SLAUGHTER AND MAY/

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FINANCIAL REGULATION WEEKLY BULLETIN

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

QUICK LINKS

If you have any comments or questions, please contact: 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.

SELECTED HEADLINES //

GENERAL //

1 FINANCIAL STABILITY BOARD

1.1 **2025 work programme published by the FSB** – *23 January 2025* – The Financial Stability Board (FSB) has published its work programme for 2025, setting out its key priorities and areas of focus for the next 12 months. Among other things, significant areas of work for 2025 include enhancing the resilience of non-bank financial intermediation, harnessing the benefits of digital innovation and addressing financial risks from climate change.

The annex to the work programme provides an indicative timeline for FSB publications planned throughout 2025 to the start of 2026.

FSB Work Programme for 2025

2 EUROPEAN SECURITIES AND MARKETS AUTHORITY

2.1 **Non-MiCA compliant ARTs and EMTs - ESMA publishes public statement** – *17 January 2025* – The European Securities and Markets Authority (ESMA) has published a public statement on its position relating to non-compliant asset-referenced tokens (ARTs) and electronic money tokens (EMTs) (stablecoins) under the Regulation on markets in cryptoassets ((EU) 2023/1114) (MiCA).

The statement sets out that ESMA expects cryptoasset service providers (CASPs) to prioritise restricting existing services that facilitate the acquisition of non-MiCA compliant ARTs and EMTs; and more generally, to avoid offering new products and services involving non-MiCA compliant ARTs and EMTs. However, to allow EU investors to liquidate or convert their positions in non-MiCA compliant ARTs and EMTs, concerned CASPs may maintain cryptoasset services for these products on a “sell only” basis until the end of Q1 2025.

ESMA public statement: on the provision of certain crypto-asset services in relation to non-MiCA compliant ARTs and EMTs (ESMA75-223375936-6099)

3 EUROPEAN SUPERVISORY AUTHORITIES

3.1 **DORA - ESAs publish joint report on feasibility of further centralisation of major ICT-related incident reporting** – *17 January 2024* – The European Supervisory Authorities (comprising the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority) (ESAs) have published a joint report on the feasibility of further centralisation in the reporting of major ICT-related incidents by financial entities in accordance with Article 21 of the Regulation on digital operational resilience for the financial sector ((EU) 2022/2554) (DORA). The ESAs have submitted the report, which assesses the feasibility of three different models with increasing levels of centralisation, to the European Parliament, the European Council and the European Commission for consideration.

Joint ESAs Report on the feasibility or further centralisation of reporting of major ICT-related incidents (JC 2024 108)

4 PRUDENTIAL REGULATION AUTHORITY AND FINANCIAL CONDUCT AUTHORITY

4.1 **Call for UK regulators to support growth - PRA and FCA publish letters responding to UK government** – *20 January 2025* – The PRA and the FCA have published separate letters (dated 15 and 16 January 2025 respectively) addressed to the UK government in response to the government's letter of 24 December 2024 calling on the UK's main regulators to boost economic growth.

The PRA supports the government's growth mission and outlines the actions it has taken, and intends to take, to advance competitiveness and growth. Specifically, the PRA identifies three channels guiding its efforts in this area: the allocation of capital in the UK economy; how well UK banks and insurers are equipped to compete; and how attractive the UK is as a location for foreign banks and insurers. Future PRA actions of interest include: plans to consult on establishing a 'Matching Adjustment Investment Accelerator' this year, with the aim of reducing barriers to investment by insurance firms; exploring a proposal for a 'concierge' service to help foreign firms navigate the UK regulatory environment; and potentially rationalising the number of principles that the PRA is required to 'have regard' to when making or amending a rule (the number currently stands at around 25).

The FCA, meanwhile, welcomes the government's recommendations, stating that "*we want to collaborate with you in a fundamentally different way to support the growth mission. To achieve the deep reforms necessary, your acceptance that we will take greater risks and rigorously prioritise resources is crucial*". Emphasising that growth will be the cornerstone of its strategy through to 2030, the letter sets out the work the FCA will undertake in 2025, alongside new longer-term proposals.

These proposals, detailed in the letter with the aim of testing them with the government, include accelerating a review of capital requirements for specialised trading firms to improve liquidity; removing the £100 contactless limit; removing the need for a Consumer Duty Board champion now the Consumer Duty is in effect; simplifying responsible lending and advice rules for mortgages; and relaxing know your customer requirements on small transactions. The FCA is also considering reforms to the redress framework as part of its aim to prevent further significant FCA-led consumer redress exercises.

PRA letter to the UK government

FCA letter to UK government

Selected Headlines
General
Banking and Finance
Financial Crime

BANKING AND FINANCE //

5 EUROPEAN BANKING AUTHORITY

5.1 **2025 stress test - EBA launches EU-wide stress test** – *20 January 2025* – The European Banking Authority (EBA) has published a press release announcing the launch of its 2025 EU-wide stress test, assessing the performance of EU banks in both a baseline and adverse scenario over a three-year period (2025-2027). The stress test will be conducted on a sample of 64 banks, and the EBA expects to publish the results of this exercise at the beginning of August 2025.

Press release

5.2 **CRD IV - EBA publishes opinion on interplay between output floor and Pillar 2 requirements** – *21 January 2025* – The European Banking Authority (EBA) has published an opinion on the interaction between the output floor and Pillar 2 requirements (P2R) under the Capital Requirements Directive (2013/26/EU) (CRD IV). The opinion describes how P2R are to be calculated temporarily based on the unfloored, instead of floored, total risk exposure amount (TREA) when an institution first becomes subject to the output floor, by applying the P2R percentage previously communicated following the last supervisory review and evaluation process (SREP) cycle. Further, the EBA expects competent authorities only to consider offsets in relation to “regulatory model deficiencies” when reviewing double counting risks regarding P2R add-ons. The opinion will be considered in the upcoming review of the EBA guidelines on the SREP.

EBA opinion on interaction between Pillar 2 requirements and the output floor (EBA/Op/2025/01)

Press release

6 PRUDENTIAL REGULATION AUTHORITY

6.1 **UK implementation of Basel 3.1 - PRA announces further delay** – *17 January 2025* – The PRA, in consultation with HM Treasury, has announced a further delay to the implementation of the Basel 3.1 standards in the UK to 1 January 2027. This further delay is due to uncertainty regarding the timing of the implementation of Basel 3.1 in the US and takes into account competitiveness and growth considerations. The transitional periods will be adjusted to ensure that the full implementation date remains 1 January 2030.

In light of the delay to implementation, the PRA is also pausing its firm data collection exercise (intended to inform an off-cycle review of firm-specific Pillar 2 capital requirements), the deadline for which had been 31 March 2025. The end-date of the window for joining the Interim Capital Regime (previously set at 28 February 2025) will also be pushed back, with the PRA providing further information in due course.

Press release

6.2 **2025 supervisory priorities - PRA publishes letters to UK deposit takers and international banks** – *21 January 2025* – The PRA has published two letters addressed to the Chief Executive Officers of PRA-regulated deposit takers and international banks respectively, communicating its 2025 supervisory priorities. The thematic priorities covered in both letters include risk management, governance and control frameworks, data risk, operational resilience and the delayed Basel 3.1 implementation. The letters, in conjunction with firms' feedback from the most recent periodic summary meetings, are intended to convey a sense of the PRA's planned work for 2025.

Letter: UK deposit takers supervision

Letter: International banks supervision

7 FINANCIAL CONDUCT AUTHORITY

7.1 **Motor finance commission - FCA publishes letter in response to Financial Services Regulation Committee** – *17 January 2025* – The FCA has published a letter (dated 17 January 2025) addressed to the House of Lords Financial Services Regulation Committee, in response to questions raised in the Committee's letter of 20 December 2024 on the Court of Appeal judgment on motor finance commissions (*Johnson v FirstRand Bank Ltd (London Branch) (t/a MotoNovo Finance)* [2024] EWCA Civ 1282).

In the letter, the FCA outlines its relevant rules and principles concerning discretionary and fixed commissions as found in the Consumer Credit sourcebook (CONC), its Principles for Businesses and the Consumer Credit Act 1974. The FCA also notes that it did not seek legal advice on the issue of the relevance of disinterested or fiduciary duties before making (and amending) the rules providing for commission disclosure and the discretionary commission arrangements ban. The FCA emphasised that had a case like the Court of Appeal's decision existed at the time, it would have considered it carefully.

The FCA further states that it will consider whether any intervention is required, including a review into its rules, once the Supreme Court has given its judgment in the case.

Letter

7.2 **Supreme Court motor finance appeals - FCA publishes proposed summary grounds for intervention** – *20 January 2025* – The FCA has published its proposed summary grounds for intervention (dated 17 January 2025) in support of its application to intervene in the Court of Appeal's decision in *Johnson v FirstRand Bank Ltd (London Branch) (t/a MotoNovo Finance)* [2024] EWCA Civ 1282. In its grounds, the FCA submits that it is likely to be able to provide assistance to the court, in particular on: (i) the proper approach to the interpretation of its rules and related legislation; (ii) the interaction between private law remedies and the regulatory framework; and (iii) the broader context of the motor finance and related consumer markets.

The FCA seeks permission to intervene in writing and orally for up to one hour in the three-day hearing, and has asked the court to rule on intervention applications as soon as possible.

Separately, in a submission to the Supreme Court, HM Treasury is also seeking permission to intervene, as was widely reported in the press.

Application notice

8 FINANCIAL CONDUCT AUTHORITY AND PAYMENT SYSTEMS REGULATOR

8.1 **Open banking - FCA and PSR publish statement setting out next steps** – *23 January 2025* – The FCA and PSR have published a statement announcing their plans for open banking. In light of the National Payments Vision, published in November 2024, and the government's growth agenda, the pair emphasise their commitment to driving the success of open banking. To advance this, Open Bank Limited will play a key role in establishing an independent central operator to coordinate how variable recurring payments are made. Significant progress is expected to be made on this agenda in 2025, which will see live services available for consumers to make recurring payments to utility companies, government and financial services firms.

Press release

FINANCIAL CRIME //

9 FINANCIAL CONDUCT AUTHORITY

9.1 **Money muling - FCA publishes review findings** – *23 January 2025* – The FCA has published the findings of its review of payment services and account providers' use of the national fraud database (NFD) and an account detection tool to prevent 'money muling' activities. Money muling is a money laundering technique where an individual - a 'money mule' - moves the proceeds of crime on behalf of criminals, in some cases unwittingly.

Among other things, the FCA found that the proportion of identified money mules being reported to the NFD varies considerably. There were some cases of firms deciding against submitting a customer's details to the NFD, despite identifying them as a money mule, and the FCA disagreed with the firm's decision in nearly a third of these cases. The FCA acknowledged, however, the challenges firms face in meeting the standard of proof for filing cases with the NFD. These include delayed (or no) responses to information requests to other firms regarding the origin of funds and difficulty in demonstrating conclusively whether the customer willingly participated in money mule activities.

The FCA has shared its findings with Cifas, a not-for-profit fraud prevention service, and expects all other payment services and account providers to consider their own systems and controls in light of the findings.

Webpage

9.2 **Money laundering through the markets - FCA publishes report updating its analysis** – *23 January 2025* – The FCA has published a report updating its analysis on money laundering through the markets (MLTM) risk. The report follows the FCA's 2019 thematic review on money laundering risks in the capital markets (TR19/4) and focuses on wholesale broker firms because of the important role they play in capital markets in facilitating deals. The findings in the report should, however, be considered across wider markets and by other types of firms.

The FCA found that, while good progress had been made since 2019, there are areas where firms need to improve to better protect against money laundering. Issues identified by the FCA include an underestimation of the money laundering risks that firms are exposed to, over-reliance on others in the transaction chain completing the appropriate due diligence checks on customers, and limited information sharing between firms.

Steve Smart, joint executive director of enforcement and market oversight at the FCA, said "*for the UK financial services industry to grow, investors and institutions need to have trust in it. Integrity is vital for that, and firms play a key role in helping to detect criminal activity.*" The FCA states that firms need to continue to review their systems, controls, MLTM awareness and training. The FCA will also encourage firms and third-party providers to innovate more and to tailor transaction monitoring systems and alerts to capital markets.

FCA report: Assessing and reducing the risk of money laundering through the markets (MLTM)

Press release

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	jan.putnis@slaughterandmay.com
Nick Bonsall	nick.bonsall@slaughterandmay.com
David Shone	david.shone@slaughterandmay.com
Kristina Locmele	kristina.locmele@slaughterandmay.com
Sabine Dittrich	sabine.dittrich@slaughterandmay.com

London	Brussels	Hong Kong	Beijing
T +44 (0)20 7600 1200	T +32 (0)2 737 94 00	T +852 2521 0551	T +86 10 5965 0600
F +44 (0)20 7090 5000	F +32 (0)2 737 94 01	F +852 2845 2125	F +86 10 5965 0650

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For further information, please speak to your usual Slaughter and May contact.

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