

# 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 Newsletter. If you would like to go on the distribution list, please contact: [Beth Dobson](#).

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## GENERAL //

### 1 FINANCIAL STABILITY BOARD

- 1.1 **Implications of AI on financial stability - FSB publishes report - 14 November 2024** - The Financial Stability Board (FSB) has published a report assessing the implications the adoption of AI may have on financial stability. The FSB observed that financial authorities face two critical challenges for effective surveillance of vulnerabilities: the speed of AI change and the lack of data on AI usage in the financial sector. The FSB concludes that, whilst existing financial policy frameworks address many of the vulnerabilities associated with AI adoption, additional work may be needed to ensure these frameworks are sufficiently comprehensive.

[FSB: The Financial Stability Implications of Artificial Intelligence](#)

### 2 COUNCIL OF THE EUROPEAN UNION

- 2.1 **Proposed Regulation on ESG rating activities - Council of the EU publishes text - 8 November 2024** - The Council of the EU has published the text of a proposed Regulation on the transparency and integrity of Environmental, Social and Governance rating activities (2023/0177(COD)) (the Regulation). The Regulation requires adoption by the Council of the EU before publication in the Official Journal of the EU and will enter into force on the 20<sup>th</sup> day following its publication. The Regulation will begin to apply 18 months following its entry into force.

[Regulation on the transparency and integrity of ESG rating activities, and amending Regulations \(EU\) 2019/2088 and \(EU\) 2023/2859 \(2023/0177\(COD\)\)](#)

### 3 UK PARLIAMENT

- 3.1 **Draft Financial Services and Markets Act 2000 (Designated Activities) (Supervision and Enforcement) Regulations 2024 published - 11 November 2024** - A draft version of the Financial Services and Markets Act 2000 (Designated Activities) (Supervision and Enforcement) Regulations 2024 has been published, along with an explanatory memorandum.

The draft Regulations extend some of the FCA's existing supervision and enforcement powers under the Financial Services and Markets Act 2000 to designated activities under the new designated activities regime (DAR) established by the Financial Services and Markets Act 2023. In the explanatory memorandum, HM Treasury observes that the alternative to this approach would be to create a specific enforcement regime for each designated activity at the expense of supervisory consistency.

In the first instance, the draft Regulations apply this supervision and enforcement framework to the Consumer Composite Investments (Designated Activities) Regulations 2024 and the Short Selling Regulations 2024. If HM Treasury designates further activities in the future, then the intention is that this framework would also be extended to them. The draft Regulations also set

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out the procedures that apply to the giving of directions by the FCA relating to designated activities. The draft Regulations will come into force on the day after the day on which they are made.

[Draft statutory instrument](#)[Explanatory memorandum](#)

## 4 BANK OF ENGLAND, PRUDENTIAL REGULATION AUTHORITY AND FINANCIAL CONDUCT AUTHORITY

- 4.1 **Critical third parties and operational resilience - Bank of England, PRA and FCA publish joint policy statement - 12 November 2024** - The Bank of England, the PRA and the FCA (the Regulators) have published a joint policy statement (PRA PS16/24 and FCA PS24/16) containing final rules on overseeing and strengthening the resilience of services provided by critical third parties (CTPs) to the UK financial sector. The Regulators do not consider that the changes in these final rules, as compared with those previously proposed (PRA CP26/23 and FCA CP23/30), are significant. The changes result in a more proportionate regulatory regime for CTPs; for example, by allowing CTPs to use existing incident management policies rather than developing a bespoke ‘financial sector incident management playbook’ (where those existing policies meet specified outcomes).

The final rules will take effect from 1 January 2025, although the requirements will only apply to CTPs from the date a designation order made by HM Treasury comes into force. In addition, compliance with certain requirements will be subject to a transitional period.

The Regulators have also published a package of associated documents, including: supervisory statements on the rules and on reports by skilled persons; an updated Bank of England statement of policy on its approach to enforcement (where changes have been made on approach to CTPs, as consulted on in light of operational concerns); and a memorandum of understanding setting out how the Regulators will co-ordinate.

[PRA and FCA policy statement: Operational resilience: CTPs to the UK financial sector \(PRA PS16/24 and FCA PS24/16\)](#)

[Bank of England policy statement: The Bank of England’s approach to enforcement: changes to statements of policy and procedure following the Financial Services and Markets Act 2023](#)

[Memorandum of understanding](#)[Press release](#)

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## BEYOND BREXIT //

### 5 UK PARLIAMENT

- 5.1 **The Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2024 published - 14 November 2024** - HM Treasury has laid before Parliament the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2024, amending the Financial Services (Gibraltar) (Amendment) (EU Exit) Regulations 2019 (SI 2019/589) (the Regulations). The amendment extends the temporary arrangements for market access rights for financial services between Gibraltar and the UK by a further 12 months, until 31 December 2025. The Regulations have been repeatedly extended, and the accompanying explanatory memorandum explains that the temporary arrangements can only be extended by 12 months at a time. The amendment will come into force on 16 December 2024.

[The Financial Services \(Gibraltar\) \(Amendment\) \(EU Exit\) Regulations 2024 \(SI 2024/1158\)](#)

[Explanatory memorandum](#)

## BANKING AND FINANCE //

### 6 EUROPEAN CENTRAL BANK

**Options and discretions policies - ECB launches consultation on revisions - 8 November 2024** - The European Central Bank (ECB) has launched a consultation on revisions to its revised policies for 'options and discretions' (O&Ds) available to competent authorities for the prudential supervision of credit institutions. In an accompanying explanatory memorandum, the ECB explains that the revisions largely reflect changes brought in by the third Capital Requirements Regulation ((EU) 2024/1623) (CRR III) and the sixth Capital Requirements Directive ((EU) 2024/1619) (CRD VI). The deadline for responses is 10 January 2025.

[Press release](#)

[Explanatory memorandum](#)

### 7 HM TREASURY

- 7.1 **HM Treasury publishes response to consultation on near-term bank ring-fencing reforms and lays draft statutory instrument - 11 November 2024** - HM Treasury has published a response to its consultation paper, published in September 2023, on near-term reforms to the banking ring-fencing regime. In parallel, the draft Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and Prohibitions) (Amendment) Order 2024 (the draft Order), which provides for amendments to the UK bank ring-fencing regime, has been laid before Parliament.

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The consultation response highlights widespread support for the majority of the proposed reforms. There were, however, a number of policy and legal issues identified by respondents which the government has sought to address, and amendments have been made in relation to (amongst other areas) the proposal to permit ring-fenced banks to make equity investments in UK SMEs.

The draft Order is subject to the ‘affirmative procedure’. As a result, approval will be required from both Houses of Parliament (having first been considered by various Commons and Lords Committees) before the Order is made. The draft Order will come into force on the 22<sup>nd</sup> day after the day on which it is made.

[HM Treasury: A smarter ring-fencing regime: consultation on near-term reforms](#)

[Draft statutory instrument](#)

[Draft explanatory memorandum](#)

## 8 RECENT CASES

- 8.1 *Doug Taylor Class Representative Limited v Motonovo Finance Limited, Firstrand Bank Limited (London Branch), and Aldermore Group PLC* (Case Nos: 1598/7/7/23, 1599/7/7/23, 1600/7/7/23), 8 November 2024

The Competition Appeal Tribunal (CAT) has published an order extending the stay in proceedings granted in the three applications brought by Doug Taylor Class Representative Limited (a special purpose vehicle created to commence these proceedings) under section 47B of the Competition Act 1998 (CA 1998), until 31 July 2025. The proceedings are against a number of motor finance providers (the Defendants), and concern loss and damages resulting from the Defendants’ alleged breaches of the Chapter I prohibition under CA 1998. The proposed class members are consumers who funded their acquisition of used motor vehicles in the period from 1 October 2015 to 27 January 2021 using point-of-sale motor vehicle products pursuant to point-of-sale agreements with one or more of the companies in the Defendants’ corporate group.

[Doug Taylor Class Representative Limited v Motonovo Finance Limited, Firstrand Bank Limited \(London Branch\), and Aldermore Group PLC](#) (Case Nos: 1598/7/7/23, 1599/7/7/23, 1600/7/7/23)

# SECURITIES AND MARKETS //

## 9 COUNCIL OF THE EUROPEAN UNION

- 9.1 **EMIR 3 - Council of the EU publishes text of proposed amending Directive - 8 November 2024 -**  
The Council of the EU has published the text of a proposed Directive (2022/0404(COD)) which amends several Directives in relation to the treatment of concentration risk arising from

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exposures to central counterparties, and the treatment of counterparty risk in centrally cleared derivative transactions. These amendments complement the revisions to EMIR ((EU) 648/2012) set out in the proposed EMIR 3 (2022/0403(COD)).

The proposed Directive requires adoption by the Council of the EU before publication in the Official Journal of the EU, after which it will enter into force on the 20<sup>th</sup> day following its publication. Member states will then have 18 months to implement the changes.

[Directive amending Directives 2009/65/EC, 2013/36/EU and \(EU\) 2019/2034 as regards the treatment of concentration risk arising from exposures towards CCPs and of counterparty risk in centrally cleared derivative transactions \(2022/0404\(COD\)\)](#)

## 10 UK PARLIAMENT

**10.1 Draft Short Selling Regulations 2024 published - 11 November 2024** - A draft version of the Financial Services and Markets Act 2000 (Designated Activities) (Supervision and Enforcement) Regulations 2024 have been published, along with an explanatory memorandum.

The draft Regulations establish a new legislative framework for the regulation of short selling under the designated activities regime brought in by the Financial Services and Markets Act 2023. New designated activities for short selling are created, and the FCA is given associated rulemaking powers and powers of intervention. The draft Regulations replace the UK version of the Short Selling Regulation (EU) No 236/2012, and a series of substantive changes to this regime are made. This includes a requirement that the FCA publishes anonymised aggregated net short positions based on all individual positions notifications it receives. The draft Regulations will come into force on a staggered basis.

[Draft statutory instrument](#)

[Explanatory memorandum](#)

## 11 FINANCIAL CONDUCT AUTHORITY

**11.1 Credit rating agencies - FCA publishes portfolio letter - 12 November 2024** - The FCA has published a portfolio letter setting out its supervisory strategy for credit rating agencies (CRAs). The FCA's supervisory strategy continues to be driven by, among other considerations, potential conflicts of interest inherent in the CRA business model and reliance on non-UK based operations. The FCA suggests that it may use its expected review of the UK CRA Regulation (1060/2009) framework, as assimilated law, to address issues that may be limiting effective competition within the credit ratings data feed market.

[Portfolio letter](#)

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## INSURANCE //

### 12 EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY

**12.1 Mass-lapse reinsurance and reinsurance agreements' termination clauses - EIOPA launches consultation - 8 November 2024** - The European Insurance and Occupational Pensions Authority (EIOPA) has published a consultation paper on further guidance to supervisors on the treatment of mass-lapse reinsurance, and addressing specific terms of reinsurance agreements' termination clauses that can compromise the effective transfer of risk. The deadline for comments is 7 February 2025.

[EIOPA consultation paper on the annexes to the opinion on the use of risk mitigation techniques by insurance undertakings: mass-lapse reinsurance and reinsurance agreements' termination clauses \(EIOPA-BoS-24/419\)](#)

## FINANCIAL CRIME //

### 13 PAYMENT SYSTEMS REGULATOR

**13.1 APP fraud enabler data - PSR publishes Dear CEO letter - 8 November 2024** - The Payment Systems Regulator (PSR) has published a Dear CEO letter on its plans to publish data in December 2024 on the firms which are most commonly reported as enabling contact between authorised push payment (APP) fraudsters and victims. Through this initiative, the PSR hopes to understand more about how fraudsters contact victims, earn their trust, and '*strike at the heart of the problem to stop fraud occurring in the first place*'.

Going forward, the PSR plans to publish such 'fraud enabler' data every year, and to rank firms by the number of times they were reported by fraud victims as an enabler. The PSR may also publish rankings of firms by specific sectors: such as the most common enabler recorded among listing or auction sites, and the most common among social media platforms. The PSR invites firms to make comments on its plans by 4 December 2024.

[Dear CEO letter](#)

## ENFORCEMENT //

### 14 FINANCIAL CONDUCT AUTHORITY

**14.1 Enforcement regulatory disclosure review - FCA publishes statement on outcome - 11 November 2024** - The FCA has published a statement on the outcome of its review of certain elements of the disclosure process in regulatory enforcement cases, following a recommendation of the Upper Tribunal (Tax and Chancery Chamber) in *Seiler and others v FCA* [2023] UKUT 00133.



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Following the review, the FCA confirms that it is making a number of changes, including taking a broader approach to disclosure with the effect that its review of documents is not focused solely on identifying potentially undermining material. The FCA states that it will closely monitor the effectiveness of the changes and will conduct a further review in approximately 12 months' time to assess next steps.

[Press release](#)

- 14.2 Financial crime failings - FCA publishes final notice and fines bank - 12 November 2024** - The FCA has published a final notice issued to Metro Bank Plc (Metro) imposing a fine of over £16 million.

The FCA stated that between June 2016 and December 2020, Metro failed to have the right systems and controls in place to adequately monitor over 60 million transactions (with a value of over £51 billion) for money laundering risks. Since the firm's identification of the issues with its transaction monitoring system in April 2019, Metro has put in place remedial processes. Metro agreed to settle this matter and qualified for a 30% discount on the fine.

[Final notice: Metro Bank Plc](#)[Press release](#)

- 14.3 FCA announces consultation on extending the time motor finance firms have to handle commission complaints - 13 November 2024** - The FCA has announced that it will consult on extending the time firms have to respond to consumer complaints regarding motor finance where a non-discretionary commission was involved, and for consumers to refer them to the Financial Ombudsman Service. The proposals are expected to be published within two weeks and, if taken forward, would mean the complaint extension is in place by mid-December 2024.

This follows the Court of Appeal's 25 October 2024 judgment in *Hopcraft v Close Brothers Ltd*, *Johnson v Firststrand Bank Ltd*, and *Wrench v Firststrand Bank Ltd*. Commenting on the Court of Appeal's decision, the FCA stated that "*firms authorised by the FCA must meet wider legal requirements as well as regulatory rules. The interpretation of common law is rightly for the courts*".

The FCA will write to the Supreme Court asking it to decide quickly whether it will give permission to appeal and, if it does, to consider the case as soon as possible, in light of the potential impact of any judgment on the market and affected consumers. If permission to appeal is granted, the FCA will consider intervening to share its expertise to assist the Court.

[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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