

# 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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If you have any  
comments or  
questions, please  
contact:  
[Selmin Hakki](#).

Slaughter and May  
also produces a  
periodical Insurance  
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would like to go on  
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[Beth Dobson](#).

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### General

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## Financial Crime

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## GENERAL //

### 1 COUNCIL OF THE EUROPEAN UNION

- 1.1 EU sustainability reporting standards - Council of the European Union and European Parliament reach provisional agreement on proposal to delay reporting for certain sectors and third-country companies by two years - 7 February 2024** - The Council of the European Union (the Council) and the European Parliament (the Parliament) have announced that they have reached provisional agreement on a proposed directive which delays the adoption of the European sustainability reporting standards (ESRS) for certain sectors and for certain third-country undertakings by two years, until 30 June 2026.

[Press release](#)

- 1.2 Proposed Regulation on ESG rating activities - Final compromise text published by Council of EU - 14 February 2024** - The Council of the European Union (the Council) has published the final compromise text of the proposed Regulation on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities (2023/0177(COD)). The final compromise text reflects the political agreement that was reached between the Council and the Parliament earlier in February 2024.

The provisional political agreement is subject to approval by the Council and the Parliament before going through the formal adoption procedure. The regulation will apply from the date falling 18 months after its entry into force.

**[Final compromise text: Regulation of the European Regulation and the Council on the transparency and integrity of ESG rating activities, and amending Regulation \(EU\) 2019/2088 \(2023/0177\(COD\)\)](#)**

[Updated press release](#)

### 2 FINANCIAL CONDUCT AUTHORITY

- 2.1 Claims management companies carrying out unregulated claims - FCA publishes findings from multi-firm review - 15 February 2024** - The FCA has published the findings from its multi-firm review of 26 claims management companies (CMCs) carrying out unregulated claims activity to assess whether these firms use their FCA authorisation to legitimise unregulated services.

The FCA explains its concerns that consumers may mistakenly assume that all the services CMCs offer fall within FCA regulation, thereby misleading them about the level of protection they have and giving unregulated activities extra credibility. The FCA found that some of its sample firms:

- undertook very little, or no regulated claims management activity;
- had inadequate systems and controls in place to differentiate between regulated and unregulated claims activity; and

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- charged significantly higher fees for unregulated claims activity.

The FCA reminds CMCs of its expectations, urging CMCs to keep in mind “*the spirit of the Consumer Duty*” where fees for unregulated claims exceed those charged for the regulated claims services.

[FCA: Key findings of multi-firm work on Claims Management Companies carrying out unregulated claims](#)

## BANKING AND FINANCE //

### 3 EUROPEAN PARLIAMENT

3.1 **PSD3 and PSR - ECON votes to adopt draft reports - 14 February 2024** - The European Parliament’s Economic and Monetary Affairs Committee (ECON) has published a press release announcing that it has voted to adopt draft reports on the European Commission’s legislative proposals for:

- a directive on payment services and electronic money services in the internal market (2023/0209 (COD)) (PSD3) amending the Payment Services Directive ((EU) 2015/2366) (PSD2), with proposed amendments relating to access to cash, the ability of new types of payment services to enter the EU payment service sector and the authorisation process for undertakings intending to provide payment services or electronic money services; and
- a regulation on payment services in the internal market (2023/0210(COD)) (Payment Services Regulation) (PSR), proposed amendments to which enhance the security of transfers, the security of personal data and disclosures concerning charges prior to the initiation of a payment transaction.

ECON states that the Parliament is expected to vote on both texts during its first plenary session in April 2024.

[Press release](#)

### 4 LENDING STANDARDS BOARD

4.1 **Standards of Lending Practice - LSB publishes response to review - 13 February 2024** - The Lending Standards Board (LSB) has published its response to its review, launched in June 2023, of the Standards of Lending Practice for business customers (the Standards). The review’s findings indicate that the existing framework and content of the Standards continues to set appropriate levels of protections for business customers. Accordingly, no substantive changes to the current requirements were identified.

[LSB consultation response: Review of the Standards of Lending Practice for business customers](#)

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## SECURITIES AND MARKETS //

### 5 COMMITTEE ON PAYMENTS AND MARKET INFRASTRUCTURES AND INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS

- 5.1 **Streamlining variation margin in centrally cleared markets - CPMI and IOSCO publish report outlining examples of effective practices - 13 February 2024** - The Bank for International Settlements' Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) have published a report presenting eight examples of effective practices for central counterparties (CCPs) and clearing members regarding variation margin (VM) processes and transparency. These are intended to help CCPs as they design their VM call and collection processes in line with the Principles for Financial Market Infrastructures (PFMI) and the CPMI's and IOSCO's July 2017 guidance on the resilience of CCPs.

The CPMI and IOSCO welcome feedback on the report until 14 April 2024.

[CPMI and IOSCO report: Streamlining variation margin in centrally cleared markets - examples of effective practices \(FR03/2024\)](#)

### 6 COUNCIL OF THE EUROPEAN UNION

- 6.1 **EMIR 3 - Final compromise texts published by Council of EU - 14 February 2024** - The Council has published the final compromise texts for the proposals on:

- a Regulation amending the European Market Infrastructure Regulation (648/2012/EU) on measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of EU clearing markets (referred to as EMIR 3) (2022/0403(COD)); and
- a Directive amending various directives as regards the treatment of concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions (2022/0404(COD)).

The final compromise texts reflect the political agreement that was reached between the Council and the Parliament earlier in February 2024.

The provisional political agreement is subject to approval by the Council and the Parliament before going through the formal adoption procedure and entering into force.

[Final compromise text: Regulation of the European Parliament and of the Council amending Regulations \(EU\) No 648/2012, \(EU\) No 575/2013 and \(EU\) 2017/1131 as regards measures to mitigate excessive exposures to third-country central counterparties and improve the efficiency of Union clearing markets \(2022/0403\(COD\)\)](#)

[Final compromise text: Directive of the European Parliament and of the Council amending Directives 2009/65/EU, 2013/36/EU and \(EU\) 2019/2034 as regards the treatment of](#)

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[concentration risk towards central counterparties and the counterparty risk on centrally cleared derivative transactions \(2022/0404\(COD\)\)](#)

[Updated press release](#)

## 7 EUROPEAN SECURITIES AND MARKETS AUTHORITY

7.1 **CCP Recovery and Resolution Regulation - ESMA publishes official translations of guidelines - 9 February 2024** - The European Securities and Markets Authority (ESMA) has published official translations of its guidelines on:

- the key elements of the summary of the resolution plan to be disclosed by resolution authorities to central counterparties (CCPs) which are subject to resolution planning pursuant to the Regulation on the recovery and resolution of central counterparties ((EU) 2021/23) (the CCP Recovery and Resolution Regulation or CCPRRR); and
- the assessment of resolvability of CCPs under CCPRRR.

Both sets of guidelines will apply from 9 April 2024. National competent authorities must notify ESMA whether they comply (or intend to comply) with the guidelines by this date.

[ESMA Guidelines on the summary of resolution plans \(ESMA91-372-2345\)](#)

[ESMA Guidelines on the assessment of resolvability \(Article 15\(5\) of CCPRRR\) \(ESMA91-372-2346\)](#)

## ASSET MANAGEMENT //

### 8 FINANCIAL CONDUCT AUTHORITY

8.1 **Ongoing advice services and the Consumer Duty - FCA requests information - 15 February 2024** - The FCA has announced that it has written to around 20 of the largest financial adviser firms that it regulates, requesting information about their delivery of ongoing services, for which their clients continue to be charged after advice has been given. The FCA is collecting this information to assess what, if any, further regulatory work it may undertake in this area, and notes its concern that advice firms are not adequately considering the relevance, nature and costs of these ongoing services for all their clients.

In its survey, the FCA asks if firms have assessed their ongoing services in response to the introduction of the Consumer Duty, and whether they have made any changes as a result. It also asks for data on the number of clients due a review of the ongoing suitability of the advice as part of the service, how many received that review, and how many paid for ongoing advice but whose fee was refunded as the suitability review did not happen.

[Press release](#)

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## INSURANCE //

### 9 FINANCIAL CONDUCT AUTHORITY

- 9.1 **GAP insurance and fair value to customers - FCA announces suspension in sales - 9 February 2024** - The FCA has announced that multiple insurance firms have agreed to suspend the sale of guaranteed asset protection (GAP) insurance products, which are typically sold alongside car finance and cover the difference between a vehicle's purchase price or outstanding finance and its current market value, in the event it is written off before finance has been repaid.

This action follows findings in the FCA's latest fair value measures data, which shows that only 6% of the amount customers pay in premiums for GAP insurance is paid out in claims. The FCA has seen examples of some firms paying out 70% of the value of insurance premiums in commission to parties involved in selling GAP policies.

The FCA is concerned that the product is failing to provide fair value to some consumers, and has identified concerns with the design of GAP insurance across all distribution channels and is requiring firms to make changes. The FCA will consider firms' proposals for different distribution channels, and recognises that in some channels it may be able to address these concerns more quickly.

The firms which have agreed to this action account for 80% of the GAP market, and the FCA will carry out a second wave of engagement with the rest of the GAP market to improve the value of the product across all firms. These firms have agreed not to use new distributors of GAP in the interim.

[Press release](#)

## FINANCIAL CRIME //

### 10 COUNCIL OF THE EUROPEAN UNION

- 10.1 **AML Regulation and MLD6 - Final compromise texts published by Council of EU - 14 February 2024** - The Council of the European Union (the Council) has published the final compromise texts for the proposals for:

- a Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AML Regulation) (2021/0239(COD)); and
- a Directive on the mechanisms to be put in place by the member states for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849 (Sixth Money Laundering Directive or MLD6) (2021/0250(COD)).

The final compromise texts reflect the political agreement that was reached between the Council and the Parliament in January 2024. The Council notes that it is yet to publish the text of

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the proposed Regulation which will establish the Anti-Money Laundering Authority (2021/0240(COD)) and forms part of the same legislative package.

The texts will now be finalised and presented to member states' representatives in the Committee of Permanent Representatives and the Parliament for approval. If approved, the Council and the Parliament will have to formally adopt the texts before they are published in the EU's Official Journal and enter into force.

[Final compromise text: AML Regulation \(2021/0239\(COD\)\)](#)

[Final compromise text: MLD6 \(2021/0250\(COD\)\)](#)

[Updated press release](#)

## 11 HOME OFFICE

### 11.1 SARs regime - Home Office publishes response to Law Commission review - 12 February 2024 -

The Home Office has published its response to the Law Commission's review of the suspicious activity reports (SARs) regime, which was originally commissioned by the Home Office in 2017. The review covered limited aspects of the anti-money laundering regime in Part 7 of the Proceeds of Crime Act 2002 (POCA) and the counter-terrorism financing regime in Part 3 of the Terrorism Act 2000. The review considered whether there is scope, within the existing legislative framework, for reform of the system of voluntary disclosures known as the consent regime.

The Law Commission published its report in 2019 and made 19 legislative and non-legislative recommendations covering: exemptions from the substantive money laundering offence; the use of suspicion as threshold for information sharing; statutory guidance; and data exploitation. The Home Office confirms it accepts or partially accepts 13 of these recommendations.

Notably, a recommendation to amend POCA to impose an obligation on the Secretary of State to issue guidance covering the operation of Part 7 of POCA so far as it relates to businesses in the regulated sector (as defined in POCA and which includes credit institutions and those providing investment services) was rejected on the basis that such guidance was neither "*desirable, or necessary*".

[Policy paper: Response to Law Commission review of the SARs regime](#)

[Webpage](#)

## 12 HM TREASURY AND OFFICE OF FINANCIAL SANCTIONS IMPLEMENTATION

### 12.1 Ransomware and sanctions - HM Treasury and OFSI publish guidance - 14 February 2024 -

HM Treasury and the Office of Financial Sanctions Implementation (OFSI) have published guidance on ransomware and financial sanctions against a backdrop where ransomware has evolved into a serious cybercrime threat to the UK.



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The guidance makes it clear that the UK government does not condone making ransomware payments and promotes the strengthening of cyber resilience measures (in particular, those advised by the National Cyber Security Centre, which are flagged in the guidance) to prevent and mitigate the effects of ransomware attacks. The guidance further outlines the relationship between ransomware payments and financial sanctions, and how individuals and entities can mitigate the risks of a financial sanctions breach.

[HM Treasury and OFSI: Guidance on Ransomware and Financial Sanctions](#)**13 FINANCIAL CONDUCT AUTHORITY**

- 13.1 Trading by organised crime groups - FCA publishes Market Watch No. 77 - 14 February 2024** - The FCA has published issue 77 of Market Watch, in which it shares observations on trading by organised crime groups (OCGs), as defined under section 45(6) of the Serious Crime Act 2015, and how firms can mitigate the risks they pose.

The FCA outlines behaviours that are characteristic of the activity of OCGs in equity spread bets and contracts for differences, such as a pattern of trading before merger and acquisition (M&A) announcements, and pro-active recruitment of sources of inside information. It further outlines a number of measures firms can take to mitigate the risks of being used to facilitate OCG trading, including considering whether it is appropriate to reference the names of staff engaged in M&A advisory work in the firm's own social media profiles, beyond its principal senior contacts. The FCA concludes by noting that it will not hesitate to use the tools at its disposal, including requiring section 166 skilled persons reports under the Financial Services and Markets Act 2000, where it sees poor compliance.

[Market Watch No. 77](#)**ENFORCEMENT //****14 FINANCIAL CONDUCT AUTHORITY**

- 14.1 Signing off misleading financial promotions - FCA fines and bans LC&F director - 13 February 2024** - The FCA has published a Final Notice and issued a fine of £31,800 to Floris Jakobus Huisamen, a former director of London Capital and Finance plc (LC&F), for recklessly signing off misleading financial promotions while he was responsible for compliance at LC&F and held the Compliance Oversight controlled function (CF10). The FCA has also banned Mr Huisamen from working in financial services.

The financial promotions in question, signed off by Mr Huisamen between February 2017 and December 2018, presented a misleading picture of the minibonds marketed by LC&F, making them appear a far more attractive investment than they were despite Mr Huisamen's concerns about LC&F's strategy. Mr Huisamen failed to provide proper scrutiny or sufficiently challenge senior management. In particular, he failed to obtain evidence of the accuracy of the claims being made. Therese Chambers, Joint Executive Director of Enforcement and Market Oversight at

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the FCA, noted that under Mr Huisamen “*the approval process became an ineffective tick-box exercise*”.

Mr Huisamen agreed to resolve this matter and qualified for a 30% discount under the FCA’s executive settlement procedures. Were it not for the discount, the FCA would have imposed a financial penalty of £45,000. The Final Notice follows the censure of LC&F in October 2023, as previously reported in this Bulletin.

**Final Notice: Floris Jakobus Huisamen****Press release**

**14.2 Misleading advertisements and financial promotions - FCA publishes Q4 2023 data alongside 2023 data analysis - 14 February 2024** - The FCA has published its financial promotions quarterly data for Q4 2023, alongside a webpage analysing financial promotions data between 1 January 2023 and 31 December 2023. In both cases, this data was generated from action taken by the FCA against authorised firms breaching its financial promotions rules, and referrals and investigations into unregulated activity.

The FCA reports that it continued to increase its intervention activity in response to poor compliance practices concerning financial promotions in 2023, but remains concerned about the levels of compliance with the financial promotions rules. The FCA states that:

- for authorised firms, the FCA had 10,008 promotions amended or withdrawn in 2023, an increase of 16.6% compared to 2022; and
- for unauthorised firms and individuals, the FCA issued 2,285 alerts in 2023, an increase of 21% from 2022.

Of particular note, the FCA outlines how the Consumer Duty (which came into force for new and existing products and services that were open for sale or renewal on 31 July 2023) shifted its expectations in this area, and the Q4 2023 data flushes out the impact of the FCA’s financial promotions rules for cryptoassets going live on 8 October 2023. The cost of living crisis, and in particular an increase in the use of TikTok and sponsored advertising to attract vulnerable customers to engage in discussions on managing debt, presented another significant development influencing the FCA’s workstream in this area.

**FCA webpage: Financial promotions data 2023****FCA webpage: Financial promotions quarterly data 2023 Q4****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](#).

If you would like to find out more about our Financial Regulation Group or require advice on a financial regulation matter, please contact one of the following or your usual Slaughter and May contact:

Jan Putnis	<a href="mailto:jan.putnis@slaughterandmay.com">jan.putnis@slaughterandmay.com</a>
Nick Bonsall	<a href="mailto:nick.bonsall@slaughterandmay.com">nick.bonsall@slaughterandmay.com</a>
David Shone	<a href="mailto:david.shone@slaughterandmay.com">david.shone@slaughterandmay.com</a>
Kristina Locmele	<a href="mailto:kristina.locmele@slaughterandmay.com">kristina.locmele@slaughterandmay.com</a>
Tim Fosh	<a href="mailto:timothy.fosh@slaughterandmay.com">timothy.fosh@slaughterandmay.com</a>
Sabine Dittrich	<a href="mailto:sabine.dittrich@slaughterandmay.com">sabine.dittrich@slaughterandmay.com</a>

London  
T +44 (0)20 7600 1200  
F +44 (0)20 7090 5000

Brussels  
T +32 (0)2 737 94 00  
F +32 (0)2 737 94 01

Hong Kong  
T +852 2521 0551  
F +852 2845 2125

Beijing  
T +86 10 5965 0600  
F +86 10 5965 0650

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