

# ALLEN & OVERY

## *Key Regulatory Topics: Weekly Update*

29 March 2019 – 4 April 2019



### **BREXIT**

Please see the Markets and Markets Infrastructure section for the FMLC's paper on legal uncertainties arising from Brexit statutory instrument on securitisations.

Please see the Other Developments section for the FCA's updated MoUs with the SEC.

#### **Final EBA Outsourcing Guidelines: Impact on firms' Brexit contingency plans**

The EBA has published final guidelines on outsourcing (the EBA Guidelines), which will replace the guidelines issued by its predecessor, the Committee of European Banking Supervisors, with effect from 30 September. The EBA Guidelines will apply to all firms within the EBA's remit, being CRD IV institutions, payment services institutions and e-money institutions. The EBA has focussed on reducing the risks posed by so-called 'letter-box entities', outsourcing of banking and/or payment services (particularly to non-EEA locations) and intra-group outsourcings, all of which may have material consequences for firms' Brexit contingency plans. Please find A&O's bulletin [here](#).

#### **Draft Financial Services (Miscellaneous) (Amendment) (EU Exit) (No 2) Regulations 2019 laid before Parliament**

On 4 April, a draft version of the Financial Services (Miscellaneous) (Amendment) (EU Exit) (No 2) Regulations 2019 was published, together with a draft explanatory memorandum. The purpose of the Regulations, which have been laid before Parliament, is primarily to make minor amendments to financial services statutory instruments made under the European Union (Withdrawal) Act 2018. Among other things, the Regulations make amendments to: (i) the EEA Passport Rights (Amendment, etc, and Transitional Provisions) (EU Exit) Regulations 2018 and the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018 relating to the Financial Services Contracts Regime (FSCR). These Regulations are revised to require firms that enter contractual run-off (CRO) under the FSCR, to inform their UK consumers of their status under the CRO, and to disclose any changes to consumer protection; and (ii) the Financial Conglomerates and Other Financial Groups (Amendment) (EU Exit) Regulations to ensure that provisions in those Regulations are temporarily modified to allow the FCA and the PRA to use their temporary transitional arrangements effectively. The Regulations also make minor amendments to the Long-term Investment Funds (Amendment) (EU Exit) Regulations and the retained version of Commission Delegated Regulation (EU) 2015/61 on the liquidity coverage ratio. HMT published a draft version of the Regulations and related explanatory information document on 28 February. Regulation 1 (Citation and commencement) comes into force on the day after the day on which the Regulations are made. Regulation 10, which amends the retained version of Commission Delegated Regulation (EU) 2015/61, comes into force on the later of exit day or the day after the day on which the Regulations are made. The remainder of the regulations will come into force immediately before exit day or the day after the day on which they are made, whichever is later.

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

#### **FCA final rules and guidance for no-deal Brexit**

On 29 March, the FCA announced that it had published its final instruments and guidance that will apply if there is a no-deal Brexit. The FCA published a policy statement in February with near-final versions of its instruments and guidance relating to a no-deal Brexit (PS19/5). The FCA has now published the final versions of the instruments following their approval by HMT. These instruments contain amendments to the FCA Handbook and onshored EU regulations containing binding technical standards. The FCA states that the final instruments are largely unchanged from the near-final versions. The most significant change is that the instruments now commence on "exit day" as defined in the European Union (Withdrawal) Act 2018, rather than 11pm on 29 March.

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### **Final FCA directions using Brexit temporary transitional powers**

On 29 March, the FCA published two documents containing transitional directions: (i) main FCA transitional directions - this is accompanied by Annex A (application of the standstill direction to amendments made in statutory instruments and exit instruments amending technical standards) and Annex B (application of the standstill direction to amendments made in the FCA Handbook); and (ii) FCA prudential transitional direction - this includes Annex 1, which comprises section A (application of the prudential standstill direction to amendments made in statutory instruments and exit instruments amending binding technical standards) and section B (application of the direction to amendments made in the FCA Handbook). The standstill direction means that, for most requirements, firms and other regulated persons will not need to comply with changes to their regulatory obligations resulting from Brexit onshored legislation from exit day. Instead, they will generally be able to continue to comply with the requirements as they had effect before exit day. However, in certain areas where the FCA is not using the power, it expects firms and other regulated persons to undertake reasonable steps to comply with the changes by exit day. If there is a no-deal Brexit, the transitional directions will take effect from exit day until midnight on 30 June 2020. After this date, all onshored changes will apply without modification. In a related explanatory note, the FCA sets out details of three areas where it has made amendments to the near-final versions: (i) UK managers of EEA UCITS funds; (ii) the application of the Client Assets Sourcebook to activities carried on from an EEA branch and the distance marketing provisions; and (iii) the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019.

[Main FCA transitional directions](#)

[FCA prudential transitional direction](#)

[Explanatory Note](#)

### **FCA and PRA extend notification window for temporary permissions regime (TPR) to 11 April**

On 29 March, the FCA published amended directions (dated 28 March) relating to notifications concerning the TPR for: (i) EEA firms with passports and Treaty firms; (ii) EEA authorised payment institutions and EEA registered account information service providers; and (iii) EEA authorised electronic money institutions. The amended directions have the effect of extending the window for notifications to the FCA by firms wishing to enter the TPR from the end of 28 March to the end of 11 April. They revise directions made by the FCA in November 2018 and December 2018. The FCA has also published amended directions relating to temporary marketing permissions for EEA UCITS and for EEA alternative investment funds (which also covers EU long-term investment funds, social entrepreneurship funds and venture capital funds). The TPR will come into force when the UK leaves the EU, if there is no transition period.

[EEA firms with passports and Treaty firms amended direction](#)

[EEA authorised payment institutions and EEA registered account information service providers amended direction](#)

[EEA authorised electronic money institutions amended direction](#)

## **CAPITAL MARKETS**

### **FCA policy statement on recovering costs of regulating credit rating agencies (CRAs), trade repositories (TRs) and securitisation repositories (SRs) post-Brexit**

On 29 March, the FCA published a policy statement (PS19/10) on recovering the costs of regulating CRAs, TRs and SRs after the UK leaves the EU and the FCA becomes their regulatory authority in the UK. The FCA consulted on the costs in CP18/34 and CP19/1, which were published in November 2018 and January. The FCA provides feedback to the responses received to the consultation papers in chapter 2 of PS19/10. In light of broadly supportive responses, the FCA has implemented all of its proposals as consulted on, with a small technical change that gives firms greater flexibility over their

reporting years. As firms convert to the FCA's regulatory regime, or register with the FCA, they will provide it with the turnover data needed to calculate their fee-rates. The FCA will consult on the rates in June or July, with a view to finalising the rules and issuing invoices about six months later. The final rules are in the Fees (Credit Rating Agencies, Trade Repositories and Securitisation Repositories) Instrument 2019 (FCA 2019/21), which is in the appendix to PS19/10, and will come into force on exit day.

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## **CONDUCT**

Please see the Consumer/Retail section for the FCA's policy statement on applying SMCR to claims management companies.

## **CONSUMER/RETAIL**

Please see the Markets and Markets Infrastructure section for ESMA's opinion on FCA binary option product intervention measure and the FCA's policy statement on product intervention measures for retail binary options.

### **Joint Committee of ESAs updates Q&As on PRIIPs KID**

On 4 April, the Joint Committee of ESAs published an updated version of its Q&As on the KID requirements for PRIIPs, as laid down in Commission Delegated Regulation (EU) 2017/653. The updated Q&As include new Q&As in the following sections of the document: (i) general topics: this contains a new Q&A on what aspects should be considered by the manufacturer when determining the recommended holding period of a PRIIP; and (ii) multi-option products: this contains a new Q&A on the form and name that "specific information on each underlying investment option", referred to in Article 14(1) of the Delegated Regulation should take. The Q&As aim to promote common supervisory approaches and practices in the implementation of the KID. They include answers to questions linked with the presentation, content and review of the KID, including the methodologies underpinning the risk, reward and costs information. The questions were raised by different stakeholders, including product manufacturers and distributors.

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### **FCA authorisation forms for claims management companies (CMCs)**

On 1 April, the FCA published a number of forms and guidance notes that CMCs with temporary permission should use if they plan to apply for full authorisation. The forms are: (i) Application for authorisation - supplement for claims management; (ii) threshold conditions supplement; (iii) Individual form to assess the appropriate resources and suitability in relation to individuals responsible for the management of a CMC; and (iv) application for authorisation notes. The publication of the new forms coincides with the FCA's assumption of responsibility for the regulation of CMCs, which took effect on 1 April. The FCA has also updated its webpage on CMC regulation and its webpage on how it will authorise and regulate CMCs, to reflect the new regime. The FCA published a policy statement setting out its final rules and guidance on the regulation of CMCs in December 2018 (PS18/23).

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### **New Deal for Consumers: Enforcement and Modernisation Directive reaches final stages**

On 29 March, the Enforcement and Modernisation Directive, introduced as part of the EU's New Deal for Consumers, was approved by COREPER. It amends four other consumer protection directives, implementing reforms suggested by a Commission Fitness Check which completed in May 2017. Key changes being introduced include: (i) the right to fine businesses up to 4% of their annual turnover for breach of any of the Unfair Commercial Practices Directive, the Consumer Rights Directive, the Unfair Contract Terms Directive, and the Price Indications Directive. New rights for consumers to seek redress directly from traders are also introduced into the Unfair Commercial Practices Directive; (ii) new obligations on online traders to provide information to consumers, including in relation to: ranking criteria for search results; the status of third party sellers and availability of consumer protections; whether consumer reviews have been verified and how; and whether prices have been automatically personalised; (iii) amendments to align the Consumer Rights Directive with the draft Digital Content Directive, including changes to definitions and information obligations and new provisions dealing with the treatment of personal data and user contributed content following cancellation; (iv) new provisions clarifying that the practice of marketing dual quality products can be misleading under the Unfair

Commercial Practices Directive; and (v) new rights for member states to introduce stricter national laws in relation to contracts formed as a result of unsolicited home visits or excursions organised by a trader. The next steps will be adoption by the EP (scheduled for a plenary session on 15 April) and adoption by the Council. The Directive will then enter into force 20 days after it is published in the OJ and member states will have 24 months to transpose it into national law.

[Read more](#)

### **FCA policy statement on applying the Senior Managers & Certification Regime (SMCR) to claims management companies (CMCs)**

On 29 March, the FCA published a policy statement (PS19/9) on applying the SMCR to CMCs. The FCA consulted on its proposals in CP18/26, which was published in September 2018. CMCs will be regulated by the FCA from 1 April. As such, CMCs will be subject to the SMCR when it is extended to cover FCA solo-regulated firms on 9 December. The following elements of the SMCR will apply to CMCs: (i) SMR - at least one person within each CMC will need to be approved by the FCA to perform a Senior Management Function (SMF); (ii) certification regime - this requires firms to assess the fitness and propriety of specific individuals who could harm the firm or its customers; (iii) conduct rules - these are basic standards of conduct that apply to most staff; and (iv) directory - this is a new public register and user interface that will include certification staff and other individuals, such as directors. Respondents were generally supportive of the FCA's proposals. It intends to implement the proposals with two minor changes in light of feedback received and to clarify the FCA's rules. Final rules relating to the transitional provisions for CMCs are in the Approved Persons Regime (Exclusion for Claims Management) Instrument 2019, which will come into force on 1 April. There are also near-final rules in the Senior Managers and Certification Regime (Claims Management Firms) Instrument 2019, which is in appendix 2 to PS19/9. In general, the rules set out in PS19/9 will apply from 9 December. If a CMC has not been authorised by that time, the rules will apply from the date the CMC is fully authorised. CMCs will need to apply for individuals to be authorised to perform SMFs as soon as the relevant forms (long or short form A) become available (this is expected to be 9 September). Individuals who will perform SMFs need to have received approval by 9 December (or the date at which the CMC is authorised, if later). CMCs are encouraged to submit their forms by 1 November.

[Read more](#)

### **Financial Guidance and Claims Act 2018 (Commencement No 6) Regulations 2019 published**

On 29 March, the Financial Guidance and Claims Act 2018 (Commencement No 6) Regulations 2019 were published. The Regulations bring into force, on 29 March, section 28 of the Financial Guidance and Claims Act 2018 (FGCA), which provides the FCA with the power to make rules restricting charges for claims management services. Among other things, the FGCA transferred the regulation of CMCs from the Ministry of Justice to the FCA. The FCA takes over regulation of CMCs on 1 April. It published its final rules and guidance relating to this in December 2018.

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## **FINANCIAL CRIME**

Please see the Markets and Markets Infrastructure section for ESMA's updated Q&As on MAR.

## **FINTECH**

### **International Association for Trusted Blockchain Applications launched**

On 3 April, the International Association for Trusted Blockchain Applications (INATBA), a new international association to encourage the global governance and development of blockchain technology was launched. Mariya Gabriel, Commissioner for Digital Economy and Society, gave the keynote speech at INATBA's inaugural meeting. The establishment of INATBA was agreed in November 2018 at an EU Blockchain Industry Roundtable. The EC's website indicates that it facilitated the foundation of INATBA on 6 March, and that the 105 founding members are organisations in Europe, North America and Asia. It says that INATBA will: (i) work on establishing a dialogue with public authorities and regulators to foster a convergence of the legal frameworks applying to the distributed network economy; and (ii) support the development of interoperability specifications and standards in sectors such as financial services, health, energy, agriculture, mobility or public services.

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### **European Forum for Innovation Facilitators launched**

On 2 April, the EC published a speech by Valdis Dombrovskis, European Commissioner for Financial Stability, Financial Services and Capital Markets Union on the launch of the European Forum for Innovation Facilitators (EFIF). The purpose of the EFIF is to harmonise and align practices of member states with regards existing innovation hubs and regulatory sandboxes. By improving co-operation and co-ordination in support of the application of new technological developments in the EU financial sector, the EFIF is expected to allow FinTech solutions to scale up more easily in the single market. The EFIF will create a network of national supervisors for exchanging best approaches to FinTech, and enable the EC and ESAs to identify regulatory and supervisory obstacles early on, so that they may be addressed more quickly at EU level. The EFIF will also allow competent authorities and the ESAs to enhance their capacity and share knowledge. Mr Dombrovskis refers, by way of example, to the significant work carried out at national level on initial coin offerings or the use of artificial intelligence in finance. The launch of the EFIF follows publication of the ESA's joint report on regulatory sandboxes and innovation hubs in January.

[Read more](#)

### **BoE on the business models of new fintech firms in the UK**

On 29 March, the BoE published an article on the business models of new fintech firms in the UK.

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## **FUND REGULATION**

Please see the Other Developments section for the FCA's updated MoUs with the SEC.

### **ESMA first annual report on use of UCITS supervisory sanctions**

On 4 April, ESMA published its first annual report on sanctions imposed by national competent authorities (NCAs) under the UCITS Directive. Under the UCITS Directive, NCAs can impose sanctions for infringements of its provisions. The report contains an overview of the applicable legal framework and information on the penalties and measures imposed by NCAs in accordance with Article 99e of the UCITS Directive. It covers the periods between 1 January 2016 and 31 December 2016, and 1 January 2017 and 31 December 2017. ESMA deems that the data on sanctions imposed during 2016 and 2017 does not allow it to observe clear trends or tendencies in the imposition of sanctions, or to produce detailed statistics based on it. Implementing technical standards relating to Article 99 of the UCITS Directive were published in the OJ in July 2016.

[Read more](#)

### **ESMA updates Q&As on application of AIFMD**

On 29 March, ESMA announced that it had updated its Q&As on the application of AIFMD. ESMA has added two new Q&As on the calculation of leverage under the AIFMD, clarifying: (i) treatment of short-term interest rate futures for the purposes of AIFMD leverage exposure calculations according to the gross and commitment methods; and (ii) required frequency of the calculation of leverage by an AIFM managing an EU AIF that employs leverage. ESMA last updated the AIFMD Q&As in October 2018.

[Press release](#)

[Q&As](#)

### **ESMA updates Q&A on application of UCITS Directive**

On 29 March, ESMA announced that it has updated its Q&As on the application of the UCITS Directive. Q&As on past performance have been modified to clarify that where funds name a target in their investment objectives and policies, the performance should be disclosed against the target, even if the comparator is not named a "benchmark". The performance disclosed in a KIID regarding a benchmark index should be consistent with performance disclosure in other investor communications. Q&As on the disclosure of the benchmark index clarify: (i) UCITS should clearly indicate, in a KIID, whether their strategy is active (or actively managed) or passive (or passively managed); (ii) a UCITS managed in reference to a benchmark is one where the benchmark plays a role in the management of the UCITS, for example, in the explicit or implicit definition of its portfolio composition or performance objectives and measures; and (iii) investors should be provided with an indication of how actively managed the UCITS is, compared to its reference benchmark index.

[Press release](#)

[Q&As](#)

## **INSURANCE**

### **Second PRA consultation paper and Dear CEO letter on Solvency II and equity release mortgages**

On 3 April, the PRA published a consultation paper (CP7/19) on the Solvency II Directive and equity release mortgages (ERMs). In CP7/19, the PRA sets out proposed amendments to its supervisory statement (SS3/17): 'Solvency II: Matching adjustment – illiquid unrated assets and equity release mortgages'. SS3/17 contains a test (the effective value test (EVT)) that helps the PRA determine whether firms appear to be taking inappropriately large matching adjustment (MA) benefit from restructured ERMs held within MA portfolios. The proposals relate to the following issues: (i) when and how the PRA would periodically review and publish updated values for the property volatility and deferment rate parameters to be used in the EVT; (ii) where firms include assets other than ERMs in the special purpose vehicle (SPV) used to restructure ERM loans, how those other assets should be allowed for in the EVT; (iii) the frequency with which the PRA would expect firms to assess the EVT; (iv) principles for how the PRA would assess the approaches firms could use to model the risks associated with ERMs in their internal models against the Solvency II tests and standards, including whether and how the PRA would expect firms to apply the EVT in stress; and (v) principles to clarify how the loan value plus accrued interest input to the EVT would reflect circumstances where the ultimate amount due at exit is uncertain. The deadline for comments is 3 July. The PRA intends to implement the proposals on 31 December.

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### **EIOPA discussion paper on systemic risk and macro-prudential policy in insurance**

On 29 March, EIOPA published a discussion paper on systemic risk and macro-prudential policy in insurance. The discussion paper is based on three other papers previously published by EIOPA. These papers aimed to contribute to the debate on systemic risk and macro-prudential policy in insurance while ensuring that any extension of this debate to the insurance sector reflects the specific nature of insurance business. EIOPA now wants to turn this work into a specific policy proposal for additional macro-prudential tools or measures to enhance the current framework as part of the review of the Solvency II Directive. Its discussion paper therefore focuses on the four categories of tools covered in its third paper and also considers the tools and measures highlighted in section 3.10 of the EC's February call for advice. The list of potential tools to be considered further includes: (i) leverage ratio; (ii) capital surcharge for systemic risk; (iii) liquidity risk ratios and additional reporting on liquidity risk; (iv) enhancement of the own-risk and solvency assessment; (v) enhancement of the prudent person principle; (vi) request of recovery plans and development of resolution plans; and (vii) request of systemic risk and liquidity risk management plans. The deadline for comments is 30 April.

[Read more](#)

## **MARKETS AND MARKETS INFRASTRUCTURE**

Please see the Other Developments section for the FCA's updated MoUs with the SEC.

### **ESMA MiFID II supervisory briefing on appropriateness and execution-only**

On 4 April, ESMA published an updated version of its supervisory briefing on the appropriateness and execution-only requirements under MiFID II. The supervisory briefing is an updated version of ESMA's 2012 supervisory briefing on the same topic. It takes into account ESMA's guidelines on suitability, which were published in May 2018, with respect to aspects that are also relevant to the appropriateness rules. The briefing covers topics including the following: (i) determining situations where the appropriateness assessment is required and the assessment of appropriateness; (ii) obtaining information from clients; (iii) warnings to clients; and (iv) qualification of firm's staff. The briefing is aimed at competent authorities as defined in MiFID II. It summarises the key elements of the rules and includes indicative questions that supervisors could ask themselves, or a firm, when assessing firms' approaches to the application of the MiFID II rules. The briefing also aims to give market participants indications of compliant implementation of the MiFID II appropriateness provisions. The briefing applies in relation to the application of Article 25(3) and (4) of MiFID II, and Articles 55, 56 and 57 of Delegated Regulation (EU) 2017/565. It replaces the 2012 ESMA briefing.

[Read more](#)

### **Commission Implementing Decisions on temporary equivalence of UK regulatory framework for CCPs and CSDs published in OJ**

On 4 April, the following Commission Implementing Decisions were published in the OJ: (i) Commission Implementing Decision (EU) 2019/544 which amends Implementing Decision (EU) 2018/2031 on the temporary equivalence of the UK's regulatory framework for CCPs under EMIR; and (ii) Commission Implementing Decision (EU) 2019/545 which amends Implementing Decision (EU) 2018/2030 on the temporary equivalence of the UK's regulatory framework for CSDs under the CSDR. Implementing Decision (EU) 2018/2030 and Implementing Decision (EU) 2018/2031 were published in the OJ on 20 December 2018. The aim of the two amending Decisions is to ensure that the Implementing Decisions they amend will apply in the event that the UK leaves the EU without a withdrawal agreement after the expiry of the period referred to in Article 50(3) of the Treaty on European Union (Brexit date) as extended by the European Council in Decision (EU) 2019/476 on 22 March. The Decisions will enter into force on 5 April.

[Commission Implementing Decision \(EU\) 2019/544](#)

[Commission Implementing Decision \(EU\) 2019/545](#)

### **ESMA launches third EU-wide CCPs stress test**

On 3 April, ESMA published the methodological framework for its third EU-wide stress test exercise on CCPs. The framework document explains the design of the new stress test exercise, including its scope, objectives, methodology and next steps. The exercise has components covering credit stress, liquidity stress, concentration risk and reverse credit stress. The new exercise will cover the 16 CCPs authorised in the EU. ESMA will include the three UK CCPs (LCH Ltd, ICE Clear Europe Ltd and LME Clear Ltd) in the exercise unless there is a no-deal Brexit. ESMA will shortly send a data request to the CCPs, requesting them to calculate and deliver the exposures on the basis of predefined templates and detailed methodological instructions. The data will then be validated and analysed by national competent authorities and ESMA. ESMA expects to publish the final report and results in the second quarter of 2020.

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### **ESMA opinion on FCA binary option product intervention measure**

On 2 April, ESMA published an opinion (dated 26 March) on the product intervention measure relating to binary options proposed by the FCA. The FCA notified ESMA, on 25 January, of its intention to take a product intervention measure under Article 42 of MiFIR, which consists of a permanent prohibition on the marketing, distribution or sale of binary options to retail clients in or from the UK. It consulted on its proposals in December 2018. The FCA's measure is the same as ESMA's measure, with the difference that the national measure will also apply to the binary options referred to in Article 1(3)(b) of ESMA's measure. ESMA considers that the specificities of the UK market, together with the inherent complexity of the product, justifies stricter treatment in the national measure. The most recent ESMA measure was published in the OJ on 27 March. Having considered the matter, ESMA believes that the national measure is justified and proportionate. It is also necessary for the national competent authorities (NCAs) of other member states to take product intervention measures that are at least as stringent as ESMA's measure. The FCA's measure came into force on 2 April. ESMA has issued the opinion under Article 43 of MiFIR, which provides for ESMA to perform a facilitation and co-ordination role relating to product intervention measures taken by NCAs.

[Read more](#)

### **House of Commons European Scrutiny Committee clears from scrutiny EMIR Refit Regulation and revised EU prudential framework for investment firms**

On 2 April, the House of Commons European Scrutiny Committee published its sixty-first report of the 2017-19 parliamentary session, in which, among other things, it considers the progress of EMIR Refit Regulation and the revised EU prudential framework for investment firms. Clearing both legislative files from scrutiny, the Committee makes the following comments: (i) EMIR Refit Regulation - HMT's March update on the proposals expressed broad support for the compromise text and asked the Committee to clear the file from scrutiny. The Committee points out that the new rules are likely to have a direct and significant impact on the UK clearing industry despite Brexit, given the pre-eminent position of the UK clearing industry worldwide and the large amounts of euro-denominated derivatives that are traded in London. The Committee states that if the UK wants to retain current levels of market access after exit, it will need to obtain equivalence with EU rules, which it states will limit the UK's domestic regulatory flexibility, even when EU law no longer directly applies in the UK; and (ii) revised EU prudential framework for investment firms - this legislation is driven in part by Brexit, which will

cause a large part of Europe's investment services industry to fall beyond the jurisdiction of EU financial services law. The legislation therefore introduces stricter conditions for "equivalence" under MiFIR. The Committee flags as a concern the fact that there is no guarantee the UK will be deemed equivalent and questions the extent to which any granting of equivalence might come with conditions or time limits. The Committee comments that access for UK financial services firms to the EU market is likely to be, implicitly, linked to any wider trade negotiations.

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### **ESMA updates MiFID II Q&As on market structures and transparency**

On 2 April, ESMA published an updated version of its Q&As on market structures topics and an updated version of its Q&As on transparency topics under MiFID II and MiFIR. ESMA has amended its Q&As on transparency topics to provide clarity relating to a number of topics including money market instruments (MMIs), the impact for systematic internalisers (SIs) of an instrument changing liquidity status in between the SI determination dates, reporting of prime brokerage transactions, branches of third country firms operating as an SI in the EU, and third-country trading venues' access to an EU CCP. ESMA has reviewed the Q&As on market structures topics with a view to deleting or amending obsolete Q&As. ESMA has deleted the Q&A clarifying how tick sizes should be determined for non-EU instruments given the publication of Commission Delegated Regulation (EU) 2019/443. It has also amended four Q&As: (i) identification and authorisation of high frequency trading (HFT) (Q&A 6 of section 3 on direct electronic access (DEA) and algorithmic trading); (ii) timing of notification for transitional arrangements under Article 35(5) of MiFIR (Q&A 1 of section 6 on access to CCPs and trading venues); (iii) timing and procedure of notification for temporary opt out under Article 36(5) MiFIR (Q&A 3 of section 6 on access to CCPs and trading venues); and (iv) timing of application for transitional arrangements under Article 54(2) of MiFIR (Q&A 5 of section 6 on access to CCPs and trading venues).

[Q&As on MiFID II and MiFIR market structures topics](#)

[Q&As on MiFID II and MiFIR transparency topics](#)

### **Implementing Decision recognising certain Singapore derivatives trading venues under MiFIR published in OJ**

On 2 April, Commission Implementing Decision (EU) 2019/541 on the equivalence of the legal and supervisory framework applicable to approved exchanges and recognised market operators in Singapore under MiFIR was published in the OJ. The Implementing Decision, which relates to Article 28(1) of MiFIR, recognises the approved exchanges and recognised market operators that are authorised by the Monetary Authority of Singapore (MAS) (and listed in the annex to the Implementing Decision) as eligible for compliance with the EU trading obligation for derivatives. The decision will allow EU counterparties (such as EU investment banks that operate as swap dealers in Asia) to comply with their EU trading obligation under MiFIR and be compliant with the G20 reforms for standardised derivatives when executing derivatives transactions with counterparties in Singapore. A joint press release by the EC and MAS explains that MAS has concurrently adopted regulations to exempt certain EU MTFs and OTFs from MAS' markets licensing requirements. This means that Singapore participants can trade with EU counterparties on such EU trading venues in compliance with Singapore's derivative trading obligations. The Implementing Decision will come into force on the day after its publication in the OJ (that is, 3 April). It was adopted by the EC on 1 April.

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### **EP to consider proposed EMIR Refit Regulation at 15 to 18 April plenary session**

On 2 April, the EP updated its procedure file on the EMIR Refit Regulation. The procedure file indicates that the EP will consider the proposed Regulation (for first reading/single reading) during its plenary session to be held from 15 to 18 April. The Council of the EU and the EP reached a preliminary agreement on the proposal in February.

[Read more](#)

### **ICE Benchmark Administration completes transition of LIBOR panel banks to waterfall methodology**

On 1 April, ICE Benchmark Administration Ltd (IBA) announced that it has successfully completed the transition of all LIBOR panel banks to the waterfall methodology. IBA, the administrator of LIBOR, had published a report in April 2018 summarising the evolution of LIBOR and outlining plans for the gradual transition of LIBOR panel banks to the waterfall methodology, as set out in its updated LIBOR output statement. IBA states that, notwithstanding the successful transition, there is no guarantee that

any LIBOR settings will continue to be published after year-end 2021. Users of LIBOR should not rely on the continued publication of any LIBOR settings when developing transition or fall back plans.

[Read more](#)

### **ESMA updates Q&As on MAR**

On 29 March, ESMA announced that it has updated its Q&As on MAR. The Q&As have been updated to clarify: (i) the scope of firms subject to the MAR provision to detect and report suspicious orders and transactions; (ii) the meaning of parent and related undertakings in Article 17(2) of MAR; and (iii) when emission allowances market participants are under an obligation to disclose inside information concerning emission allowances where that inside information relates to installations of group undertakings.

[Press release](#)

[Q&As](#)

### **FCA policy statement on product intervention measures for retail binary options**

On 29 March, the FCA published a policy statement on product intervention measures for retail binary options (PS19/11). PS19/11 contains a summary of the feedback the FCA received to its December 2018 consultation paper on product intervention measures (CP18/37) and the FCA's response. The FCA is permanently prohibiting the sale, marketing and distribution of binary options (including securitised binary options) to retail consumers. This will affect UK MiFID investment firms and EEA MiFID investment firms who are marketing, distributing or selling binary options in, or from, the UK to retail clients, and UK branches of third-country investment firms. The intervention has arisen following evidence of consumer harm from the inherent risks of these products and the poor conduct of the firms selling them. The FCA's rules are in substance the same as ESMA's existing, EU-wide temporary restrictions on binary options. However, the FCA is also applying its rules to "securitised binary options" that were excluded from ESMA's prohibition. Securitised binary options are not currently sold in or from the UK. The FCA thinks these products pose the same risks for investors and is therefore extending the scope of the prohibition to prevent a market developing for these products. Firms that are currently authorised to offer binary options to retail clients should request a variation of permission to remove this investment type or apply for a requirement to limit their permissions to offer these products to professional clients only as soon as practically possible. The Conduct of Business (Binary Options) Instrument 2019 was made by the FCA Board on 28 March and comes into force on 2 April, making changes to the FCA's Conduct of Business Sourcebook.

[Read more](#)

### **FMLC paper on legal uncertainties arising from Brexit statutory instrument on securitisations**

On 29 March, the FMLC published a paper on legal uncertainties arising from the draft version of the Securitisation (Amendment) (EU Exit) Regulations 2019. The final version of the Regulations was published on 25 March. 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. In its paper, the FMLC highlights legal uncertainties arising from the draft version of the Regulations, in relation to: (i) EU legislative references, including cross-references to EU Directives; (ii) the geographical scope of the on-shored securitisation regime, particularly with respect to the risk retention requirement; (iii) due diligence requirements for institutional investors; and (iv) transitional provisions and guidelines for the UK securitisation regime. The FMLC encourages HMT and HM Government to publish, wherever possible, guidance which might enable impacted institutions and investors to begin planning for the future.

[Read more](#)

### **New Prospectus Regulation: ESMA final report on technical advice on minimum information content for prospectus exemption**

On 29 March, ESMA published its final report on the technical advice on the minimum information required for a document that is made available to the public under the prospectus exemption. The final report sets out changes to the draft technical advice that ESMA proposed in a consultation published on 13 July 2018. The final report notes that ESMA received only five responses to the consultation and that none of these represented the interests and views of investors or provided specific evidence to ease ESMA's concerns regarding investor protection. As such, ESMA considers that it does not have a sufficient basis significantly to change the approach in its technical advice and has therefore made limited changes to the draft technical advice. These include: (i) introducing the

materiality test from Article 14 of the new Prospectus Regulation into Article C of the technical advice, to further alleviate the requirements under the simplified disclosure regime set out in Appendix I; (ii) extending the list of documents that may be incorporated by reference under Article D to include documents relevant to the takeover, merger and division required by national law; (iii) the removal of disclosure items 12, 13 and 14 from Appendix I, to further alleviate the disclosure requirements for issuers already admitted to trading on a regulated market; and (iv) alleviations to the disclosure requirements under Appendix III when the securities offered are fungible with other securities already admitted to trading on a regulated market. The final report contains an annex with the text of ESMA's technical advice, noting that it has not drafted recitals, as these will depend on the advice that is adopted. The report will be delivered to the EC. Subject to endorsement by the EC, this technical advice will form the basis for the delegated act to be adopted by the EC.

[Read more](#)

### **New Prospectus Regulation: ESMA guidelines on risk factors**

On 29 March, ESMA published its final guidelines on risk factors under the new Prospectus Regulation. Amendments to the consultation draft include: (i) the removal of references to non-approval of prospectuses where the materiality or specificity of a risk factor is unclear, however ESMA states that it intends the revised language to have the same result; (ii) the movement of examples to an appendix; (iii) the insertion of explanatory text in the background section about how the process of approving prospectuses should be conducted, including that it should be an interactive discussion between the national competent authority (NCA) and persons responsible for the prospectus, and that NCAs may take into account the prospectus addressees when challenging a disclosure; (iv) the amendment of guidelines on specificity to clarify that the NCA's role is to ensure the specificity of the risk factor is clear from the disclosure, and to clarify what is expected when issuers operate in same industry or securities seem to be exposed to similar risks; (v) the amendment of guideline 3 on materiality, to clarify that the NCA is to ensure that the materiality of the risk factor is clear from the disclosure, and clarifying the steps they should take where materiality is not evident; (vi) the amendment of guideline 4 on quantitative information to provide that where such information is available in previously published documents and appropriate to include, it should be included to illustrate the potential negative impact; to acknowledge that it may not always be appropriate to include quantitative information; and that if qualitative information is included, the NCA should ensure the materiality of the risk factor is evident from its disclosure; (vii) the amendment of guideline 6 to clarify that the NCA is to ensure that the materiality and specificity of the risk factor is corroborated by the overall picture presented by the prospectus; and (viii) the amendment of the guidelines on presentation of risk factors across categories to broaden the use of sub-categories, and so their use is not limited to a particular type of prospectus. ESMA states that the final guidelines will become effective two months after publication on its website.

[Read more](#)

## **PAYMENT SERVICES AND PAYMENT SYSTEMS**

Please see the Brexit section for an update on the extension of the FCA notification window for payment institutions and electronic money institutions to enter the temporary permissions regime.

### **EBA clarifies second set of issues raised by working group on APIs under PSD2**

On 1 April, the EBA published a document setting out clarifications to the second set of issues raised by its working group on APIs under PSD2. The issues relate to: (i) API performance and support; (ii) the list of third party providers (TPPs) that are interested in testing; (iii) the testing by entities that are not authorised TPPs; and (iv) the timelines applicable across the EEA if account servicing payment service providers (ASPSPs) want to be exempted from the fall-back mechanism. The EBA published clarifications to the first set of issues raised by its working group on 11 March. The EBA plans to add further clarifications over the coming months. The group aims to help industry prepare for the regulatory technical standard on strong customer authentication and common and secure communication and to support the development of high-performing and customer-focused APIs under PSD2. The regulatory technical standard applies from 14 September.

[Read more](#)

### **Regulation amending Regulation on cross-border payments published in OJ**

On 29 March, Regulation (EU) 2019/518 amending the Regulation on cross-border payments (924/2009) as regards certain charges on cross-border payments in the EU and currency conversion

charges was published in the OJ. The Council of the EU adopted the proposed Regulation in March. The EP adopted it in February. The Regulation will enter into force on 18 April.

[Read more](#)

## **PENSIONS**

### **Pensions dashboards: DWP sets out next steps**

On 4 April, the DWP published a response to its December 2018 feasibility report and consultation paper about pensions dashboards. The report envisaged an industry-led system of multiple dashboards, allowing consumers to access their pension information in a single place online. The DWP notes that 125 responses were received, for the most part welcoming its plans. As anticipated, dashboards will be phased in over several years, with a non-commercial dashboard hosted by the single financial guidance body (SFGB) established first, followed by commercial dashboards provided by industry. Primary legislation will be enacted to compel pension schemes to provide their data to dashboards. The focus of the next steps will be on work due to be undertaken by the industry delivery group being convened by the SFGB. The DWP expects the group to be fully operational by the end of the summer. Its priorities for the coming year will be to: (i) create a "clear and comprehensive roadmap for delivering the digital architecture for dashboards"; (ii) work with the industry on setting data standards and its readiness to provide data via dashboards; and (iii) design a "robust governance and security framework" enabling information to be supplied by schemes to consumers via dashboards. Private firms wishing to set up commercial dashboards will be expected to create and test dashboards in collaboration with the delivery group. Only firms that are already authorised by the FCA to undertake a regulated activity will be permitted to connect to the digital architecture, although the DWP notes that over the long term different regulatory requirements may be developed to help new market entrants. Compulsory data provision by pension schemes will be introduced on a staged basis according to scheme size, with large defined contribution schemes likely to be staged first. In terms of timescale, most schemes will be expected to provide data via dashboards within a three to four year timeframe. In advance of compulsory data provision, the DWP hopes that large DC schemes will provide data via dashboards on a voluntary basis during 2019/20.

[Read more](#)

### **EP adopts first reading position on proposed Regulation on a pan-European personal pension product**

On 4 April, the EP published a press release announcing that it has adopted its position at first reading on the proposed PEPP Regulation. The EC has also published a factsheet on the PEPP Regulation. ECON adopted a draft report on the proposal on 3 September 2018. Trialogue negotiations resulted in provisional agreement between the EC, the EP and the Council of the EU on 13 December 2018. The Council announced that COREPER agreed its position in February. The next step is for the Council to adopt the proposed Regulation (the text of which has not yet been published). Once adopted the Regulation will enter into force 20 days after its publication in the OJ. It will apply 12 months after publication in the OJ of the delegated acts under the Regulation. The EC envisages that the first PEPPs will come to market soon after the application date of the PEPP Regulation, which it expects will be in approximately two and a half years (given the time necessary for the preparation and adoption of the technical acts and for providers to adapt to the new framework). The legislative proposal was published in June 2017 and forms part of the capital markets union package of initiatives. Alongside the proposals, the EC published a tax recommendation encouraging member states to grant PEPPs the same treatment as similar existing national PPPs, even if they do not match all national criteria for tax relief.

[Press release](#)

[Fact sheet](#)

## **PRUDENTIAL REGULATION**

### **EC Implementing Decision on third country equivalence of Argentina for purposes of treatment of exposures under the CRR published in OJ**

On 1 April, European Commission Implementing Decision (EU) 2019/536 on the lists of third countries considered equivalent for the purposes of the treatment of exposures under the CRR was published in the OJ. Commission Implementing Decision 2014/908/EU contains lists of third countries and territories whose supervisory and regulatory arrangements have been deemed equivalent to the corresponding EU supervisory and regulatory arrangements in accordance with the CRR. This

enables EU banks to apply a more favourable and proportionate capital treatment for exposures to credit institutions and certain public sector entities located in those countries and territories. Implementing Decision (EU) 2019/536 amends Implementing Decision 2014/908/EU to add Argentina to the list of third countries meeting these criteria. In particular, Annexes I, IV and V to Implementing Decision 2014/908/EU are replaced by the text set out in Annexes I, II and III to Implementing Decision (EU) 2019/536. The EC adopted Implementing Decision (EU) 2019/536 on 29 March. Implementing Decision (EU) 2019/536 enters into force on 21 April.

[Read more](#)

### **Commission Implementing Regulation on benchmark portfolios, reporting templates and reporting instructions under CRD IV published in OJ**

On 29 March, Commission Implementing Regulation (EU) 2019/439 amending Implementing Regulation (EU) 2016/2070 as regards benchmark portfolios, reporting templates and reporting instructions under CRD IV was published in the OJ. Commission Implementing Regulation (EU) 2016/2070 contains implementing technical standards (ITS) specifying the information that firms must report to the EBA and competent authorities to enable the assessments of internal approaches for calculating own funds requirements in accordance with Article 78 of CRD IV (that is, the benchmarking exercise). The EBA published details of revisions to these ITS in June 2018. The Amending Regulation, which was adopted by the EC on 15 February, reflects the amendments proposed by the EBA. The Amending Regulation will enter into force on 18 April (that is, 20 days after its publication in the OJ).

[Read more](#)

### **HMT updates EU Scrutiny Committee on progress of CRR II, CRD V, BRRD II and the SRM II Regulation**

On 29 March, the UK government published a letter (dated 28 March) from John Glen, Economic Secretary to HMT, to Sir William Cash, House of Commons European Scrutiny Committee Chair, on the banking reforms adopted by the EC in November 2016. These reforms consist of the legislative proposals for CRR II, CRD V, BRRD II and the SRM II Regulation. Mr Glen states that these proposals are expected to be adopted by the EP in April, although it is unclear when they will be adopted by the Council of the EU. He sets out the UK government's views on the following issues: (i) leverage - the leverage ratio will now apply two years after entry into force of CRR II, following the timing set by the Basel Committee on Banking Supervision; (ii) remuneration - the proposed outcome would restrict the ability of UK regulators to apply remuneration rules proportionately to smaller firms. All banks will be subject to the bonus cap, the individual proportionality threshold will be lowered to EUR50,000 and the total asset threshold for a firm is set at EUR5 billion. The UK and other member states have called on the EC to monitor the risks of investment firms being subject to unnecessary costs through implementing the remuneration reforms in both CRR II/CRD V and the Investment Firms Regulation (IFR); and (iii) MREL - the government and the BoE are considering the implications of changes to BRRD II on the deadline for end-state MREL requirements. Mr Glen seeks clearance for the UK to vote in favour of the proposals in Council, if a vote takes place before the UK leaves the EU. The UK government has also published a letter from Mr Glen to Lord Boswell of Aynho, Chair of the House of Lords European Union Committee, which contains broadly identical material.

[Read more](#)

## **RECOVERY AND RESOLUTION**

Please see the Prudential Regulation section for the EU Scrutiny Committee's on progress of BRRD II and the SRM II Regulation.

## **STRUCTURAL REFORM**

### **SRB position paper on resolvability of banks in context of Brexit**

On 29 March, the SRB published a position paper on its expectations concerning the resolvability of banks in the context of Brexit. The paper applies to groups headquartered in the single supervisory mechanism (SSM) with significant business or operational activities in third countries or that will maintain such activities in the UK post Brexit. It also applies to subsidiaries in the SRB's remit of groups headquartered in the UK or in third countries, with significant business or operational activities in the SSM. In the paper, the SRB sets out its expectations on issues including: (i) MREL - the SRB expects banks to include contractual clauses in issuances governed by the laws of the UK or third

countries. These clauses should specify that the holders recognise that the liability may be subject to the write-down and conversion powers and other relevant powers of EU resolution authorities and be prepared to demonstrate that any decision of an EU27 resolution authority would be effective. Banks should also consider issuing instruments, that are intended to be MREL-eligible, under the governing law of one of the EU27 member states. The SRB notes that banks may have an MREL shortfall as a consequence of issuances governed by UK law being considered ineligible. The SRB will consider each situation on a case-by-case basis. It may allow an extension of transitional periods for banks with MREL shortfalls; (ii) internal loss absorbency - the SRB expects that banks' capital can be downstreamed and losses upstreamed between the point of entry and the relevant entities. Banks should also ensure that the structure of the group is not unduly complex and there is a limited number of layers in the upstream-downstream chain; and (iii) FMIs - the SRB expects banks to develop appropriate local contingency plans for FMI services provided by group entities outside the EU27 to maximize the likelihood of maintaining access to FMI services in case of resolution. They should also minimise their reliance on group entities outside the EU27 for access to FMIs, such as payment, clearing and settlement systems.

[Read more](#)

## **TAXES/LEVIES**

### **PRA policy statement on 2019/20 FSCS management expenses levy limit**

On 29 March, the PRA published a policy statement on the management expenses levy limit (MELL) for the FSCS for 2019/20 (PS10/19). In January, the PRA and FCA published a joint consultation paper proposing a MELL of £79.6 million for 2019/20 (PRA CP2/19 / FCA CP19/19). The PRA states that it received no responses to the consultation that were relevant to the proposals consulted upon and consequently it is implementing them as consulted. The PRA has published the PRA Rulebook instrument setting out its final rules: 'Non Authorised Persons: FSCS Management Expenses Levy Limit and Base Costs Instrument 2019 (PRA 2019/9)'. The FCA has also published its Handbook instrument relating to the MELL: 'Financial Services Compensation Scheme (Management Expenses Levy Limit 2019/2020) Instrument 2019 (FCA 2019/14)'. Both instruments come into force on 1 April.

[Read more](#)

## **OTHER DEVELOPMENTS**

### **HMT progress update on proposed European System of Financial Supervision (ESFS) reform legislative package**

On 4 April, the UK government published a letter from John Glen, Economic Secretary to HMT, to Sir William Cash, House of Commons European Scrutiny Committee, and a letter from Mr Glen to Lord Boswell of Aynho, House of Lords EU Committee Chair, in which he provides an update on the progress of negotiations on the proposed ESFS legislative reform package. The letters, dated 3 April, are on identical terms and follow political agreement being reached on 21 March. The EP is scheduled to consider the proposals at its plenary session to be held between 15 and 18 April. Mr Glen expects the file to be adopted at the next meeting of the Economic and Financial Affairs Council (ECOFIN) in May. Mr Glen explains that the final compromise meets the UK's negotiating objectives as set out in previous correspondence and asks for the file to be released from scrutiny. The letters provide a brief outline of the inter institutional agreement, and covers issues including: (i) the governance and funding of the ESAs; (ii) supervisory convergence and the establishment of "co-ordination groups"; (iii) the scope of ESMA's supervisory competence (for some critical benchmarks and for large data reporting service providers); (iv) the role of the ESAs in monitoring third country equivalence, and the review clause that requires ESMA to assess the benefit of third country regimes for trading venues and CSDs based on their significance every three years; and (v) the ESA's ability to issue "no action" letters.

[Letter from John Glen to Sir William Cash](#)

[Letter from Mr Glen to Lord Boswell of Aynho](#)

### **Financial Services and Markets (Insolvency) (Amendment of Miscellaneous Enactments) Regulations 2019 made**

On 1 April, the Financial Services and Markets (Insolvency) (Amendment of Miscellaneous Enactments) Regulations 2019 were laid before Parliament and come into force on 23 April. The Government also published an explanatory memorandum. The new Regulations make amendments to various statutory instruments, principally related to the financial sector, to replace references to the

Insolvency Rules 1986 (IR 1986) with references to the equivalent provisions of the Insolvency (England and Wales) Rules 2016 (IR 2016). The instruments amended in these Regulations are: (i) Financial Markets and Insolvency (Settlement Finality) Regulations 1999; (ii) Financial Collateral Arrangements (No. 2) Regulations 2003; (iii) Insurers (Reorganisation and Winding Up) Regulations 2004; (iv) Credit Institutions (Reorganisation and Winding up) Regulations 2004; (v) Insurers (Reorganisation and Winding Up) (Lloyd's) Regulations 2005; (vi) Regulated Covered Bonds Regulations 2008; and (vii) Financial Services and Markets Act 2000 (Administration Orders Relating to Insurers) Order 2010.

[Financial Services and Markets \(Insolvency\) \(Amendment of Miscellaneous Enactments\) Regulations 2019](#)

[Explanatory memorandum](#)

### **Council of EU invites COREPER to approve final compromise texts on the European System of Financial Supervision (ESFS) reforms**

On 29 March, the Council of the EU published an "I" item note on the EC's proposed legislative reforms to the ESFS. The EP and the Council reached provisional agreement on these reforms at a triilogue meeting on 21 March. The final compromise texts agreed by the EP and the Council are set out in addendums to the "I" item note: (i) Omnibus Regulation on reforms to the ESFS; (ii) Omnibus Directive amending MiFID II and Solvency II; and (iii) Regulation amending the ESRB Regulation. In the "I" item note, the Council asks COREPER to approve the final compromise texts agreed on 21 March and to confirm that COREPER can inform the EP that, should the EP adopt its position on the proposed legislation at first reading, as set out in the final compromise texts (and subject, where necessary, to revision of those texts by the legal linguists of both institutions), the Council will adopt the legislation at first reading. The legislation will then be published in the OJ and enter into force.

[Read more](#)

### **FCA Handbook Notice 64**

On 29 March, the FCA published Handbook Notice 64, which sets out changes made to the FCA Handbook under instruments made by the FCA board on 28 February and 28 March. It also sets out changes made by the FOS board on 6 March. The Handbook Notice reflects changes made to the Handbook by the following instruments: (i) Fees (Office for Professional Body Anti-Money Laundering Supervision) Instrument 2019; (ii) Reporting of Information About Directory Persons (Dual-Regulated Firms) Instrument 2019; (iii) Consumer Credit (Rent-To-Own Cost Cap) Instrument 2019; (iv) Financial Ombudsman Service (Award Limit) Instrument 2019 (FCA 2019/12); (v) Fees Manual (Financial Ombudsman Service Case Fees 2019/2020) Instrument 2019 (FOS 2019/2); (vi) Financial Services Compensation Scheme (Management Expenses Levy Limit 2019/20) Instrument 2019; (vii) Approved Persons Regime (Exclusion for Claims Management) Instrument 2019 (FCA 2019/16); (viii) Consumer Credit (High Net Worth Exemption) Instrument 2019 (FCA 2019/17); (ix) Fees (Credit Rating Agencies, Trade Repositories and Securitisation Repositories) Instrument 2019; (x) European Union Withdrawal Instruments; and (xi) Small Business (Eligible Complainant) (Amendment) Instrument 2019.

[Read more](#)

### **FCA and SEC sign updated MoUs**

On 29 March, the FCA announced that it has signed two updated MoUs with the SEC. The aim of the updated MoUs is to ensure the continued ability of the UK and the US to co-operate and consult with each other regarding the effective and efficient oversight of regulated entities across national borders. The first MoU is a comprehensive supervisory arrangement covering regulated entities operating across national borders. It has been updated to, among other things, expand the scope of firms covered under the MoU to include firms that conduct derivatives, credit rating and derivatives trade repository businesses. These reflect the post-financial crisis reforms related to derivatives, and the FCA taking over responsibility from ESMA for overseeing credit rating agencies and trade repositories in the event of Brexit. The second MoU, which is required under the Alternative Investment Fund Managers Regulations 2013, provides a framework for supervisory co-operation and exchange of information relating to the supervision of covered entities in the AIF industry. The updated MoU ensures that investment advisers, fund managers, private funds and other covered entities in the AIF industry, which are regulated by the SEC and the FCA, will be able to continue to operate on a cross-border basis without interruption, regardless of the outcome of Brexit. The MoUs will come into force on the date EU legislation ceases to have direct effect in the UK.

[Read more](#)

