

ALLEN & OVERY

Key Regulatory Topics: Weekly Update

6 December 2019 – 12 December 2019



BREXIT

Please see the Consumer/Retail section for an update on the FCA's Quarterly Consultation Paper, which discusses Brexit-related changes to the Handbook & new EU binding technical standards (BTS) following the extension of Article 50.

Please see the Prudential Regulation section for ESMA's final report on amendments to implementing technical standards (ITS) specifying main indices and recognised exchanges under CRR, which contains two versions of the amended ITS to provide for any Brexit outcome.

CONDUCT

Please see the Financial Crime section for an update on ESMA's peer review report on the use of suspicious transaction and order reports (STORs) under MAR as source of information in market abuse investigations.

FCA updates its webpage on the senior managers and certification regime (SM&CR) for solo-regulated firms

On 12 December, the FCA updated its webpage on SM&CR for solo-regulated firms. Inter alia, this update gives information about what has happened to approved persons applications that were in progress at 9 December. 9 December is the date on which the SM&CR replaced the Approved Persons Regime for solo-regulated firms.

[Read more](#)

SM&CR extension - FCA publishes new forms and materials

On 9 December, the FCA published a press release to announce the extension of the SM&CR to an additional 47,000 firms. By 9 December 2020 solo-regulated firms will need to ensure that (i) all relevant staff are trained on the Conduct Rules and how they apply to their roles; (ii) all staff in certified roles are fit and proper to perform that role and are issued with a certificate; and (iii) they submit data to the FCA for the directory of key people working in financial services. This will take time meaning that solo-regulated firms are encouraged to start preparing now.

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FINANCIAL CRIME

Please see the A&O Investigations Insight [article](#) published on 6 December that discusses the NCA Suspicious Activity Reports Annual Report 2019.

Please see the Fintech section for an update regarding the FCA's webpage on the new anti-money laundering (AML) and counter-terrorist financing (CTF) regime for cryptoassets.

ESMA publishes its second annual report on administrative and criminal sanctions and other administrative measures under MAR

On 12 December, ESMA published its second annual report on administrative and criminal sanctions and other administrative measures under MAR. The Report provides an overview of the applicable legal framework and information on the criminal and administrative sanctions imposed on the basis of MAR between 1 January 2018 and 31 December 2018.

[Read more](#)

ESMA's peer review report on the use of suspicious transaction and order reports (STORs) under MAR

On 12 December, ESMA published a peer review on the collection and use of STORs under MAR as a source of information in market abuse investigations. It assessed NCAs in 6 areas relating to the STOR framework including: (i) NCA's arrangements to detect suspicious activity; (ii) NCA's responses to poor quality or non-reporting of STORs; (iii) STOR outcomes; and (iv) cross-border exchange of STORs. ESMA made 4 key recommendations for NCAs suggesting improvements in how reporting persons are engaged in the STOR framework and how firms respond to and analyse STORs. ESMA also compared figures on the number of STORs reported annually; it found NCAs received 10,653 STORs in 2017 and 11,130 STORs in 2018, compared with 4,634 reports during the final year of the now repealed MAD. The vast majority of STORs were submitted to NCAs by investment firms.

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FATF speech outlines key priorities

On 11 December, the FATF published the keynote speech at the 7th International Anti-Money Laundering and Compliance Conference which was given by FATF Executive Secretary David Lewis. The FATF acknowledges the current tick box approach to AML regulation and supervision. Recent FATF evaluations of countries suggest that only 25% of countries have effective AML supervision. As a result, current FATF priorities include: (i) convening groups of AML supervisors around the world to ensure they understand what the FATF expects of them, for them to share the challenges they face, and to discuss how these challenges can be overcome. This ranges from developing a risk-based approach to supervision, to international cooperation between supervisors, and better use of technology, so called SupTech, for more effective and efficient supervision; (ii) using experience from law enforcement agencies around the world to develop and publish best practices for financial investigations; (iii) publishing guidance on the use of digital ID following the public consultation this year – the FATF acknowledges that to take advantage of the new technology, banks will have to rely more on others, and their tech. The FATF will be encouraging FATF members to reconsider where legal liability lies when relying on others; (iv) as well as continuing to monitor the use of virtual assets by criminals and terrorists, the FATF are working on the implications of stablecoins, and it will be updating G20 Finance Ministers and Central Bank Governors on the FATF's policy recommendations for dealing with stablecoins and the risks and opportunities from financial innovation more generally; and finally, other on-going work includes: (a) the operational challenges for asset recovery; (b) trade based money laundering; (c) guidance on the investigation and prosecution of terrorist financing; and (d) proliferation financing standards.

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FINTECH

Please see the Prudential Regulation section for an update on the recent ECB's speech discussing, inter alia, the supervision of Fintech firms.

FCA updates its webpage on the new anti-money laundering (AML) and counter-terrorist financing (CTF) regime for cryptoassets

On 12 December, the FCA updated its webpage on the AML and counter-terrorist financing CTF regime for cryptoassets. Following the FCA's consultation, the update confirms the registration fees for cryptoassets businesses. The FCA Board has agreed that the charges will be (i) £2,000 for businesses with UK cryptoasset income up to £250,000; and (ii) £10,000 for businesses with UK cryptoasset income greater than £250,000.

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CPMI publishes a report on wholesale digital tokens

On 12 December, the CPMI published a report on wholesale digital tokens. The report discusses some potential design choices and includes a non-exhaustive list of questions that token developers may need to consider. Important considerations include (i) availability; (ii) issuance and redemption; (iii) access; (iv) underlying assets/funds and claims; (v) transfer mechanism; (vi) privacy and regulatory compliance; and (vii)

interoperability. The Report notes that: (i) a wholesale digital token arrangement needs to be compliant with all applicable regulatory and oversight requirements - if a wholesale digital token arrangement is a systemically important financial market infrastructure (FMI), it will be expected to observe the Principles for Financial Market Infrastructures in the same way as other FMIs; and (ii) whether wholesale digital tokens offer benefits as a settlement asset will depend on whether they can provide both improved safety and increased efficiency over the traditional account-based settlement assets.

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Basel Committee on Banking Supervision (BCBS) publishes discussion paper on designing a prudential treatment for cryptoassets

On 12 December, the BCBS published a discussion paper on designing a prudential framework for cryptoassets. The paper reviews the defining technological and economic features of cryptoassets, and outlines the different potential channels by which cryptoassets could derive their value. The paper also sets out general principles to guide the design of a prudential treatment, and identifies the possible direct and indirect channels by which banks could be exposed to cryptoassets. The report then outlines an illustrative example of a potential prudential treatment for high-risk cryptoassets. Should the BCBS decide to specify a prudential treatment of cryptoassets, it will issue a consultation paper detailing its proposals.

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FUND REGULATION

ESMA publishes its second report on penalties and measures imposed under the UCITS Directive

On 12 December, ESMA published its second report on penalties and measures imposed in 2018 under the UCITS Directive 2009/65/EC. The information reported to ESMA and disclosed in the report informs ESMA's work aimed at creating supervisory convergence in the application of the UCITS Directive.

[Read more](#)

ESMA announces postponement to finalising the draft RTS under the ELTIF Regulation on costs disclosure

On 10 December, ESMA published its final report on draft RTS under Article 25 of the ELTIF Regulation. The report does not contain the final proposal from ESMA for the draft RTS to determine the costs disclosure requirements applicable to ELTIF managers because these RTS depend on the cost section of the PRIIPs KID, which is currently being revised in the context of the review of the PRIIPs Delegated Regulation 2017/653). Based on the outcome of the review of the requirements on cost disclosure of the PRIIPs KID, ESMA will assess the most appropriate way to finalise the draft RTS under Article 25 of the ELTIF Regulation and will in particular assess the need for another round of consultation on revised proposals on these RTS that would be based on these revised PRIIPs RTS.

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INSURANCE

EIOPA publishes consultation paper on the proposal for Guidelines on Information and Communication Technology (ICT) security and governance

On 12 December, EIOPA published a consultation paper on the proposal for Guidelines on ICT security and governance. The objective of these Guidelines is to (i) provide clarification and transparency to market participants on the minimum expected information and cyber security capabilities; (ii) avoid potential regulatory arbitrage; and (iii) foster supervisory convergence regarding the expectations and processes applicable in relation to ICT security and governance. The deadline for comments on the proposed Guidelines is 13 March 2020. EIOPA will consider the feedback received, publish a Final Report on the consultation and submit the Guidelines for adoption by its Board of Supervisors.

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Solvency II Commission Implementation Regulations published

On 10 December, the following two Commission Implementation Regulations were published in the OJ: (i) Commission Implementing Regulation (EU) 2019/2102 which amends Implementing Regulation (EU) 2015/2452 with regard to the disclosure of information used in the calculation of the adjustment for the loss-absorbing capacity of deferred taxes; and (ii) Commission Implementation Regulation (EU) 2019/2103 which amends and corrects Implementing Regulation (EU) 2015/2450 laying down implementing technical standards with regard to the templates for the submission of information to the supervisory authorities in accordance with the Solvency II Directive (2009/138/EC). Both regulations enter into force on 30 December.

[Regulation 2019/2102](#)

[Regulation 2019/2103](#)

MARKETS AND MARKETS INFRASTRUCTURE

Decisions of the EEA Joint Committee amending the EEA Agreement to incorporate BRRD, CRA III, EMIR, CRR/CRD, MCD into the EEA Agreement published in the OJ

On 12 December, historic decisions of the EEA Joint Committee to incorporate the BRRD, CRA III, EMIR, CRR/CRDIV and MCD into the EEA Agreement were published in the OJ.

[CRR/CRD](#)

[BRRD](#)

[MCD](#)

[EMIR](#)

[CRA III](#)

EBA publishes its consultation paper on its draft Implementing Technical Standards amending Commission Implementing Regulation (EU) 2016/2070 with regard to benchmarking of internal models

EBA published its consultation paper, dated 12 December, on draft Implementing Technical Standards amending Commission Implementing Regulation (EU) 2016/2070 with regard to benchmarking of internal models. The consultation paper aims to better achieve the EBA supervisory benchmarking's three major objectives with the integration of IFRS 9 benchmarking templates. The draft ITS will be submitted to the EC for endorsement before being published in the OJ. The technical standards will apply 20 days after publication in the OJ. The deadline for comments for responding to this consultation paper is 13 February 2020.

[Read more](#)

EMIR 2.2 published in the OJ

On 12 December, EMIR 2.2 was published in the OJ. This amends Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs.

[Read more](#)

SME growth market reform regulation published in the OJ

On 11 December, the regulation to amend MiFID II, MAR and the Prospectus Regulation in relation to the promotion of the use of SME growth markets was published in the OJ. The regulation will apply from 31 December, save for the amendments to MAR, which will apply from 1 January 2021.

[Read more](#)

ESMA briefing on BMR recognition applications

On 11 December, ESMA published a briefing to give clarification on the implementation of the recognition regime under Article 32 of the BMR. Third country administrators need to obtain recognition, endorsement or equivalence for any in-scope benchmarks to be used by supervised entities in the Union after the expiry of the Article 51 BMR transitional period. This ESMA briefing aims to clarify some aspects of the recognition application, such as: (i) the means to determine the member state of reference; and (ii) the instances where cooperation arrangements between EU and third-country competent authorities are needed.

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ESMA publishes an updated version of its Q&As on the Benchmarks Regulation (BMR)

On 11 December, ESMA published an updated version of its Q&As on the day-to-day application of the BMR following publication in the OJ of the Low Carbon Benchmarks Regulation. The updated version provides clarification on the transitional provisions applicable to third country benchmarks.

[Read more](#)

CPMI and IOSCO report on authorities' experience with co-operation on FMI supervision, oversight and regulation

On 10 December, the CPMI and IOSCO published a report to describe the ways in which authorities cooperate with each other in regulation, supervision, and oversight of FMIs. The report elaborates on a range of issues and practices that authorities have experienced and considered when determining whether, and how, to establish cooperation that suits their needs and fulfils their respective mandates. Authorities

cooperate under various circumstances and examples include (i) legal mandates or priorities for authorities; (ii) market events and other risks emerging in the financial system; (iii) the design or operation of new or existing FMIs; (iv) analysing the systemic importance of an FMI to a particular jurisdiction. It is concluded that (i) strong, trusted relationships between and among authorities are essential to realising the benefits of cooperation and achieving a shared objective; (ii) exchanging information is a recognised benefit of cooperation; (iii) the scope of authorities considered relevant for purposes of cooperation is unique to each FMI; (iv) cooperation regarding a specific FMI can promote the FMI's safety and efficiency; (v) there is no uniform approach to designing cooperative arrangements; (vi) the motivations for, forms of, and tools supporting cooperation among authorities will continue evolving meaning that the breadth of authorities' experience with cooperation will expand.

[Read more](#)

ESMA report on supervisory measures and penalties under Articles 4, 9, 10 and 11 of EMIR

On 9 December, ESMA published its second annual report on supervisory measures and penalties under EMIR. The Report, covering the period from January to December 2018, focuses on NCAs supervisory measures and enforcement actions, their powers and the interaction between NCAs and market participants, when monitoring compliance with the following EMIR requirements: (i) the clearing obligation (Article 4 of EMIR); (ii) the reporting obligation (Article 9); (iii) requirements for non-financial counterparties (Article 10); and (iv) the risk mitigation techniques (Article 11). The Report found that some supervisory areas are highly harmonised, such as NCAs' sources of information used to check compliance with EMIR requirements, including trade repository data, their competences, and NCAs' supervisory and enforcement tools. It also found that supervisory practices have evolved in relation to compliance with EMIR requirements shifting from an initial focus on raising awareness to greater efforts towards making better use of the information available for supervisory purposes. The report identifies areas that might benefit from coordinated approaches, these being (i) aspects related to the supervision of NFCs in relation to the clearing obligation; (ii) how to identify excessive reliance on the exception applied to hedging positions; and (iii) the supervisory activity towards preventing clearing evasion in relation to third country entities trading contracts.

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ESMA publishes updated version of MiFIR Q&As on data reporting

On 6 December, ESMA published an updated version of its Q&As on data reporting under the MiFIR. Following the creation of a new reference rate, clarification is given on (i) how Trading Venues and SIs should report financial instruments based on this rate under RTS 23; (ii) how MiFID investment firms should report this rate in transaction reports where the reference data fields have to be reported under RTS 22; and (iii) how other reference rates should be reported that are not explicitly included in RTS 23 and RTS 22.

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PAYMENT SERVICES AND PAYMENT SYSTEMS

Please see the Fintech section for an update on CPMI's publication of a report on wholesale digital tokens.

European Payments Council (EPC) payment threats and fraud trends report 2019

On 9 December, the EPC published a report providing an overview of the most important threats in the payments landscape. These are (i) social engineering and phishing; (ii) malware; (iii) Advanced Persistent Threats (APTs); (iv) mobile device related attacks; (v) (Distributed) Denial of Service ((D)DoS); (vi) botnets and threats related to cloud services; (vii) big data; (viii) Internet of Things; and (ix) virtual currencies. The report also elaborates on fraud related to payment instruments (cards, SEPA Credit Transfer and SEPA Direct Debit). The main conclusions concerning payment threats are that the organisation and sophistication of recent cyber-attacks have shown the increased professionalism of cybercriminals and that the main attack focus has shifted slightly away from malware to social engineering attacks, except for attacks aimed at companies. The main conclusions concerning payment fraud are that (i) in regard to card payment fraud, criminals are changing their approach by changing to more high-tech frauds like APT whilst some are reverting to old school types of fraud; (ii) CNP fraud remains a significant factor for fraud losses; (iii) for SEPA Credit Transfer and Direct Debit transactions, the criminals' use of impersonation and deception scams, as well as online attacks to compromise data, continue to be the primary factors behind fraud losses; and (iv) there has been an increase in Authorised Push Payment fraud. The EPC is establishing a new group on fraud related to SEPA payment instruments, namely the Payment Scheme Fraud Prevention Working Group, to contribute to operational payment fraud prevention. The EC has reviewed and extended the legislation on combating fraud with Directive (EU) 2019/713. The sharing of fraud intelligence on incidents amongst payment service providers facilitates fraud prevention and although this is limited by regulations

related to data protection, the new EBA guidelines on fraud reporting (EBA/GL/2018/05) will improve information sharing, leading to more accurate fraud figures.

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PRUDENTIAL REGULATION

Please see the Sustainable Finance section for an update on EBA's action plan which gives an overview of the EBA's proposed timing to deliver on sustainable finance mandates on ESG factors and risks which are set out in legislative acts, including the revised Capital Requirements Regulation (CRR 2) and Capital Requirements Directive (CRD 5).

Please see the Fintech section for BCBS's discussion paper on designing a prudential treatment for cryptoassets.

ECB publishes speech by Andrea Enria from the second ordinary hearing in 2019 at the EP's Economic and Monetary Affairs Committee

On 12 December, ECB published a speech regarding the ECB Banking Supervision's recent activities. In the speech, Mr Enria notes that whilst good progress continues to be made in reducing risks in the banking sector, the aggregate level of non-performing loans (NPLs) in the European banking sector remains elevated by international standards. Therefore, more progress must be made to reduce the number of NPLs. Furthermore, Mr Enria notes that the ECB's targeted review of internal models (TRIM) is nearing completion. TRIM has confirmed that the ECB needs to continue investing resources in supervision of internal models to maintain high quality and consistent standards. Looking forward, the full implementation of Basel III will contribute significantly to risk reduction. He goes on to note that an important element of the upcoming reforms which complements the ECB's supervisory work on TRIM is the output floor which ensures that banks using internal models cannot end up with a significantly lower level of capital than banks that do not use these models. Also, going forward, model risks will be addressed under Pillar 1 requirements to prevent unwarranted consequences of Basel III for bank-specific Pillar 2 requirements. Separately, as it is difficult to predict how digitalisation will change the business of banking, Mr Enria notes that the ECB will remain vigilant and continue to engage with banks and industry players to adequately tailor its supervisory approach. For example, the ECB have published a guide explaining how they will assess banking licence applications from fintech firms, taking into account the specificities of their business models. Finally, in terms of Brexit, Mr Enria notes that the ECB expects banks to make further progress regarding the implementation of their target operating models in line with the previously agreed timelines.

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ESMA report on amendments to ITS specifying main indices and recognised exchanges under CRR

On 11 December, ESMA published its final report on draft amendments to Commission Implementing Regulation (EU) 2016/1646, containing implementing technical standards (ITS) with regard to the main indices and recognised exchanges in accordance with the CRR. In May, ESMA consulted on amendments to the ITS to introduce a new methodology for identifying the main indices whose components can be used as collateral and to update the list of main indices and recognised exchanges in the Annex to the ITS. ESMA has largely proceeded with the proposals as consulted on. It has amended the list of recognised exchanges to include third country exchanges from those jurisdictions for which the EC has adopted equivalence decisions under MiFID II (that is, Australia, Hong Kong and the US). This reflects an amendment to the CRR definition of "recognised exchange" made by the CRR II Regulation ((EU) 2019/876). As the uncertainties around Brexit remain, ESMA has incorporated two versions of the amended ITS. The first version includes UK exchanges and should be used in case there is a "deal" or an equivalence decision. The second version excludes UK exchanges and should be used in case of a "no-deal" outcome and in the absence of an equivalence decision in respect of the UK.

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EBA publishes its final report on harmonised definitions and templates for funding plans of credit institutions

On 9 December, the EBA published its final report on harmonised definitions and templates for funding plans of credit institutions. These draft guidelines are an update of the EBA guidelines on harmonised definitions and templates for funding plans of credit institutions under Recommendation A4 of ESRB/2012/2 (EBA/GL/2014/04) issued on 19 June 2014. EBA/GL/2014/04 will be repealed from the date these draft guidelines come into force. The update is based on experience gained through analysing the data received as well as due to the questions raised via the EBA Single Rulebook Q&A tool. A detailed set of instructions

has been included to facilitate harmonised implementation and reduce implementation burden. The templates have been revised and updated reflecting lessons learnt in analysing and validating banks' funding plans and aim to better align with the definitions used in Commission Implementing Regulation (EU) No 680/2014 (the Reporting Regulation). A new template for forecasting the statement of profit or loss has been introduced to monitor trends over time in firms' profitability and their impact in funding.

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FSB report on third-party dependencies in cloud services – financial stability implications

On 9 December, the FSB published a report on third-party dependencies in cloud services, specifically considering the financial stability implications. The report gives an overview of the financial stability benefits and risks of reliance on cloud services from third-party providers. Potential benefits include (i) cost reduction; (ii) flexibility; (iii) scalability; (iv) standardisation; and (v) security and operational reliance. Potential risks are that (i) difficulty is created for financial institutions (FIs) to manage risks effectively as a result of outsourcing arrangements; (ii) temporary outages and data breaches involving FIs have occurred; (iii) operational failure at third parties could in specific scenarios compromise the confidentiality of data; and (iv) material reduction in transparency or oversight of third parties could undermine the ability of firms and authorities to effectively manage the firm's legal and regulatory obligations, risk tolerance, or contractual agreement. The implications of the use of cloud services for financial stability also depend on the regulatory standards and supervisory practices applicable to outsourcing and third-party risk. The trends in FIs' use of cloud services could lead authorities to consider new approaches to micro and macro-prudential supervision of firms, infrastructures and activities. The FSB suggests that further work by supervisory and regulatory authorities could be beneficial, particularly on (i) existing regulatory standards and supervisory practices for outsourcing arrangements, and whether there is a need to further assess the systemic risks of FIs using public cloud services and for standard-setting bodies to update current frameworks; (ii) exploring possibilities for better coordination and information-sharing among authorities when considering cloud services used by FIs; and (iii) standardisation efforts to ensure interoperability and data portability in cloud environments.

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Commission Implementing Regulation amending ITS on closely correlated currencies under CRR

On 9 December, the Commission Implementing Regulation (EU) 2019/2091 (the Amending Regulation) was published in the OJ. The Amending Regulation replaces the text of the Annex to Implementing Regulation (EU) 2015/2197 to update the list of closely correlated currencies. This is necessary to ensure that the currency pairs referred to in the Annex continue to reflect the actual correlation between the relevant currencies. The list uses 31 March 2018 as the end date for the purpose of computing the three and five-year data series required to assess currency pairs.

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RECOVERY AND RESOLUTION

SRB Conference 2019: Conference report

On 6 December, the SRB published a conference report entitled "Bank Resolution - Turning Policy into Action" following the conference which took place in October. Key themes at the conference included liquidity in resolution and operational continuity.

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SUSTAINABLE FINANCE

EC announces the European Green Deal and its goal of making Europe the first climate-neutral continent by 2050

On 11 December, the EC announced the European Green Deal which sets out how to make Europe the first climate-neutral continent by 2050. To meet this goal, the EC will present the first 'European Climate Law' within 100 days. The deal covers all sectors of the economy including transport; (ii) energy; (iii) agriculture; (iv) buildings. Industries that are covered by the deal include: (i) steel; (ii) cement; (iii) textiles; and (iv) chemicals. In March 2020, the EC will launch a 'Climate Pact' to give citizens a role in designing new actions, sharing information, launching grassroots activities and presenting solutions. In early 2020, the EC will present a Sustainable Europe Investment Plan to help meet investment needs.

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Disclosure Regulation and the Low Carbon Benchmark Regulations published in the Official Journal

On 9 December, the following two regulations were published in the OJ: (i) Regulation (EU) 2019/2088 on

sustainability-related disclosures in the financial services sector (the Disclosure Regulation) - this lays down harmonised rules for financial market participants and financial advisers on transparency with regard to the integration of sustainability risks and the consideration of adverse sustainability impacts in their processes and the provision of sustainability-related information with respect to financial products. Most of the provisions will apply from 10 March 2021; however, certain provisions listed in Article 20(3) will apply from 29 December, and others listed in the same Article will apply from 1 January 2022; and (ii) Regulation (EU) 2019/2089 which amends Regulation (EU) 2016/1011 in relation to EU climate transition benchmarks, EU Paris-aligned benchmarks and sustainability-related disclosures for benchmarks (the Low Carbon Benchmarks Regulation). This Regulation was made on 27 November and entered into force on 10 December.

[Regulation \(EU\) 2019/2088](#)

[Regulation \(EU\) 2019/2089](#)

Action plan on sustainable finance published by the EBA which outlines their plans on deliverables and activities related to environmental, social, and governance (ESG) factors and their risks

On 6 December, the EBA published an action plan which gives an overview of the EBA's proposed timing on delivering on sustainable finance mandates under revised EU legislation, including (i) the amended EBA Regulation, including Article 23; (ii) the revised Capital Requirements Regulation (CRR 2) and Capital Requirements Directive (CRD 5); (iii) the new Investment Firms Regulation (IFR) and Investment Firms Directive (IFD); and (iv) the Commission's Action Plan: Financing Sustainable Growth and related legislative packages. The EBA will follow the sequence reflected in the mandates which they summarise to be (i) strategy and risk management; (ii) key metrics and disclosure; (iii) stress testing and scenario analysis; and (iv) prudential treatment. The rationale for this sequence is the need firstly to understand institutions' current business mix from a sustainability perspective in order to measure and manage it in relation to their chosen strategy, which can then be used for scenario analysis. The classification of assets considering the sustainability perspective too will then enable institutions and regulators to conduct empirical assessments of appropriate prudential treatment.

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OTHER DEVELOPMENTS

Financial Stability Board (FSB) publishes a report assessing BigTech in finance

On 9 December, the FSB published a report assessing BigTech in finance in relation to market developments and the potential financial stability implications. The report analyses the provision of financial services by BigTech firms and its implications for financial stability, as well as the nature and scale of their activities in (i) payments; (ii) credit extension; (iii) asset management; and (iv) insurance. The report discusses various modes of interaction that are emerging between BigTech firms and incumbent financial institutions, categorised into (i) direct competition; (ii) partnership; and (iii) 'interfacing' by BigTech firms as well as looking at the potential future response of incumbent financial institutions to the entry of BigTech firms in finance. Although the report acknowledges the benefits of BigTech's entry into financial services, that entry could lead to potential financial stability risks as a result of: (i) profitability of financial institutions decreasing as a result of increased competition; (ii) new channels for the propagation of risks as a result of new operational/financial links and dependencies; (iii) risks that have previously been identified in relation to FinTech lending may be more prominent if a rapid expansion of credit provision by BigTech firms occurs; and (iv) BigTech firms could reach a scale and concentration such that their failure could cause widespread disruption to other parts of the financial system. The FSB suggests that policymakers should consider the scope for BigTech firms to provide financial services from outside the traditional financial sector and how financial authorities should approach data rights given that BigTech firms have the ability to leverage customer data.

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ESRB recommendation on exchange and collection of information on branches of credit institutions for macro-prudential purposes

On 9 December, the ESRB's recommendation on exchange and collection of information for macro-prudential purposes on branches of credit institutions having their head office in another member state or a third country, was published in the Official Journal. The following recommendations are included: (i) recommendation A (cooperation and exchange of information on a need-to-know basis); (ii) recommendation B (changes to the Union legal framework – this is addressed to the EC to assess whether any impediments exist in EU legislation that prevent authorities responsible for macro-prudential policy or financial stability from having or obtaining the necessary information on branches to carry out their functions or fulfil their

tasks. If relevant, the EC is to propose legislative amendments to remove any such impediments); (iii) recommendation C (guidelines for and the monitoring of exchange of information).

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FCA publishes its Quarterly Consultation Paper (CP19/33)

On 6 December, the FCA published its quarterly paper (CP19/33) which set out the following proposed changes to the Handbook: (i) clarification of the rules relating to FSCS claims against appointed representatives and principals; (ii) changes to the Listing Rules' requirements, which cross-refer to the Prospectus Regulation; (iii) amendments to the Listing Rules to include a requirement mandating the disclosure of rights attached to the securities; (iv) minor amendments to the Handbook to reflect changes made by the Financial Guidance and Claims Act; (v) changes to the Perimeter Guidance Manual on payment accounts (adding guidance on the defining features of a payment account to be consistent with the CJEU's judgment); (vi) changes to regulatory reporting requirements, this being an amendment of the guidance notes to correct cross-references; and (vii) further Brexit-related changes & new EU binding technical standards (BTS) following the further extension of Article 50. The proposed changes to the Handbook instruments include the update of certain provisions as a result of the extension of exit day, glossary amendments, a correction to MCOB 1.3.1R and change to DTR 4.1.14R. The proposed changes to BTS relate to the Transparency Directive, Securitisation Regulation and Markets in Financial Instruments Regulation.

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FCA's policy development update

On 6 December, the FCA updated its policy development update webpage, setting out information on recent and upcoming FCA publications. Upcoming publications include: (i) Consultation and discussion on Investment Platforms Market Study remedies (to be published alongside the Market Study Final Report); (ii) Price discrimination in the cash savings market; and (iii) Policy statement on changes to mortgage advice and selling standards.

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