please contact Elin Mills should you wish to attend.

EU Securitisation Regulation framework: Where are we now?
On 29 January, Allen & Overy will hold a seminar on the new EU Securitisation Regulation framework. It applies in general from 1 January 2019, but the securitisation markets enter the new EU regime with a number of uncertainties remaining, not least because the final texts of some of the new regulatory guidance and technical standards are not made available at the start of 2019. The seminar will provide an opportunity to hear from the A&O securitisation team on the latest position, the key issues from the perspective of different market players and latest practice points. Please contact Sarah-Jane Mc Cann should you wish to attend.

BREXIT

Please see our bulletin entitled "Preparing for a hard Brexit – key points to note for equity capital market participants".

Please see the product sections for updates on draft SIs published in anticipation of a hard Brexit.

The Competition (Amendment etc.) (EU Exit) Regulations 2019 made
On 24 January, the Competition (Amendment etc.) (EU Exit) Regulations 2019 were published. Together with an explanatory memorandum. The Regulations are intended to correct deficiencies in competition legislation arising from EU exit and are drafted for a scenario where no agreement is reached between the UK and the EU. They revoke Articles 101 and 102 of the TFEU and the EU Merger Regulation (and related EU regulations and EC decisions) and make amendments to the Competition Act 1998 and Enterprise Act 2002 (and other primary and secondary legislation) to reflect this. These Regulations are intended to separate the EU and UK systems of antitrust enforcement and merger control and to make provision for a smooth transition to a standalone UK competition regime after exiting the EU. The amendments to the Competition Act remove provisions empowering the CMA and sector regulators to investigate and enforce EU competition law and provisions that provide for reciprocal investigation cooperation. They introduce a new section 60A of the Competition Act to provide that competition regulators and UK courts will continue to be bound by an obligation to ensure no inconsistency with pre-exit EU competition case law, unless

appropriate in specific circumstances. The Regulations also bring the existing EU block exemption regulations into UK law (as amended by these Regulations). The amendments to the Enterprise Act relate to references to being part of the "one-stop shop" for merger control in the EU, which will become irrelevant or inappropriate when the UK leaves the EU. The Regulations also include transitional provisions for ongoing antitrust enforcement cases and investigations, competition court proceedings and merger cases. The Regulations will come into force on exit day.
Statutory instrument
Explanatory memorandum

HMT provides further details on transitional powers for UK regulators in event of no-deal Brexit
On 23 January, the House of Commons Treasury Committee published a letter from John Glen, Economic Secretary to the Treasury, to Nicky Morgan, Committee Chair, setting out the government's proposal for a temporary transitional power to be delegated to the BoE, the PRA and the FCA in the event of a no-deal Brexit. The letter attaches a draft version of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019, Part 7 of which contains provisions for the temporary transitional power. The version of the draft Regulations published by HMT in December 2018 does not contain these provisions. Details Mr Glen provides on the proposed power include: (i) it would enable the regulators to delay, or phase in, regulatory requirements where they either change or apply to firms for the first time due to Brexit; (ii) the transitional period would be limited to two years; and (iii) the power would be wide in scope, but limited to areas within the regulators' supervisory responsibilities. It may only be used to prevent or mitigate disruption to firms that may reasonably be expected to arise due to onshoring changes to firms' regulatory obligations, and must be consistent with the regulators' statutory objectives. HMT published its proposal to provide the UK regulators with a temporary transitional power in October 2018. The PRA, BoE and FCA consulted on their use of any such power in October 2018. Mr Glen states in his letter that the regulators are expected to set out their final proposals in February.
Letter

Draft Securitisation (Amendment) (EU Exit) Regulations 2019 laid before Parliament
On 23 January, a draft version of the Securitisation (Amendment) (EU Exit) Regulations 2019, which has been laid before Parliament, was published together with a draft explanatory memorandum. The purpose of the Regulations is to correct deficiencies in the retained version of the EU Securitisation Regulation and other EU and UK legislation relating to securitisations that arise from the UK leaving the EU. They aim to ensure that the European framework governing securitisations under the EU Securitisation Regulation (including the classification of certain securitisations as simple, transparent and standardised securitisations, will continue in the UK, post Brexit.
Statutory instrument
Explanatory memorandum

Draft Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 laid before Parliament
On 22 January, a draft version of the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019, which has been laid before Parliament, was published together with a draft explanatory memorandum. The purpose of the Regulations is to amend the Financial Services and Markets Act 2000 (Gibraltar) Order 2001 (Gibraltar Order) and FSMA to ensure that authorised financial services firms in Gibraltar are able to provide services and establish branches in the UK after exit day on current terms. The Regulations will come into force on the day after the day on which they are made, with the exception of the amendments to FSMA and the Gibraltar Order, set out in Parts 2 and 3 of the Regulations, which will come into force on exit day. HMT published a draft of the Regulations on 14 January.
Statutory instrument
Explanatory memorandum

Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019 laid before Parliament
On 21 January, a draft version of the Public Record, Disclosure of Information and Co-operation (Financial Services) (Amendment) (EU Exit) Regulations 2019, which has been laid before Parliament, was published with an explanatory memorandum. The Regulations amend primary and secondary UK legislation, notably the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (Disclosure Regulations), to ensure that, after exit day, the UK continues to have robust protections covering the way the UK financial services regulators disclose confidential information to UK, EEA and third-country regulatory and supervisory authorities. Among other things, the Regulations: (i) amend references to EU Directives, Regulations and entities in FSMA, the Disclosure Regulations and related legislation, so that they

instead refer to the relevant UK versions of that legislation; (ii) introduce a requirement to enter into co-operation agreements with the ESAs and EEA member states to continue to share certain types of confidential information; (iii) change requirements relating to the onward disclosure of confidential information. Currently, a UK regulator does not need to seek the consent of a third-country authority when onwardly disclosing confidential information from that country. The Regulations remove these consent provisions from UK legislation. However, the UK regulators are updating their internal staff guidance to stipulate that, other than in exceptional circumstances, staff must comply with any requests from an ESA or EEA regulator relating to obtaining their consent before onwardly disclosing information to a third country; and (iv) amend the professional secrecy provisions in retained direct EU legislation to address deficiencies in legislation resulting from Brexit. Parts 1 and 3 of the Regulations come into force on the day after the day on which the Regulations are made. Part 2 of the Regulations comes into force on exit day. HMT did not consult on the Regulations, but it published a draft version on 9 January.
Statutory instrument
Explanatory memorandum

CAPITAL MARKETS

Draft Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019 laid before Parliament
On 21 January, the draft version of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019 which has been laid before Parliament was published together with an explanatory memorandum. The regulations are intended to address deficiencies in the prospectus, transparency and listing regimes that arise from the UK leaving the EU, and seek to ensure that the UK's listing regime and transparency framework continue to operate as intended following exit day. Several changes have been made to the initial draft of the regulations which was published by HMT in December 2018, including various typographical and clarificatory amendments that do not affect the substance of the regulations.
Read more

COMPENSATION SCHEMES

Eurogroup establishes working group to consider EDIS
On 21 January, the Council of the EU published a press release following a Eurogroup meeting of the same date. Among other things, the statement sets out next steps concerning the proposals for a European deposit insurance scheme (EDIS). According to the press release, leaders endorsed all the elements of the Eurogroup report on euro area reform and asked the Eurogroup to progress its work on the EDIS proposal, with a view to providing the Eurogroup with an interim report by June. A high-level working group will be established to bring the discussion to a more political and focused, rather than academic, level. The press release notes that it is necessary to take into account that a deposit guarantee scheme interacts with many other policies and parts of the banking union. The working group has been given a broad mandate to take this forward.
Read more

CONDUCT

FCA consults on optimising SM&CR and proposes to exclude heads of legal from SMR
On 23 January, the FCA published a consultation paper on optimising the SM&CR. The FCA's proposals are intended to provide extra clarity in some areas and help firms adjust to the SM&CR. In summary, the FCA proposes to: (i) exclude heads of legal from the requirement to be approved as a senior manager under the SMR – it also sets out a summary of the feedback it received to its September 2016 discussion paper on overall responsibility and the legal function, which largely opposed the inclusion of heads of legal in the SMR; (ii) implement a notification requirement to bring intermediaries with regulated revenue of more than £35 million that do not complete RMA-B into the scope of the enhanced regime; (iii) amend the scope of the client dealing function in the certification regime to allow firms to exclude purely administrative roles that involve "taking part in" investment activities; (iv) ensure that the certification regime applies to individuals performing roles that were systems and controls functions under the approved persons regime, but that are no longer approved under the SM&CR – this will involve the introduction of a new certification function; (v) apply senior manager conduct rule 4 (SC4) to non-approved executive directors at limited scope firms to ensure that executive and non-executive directors at these firms are subject to equivalent requirements – SC4 requires relevant individuals to disclose appropriately any information of which the FCA would

reasonably expect notice; and (vi) make a number of minor changes to its regulatory forms to ensure they are consistent with its rules. The draft rules are set out in the Individual Accountability (Amendment) (No 1) Instrument 2019. The closing date for comments is 23 April. The FCA will consider feedback and publish its rules and guidance in a policy statement in the third quarter of this year.
Read more

FINANCIAL CRIME

ESFS reform: Council of EU discusses prioritising AML/CTF component of ESFS reform package

On 22 January, the Council of the EU published a press release following a meeting in its configuration as ECOFIN. According to this, ministers discussed the proposals to review the ESFS. The Council Presidency proposed to prioritise the provisions relating to the strengthening of the supervision of AML and CTF activities, which form part of the revised legislative proposal for the Omnibus Regulation. The item will be on the agenda for the next ECOFIN meeting in February. The press release also states that: (i) on the basis of this ministerial guidance, the Presidency will be in a position to start negotiations with the EP, with the aim of reaching political agreement on the file by the end of the current legislative term; and (ii) the negotiations on the remainder of the ESFS package will continue separately at both technical and political level, and the Presidency intends to reach an agreement on this by June. The Council agreed its position on the proposed Omnibus Regulation in December 2018, and ECON adopted its draft report on the whole ESFS package in January.
Read more

Wolfsberg Group guidance on use of sanctions screening by financial institutions

On 21 January, the Wolfsberg Group published guidance on the use of sanctions screening by FIs as a control in the detection, prevention and disruption of financial crime and, in particular, sanctions risk. The guidance states that sanctions screening is the comparison of one string of text against another to detect similarities that would suggest a possible match. It compares data sourced from an FI's operations, such as customer and transactional records, against lists of names and other indicators of sanctioned parties or locations. These lists are typically derived from regulatory sources and often supplied by specialist external providers. FIs may also augment these with lists of sanctions-relevant terms, names or phrases, identified through their own operations, research or intelligence. The guidance goes on to cover the following topics: programmatic approach to sanctions screening, screening technology and generating productive alerts, reference data or customer or name screening, transactions or message screening, list management, and historical reviews (lookbacks). The Wolfsberg Group concludes that FIs should seek to adopt a risk-based approach to sanctions screening and consider all aspects of a comprehensive sanctions screening control framework. It states that: (i) FIs must have a robust financial crime compliance programme with a clear strategy in respect of sanctions screening; (ii) their approach should recognise that sanctions screening has its limitations and, to be fully effective, should be deployed alongside a broader set of non-screening controls; (iii) FIs should document their systematic approach to screening by linking it directly to their risk appetite statements; (iv) the accuracy and completeness of the FI's own data is central to an effective and efficient sanctions screening process; (v) technology remains a key enabler in the effectiveness of identifying financial crime risk through screening; (vi) FIs must put in place robust governance and oversight mechanisms to ensure transparency of risk decisions to key stakeholders and risk owners; (vii) FIs should ensure that people involved in the end-to-end risk event management are suitably trained, supervised and that the appropriate levels of quality control are in place to ensure compliance with requirements; and (viii) robust management information should be made available to management to report effectiveness, trends and performance.
Read more

FINTECH

FCA consults on guidance on regulation of cryptoassets

On 23 January, the FCA published a consultation paper proposing new guidance to provide additional clarity on the circumstances under which cryptoassets are regulated. The guidance is in response to one of the commitments made by the joint BoE, FCA and HMT Cryptoassets Taskforce in October 2018 to provide extra clarity to firms about the regulation of current cryptoassets. The CP focuses on where cryptoassets interact with the FCA's regulatory perimeter. It considers where cryptoassets would constitute specified investments under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO), financial instruments such as transferable securities under the MiFID II Directive, or fall within the Payment Services Regulations 2017, or the Electronic Money Regulations 2011. It also covers where cryptoassets

would not be considered specified investments under the RAO. In addition, the FCA sets out the wider context to the proposed guidance. It explains the key concepts related to cryptoassets, and provides an overview of the UK market, its assessment of harm and the action it has taken so far. The consultation closes on 5 April. The FCA also informs firms that HMT will be publishing a consultation paper early this year to discuss legislative change on potentially broadening the FCA's regulatory remit to bring in further types of cryptoassets. Moreover, it indicates that it will be issuing the following further publications during 2019: (i) consumer research on cryptoassets (early 2019); (ii) policy statement on cryptoassets in response to the CP (summer 2019); and (iii) consultation on potentially banning the sale to retail customers of derivatives linked to certain cryptoassets (2019).
Read more

FUND REGULATION

European Parliament to consider proposed Regulation and Directive on cross-border distribution of collective investment funds at 15 to 18 April plenary session
On 24 January, the EP updated: (i) the procedure file for the proposal for a Directive on the cross-border distribution of collective investment funds; and (ii) the procedure file for the proposal for a Regulation on facilitating cross-border distribution of collective investment funds in each case to indicate that the EP will consider the proposals at its plenary session of 15 to 18 April.
Read more

Draft Money Market Funds (Amendment) (EU Exit) Regulations 2019 laid before Parliament
On 24 January, a draft version of the Money Market Funds (Amendment) (EU Exit) Regulations 2019, which has been laid before Parliament, was published on legislation.gov.uk, together with a draft explanatory memorandum. The draft Regulations will make amendments to the Regulation on money market funds (MMF Regulation), in its capacity as retained EU law, to ensure that it continues to operate effectively in the UK post-Brexit. Among other things, the draft Regulations: (i) change the scope of the retained MMF Regulation to only apply to MMFs established in the UK; (ii) change the scope of the retained MMF Regulation so that it only applies within the UK, and requires that the manager of an MMF is established in the UK (with the temporary exception of EEA MMFs currently marketed in the UK via a passport); (iii) provide a transitional arrangement, which enables all MMFs that have a temporary marketing permission to be able to continue to be marketed for the duration of the temporary permissions regime; and (iv) transfers functions previously held by the EC to HMT, and functions previously held by ESMA to the FCA. Parts 1 (General) and 2 (Amendment of secondary legislation) will come into force on the day after the day on which the Regulations are made, with the remaining provisions coming into force on exit day.
Statutory instrument
Explanatory memorandum

Erratum to ECON report on proposed Regulation on facilitating cross-border distribution of collective investment funds
On 22 January, the EP published an erratum to a report from ECON on the proposal for a Regulation on facilitating cross-border distribution of collective investment funds, adopted in December 2018. The erratum amends Recital 6 and Article 10, and inserts new Recitals 7a, 7b and 7c. It explains that these amendments were adopted by ECON but were missing from the text sent for translation. The changes affect all language versions of the report.
Read more

INSURANCE

Executed UK-US bilateral agreement on insurance and reinsurance prudential measures published
On 22 January, the Foreign & Commonwealth Office published the final version of the UK-US bilateral agreement on insurance and reinsurance prudential measures which was signed on 18 December 2018, together with an explanatory memorandum. HMT, the US Treasury and the Office of the US Trade Representative issued a joint statement announcing the signing of the bilateral agreement in December 2018. The bilateral agreement is based on US recognition that the package of measures under the Solvency II Directive is equivalent to US prudential standards for insurance. The EU regulations within the Solvency II package will be carried over to UK law as part of the European Union (Withdrawal) Act 2018. The bilateral agreement is intended to take effect when the equivalent EU-US agreement ceases to apply to and in the UK when the UK leaves the EU. It will maintain the effect of the EU-US Agreement. The application of the bilateral agreement extends to Gibraltar. The bilateral agreement will enter into force either when the parties

certify in written notifications to each other that they have completed their respective internal requirements and procedures, or on such other date as the parties agree.
Read more

ECON concerns over SCR review
On 22 January, ECON published a press release with regard to the EC's amendments to the Solvency II Delegated Regulation (EU) 2015/35 relating to the review of the solvency capital requirement (SCR) standard formula. ECON makes the following points: (i) it reiterates its support for a reduction of the current risk margin to boost the financing of the real economy and to encourage insurers to invest in long-term projects; (ii) it is concerned that the current design of the criteria of a new equity class for long-term investments, such as the 12-year duration and the ring-fencing requirements, could prevent the long-term equity class from working in practice; (iii) it reiterates its position on the importance of finding a short-term solution to address the shortcomings of the current functioning of the volatility adjustment; and (iv) in the light of the delay in adopting amendments to the Delegated Regulation, it is concerned about the start date for the application of the new provisions. ECON strongly suggests that the EC takes up the above points in its 2018 SCR review. The EC published a draft version of a Commission Delegated Regulation amending the Solvency II Delegated Regulation in November 2018.
Read more

MARKETS AND MARKETS INFRASTRUCTURE

Please refer to the Other Developments section for an update on the House of Commons European Scrutiny Committee considering progress of Omnibus Regulation and Regulation on carbon benchmarks

ICE Benchmark Administration Ltd – Report: U.S. Dollar ICE Bank Yield Index
On 24 January, Intercontinental Exchange, Inc. announced that ICE Benchmark Administration (IBA) has published a paper introducing the U.S. Dollar ICE Bank Yield Index for review and comment by market participants. The fully transaction-based U.S. Dollar ICE Bank Yield Index is designed to measure the yields at which investors are willing to invest U.S. dollar funds in large, internationally active banks on a wholesale, unsecured basis over one-month, three-month and six-month periods. The index has been developed to meet the potential needs of lenders, borrowers and other users of non-derivative or "cash" products that have historically referenced short-term interest rate benchmarks, such as LIBOR, in their contracts. IBA has conducted a period of testing on a preliminary methodology for the index over the course of the past year. The results are published in the paper and on IBA's website. IBA is now inviting market participants and stakeholders to review and provide feedback on the U.S. Dollar ICE Bank Yield Index and its proposed methodology by March 31. IBA intends to consider and take account of this feedback in finalising the construction of the index before conducting a production-standard test in the second half of 2019. If the market's response is encouraging and future testing is successful, IBA anticipates that it will launch the U.S. Dollar ICE Bank Yield Index and commence publication during the first quarter of 2020.
Read more

Draft Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 laid before Parliament
On 24 January, a draft version of the Benchmarks (Amendment and Transitional Provision) (EU Exit) Regulations 2019 was published together with a draft explanatory memorandum. The Regulations, which have been laid before Parliament, will make amendments to retained EU law relating to the Benchmarks Regulation (BMR) to ensure that the regime for financial benchmarks continues to operate effectively in the UK once the UK has left the EU. The Regulations will also make minor changes to delegated acts under the BMR to ensure they function after exit day. This includes amending the list of critical benchmarks to remove benchmarks administered in the EU. Once made, the Regulations will come into force on exit day.
Statutory instrument
Explanatory memorandum

ISDA issues clearing risk management best practices for CCPs
On 24 January, ISDA published a paper containing a set of clearing risk management best practices for CCPs. The paper outlines ISDA's current thinking on clearing risk management and identifies ten best practices. These include: (i) CCP risk management should be linked to the underlying risk and not be based solely on a given product being an exchange-traded or OTC derivative; (ii) CCPs need to have robust requirements for their members, including operational capacity, back-up sources of liquidity and financial resources, and to review these, and the creditworthiness of their members, regularly; (iii) products cleared by

a CCP need to be sufficiently standardised and liquid – where these products contain very specific characteristics or market dynamics, they should be cleared in a separate or segmented silo, or be subject to prospectively increased margin requirements; (iv) CCPs need to make sure there are sufficient participants in an auction – for some products, this will be clients rather than members; (v) CCPs should implement best practices for margin calculations across all products, based on applicable risk factors and not limited to trading venue; (vi) controls and limits that protect against erroneous trades and build-up of concentrated positions should be implemented at the exchange level; and (vii) CCPs should have effective and transparent default management processes. The paper also highlights some evolving best practices relating to topics such as skin-in-the-game and provision for non-default losses. The paper is a response to the fact that two CCPs have experienced clearing member defaults over the past five years that have exceeded the defaulting member's contribution to default resources and required the use of mutualised resources in the default fund, spreading losses to other CCP participants. These defaults have highlighted weaknesses in some CCP risk management practices and underscore the importance of a more consistent implementation of risk management best practices by CCPs around the world.
Read more

ESMA agrees MiFID II position limits on ICE Low Sulphur Gasoil Futures and Options commodity contracts proposed by FCA
On 23 January, ESMA published an opinion on position limits on ICE Low Sulphur Gasoil Futures and Options commodity contracts. ESMA received a notification from the FCA in February 2018 under Article 57(5) of MiFID II relating to the exact position limits the FCA intends to set for ICE Low Sulphur Gasoil Futures and Options commodity contracts in accordance with the methodology for calculation established in Commission Delegated Regulation (EU) 2017/591 (RTS 21) and taking into account the factors referred to in Article 57(3) of MiFID II. ESMA concludes in its opinion that the spot month position limit and the other months' position limit comply with the methodology established in RTS 21 and are consistent with the objectives of Article 57 of MiFID II.
Read more

ESMA updates MiFID II transitional transparency calculations for electricity derivatives
On 22 January, ESMA published an updated version of its transitional transparency calculations (TTC) required under MiFID II and MiFIR. The update relates to the TTC for commodity derivatives and only affects electricity derivatives. A link to the TTC can be found on ESMA's transparency calculations webpage.
Read more

Working group on euro risk-free rates publishes guiding principles for fallback provisions
On 21 January, the working group on euro risk-free rates published Guiding principles for fallback provisions in new contracts for euro-denominated cash products, together with a press release. The paper makes recommendations for fallback provisions used in cash products that reference EURIBOR or EONIA as a benchmark rate (for example, bilateral and syndicated loans, securitisations, bonds and mortgages). The working group previously recommended ESTER as the euro risk free rate to replace EONIA and as a basis for developing fallbacks for contracts referencing EURIBOR. It now recommends that market participants make fallback language in new contracts for cash products referencing EONIA or EURIBOR more robust, taking into account principles relating to: (i) the trigger events that should be catered for in fallback provisions (for example, the EURIBOR/EONIA administrator publicly announcing that it will cease publishing that benchmark, the FSMA announcing that EURIBOR/EONIA has been permanently or indefinitely discontinued and, potentially, the competent authority stating that the calculation methodology for EURIBOR/EONIA has changed); (ii) using ESTER or a term rate derived from it recommended by a relevant body such as the ECB, ESMA, the FSMA or the working group in fallback provisions now, even though ESTER may not be available until October 2019 and a consultation about producing a term rate is ongoing; (iii) an adjustment spread being added to the fallback rate; (iv) flexibility to facilitate amendments to contractual provisions relating to the benchmark rate; and (v) achieving consistency between different products, particularly where related (for example, loans, securitisations and derivatives).
Guiding principles
Press release

Draft Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019 laid before Parliament
On 18 January, a draft version of the Investment Exchanges, Clearing Houses and Central Securities Depositories (Amendment) (EU Exit) Regulations 2019, which has been laid before Parliament, was published together with a draft explanatory memorandum. The Regulations address failures of retained EU

law to operate effectively and other deficiencies arising from the UK's withdrawal from the EU. They ensure that the regulatory regime for recognised investment exchanges, EEA market operators (that is, firms responsible for setting up and maintaining a trading venue), clearing houses (including central counterparties) and central securities depositories continues to be clearly defined and operable in UK domestic law after exit day in a no-deal scenario. HMT published a draft version of the Regulations on 30 November 2018. Regulation 1 (Citation, commencement and interpretation) and Part 2 of the Regulations will come into force on the day after the day on which the Regulations are made. The remaining provisions come into force on exit day.
Statutory instrument
Explanatory memorandum

PAYMENT SERVICES AND PAYMENT SYSTEMS

PSR confirms market review into card-acquiring services
On 24 January, the PSR published its final terms of reference and confirmed that is conducting a market review into the supply of card-acquiring services in the UK. The PSR has confirmed the scope of the market review and the issues that it intends to examine, having consulted on a draft of the terms of reference in July 2018. The PSR is conducting the review using its general powers under the Financial Services (Banking Reform) Act 2013 The market review will examine whether the supply of card-acquiring services (services to accept and process card payments on behalf of a merchant resulting in a transfer of funds to the merchant) is working well for merchants, and ultimately consumers. The PSR will focus on the supply of these services in relation to Mastercard and Visa, but this is a non-exclusive focus. The PSR will, in particular, examine the nature and characteristics of card-acquiring services, how merchants buy these services and who provides them, whether there are credible alternatives for some or all merchants, and what the market is delivering for merchants and consumers (including the fees merchants pay and the quality of service they receive). It will look at barriers to entry and expansion, barriers to searching and switching, and the availability of services that facilitate merchant decision-making. The PSR intends to publish an interim report on its market review by the end of 2019 and its final report in the first half of 2020.
Read more

PENSIONS

EP to consider proposed PEPP Regulation at 25 to 28 March plenary session
On 24 January, the EP updated its procedure file on the proposed Regulation on a pan-European personal pension product to indicate that it will consider the proposed Regulation during its plenary session to be held from 25 to 28 March.
Read more

Joint protocol between FCA, Pensions Regulator and TPAS
On 22 January, the FCA, Pensions Regulator and TPAS published a joint protocol. The protocol has been drawn up for the purpose of enabling early intervention by the three bodies to ensure members of defined benefit (DB) pension schemes are adequately and fully informed about their options when considering transferring their DB pensions. The organisations will work alongside the Pension Protection Fund as necessary and will share information, to the extent permitted by law, to help identify potential issues that may arise and improve communication channels when working with pension schemes. Among other things, the protocol provides that the Pensions Regulator will share information with the FCA and TPAS about its regular market intelligence DB report and will let the FCA know if it requires any company-specific information about a company regulated by the FCA which appears in a report.
Read more

PRUDENTIAL

Please refer to the Insurance section for an update on the published UK-US bilateral agreement on insurance and reinsurance prudential measures

Draft Financial Conglomerates and Other Financial Groups (Amendment etc) (EU Exit) Regulations 2019 laid before Parliament
On 18 January, a draft version of the Financial Conglomerates and Other Financial Groups (Amendment etc) (EU Exit) Regulations 2019, which has been laid before Parliament, was published together with a draft explanatory memorandum. The purpose of the Regulations is to make amendments to correct deficiencies in

legislation implementing the Financial Conglomerates Directive (FICOD). They will come into force on exit day. The Regulations make extensive amendments to the Financial Conglomerates and Other Financial Groups Regulations 2004, as well as consequential amendments to the Capital Requirements Regulations 2013 and the retained version of the CRR. HMT published a draft of the Regulations and accompanying explanatory information in October and December 2018 respectively.
Statutory instrument
Explanatory memorandum

SUSTAINABLE FINANCE

EP to consider sustainable finance reforms package at plenary sessions on 25 to 28 March and 15 to 18 April
On 24 January, the EP updated: (i) the procedure file for the proposed Regulation on the establishment of a framework to facilitate sustainable investment; (ii) the procedure file for the proposed Regulation on disclosures relating to sustainable investments and sustainability risks; and (iii) the procedure file for the proposed Regulation amending the BMR on low carbon benchmarks and positive carbon impact benchmarks. The updated procedure files for the first and third proposals indicate that the EP will consider the two proposed Regulations during its plenary session to be held from 25 to 28 March. The updated file for the second proposal indicates that it will consider that proposed Regulation during its plenary session to be held from 15 to 18 April.
Read more

OTHER DEVELOPMENTS

EP to consider ESFS reforms at 15 to 18 April plenary session
On 24 January, the EP updated: (i) the procedure file for the proposed Omnibus Regulation relating to the powers, governance and funding of the ESAs; (ii) the procedure file for the proposed Omnibus Regulation relating to the powers of ESMA and EIOPA; and (iii) the procedure file for the proposed Regulation amending the Regulation that established the ESRB. The updated procedure files indicate that the EP will consider the proposals at its plenary session of 15 to 18 April.
Read more

House of Commons European Scrutiny Committee considers progress of Omnibus Regulation and Regulation on carbon benchmarks
On 22 January, the House of Commons European Scrutiny Committee published its fifty-first report of the 2017-19 parliamentary session. The report covers matters including the proposed Omnibus Regulation, which forms part of the proposed reforms to the ESFS, and the proposed Regulation amending the BMR on low carbon benchmarks and positive carbon impact benchmarks (Carbon Benchmark Regulation). With regard to the proposed Omnibus Regulation, the Committee remains concerned about its implications for the UK. This is because, despite Brexit, under the draft Withdrawal Agreement, EU financial services law would remain applicable in the UK throughout a transitional period, although HMT would no longer be able to participate in legislative deliberations. The reforms, as originally proposed, would be particularly problematic for the UK if they took effect during this time as they could give the European authorities more powers over national regulators and individual firms. The Committee also notes that although the Financial Services (Implementation of Legislation) Bill gives HMT the power to implement proposals relating to the ESFS review, in a no-deal scenario this seems counterintuitive. The Committee goes on to grant the government a scrutiny waiver in relation to the anti-money laundering elements of the proposal. However, it retains the right to amend the regulations under scrutiny pending further information on developments in the legislative process. In addition, it urges Parliament to carefully consider the scope of the powers given to the government to implement new EU financial services legislation by regulations post-Brexit, when it is no longer under a legal obligation to do so, and whether primary legislation would be more appropriate. As with the Omnibus Regulation, the Committee considers that the Carbon Benchmark Regulation could impact on the UK financial services industry directly and indirectly for several years. However, it is content to clear the proposal from scrutiny, given that the EC has clarified the optional nature of using the "low carbon" or "carbon positive" labels for a financial benchmark. The Committee adds that as negotiations on the third proposal in the green finance package, which relate to sustainability taxonomy, are still on-going within the Council of the EU and no agreement is expected in the short-term, it remains under scrutiny.
Read more