

FINANCIAL REGULATION WEEKLY BULLETIN

Major UK and European regulatory developments of interest to banks insurers and reinsurers, asset managers and other market participants

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[Selmin Hakki](#).

Slaughter and May also produces a periodical Insurance Newsletter. If you would like to go on the distribution list, please contact: [Beth Dobson](#).

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GENERAL //

1 EUROPEAN SUPERVISORY AUTHORITIES

1.1 BigTech and financial services - ESAs publish stocktake of provision - 1 February 2024 -

The European Supervisory Authorities (ESAs) (comprising the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority) have published a report on their stocktake of BigTechs carrying out financial services in the EU. The stocktake shows that BigTechs have subsidiary companies carrying out financial services in the EU payments, e-money, insurance and (in limited cases) banking sectors, but not in the securities and markets sector.

The report suggests that some risks relating to intra-group interconnectedness may warrant policy actions should the provision of financial services by BigTechs continue to grow. In particular, the activity-based supervision and regulation of BigTech financial services activities (as opposed to entity/group-based) mean that risks posed by intra-group interdependencies could be insufficiently mitigated.

The ESAs intend to further strengthen the cross-sectoral mapping of BigTech financial services activities and relevance to the financial sector via the establishment of a data mapping tool within the European Forum for Innovation Facilitators (EFIF).

[ESAs report: 2023 stocktaking of BigTech direct financial services provision in the EU \(JC 2024 02\)](#)

[EBA press release](#)

2 EUROPEAN SECURITIES AND MARKETS AUTHORITY

2.1 MiCA - ESMA launches consultation on reverse solicitation (ESMA35-1872330276-1619) - 29 January 2024 -

The European Securities and Markets Authority (ESMA) has published a Consultation Paper on reverse solicitation under the Regulation on markets in cryptoassets ((EU) 2023/1114) (MiCA).

ESMA is seeking input on proposed guidance relating to the conditions of application of the reverse solicitation exemption and the supervision practices that National Competent Authorities (NCAs) may take to prevent its circumvention. ESMA states that this exemption should be understood as very narrowly framed and must be regarded as the exception, and a firm cannot use it to bypass MiCA.

The consultation will be open until 29 April 2024.

[ESMA Consultation Paper: draft guidelines on reverse solicitation under MiCA \(ESMA35-1872330276-1619\)](#)

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3 HM TREASURY

- 3.1 **The Data Reporting Services Regulations 2024 - 31 January 2024** - HM Treasury has published the Data Reporting Services Regulations 2024 (SI 2024/107) (the Regulations) along with an explanatory memorandum. The Regulations replace retained EU law under the Data Reporting Services Regulations 2017 (SI 2017/699) (DRSRs) and establish a new framework for the regulation of data reporting services providers, with firm-facing rules set by the FCA. The Regulations also make the necessary legislative changes to encourage the emergence of a consolidated tape in the UK.

The Regulations will come into force on the day on which the revocation of the DRSRs comes into force via a separate statutory instrument.

[The Data Reporting Services Regulations 2024 \(SI 2024/107\)](#)

[Explanatory memorandum](#)

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4 HOUSE OF COMMONS TREASURY COMMITTEE

- 4.1 **The case for a digital pound - House of Commons Treasury Committee publishes HM Treasury and Bank of England's response to the Committee's Report - 31 January 2024** - The House of Commons Treasury Committee has published the response of HM Treasury and the Bank of England (the Bank) to its report entitled "*The digital pound: still a solution in search of a problem?*", published in December 2023. Responding to concerns raised in that report around the development of a UK central bank digital currency (CBDC), HM Treasury and the Bank:

- emphasise their commitment to guaranteeing users' privacy in primary legislation if a digital pound were launched, as announced with the publication of their digital pound consultation response on 25 January 2024;
- remain firm on their plan for a digital pound to be unremunerated at launch; and
- are minded to proceed with a proposed holding limit in the range of £10,000 to £20,000, but remain open to revisiting this range if new information comes to light.

The Bank and HM Treasury have now progressed to the 'design phase' of the digital pound, which is expected to run to 2025/2026, during which they will invest further in the policy and technical development of the proposed model for a digital pound.

[The Digital Pound: A solution in search of a problem?: Government and Bank of England Response to the Committee's First Report](#)

5 PRUDENTIAL REGULATION AUTHORITY

- 5.1 **Approach to rule permissions and waivers - PRA launches consultation (CP3/24) - 31 January 2024** - The PRA has published a Consultation Paper (CP3/24) on its proposal for a new statement

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of policy setting out its approach to rule permissions, modifications and waivers made under section 138BA of the Financial Services and Markets Act 2000 (FSMA), as inserted by the Financial Services and Markets Act 2023. The PRA states that the proposed statement of policy will help to improve clarity and transparency on the criteria it will use to assess applications, thereby lowering the cost and increasing the speed of s138BA rule permissions.

The consultation will be open until 30 April 2024, and the PRA proposes to publish a final statement of policy in June 2024.

[PRA Consultation Paper: The PRA's approach to rule permissions and waivers \(CP3/24\)](#)

6 FINANCIAL CONDUCT AUTHORITY AND WORLD ECONOMIC FORUM

6.1 Quantum security in the financial sector - FCA and WEF publish white paper - 17 January 2024 - The World Economic Forum (WEF) and the FCA have published a collaborative white paper on global regulatory approaches to quantum security in the financial sector. The report takes as its catalyst the fact that quantum computing could render most current encryption schemes obsolete, threatening the integrity of digital infrastructures, communications and data—and, by extension, trust in the financial system. As a precursor to the report, the FCA surveyed regulatory authorities across a number of jurisdictions worldwide, with 93% of respondents agreeing that quantum technologies will have significant implications for their regulatory frameworks.

Meeting this challenge head on, the white paper sets out four guiding principles to guide and inform global regulatory approaches for a quantum-secure transition, alongside a four-phase roadmap in the transition to a quantum-secure financial sector.

The WEF and FCA intend for the white paper to establish the groundwork for future discussions between the industry and regulatory authorities toward a quantum-secure financial sector. To this end, the FCA has also separately invited stakeholders to share their views on the paper.

[FCA and WEF white paper: Quantum Security for the Financial Sector: Informing Global Regulatory Approaches](#)

[Webpage](#)

BANKING AND FINANCE //

7 OFFICIAL JOURNAL OF THE EUROPEAN UNION

7.1 Capital Requirements Regulation - RTS on calculation of the stress scenario risk measure published in the OJ - 29 January 2023 - Delegated Regulation (EU) 2024/397 containing Regulatory Technical Standards (RTS) supplementing the Capital Requirements Regulation (575/2013) (CRR) on the calculation of the stress scenario risk measure has been published in the Official Journal of the European Union. The Delegated Regulation will enter into force on 18 February 2024.

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[Commission Delegated Regulation \(EU\) 2024/397 of 20 October 2023 supplementing the CRR of the European Parliament and of the Council with regard to regulatory technical standards on the calculation of the stress scenario risk measure](#)

8 HM TREASURY

- 8.1 **The Securitisation Regulations 2024 - 30 January 2024** - HM Treasury has published the Securitisation Regulations 2024 (SI 2024/102) (the Regulations) along with an explanatory memorandum. The Regulations replace the version of the EU Securitisation Regulation (2017/2402/EU) retained in UK law after Brexit and establish a new framework for securitisation within which the FCA and PRA can make rules.

The Regulations will come fully into force alongside new FCA and PRA rules and the commencement of the repeal of retained EU law in relation to securitisation.

[The Securitisation Regulations 2024 \(SI 2024/102\)](#)

[Explanatory memorandum](#)

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SECURITIES AND MARKETS //

9 EUROPEAN SECURITIES AND MARKETS AUTHORITY

- 9.1 **CSDR - ESMA publishes report on cross-border services and passport applications- 31 January 2024** - The European Securities and Markets Authority (ESMA) has published a report on the provision of cross-border services by central securities depositories (CSDs) and the handling of passport applications under Article 23 of the Central Securities Depositories Regulation (909/2014/EU) (CSDR) from 2020 to 2022.

The report finds that there was overall stability in the landscape of EEA CSDs, with a clear dichotomy between international CSDs and other EEA CSDs, and a diversity of the approaches to cross-border integration. The report also identifies regulatory factors and market factors, including connection to TARGET2-Securities (T2S), as main drivers of development of cross-border services. Finally, as compared with 2017-2020, ESMA states that there were fewer passport applications submitted in the period between 2020 and 2022.

[ESMA report: provision of cross-border services by CSDs and handling of applications under Article 23 of CSDR from 2020 to 2022 \(ESMA74-2119945925-1568\)](#)

10 HM TREASURY

- 10.1 **The Public Offers and Admissions to Trading Regulations 2024 - 30 January 2024** - HM Treasury has published the Public Offers and Admissions to Trading Regulations 2024 (SI 2024/105) (the Regulations) along with an explanatory memorandum. The Regulations replace the UK Prospectus

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Regulation (2017/1129) and create a new framework for the offering of securities to the public and the admission of securities to trading in the UK.

This instrument will come fully into force alongside the commencement of the repeal of retained EU law relating to prospectuses.

[The Public Offers and Admissions to Trading Regulations 2024 \(SI 2024/105\)](#)[Explanatory memorandum](#)[Webpage](#)

ASSET MANAGEMENT //

11 UK PARLIAMENT

11.1 Overseas fund regime - House of Commons and House of Lords publish statement on UK equivalence assessment of EEA states - 30 January 2024 - The House of Commons and House of Lords have published an identical statement made in both Houses by Bim Afolami, Economic Secretary to HM Treasury, confirming that the UK Government has found the EEA states, including the EU member states, equivalent under the overseas fund regime (OFR). The statement notes that secondary legislation will be required to enact this decision, when parliamentary time allows. The Government does not intend to require the funds assessed to comply with any additional UK requirements as part of this equivalence determination at this time.

This decision will apply to undertakings for collective investment in transferable securities except those which are also money market funds, as there are ongoing regulatory developments in this area. Separate to the assessment of the EEA, the government intends to consult on whether to broaden the scope of sustainable disclosure requirements (SDR) to include funds recognised under the OFR.

The statement also confirms the UK Government's intention to extend the temporary marketing permission regime, which is currently in place and set to expire at the end of 2025, until the end of 2026 to ensure that funds are able to smoothly transition to the OFR.

[House of Commons Statement](#)[House of Lords Statement](#)

12 HM TREASURY

12.1 The Financial Services Act 2021 (Overseas Funds Regime and Recognition of Parts of Schemes) (Amendment and Modification) Regulations 2024 - 30 January 2024 - HM Treasury has published the Financial Services Act 2021 (Overseas Funds Regime and Recognition of Parts of

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Schemes) (Amendment and Modification) Regulations 2024 (the Regulations) along with an explanatory memorandum. The Regulations support the operationalisation of the new equivalence regime to recognise overseas funds under section 271A of the Financial Services and Markets Act 2000 (FSMA 2000).

More specifically, the Regulations make consequential amendments across the statute book to insert references to section 271A FSMA 2000. They also make modifications to some of these new amendments and existing references to recognised funds where relevant, to ensure that such references account for recognised sub-funds.

The Regulations will come into force on 26 February 2024.

[The Financial Services Act 2021 \(Overseas Funds Regime and Recognition of Parts of Schemes\) \(Amendment and Modification\) Regulations 2024](#)[Explanatory memorandum](#)[Webpage](#)

FINANCIAL CRIME //

13 FINANCIAL CONDUCT AUTHORITY

13.1 Misleading customer communications - FCA publishes Market Watch No. 76 - 30 January 2024

- The FCA has published issue 76 of Market Watch in which it shares observations on 'flying' and 'printing', and how firms can mitigate the risks of misleading the market by their staff engaging in these behaviours. For this purpose:

- 'flying' involves a firm communicating to its clients, or other market participants, via screen, instant message, voice or other method, that it has bids or offers when they are not supported by, or sometimes not even derived from, an order or a trader's actual instruction; and
- 'printing' involves communicating, by one of the above methods, that a trade has been executed at a specified price or size when no such trade has taken place.

The FCA cautions that such activities create a false impression of a financial instrument's liquidity and/or price. As a result, investment decisions of clients and other market participants may be based on misleading information, potentially causing financial harm to those participants as well as undermining the integrity of, and confidence in, the market. Such behaviour may breach Article 12.1.a(i) of the retained UK law version of the Market Abuse Regulation (596/2014/EU) and/or sections 89 and 90 of the Financial Services Act 2012, as well as sections of the FCA's Handbook.

To mitigate these risks, the FCA recommends a number of measures firms can take, including ensuring compliance manuals prohibit flying and printing, providing appropriate training, and

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ensuring that annual attestations of compliance are obtained. The FCA reiterates its commitment to intervention where such practices are suspected.

[Market Watch No. 76](#)

ENFORCEMENT //

14 BANK OF ENGLAND AND PRUDENTIAL REGULATION AUTHORITY

14.1 Approach to enforcement - Bank of England and PRA publish Policy Statement (PS1/24) - 30 January 2024 - The Bank of England (the Bank) and the PRA have published a Policy Statement (PS1/24) on their approach to enforcement, following consultation on their proposed approach between May and August 2023 (CP9/23).

Respondents to CP9/23 generally welcomed the Bank and PRA's proposals to enhance clarity, transparency, and accessibility of its enforcement policies. In light of the comments received, the Bank has made several changes to its enforcement approach, including clarifying the application of the Early Account Scheme and Enhanced Settlement Discount, and clarifying the scope of the senior management attestation which will need to supplement any early account provided by a firm or financial market infrastructure (FMI).

The Bank further explains that, despite respondent concerns, there is unlikely to be a material uplift in penalties despite changes to the methodology for the calculation of PRA firm penalties, although the Bank cannot rule out that the size of the financial penalty may increase for certain firms.

The Policy Statement generally took effect on 30 January 2024. However, sections 69(8) and 210(7) of the Financial Services and Markets Act 2000 and section 198(4) of the Banking Act 2009 require the Bank to have regard to the policies on imposing penalties, restrictions or suspensions and the amount of such penalties or the period of such restrictions or suspensions in force at the time the misconduct, contravention or failure (collectively referred to as 'breach') occurred. As such, where a breach begins before 30 January 2024 and continues after that date, two different regimes will apply. The penalty, suspension and restriction regime in place before 30 January 2024 will apply to conduct before that date, and the new penalty, suspension and restriction regime will apply to conduct from that date onwards.

[Bank of England and PRA Policy Statement: The Bank of England's approach to enforcement \(PS1/24\)](#)

15 PRUDENTIAL REGULATION AUTHORITY

15.1 Failures in deposit protection identification and notification - PRA publishes final notice and imposes financial penalty on HSBC Bank PLC and HSBC UK Bank PLC - 30 January 2024 - The PRA has published a final notice (dated 29 January 2024) issued to HSBC Bank PLC (HBEU) and HSBC UK Bank PLC (HBUK) (together the Firms), fining them £57,417,500 for historic depositor

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protection failings arising from the Firms' failures over many years to properly implement the requirements set out in the Depositor Protection Part of the PRA Rulebook (the DP Rules).

The PRA has found that, between 2015 and 2022 for HBEU and 2018 and 2021 for HBUK, the Firms' implementation of the DP Rules failed on a number of fronts, including:

- the Firms inaccurately identifying deposits as ineligible for Financial Services Compensation Scheme (FSCS) protection (with HBEU incorrectly classifying 99% of eligible deposits by value as ineligible);
- the Firms' failure to produce finalised versions of annual reports required to be signed by their board of directors that confirmed compliance with the requirements of the DP Rules; and
- the Firms' failure to ensure that a senior manager, under the Senior Managers and Certification Regime (SMCR), was allocated responsibility for these processes and the integrity of the information required under the DP Rules.

HBEU also failed to be duly open and cooperative with the PRA in not alerting the PRA over an approximately 15-month period about problems identified in the incorrect marking of accounts as eligible for FSCS protection.

These failings meant that the Firms breached PRA Fundamental Rules 2 and 6, as well as DP Rules 11, 12 and 14. HBEU was also found to have breached DP Rule 50, and Fundamental Rules 7 and 8. Significantly, this is the first PRA enforcement action in relation to Fundamental Rule 8, which states that firm must prepare for resolution so, if the need arises, it can be resolved in an orderly manner with a minimum disruption of critical services.

The financial penalty was reduced by 45% owing to the firms' cooperation with the investigation and agreement to resolve the matter. This is the second-highest fine the PRA have imposed to date.

For more information on what happened, as well as what lessons can be learned by banks, see [our client briefing](#).

[PRA Final Notice: HSBC Bank PLC and HSBC UK Bank PLC](#)**[Press release](#)**

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This Bulletin is prepared by the Financial Regulation Group of Slaughter and May in London. The Group comprises a team of lawyers with expertise and experience across all sectors in which financial institutions operate.

We advise on regulatory issues affecting firms across the financial services sector, including banks, investment firms, insurers and reinsurers, brokers, asset managers and funds, non-bank lenders, payment service providers, e-money issuers, exchanges and clearing systems. We also advise non-regulated businesses involved in financial regulatory matters. In addition, our leading financial regulatory investigations practice is regularly instructed by financial institutions requiring specialist knowledge of financial services regulation together with experience in high profile and complex investigations and contentious regulatory matters.

Most of the projects that we advise on have an extensive international or cross-border element. We work in seamless integrated teams with leading independent law firms which offer many of the most highly regarded financial institutions lawyers in Europe, the US and Asia, as well as strong and constructive relationships with local regulators.

Our Financial Regulation Group also produces occasional briefing papers and other client publications. The five most recent issues of this Bulletin and our most recent briefing papers and client publications appear on the Slaughter and May website [here](#).

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