

ALLEN & OVERY

Key Regulatory Topics: Weekly Update

12 – 17 April 2019



BREXIT

An extension until 31 October 2019 for the UK's withdrawal from the EU has been agreed. Are you still wondering what Brexit means for your business? Our insights can be found on our [Brexit Law Microsite](#).

FCA extends notification window for temporary permissions regime (TPR) to 30 May

On 12 April, the FCA published amended directions relating to notifications concerning the TPR, which extend the window for notifications to the FCA by firms wishing to enter the TPR from the end of 11 April to the end of 30 May. The five directions apply to: (i) EEA firms with passports and Treaty firms. They revise directions made by the FCA on 9 November 2018 and 28 March; (ii) EEA authorised payment institutions and EEA registered account information service providers and EEA authorised electronic money institutions. They revise directions made by the FCA on 18 December 2018 and the directions made on 28 March; and (iii) EEA UCITS and EEA AIFs (which also covers EU long-term investment funds, social entrepreneurship funds and venture capital funds). The amended directions relate to temporary marketing permissions, and extend the period for submitting the fund notification permission regime notification form to the end of 30 May by revising the FCA directions made on 28 March. The FCA has updated its webpage on the TPR for inbound passporting EEA firms and funds to reflect the extension of the notification window. It states that any fund managers that, as a result of the extension, wish to update their notification should email the FCA by the end of 16 May at the very latest confirming this and including their firm reference number. The FCA has also updated the guide to making notifications of an intention to use the TPR.

[Read more](#)

CAPITAL MARKETS

FCA Primary Market Bulletin No 23

On 16 April, the FCA published its 23rd Primary Market Bulletin. The bulletin: (i) summarises the feedback received by the FCA to its consultation in Primary Market Bulletin No 19 on the technical note on periodic financial information and inside information. The FCA notes that, as many of the suggested amendments would have inappropriately softened or directly contradicted the key messages that it wants to communicate, it is not incorporating any of these amendments. It has, however, included wording to clarify that, in order to delay disclosing inside information in line with Article 17 of MAR, an issuer must be able to ensure the confidentiality of the information in question; (ii) notes that the FCA has identified shortcomings in several firms' adoption of MiFID II requirements on informing and engaging with the issuer regarding risk management transactions and justifying allocation decisions; (iii) notes that stakeholders are largely supportive of the recent UK IPO reforms, with market participants recognising that they have improved the information available to investors at an earlier stage and that they support a more balanced investor education and price discovery process. The FCA reminds firms, however, that research analysts should not participate in investment banking activities and that firms should consider their obligations to manage

conflicts of interest where research analysts play a role in providing an internal-facing due diligence advisory service within the firm, prior to underwriting and placing mandates being awarded; and (iv) provides an update on the implementation of the new EU Prospectus Regulation, which comes into effect on 21 July. The FCA plans to make changes to the Prospectus Rules to make them consistent with the new regulation and notes that, from the end of April, it will be able to receive for review, prospectuses and other documents intended for approval on or after 21 July.

[Read more](#)

CONSUMER/RETAIL

Please see the Other Developments section for the FCA's consultation on proposed extension to remit of independent governance committees.

FINANCIAL CRIME

HMT consults on implementation of MLD5

On 15 April, HMT published a consultation paper on the implementation of MLD5. HMT is consulting on matters including the following: (i) changes to exemptions relating to e-money and which e-money products can be made exempt from customer due diligence (CDD) under MLD5; (ii) the introduction of electronic identification processes and the impact on CDD; (iii) changes to enhanced due diligence (EDD) measures. Although the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 already require mandatory EDD measures to be taken in certain circumstances, MLD5 introduces additional requirements; (iv) mechanisms to report discrepancies in beneficial ownership information; (v) the establishment of a national register of bank account ownership; and (vi) the requirement for self-regulatory bodies to publish an annual report containing information on their supervisory activity undertaken in the preceding year. The deadline for responding to the consultation is 10 June. Member states are required to implement MLD5, which amends MLD4, by 10 January 2020.

[Read more](#)

FUND REGULATION

Please see the Brexit section for an update regarding the FCA's extension of the notification window for the temporary permissions regime to 30 May.

Adopted texts of EP's first reading position on reforms to cross-border distribution of investment funds

On 16 April, the EP published the following texts it has adopted at first reading on the proposed reforms to the cross-border distribution of collective investment funds: (i) the legislative resolution on the proposed Directive on the cross-border distribution of collective investment funds; (ii) the legislative resolution on the proposed Regulation on facilitating the cross-border distribution of investment funds. The next step is for the Council of the EU to adopt the proposals at first reading. The Council published an "I" item note relating to the proposals on 22 February. The Council and the EP reached political agreement on the proposed reforms on 5 February.

[Proposed Directive](#)

[Proposed Regulation](#)

INSURANCE

EIOPA held Fourth InsurTech Roundtable on "The use of cloud computing by (re)insurance undertakings"

On 17 April, EIOPA issued a press release regarding their Fourth InsurTech Roundtable on "the use of cloud computing by (re)insurance undertakings" (held on 11 April). The aim of the roundtable was to discuss with the different market participants views and approaches to cloud outsourcing in a Solvency II and post-European Banking Authority Recommendations environment and determine best practices for the development of principle based guidelines. Points of interest include: (i) cloud computing is expected to become the "new normal" for business and IT development in the coming years; (ii) the cloud industry is dedicating resources to increase transparency of their services by providing tools to "auditing" the cloud; and (iii) to succeed with the cloud, it is essential to keep in mind the shared responsibility model which requires a cultural shift of the management, business and control functions.

[Read more](#)

PRA request for feedback on 2019 insurance stress test

On 15 April, the PRA published a letter from Stefan Claus, PRA Technical Head of Insurance, to the largest UK regulated life and general insurers. The PRA will be conducting an insurance stress test from July to September. The purpose of the letter is to seek industry feedback on any aspects of the exercise ahead of the PRA's formal launch of the stress test on 1 July. Participating firms will then be requested to complete the exercise by 30 September. Alongside the letter, the PRA has published a template and scenario specification, guidelines and instructions for general insurers and life insurers. The PRA explains that general insurers will be familiar with the exercise as it represents an evolution of the stress testing exercises conducted in 2015 and 2017. For life insurers, the exercise captures potential risks that were not fully covered under EIOPA's 2018 stress test. The PRA will also be requesting a climate scenario designed to provide additional market impetus in this area, and to inform the BoE's development of a consistent and effective approach to climate-focused scenario analysis. For general insurers, the PRA will be running a number of scenarios jointly with the Bermuda Monetary Authority. This is because many London market insurers are exposed to risks similar to those based in Bermuda. Furthermore, UK-based insurers cede a significant proportion of risks to Bermuda-based reinsurers. The joint exercise will allow the PRA to understand the interdependencies between London market and Bermuda-based reinsurers in more depth. Feedback can be made on the stress test templates and specifications until 31 May. In the letter, the PRA identifies four areas where it would specifically like comments. The PRA will also be hosting industry roundtables on 10 May to discuss any questions or comments regarding the exercise. Insurers should contact the PRA if they wish to participate.

[Read more](#)

FCA enters into MoU with Insurance Fraud Bureau

On 12 April, the FCA published an MoU that it has entered into with the Insurance Fraud Bureau (IFB). The MoU has been entered into to provide a formal basis for the FCA and IFB to co-operate in relation to claims management activities, including for exchanging information and providing investigative assistance. The IFB acts as a central hub in the insurance sector for sharing insurance fraud data and intelligence. It uses this information to meet its primary objectives of helping insurers identify fraud and avoid the financial consequences, and supporting the police, regulators and other law enforcement agencies in fighting fraudsters and bringing them to justice.

[Read more](#)

MARKETS AND MARKETS INFRASTRUCTURE

Please refer to the Brexit section for an update regarding the FCA's extension of the notification window for the temporary permissions regime to 30 May.

FCA Market Watch Issue 59

On 17 April, the FCA published Issue 59 of Market Watch, its newsletter on market conduct and transaction reporting issues. Issue 59 covers: (i) transaction reporting observations. The FCA's Markets Reporting Team monitors the accuracy and completeness of transaction reporting and instrument reference data. As a result of this work, the FCA has identified a variety of data quality issues, some of which it sets out in Issue 59 of Market Watch. They relate to systems and controls, reporting trade price, time and venue, party identifiers, instrument reference data, and errors and omissions. The FCA advises investment firms, trading venues and approved reporting mechanisms to take note of these observations and ensure they have appropriate arrangements in place; (ii) telephone recording and retention. The FCA has observed that some firms have not properly ensured telephone conversations are being recorded, despite having recording systems installed. In some recent cases, several months passed before firms realised conversations were not being correctly recorded due to system failings. The FCA reminds firms of the importance of ensuring they have the systems in place to record telephone conversations and are undertaking appropriate checks to ensure calls are consistently recorded. It suggests firms may also find it valuable to use the recordings as part of their market abuse surveillance programme; and (iii) use of client codes. The FCA is aware that many trading venue operators do not collect the full client identification code (that is, legal entity identifier or National ID) when an order is received. Instead, they receive the information later in the day. In addition, some trading venues use "short codes" in their market abuse surveillance system, rather than "long codes". Consideration is then only given to the long code once an exception alert has triggered, for example, to gather further client details. The FCA has also observed trading venues' member firms using different short codes for the same client over time. Where an entity is a client of multiple member firms, member firms use different short codes for the same client. The FCA is concerned that, as a result, the use of short codes may not be as effective as

using long codes from a market abuse surveillance perspective. Member firms and trading venues must ensure their systems for use of short and long client codes are adequate for these purposes.

[Read more](#)

BoE policy statement on fees regime for recognition of non-UK CCPs

On 15 April, the BoE published a policy statement on its fees regime for non-UK CCP recognition. The BoE consulted on its proposals in October 2018. Following the consultation and having considered the feedback received, the BoE has decided to introduce a recognition fee of £35,000 for non-UK CCPs. It has concluded that this is the fairest way to recover the costs associated with the recognition of non-UK CCPs, based on a calculation of the BoE's expected work effort and associated costs that it anticipates will be incurred in handling all aspects of a non-UK CCP recognition application. The policy statement covers the BoE's feedback to responses to its consultation paper, the fee rates for the 2019/20 fee year and its statement of policy on the final fee-levying regime. The fee regime is now in force and applies to all applications for non-UK CCP recognition made to the BoE. It states that non-UK CCPs should expect to receive invoices once they have been recognised by the BoE. ESMA's functions relating to the recognition of third-country CCPs under EMIR will transfer to the BoE when the UK leaves the EU.

[Read more](#)

PENSIONS

Please see the Other Developments section for the FCA's consultation on proposed extension to the remit of independent governance committees.

PAYMENT SERVICES AND PAYMENT SYSTEMS

Please see the Brexit section for an update regarding the FCA's extension of the notification window for the temporary permissions regime to 30 May.

PRUDENTIAL REGULATION

Adopted texts of EP's first reading position on IFD and IFR

On 16 April, the EP published the following texts it has adopted at first reading on the proposed reforms to investment firms' prudential requirements: (i) the legislative resolution on the proposed Directive on the prudential supervision of investment firms (IFD); and (ii) the legislative resolution on the proposed Regulation on the prudential requirements of investment firms (IFR). The next step is for the Council of the EU to adopt the proposals at first reading. The Council published an "I" item note relating to the proposals on 19 March. The Council and the EP reached political agreement on the proposed reforms on 26 February.

[IFD](#)

[IFR](#)

EP adopts first reading position on CRR II, CRD V, BRRD II and SRM II

On 16 April, the EP published a press release announcing that it has adopted its position at first reading on the banking package of reforms. The reforms consist of: (i) the proposed Regulation amending CRR (CRR II); (ii) the proposed Directive amending CRD IV (CRD V); (iii) the proposed Directive amending BRRD (BRRD II); and (iv) the proposed Regulation amending the Regulation establishing SRM (SRM II). The next step is for the Council of the EU to adopt the proposals. COREPER endorsed the proposals in February.

[Press release](#)

[Amending CRR](#)

[Amending CRD IV](#)

[Amending BRRD](#)

[Amending Regulation establishing SRM](#)

RECOVERY AND RESOLUTION

Please see the Prudential Regulation section for the EP's adoption of first reading position in relation to BRRD II and SRM II.

ECB speech on move towards mutually assured co-operation over regulation of cross-border banks

On 12 April, the ECB published a speech, given by Andrea Enria, ECB Supervisory Board Chair, on the importance of all banks being able to fail without triggering another global crisis. Points of interest include: (i)

whether the bail-in approach can really succeed depends on a number of things. The market for "bail-inable" debt must be large enough and all banks must be able to tap it. Bail-inable debt must be distributed across group entities based on needs. Attention must be paid to who holds bail-inable debt. Those who might be bailed in must understand how the new system works. Supervisors need to better explain their principles and policies; (ii) in spite of global efforts, there seems to be a lingering fear that banks might still be national in failure. Countries put up fences to shield local shareholders, creditors and taxpayers. Some measures exceed globally-agreed prudential standards. Ad hoc ring-fencing is often borne out of uncertainty. However, it creates uncertainty. Home and host authorities might have agreed to co-operate in a crisis, but these agreements may not hold. It is likely that ring-fencing will happen. Some call this "mutually assured fragmentation"; (iii) ring-fencing stands in the way of integrated markets. Cross-border banks are divided up along national lines. Capital and liquidity are most efficiently allocated when they can flow freely. Cross-border banks may have to hold more capital than would otherwise be necessary. This does not make them more resilient. It can have the opposite effect, as entities in the group become less able to support each other in times of crisis. If the banking sector was more integrated, shock would be diffused across borders and carried by many shoulders; and (iv) the EU banking sector remains segmented along national lines. Since the single passport for banking services was launched it has not been used very much. Given the importance of being close to clients and having local knowledge, most banks opted to enter the market in other member states by acquiring local banks. Subsidiaries are dominating the scene. However, this may be changing. New technologies reduce the relevance of branch networks and make it easier for banks to offer services remotely. At the same time, the underlying sources of fragmentation need to be dealt with. These are both a result of, and a problem for, crisis management.

[Read more](#)

SUSTAINABLE FINANCE

BoE will disclose in its 2019/20 annual report its assessment of how it manages climate-related financial risk

On 17 April, the BoE published a press release reporting that it will disclose in its 2019/20 annual report (to be published in 2020) how financial risks from climate change are managed across its entire operations. The press release states that the BoE's response to the financial risks from climate change has developed significantly in recent years. In particular, it now expects regulated firms to disclose their approach to managing climate-related financial risks. The BoE holds itself to similarly high standards and, in making the commitment on climate disclosures, intends to mirror the framework of the Taskforce for Climate-related Financial Disclosures by disclosing how it integrates climate-related financial risks across its balance sheet and processes. Mark Carney, BoE Governor, announced this commitment at the Network for Greening the Financial System (NGFS) conference. It follows publication by the NGFS (of which the BoE is a member) of its first comprehensive report aiming to translate commitments to act on climate-related financial risks into specific actions. The six recommendations in the report provide central banks, supervisors and the financial community with deliverable goals that will help to ensure a smooth transition to a low-carbon economy. The NGFS notes in the report that there remains a significant amount of analytical work to be done to equip central banks and supervisors with appropriate tools and methodologies to identify, quantify and mitigate climate risks in the financial system. This calls for a close and specific dialogue with academia and for further technical work to translate the NGFS recommendations or observations into operational policies and processes. More specifically, the NGFS plans to develop a handbook on climate and environment-related risk management for supervisory authorities and financial institutions, together with voluntary guidelines on scenario-based risk analysis, and best practices for incorporating sustainability criteria into central banks' portfolio management (particularly regarding climate-friendly investments). The BoE has also made available an open letter on climate-related financial risks, authored by Dr Carney, François Villeroy de Galhau, Banque de France Governor, and Frank Elderson, NGFS Chair. The open letter outlines the recommendations in the NGFS report and notes that climate change is a global problem requiring global solutions, in which the whole financial sector has a crucial role to play.

[Press release](#)

[NGFS report](#)

PRA policy and supervisory statements on enhancing banks' and insurers' approaches to managing financial risks from climate change

On 15 April, the PRA published a policy statement (PS11/19) and a supervisory statement (SS3/19) on enhancing banks' and insurers' approaches to managing the financial risks from climate change. The PRA consulted on its proposals in October 2018 in CP23/18. The PRA received 54 responses, with respondents generally welcoming the PRA's proposals. Feedback to the responses is set out in chapter 2 of PS11/19.

Following consideration of respondents' comments, the PRA has made the following changes to the expectations in SS3/19: (i) provided more clarity on the timescales appropriate for scenario analysis; (ii) updated the wording of the disclosure expectations in response to requests for clarification; and (iii) clarified that financial positions related to climate vulnerable assets cannot always be hedged, so firms should not rely on that assumption. Chapter 2 of SS3/19 describes the two risk factors through which financial risks from climate change arise and the elements that, when considered together, present unique challenges and require a strategic approach. Chapter 3 goes on to set out the PRA's expectations concerning the strategic approach. SS3/19 also identifies other materials that it should be read in conjunction with. The expectations in SS3/19 take immediate effect. The PRA expects firms to have an initial plan in place to address the expectations and submit an updated senior management function (SMF) form by 15 October. However, firms should note that expectations on firms and SMF holder(s) will take into consideration the evolving understanding of what best practice looks like. The PRA intends to publish more detailed expectations relating to the financial risks from climate change in due course. It considers that firms' practices regarding the financial risks from climate change will continue to develop and mature, and the sophistication of firms' approaches will reflect that. The PRA and the FCA have established the Climate Financial Risk Forum (CFRF) to support the integration of climate-related factors into financial decision making. The outputs from the CFRF, supervisory engagement, and the PRA's international work with the central banks and supervisors network for greening the financial system will inform the PRA's approach to supervising its expectations and the PRA will keep its climate change policy under review.

[Policy statement](#)

[Supervisory statement](#)

TAXES/LEVIES

Please refer to the Markets and Markets Infrastructure section for the BoE's policy statement on fees regime for recognition of non-UK CCPs.

FCA consults on regulated fees and levies rates for 2019/20

On 17 April, the FCA published a consultation paper on regulated fees and levies rates for 2019/20 (CP19/16). In CP19/16, the FCA is consulting on proposed 2019/20 regulated fees and levies to fund, inter alia, itself, the Financial Ombudsman Service, the Money and Pensions Service, debt advice delivered by the Devolved Authorities. The FCA's annual funding requirement (AFR) for 2019/20 is £558.5 million (an increase of 2.7%). This figure includes the costs it needs to recover for changes to regulatory responsibilities and additional costs related to Brexit. The FCA policy for allocating the AFR recovery across fee-blocks is to maintain an even distribution of increases or decreases, other than where for individual fee-blocks there have been material and explainable exceptions. The exceptions to an even distribution of the FCA's 2019/20 AFR cover scope change costs, Brexit costs and set-up costs relating to the Securitisation Regulation. More information on the exceptions is set out in chapter 2. Table 1.1 in chapter 1 of CP19/16 helps fee payers identify which chapters relate to them. The FCA's fee calculator is available for fee payers to use to calculate their periodic fees for the forthcoming year. The fees calculator is based on the draft periodic fee rates in Appendices 1 and 2 to CP19/16. The fees calculator also covers PRA fees and levies (where applicable). However, the Financial Services Compensation Scheme levies will not be available until early May. The draft instruments making the proposed changes to the Fees manual are set out in Appendices 1 (which sets out the text of the draft Periodic Fees (2019/20) and Other Fees Instrument 2019) and 2 (which sets out the text of the Periodic Fees (2019/20) and Other Fees Instrument 2019). The first instrument states that it comes into force on a date to be specified this year, and the second states that it comes into force on exit day. In chapter 6, the FCA is consulting on clarification of the definition of income as the tariff base measure used to calculate the fees of regulated benchmark administrators. The deadline for comments on the proposals is 29 May. The FCA plans to publish its response and the final fee rates and levy rules in a policy statement in early July, subject to FCA Board approval in June.

[Read more](#)

PRA consults on regulated fees and levies for 2019/20

On 15 April, the PRA published a consultation paper (CP9/19) on its regulated fees and levies for 2019/20. In CP9/19, the PRA sets out proposals relating to: (i) the annual funding requirement (AFR). The AFR will be made up of the budgeted cost of ongoing regulatory activities (ORA) and costs associated with Brexit. The proposed ORA for 2019/20 is £241.3 million. Consistent with the approach taken in 2018/19, the PRA proposes to recover certain costs incurred in relation to Brexit through the EU withdrawal fee; (ii) replacing the ring-fencing implementation fee (RFIF) with the ring-fencing fee; (iii) changes to the PRA's fees rules in the event of the UK's withdrawal from the EU without a deal; (iv) how the PRA intends to recoup a shortfall

from the 2018/19 AFR and distribute a surplus from the 2018/19 RFIF; and (v) how the PRA intends to distribute retained penalties for 2018/19. In 2018/19, enforcement activity by the PRA resulted in fines and penalties of £358,876. This amount will be refunded to firms across all fee blocks excluding those firms that incurred the fines. The proposed amendments to the Fees Part of the PRA Rulebook are in the Draft periodic fees (2019/20) and Other fees instrument 2019, and the Draft periodic fees (2019/20) and Other fees (EU withdrawal) instrument 2019 (only relevant if the UK leaves the EU without a deal), which are in appendices 1 and 2 to CP9/19. The PRA also proposes to update its supervisory statement, Fees: PRA approach and application, to detail the factors it will consider before levying a new special project fee. The deadline for responses to CP9/19 is 14 May. The proposed implementation date for the amended rules is 1 July.

[Read more](#)

OTHER DEVELOPMENTS

Podcast: [How should employers approach equal pay audits?](#)

Establishing a workplace culture that nurtures diversity and equality, with a commitment to offering equal pay in a fair and consistent manner, is one of the most high-profile challenges facing senior management today. Using tools such as equal pay audits to identify potential flaws in pay structures and practices can provide the practical insights needed to manage reputational and operational risks as well as inform longer-term pay strategy. In this podcast we discuss whether equal pay audits are a good idea, and the issues that employers should consider before conducting an audit.

FCA's 2019/20 business plan

On 17 April, the FCA published its 2019/20 business plan. The business plan sets out the FCA's main areas of focus for 2019/20. It has prioritised issues by splitting the financial services industry into seven specific sectors: (i) retail banking; (ii) retail lending; (iii) general insurance and protection; (iv) pensions and retirement income; (v) retail investments; (vi) investment management; and (vii) wholesale financial markets. It has also identified the following eight cross-sector priorities where its work will impact on multiple sectors in 2019/20: (i) EU Withdrawal and International engagement; (ii) firms' culture and governance; (iii) operational resilience; (iv) financial crime (fraud and scams) and anti-money laundering; (v) fair treatment of existing customers; (vi) innovation, data and data ethics; (vii) demographic change; and (viii) the future of regulation. For each sector and cross-sector area, the FCA has identified its key priorities, specific activities and how it will monitor change.

[Read more](#)

FCA research agenda

On 17 April, the FCA published its research agenda. The FCA explains that research plays an important role at the FCA. Research helps it to advance its mission by developing evidence-based policy, prioritising effectively and staying ahead of trends and developments. The FCA has combined economics, statistics, behavioural science, and market data and intelligence, together with newer techniques in machine learning and artificial intelligence, to understand how markets work. Effective research reveals the drivers of behaviour by firms and consumers and provides insights into the strengths and weaknesses of regulatory tools in different circumstances. This understanding helps the FCA to develop policy to improve market functioning and outcomes, and to improve its own operational capability and efficiency. The research agenda explains the broad areas of research most relevant to the FCA's mission (that is, its core research themes). The FCA's research interests fall across five broad and complementary themes: (i) household finance and consumer behaviour; (ii) securities markets: microstructure, integrity and stability; (iii) competition, innovation, and firm behaviour and culture; (iv) technology, big data and AI; and (v) regulatory efficiency and effectiveness. In the research agenda, the FCA provides an overview of each theme, highlights examples of current priority topics, and asks questions within each theme. It advises that each of these themes are important. The FCA will prioritise feasible projects that are likely to do the most to advance its mission. It will often investigate the same regulatory issue from different angles. The FCA describes the research agenda as "ambitious and complex", reflecting its commitment to be a forward-looking regulator. The FCA welcomes external contributions and hopes to expand its network of collaborators from a range of disciplines. It invites academics to engage with its mission and collaborate where there is an opportunity to create a shared understanding of relevant issues. The FCA will be organising research conferences and seminars on some of the themes, as well as partnering with academics on relevant scientific projects.

[Read more](#)

EP adopts first reading position on ESFS reforms

On 16 April, the EP published a press release announcing that it has adopted its position at first reading on the EC's proposed reforms to the European System of Financial Supervision (ESFS). The reforms consist of: (i) the proposed Omnibus Regulation relating to the powers, governance and funding of the ESAs; (ii) the proposed Omnibus Directive amending MiFID II and the Solvency II Directive; and (iii) the proposed Regulation amending the ESRB Regulation. The next step is for the Council of the EU to adopt the proposals. The Council published an "I" item note relating to the proposals on 1 April. The Council and the EP reached political agreement on the proposed reforms in March.

[Press release](#)

[Proposed Omnibus Regulation](#)

[Proposed Omnibus Directive](#)

[Proposed Regulation](#)

Complaints Commissioner follows up on FCA's response to final report recommending it conduct further inquiries

On 16 April, the Office of the Complaints Commissioner published a follow-up from the Financial Regulators Complaints Commissioner to a previously published final report dated 30 August 2018, in which the Commissioner upheld a complaint regarding the FCA's failure to respond adequately to certain information provided by the complainant about their bank (referred to as "bank X"). The FCA did not uphold the complaint and the complainant referred the matter to the Commissioner, expressing dissatisfaction and raising the issues of: (i) the FCA's regulatory approach to firms conducting both regulated and unregulated business; (ii) how the FCA defines and treats whistleblowers; and (iii) how the FCA responds to allegations of fraud. The final report was published in September 2018 and the FCA accepted the Commissioner's recommendations. The follow-up states that, while the formal investigation into the complaint ended with the final report, the Commissioner can and does monitor the FCA's response to his recommendations. In relation to the complaint, the Commissioner notes that the FCA has issued the recommended apology. It has also reported to the complainant on the outcome of its further inquiries with bank X. However, the complainant is dissatisfied with the FCA's response. The FCA has sent the Commissioner a fuller report than that provided to the complainant. Having considered the matter, the Commissioner's view is that, although the FCA devoted considerable resources to following up on the issues raised in the final report, its further response to the complainant was insufficient to reassure them it had taken adequate steps to address their concerns. The Commissioner outlines in the follow-up his reasons for reaching this view and comments that, having agreed to the recommendation to make further inquiries, he would have expected the FCA would have made a "special effort" to give the complainant "as full as possible an explanation of what it had done". While the Commissioner has no view on whether or not the complainant's financial claims in respect of bank X have any merit and considers the FCA's explanation in relation to those is "not unreasonable", he is "surprised that the incontrovertible issue of repeated failings by [bank X] to deal with court documents has not resulted in a fuller explanation of what might be done to prevent a recurrence, bearing in mind the potential effects upon vulnerable customers". However, he notes that the FCA has undertaken to monitor this. There are no further steps the Commissioner can take in relation to the complaint and the follow-up therefore represents his final comment. The FCA has published a response accepting the Commissioner's recommendations and criticisms.

[Final report](#)

[Response](#)

[Follow up](#)

Whistleblowing: EP formally adopts Directive to protect EU whistleblowers

On 16 April, the EP plenary session formally adopted at first reading a Directive on the protection of persons reporting on breaches of Union law, introducing amendments to the text of the EC's proposal. This proposal is part of a package of measures adopted by the Commission on 23 April 2018. The package also includes a Communication, strengthening whistleblower protection at EU level, and two Staff Working Documents setting out the Commission's Impact Assessment on the proposal and an Executive Summary of the Impact Assessment. One of the reasons for adopting this package was that recent scandals such as Dieselgate, Luxleaks, the Panama Papers, and the ongoing Cambridge Analytica revelations showed that whistleblowers can play an important role in uncovering unlawful activities that damage the public interest and the welfare of citizens and society. Taking into consideration the informal trilogue agreement reached on the final text of this Directive on 12 March, and the Council's undertaking by letter of 15 March to approve the EP's first-reading position without further amendments, it is expected that the Council will formally adopt the Directive at first reading at one of its next meetings, after which it will be published in the OJ.

[Read more](#)

PRA 2019/20 business plan

On 15 April, PRA has published its business plan for 2019/20, which sets out its strategy and work plan for the coming year and also its budget for 2019/20. The PRA's strategic goals for 2018/19 relate to matters including the following: (i) robust prudential standards and supervision; (ii) adapting to market changes and horizon scanning; (iii) financial and operational resilience; (iv) recovery and resolution; and (v) Brexit.

[Read more](#)

PRA consults on proposed changes to settlement of enforcement action policy

On 15 April, the PRA published a consultation paper on proposals to amend its policy on the settlement of enforcement action (CP10/19). These proposals follow the February 2017 PRA and FCA joint policy statement on implementation of HMT's enforcement review and the Green Report, which contained a number of recommendations, including in relation to settlement policies and procedures. In CP10/19, the PRA proposes to implement an HMT recommendation by continuing to offer a 30% settlement discount for cases that settle within Stage 1 and abolishing the settlement discounts currently offered at Stages 2 and 3. Parties may still settle an enforcement action after Stage 1 has passed; but any such settlement would not attract a settlement discount in relation to the financial penalty, suspension or restriction imposed. To make clear there is only one stage in which discounts are available, the PRA proposes renaming Stage 1 the "Discount Stage". It believes this proposed approach will simplify its settlement discount scheme, focus incentives, encourage early settlement of cases capable of settlement, and identify at an early stage those cases that are likely to be contested. The PRA also proposes a number of amendments to its Enforcement Statement of Policy to clarify its settlement procedures. Several of these amendments reflect existing PRA practices during the conduct of enforcement matters and reflect the relevant HMT recommendations. They relate to early notification of Discount Stage discussions, preliminary "without prejudice" meetings, preliminary penalty parameters, subjects' understanding of the case, extending the Discount Stage, submissions during the Discount Stage, and PRA discretion to offer or engage in settlement discussions. In addition, the PRA proposes to implement a process that invites post-settlement feedback from the subjects of PRA cases. The deadline for responses to CP10/19 is 15 July. Any changes to the settlement discount scheme will apply to all cases from the date of publication of the final PRA policy, with one exception. This is in relation to cases where the PRA has already concluded Stage 1 settlement discussions with the subject, without reaching a settlement, prior to publication of the final policy. In these circumstances, the existing scheme will continue to apply. On a related webpage, the PRA explains it will be hosting a roundtable for law firms on 11 June, to discuss its proposals and related publications on its approach to enforcement, answer questions, and receive initial responses to CP10/19.

[Consultation paper](#)

[Related webpage](#)

FCA consults on proposed extension to remit of independent governance committees

On 15 April, the FCA published a consultation paper proposing an extension to the remit of independent governance committees (IGCs) (CP19/15). The FCA is proposing to extend the remit of IGCs in two areas: (i) a new duty for IGCs to report on their firm's policies on environmental, social and governance (ESG) issues, consumer concerns and stewardship, for the products that IGCs oversee. The aim is to protect consumers from investments that may be unsuitable because of ESG risks, including climate change, to help ensure consumer concerns are taken into account, and encourage good stewardship of investments. The FCA is also proposing related guidance for pension product providers and investment-based life insurance product providers, setting out how these firms should have regard to factors that can have an impact on financial returns (such as ESG risks and opportunities), and non-financial consumer concerns, when making investment decisions on behalf of consumers. These proposals address (and, in some respects, go further than) recommendations made by the Law Commission in its June 2017 report on pension funds and social investment; and (ii) a new duty for IGCs to oversee the value for money of investment pathway solutions for pension drawdown. The aim is to ensure that consumers with investment pathway solutions get good value for money. This proposal follows the FCA's January consultation on investment pathways and other proposed changes to its rules and guidance (CP19/5). The proposed rules and guidance relating to these new duties for IGCs are set out in a draft version of the Conduct of Business Sourcebook (Independent Governance Committees) Instrument 2019, which is contained in Appendix 2 to CP19/15. CP19/15 also includes a discussion on what the FCA has seen in published IGC annual reports and through its engagement with IGCs. Separately, the FCA invites views on issues relevant to its planned work with the Pensions Regulator on value for money in pensions, as outlined in the joint regulatory pensions strategy. The deadline for responses to CP19/15 is 15 July. The FCA will consider responses and plans to publish, in the fourth quarter of this year, a policy statement and final rules on the IGC remit extension.

[Read more](#)

