

## Financial Regulation Weekly Bulletin

27 February 2020 / Issue 1048

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

### Quick Links

[Selected Headlines](#)  
[General](#)  
[Brexit](#)  
[Banking and Finance](#)  
[Securities and Markets](#)  
[Asset Management](#)  
[Insurance](#)  
[Financial Crime](#)

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

**Climate change and the financial sector** - speech by Christine Lagarde, President of the ECB [1.1](#)

**COP 26 Private Finance Agenda** - Bank of England announces launch [2.1](#)

#### Brexit

**Future UK-EU relationship** - HM Government publishes paper outlining UK's approach to negotiations [5.1](#)

**Future UK-EU relationship** - Council of the EU adopts Decision authorising the Commission to open negotiations [7.1](#)

#### Banking and Finance

**Protecting the European financial sector: The Cyber Information and Intelligence Sharing Initiative** - speech by Fabio Panetta, Member of the Executive Board of the ECB [8.1](#)

#### Securities and Markets

**PRIIPs Regulation** - European Commission publishes final report on KID consumer testing [12.1](#)

**Turbo-charging sterling LIBOR transition: Why 2020 is the year for action and what the Bank of England is doing to help** - speech by Andrew Hauser, Executive Director of Markets at the Bank of England [14.1](#)

#### Asset Management

**LIBOR transition** - FCA publishes 'Dear CEO' letter to asset management firms [20.1](#)

#### Insurance

**2020 Solvency II Review** - ESRB publishes report on enhancing macroprudential policy in the insurance sector [22.1](#)

#### Financial Crime

**Transposition of 5MLD** - FMLC publishes response to consultation on extending the Trust Registration Service [25.1](#)

## General

### 1. European Central Bank

- 1.1 Climate change and the financial sector - speech by Christine Lagarde, President of the ECB - 27 February 2020** - Christine Lagarde (President of the European Central Bank (ECB)) has delivered a speech at the launch of the 2020 UN Climate Change Conference (COP 26) Private Finance Agenda (discussed below at 2.1) addressing the potential impact of climate change related risks on the financial sector. Ms Lagarde expounds on climate-related risks stemming from three broad categories: (i) risks from disregarding the impact of climate change; (ii) risks from delaying the regulatory response to climate change; and (iii) risks from deficiencies in the provision of finance to adapt to and mitigate the impact of climate change on the financial sector. She emphasises that central banks must devote greater attention to understanding the impact of climate change on the financial sector and to considering how to address sustainability considerations within their monetary policy frameworks.

Ms Lagarde further states that the ECB is assessing banks' approaches to climate risks and developing supervisory expectations on those risks. The ECB is also undertaking preparatory work on the development of a macroprudential stress test to assess climate-related risks, the results of which are expected to be published by the end of 2020.

[Speech by Christine Lagarde \(President of the ECB\) on the impact of climate-related risks on the financial sector](#)

### 2. Bank of England

- 2.1 COP 26 Private Finance Agenda - Bank of England announces launch - 27 February 2020** - The Bank of England has announced the launch of the COP 26 Private Finance Agenda, which aims to help private finance support the transition to a net zero economy. In a speech at the launch event, Mark Carney (Governor of the Bank of England) states that, in order to achieve the transition to a net zero economy, every company, bank, insurer and investor will need to adjust and adapt their business models for a low-carbon world and ensure that financial decisions also take into account environmental considerations, including climate change. In particular, Mr Carney states that the agenda will focus on developing a framework for reporting climate-related financial disclosures, managing the risks of transition and facilitating investor returns.

The Bank of England has also published a document outlining the COP 26 Private Finance strategy to drive the transition to a net zero economy. COP 26 will take place in Glasgow, Scotland, in November 2020.

[Press release: Bank of England announces launch of COP 26 Private Finance Agenda](#)

[Speech by Mark Carney \(Governor of the Bank of England\) on COP 26 Private Finance Agenda](#)

[COP 26 Private Finance Agenda strategy](#)

[Webpage](#)

[Selected Headlines](#)  
[Asset Management](#)[General](#)  
[Insurance](#)[Brexit](#)  
[Financial Crime](#)[Banking and Finance](#) [Securities and Markets](#)

### 3. [Department for Digital, Culture, Media and Sport and HM Treasury](#)

- 3.1 Dormant assets scheme - DCMS and HM Treasury publishes consultation on expanding scope - 21 February 2020** - The Department for Digital, Culture, Media and Sport (DCMS) and HM Treasury have published a consultation on expanding the scope of the dormant assets scheme, originally established under the Dormant Bank and Building Society Accounts Act 2008. The scheme is underpinned by industry efforts to reunite forgotten or lost assets with their beneficial owners, and allows for dormant bank and building society accounts to be transferred to an authorised reclaim fund. Once transferred, genuinely dormant assets can be made available to benefit communities across the UK. Since the scheme's inception, over £1.2 billion has been transferred to the authorised reclaim fund by participating firms and over £600 million has been made available to good causes.

In the consultation, the government signals its intention to expand the scheme to cover insurance, investment and wealth management, and securities products. The government also intends to introduce a legal requirement that participants make proportionate and reasonable efforts to reunite assets with their owner before transferring them into the scheme. The consultation states that this requirement would be based on industry standards and would not be prescribed in legislation.

The consultation period closes on 16 April 2020.

[DCMS and HM Treasury consultation on expanding the scope of the dormant assets scheme](#)

[Webpage](#)

[Press release](#)

### 4. [Money Advice Trust and Money and Mental Health Policy Institute](#)

- 4.1 Debt and mental health - MAT and MMHPI publish guidance for creditors and debt collectors - February 2020** - The Money Advice Trust (MAT) and the Money and Mental Health Policy Institute (MMHPI) have published guidance which aims to help creditors and debt collection staff across all essential services sectors support customers experiencing both debt and mental health problems. The guidance contains detailed information about how specific mental health conditions may affect a customer's ability to manage their finances and make repayments, and also offers practical advice to firms on supporting customers affected by these issues. This includes guidance on how best to communicate with customers about their experiences of mental health and when it may be appropriate to ask for further evidence about a customer's mental health.

[MAT and MMHPI guidance on understanding customers' mental health problems](#)

[MAT press release](#)

[MMHPI press release](#)

## Brexit

### 5. HM Government

**5.1 Future UK-EU relationship - HM Government publishes paper outlining the UK's approach to negotiations - February 2020** - HM Government has published a policy paper outlining its approach to negotiations on the future UK-EU relationship post-Brexit. The paper sets out the government's proposals for the content and structure of a comprehensive free trade agreement between the UK and the EU. In the area of financial services, it states that any agreement governing the future UK-EU relationship should:

- promote financial stability, market integrity, and investor and consumer protection and facilitate a predictable, transparent and business-friendly environment for the provision of cross-border financial services business;
- contain legally binding obligations on market access and fair competition, in line with those contained within the EU-Canada Comprehensive Economic and Trade Agreement (CETA); and
- establish regulatory and supervisory cooperation arrangements between the UK and the EU which recognise each parties' regulatory autonomy, and include appropriate processes regarding the withdrawal of equivalence findings. The paper sets out that these arrangements should be based on the EU-Japan Economic Partnership Agreement (EPA) and international best practice.

The government emphasises that equivalence assessments for financial services should be conducted separately from negotiations on the future agreement, and that they should be concluded before the end of June 2020. The government also confirms that it will not agree to any obligations requiring the alignment of UK and EU laws or jurisdiction.

[HM Government policy paper on the UK's approach to negotiations on the future UK-EU relationship post-Brexit](#)

[Webpage](#)

### 6. HM Treasury

**6.1 Draft Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020 - published by HM Treasury - February 2020** - HM Treasury has published the draft Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020, together with explanatory information.

The draft Regulations aim to ensure that the framework established under the European Market Infrastructure Regulation (648/2012/EU) (EMIR), as amended by Regulation (EU) 2019/2099 amending EMIR as regards the procedures and authorities involved for the authorisation of central counterparties (CCPs) and requirements for the recognition of third-country CCPs (EMIR 2.2), continues to operate effectively once the UK leaves the EU at the end of the implementation period.

HM Treasury plans to lay the Regulations before Parliament in Spring 2020.

## [Draft Over the Counter Derivatives, Central Counterparties and Trade Repositories \(Amendment, etc., and Transitional Provision\) \(EU Exit\) Regulations 2020](#)

### [Explanatory information](#)

### [Webpage](#)

## 7. Council of the European Union

- 7.1 **Future UK-EU relationship - Council of the EU adopts Decision authorising the Commission to open negotiations - 25 February 2020** - The Council of the European Union has adopted a Decision authorising the European Commission to open negotiations with the UK over a new agreement governing the future UK-EU relationship post-Brexit. The Council has also published an accompanying annex containing negotiating directives, detailing the purpose, scope and content of the envisaged partnership between the UK and the EU, which constitute a finalised mandate to the European Commission. The Council's Decision and negotiating directives are based on the European Commission's recommendation, published on 3 February 2020.

In the area of financial services, the negotiation directives state that:

- the envisaged partnership should reaffirm the UK and EU's commitments to preserve financial stability, market integrity, investor and consumer protection and fair competition, while respecting each party's regulatory autonomy, their ability to take equivalence decisions in their own interest, and their ability, without prejudice, to adopt or maintain any measure for prudential reasons;
- the key instrument that the UK and EU will use to regulate interactions between their financial systems will be their respective unilateral equivalence frameworks;
- any agreement should establish close and appropriately structured voluntary cooperation on financial services-related regulatory and supervisory matters and allow for informal exchange of information and bilateral discussions on regulatory initiatives; and
- equivalence mechanisms and decisions remain defined and implemented on a unilateral basis by the EU, and that transparency and consultation between the UK and EU in relation to equivalence decisions is important, while preserving the EU's regulatory and supervisory autonomy.

The European Commission has also published a speech delivered by Michel Barnier on cooperation in the age of Brexit. Focusing on the EU's approach to equivalence decisions in the area of financial services, Mr Barnier warns that equivalence decisions will never be global or permanent and that they are, and will remain, unilateral decisions. He also rejects the idea that these determinations will be subject to joint management with the UK.

The European Commission intends to agree dates for the first negotiation sessions with the UK, which are expected to take place in March 2020.

## [Council of the EU Decision authorising the European Commission to open negotiations with the UK on the future UK-EU relationship](#)

### [Annex](#)

[Selected Headlines](#)  
[Asset Management](#)

[General](#)  
[Insurance](#)

[Brexit](#)  
[Financial Crime](#)

[Banking and Finance](#)   [Securities and Markets](#)

[Speech by Michel Barnier on cooperation in the age of Brexit and the EU's approach to equivalence decisions in the area of financial services](#)

[Press release](#)

## Banking and Finance

### 8. European Central Bank

**8.1 Protecting the European financial sector: The Cyber Information and Intelligence Sharing Initiative - speech by Fabio Panetta, Member of the Executive Board of the ECB - 27 February 2020** - Fabio Panetta (Member of the Executive Board of the European Central Bank (ECB)) has delivered a speech addressing the importance of protecting financial market infrastructures (FMIs) from cyberattacks. In particular, he highlights the progress made to increase cyber resiliency, including:

- the adoption by EU FMIs and the World Bank of the ECB's cyber resilience oversight expectations (CROE), published in 2018;
- the introduction and increasing adoption of the European Framework for Threat Intelligence-based Ethical Red Teaming (TIBER-EU), which helps entities test and improve their resilience against sophisticated cyberattacks; and
- the launch of the Cyber Information and Intelligence Sharing Initiative (CIISI-EU), which aims to allow the most important FMIs to discuss cybersecurity threats, share related intelligence and best practice, and receive biannual threat reports informing them of strategic issues pertinent to their businesses.

[Speech by Fabio Panetta \(Member of the Executive Board of the ECB\) on improving the cyber resiliency of FMIs](#)

### 9. European Systemic Risk Board

**9.1 Valuation of financial instruments - ESRB publishes report on the macroprudential implications of level 2 and level 3 financial instruments for accounting purposes - February 2020** - The European Systemic Risk Board (ESRB) has published a report on the macroprudential implications of financial instruments, measured at fair value and classified as level 2 and level 3 instruments for accounting purposes.

The report highlights three ways in which financial instruments measured at fair value can affect financial stability and have a macroprudential impact, including in relation to: (i) the inaccurate valuation of financial instruments; (ii) possible volatility and illiquidity in times of stress; and (iii) inadequate reflection of underlying risks in the prudential framework. The report states that policy responses in this area should aim to increase transparency through improved disclosure.

[ESRB report on the financial stability and macro-prudential impact of level 2 and level 3 financial instruments for accounting purposes](#)

[Press release](#)

[Selected Headlines](#)  
[Asset Management](#)

[General](#)  
[Insurance](#)

[Brexit](#)  
[Financial Crime](#)

[Banking and Finance](#) [Securities and Markets](#)

## 10. Lending Standards Board

- 10.1 Access to Banking Standard - LSB publishes second summary report - February 2020** - The Lending Standards Board (LSB) has published its second summary report on banks' application of the Access to Banking Standard. The Standard came into effect in May 2017 and is designed to ensure customers are better informed about branch closures, the reasons behind closure, and the alternative local options to access banking services (including the Post Office or alternative bank branches).

The LSB report assessed proposals by seven firms to close 480 branches in 2018 and 513 branches in 2019. The LSB notes clear improvements made by firms since the first review in 2018, and found that overall compliance with the Standard was good. The report goes on to highlight certain areas which require immediate attention by some banks, including ensuring branch staff receive appropriate training in order to comply with the Standard.

The LSB intends to develop and publish industry guidance relating to the provision of information to customers, and encouraging further improvements in complying with the Standard by Spring 2020. It will continue to monitor and carry out further work to ensure all actions relating to the Standard are completed to a satisfactory level.

### [LSB summary report on banks' application of the Access to Banking Standard](#)

#### [Press release](#)

## 11. Recent Cases

- 11.1 *Morley v The Royal Bank of Scotland Plc*, [2020] EWHC 88 (Ch), 27 January 2020**

*Redemption of loan facility agreement - enforcement of security - duty to exercise reasonable skill and care in the provision of banking services - implied duty in contract to act in good faith - economic duress - claim dismissed*

The High Court has dismissed a claim brought by Oliver Morley (a commercial property developer) against the Royal Bank of Scotland Plc (RBS). Mr Morley sought damages arising from loss in 2010 of part of his portfolio of commercial properties in northern England, which were charged to RBS in 2006 to secure a £75 million loan.

Mr Morley was unable to repay the debt in full when the loan facility expired in 2009. In August 2010, following extensive negotiations with RBS, Mr Morley entered into written agreements with RBS enabling him to salvage a proportion (less than half in value) of the portfolio for which he paid the banks £20.5 million. The rest of the portfolio was transferred to West Register (Property Investments) Limited (part of RBS' now-defunct Global Restructurings Group (GRG) which handled property from distressed borrowers).

Mr Morley subsequently claimed that: (i) RBS tortiously subjected him to economic duress by threatening to appoint a receiver during negotiations, and arranging for the entire portfolio to be transferred to West Register (Property Investments) Limited; (ii) RBS breached its duty to exercise reasonable skill and care in the provision of banking services; and (iii) RBS breached its implied duty in contract to act in good faith under the loan agreement which the claimant argued, as extended, constituted a 'relational' contract.

Selected Headlines  
Asset Management

General  
Insurance

Brexit  
Financial Crime

Banking and Finance    Securities and Markets

Dismissing the claims in turn, Kerr J stated that, on the facts, RBS did not subject the claimant to intimidation or economic duress in the form of “*unlawful or illegitimate*” pressure, relating to alleged threats to transfer the claimant’s property portfolio to West Register (Property Investments) Limited. Additionally, Kerr J rejected the claim that the loan facility agreement, as extended several times, constituted a ‘relational’ contract.

Finally, the court held that RBS did not breach its duty to exercise reasonable skill and care in the provision of banking services, commenting that any non-compliance with GRG’s internal policies and procedures bears no relevance to whether the bank breached the required standard of care.

[Morley v The Royal Bank of Scotland Plc \[2020\] EWHC 88 \(Ch\)](#)

## Securities and Markets

### 12. European Commission

- 12.1 PRIIPs Regulation - European Commission publishes final report on KID consumer testing - February 2020** - The European Commission has published a final report analysing the effectiveness of the information presented to retail investors in the key information document (KID) under the Packaged Retail and Insurance-Based Investment Products Regulation (1286/2014/EU) (PRIIPs Regulation). In particular, the report assesses how retail investors interpret the figures presented to them in the KID, and the most appropriate ways to communicate the limitations of, or assumptions underlying, these figures.

The report sets out the findings from an online consumer testing exercise involving over 7,600 participants across five countries, using four different versions of the KID and three different example products (funds, structured products and insurance-based investment products). The report concludes that, while the final investment decision is not affected by which version of the KID is viewed, the KID design can play an important role in helping consumers understand the features of retail investment products and can also contribute to better informed decision making.

The European Commission intends that the results of the report will help to inform the European Supervisory Authorities’ (ESA’) review of the PRIIPs Delegated Regulation (EU) 2017/653, which sets out the content and format of the KID.

[European Commission report on the findings of a consumer testing exercise on the provision of information in the KID under the PRIIPs Regulation](#)

[Executive summary](#)

[Webpage](#)

### 13. European Central Bank

- 13.1 Joining forces: Stepping up coordination on risks in central clearing - speech by Fabio Panetta, Member of the Executive Board of the ECB - 26 February 2020** - Fabio Panetta (Member of the Executive Board of the European Central Bank (ECB)) has delivered a speech addressing the key risk management challenges in central clearing. Mr Panetta underscores that effective coordination between banks, central counterparties (CCPs) and national competent authorities (NCAs) is essential for the safety of central clearing, before going on to highlight the main shortcomings in this field and proposing possible remedies.

[Selected Headlines](#)  
[Asset Management](#)

[General](#)  
[Insurance](#)

[Brexit](#)  
[Financial Crime](#)

[Banking and Finance](#) [Securities and Markets](#)

Two main weaknesses in current coordination arrangements are identified: (i) diverging interests of banks and CCPs in the management of CCP risk; and (ii) the propagation of serious knowledge gaps between banks and CCPs in areas such as prudential requirements and preparedness for extreme stress events. Mr Panetta proposes several actions to enhance supervisory coordination, including measures to improve the institutional setting for information sharing and coordination among CCPs, banks and public authorities. He also advocates for targeted regulatory action, including action to address the diverging interests around the allocation of losses in CCP recovery and resolution.

### [Speech by Fabio Panetta \(Member of the Executive Board of the ECB\) on improving coordination arrangements relating to CCP risk management](#)

#### 14. [Bank of England](#)

- 14.1 **Turbo-charging sterling LIBOR transition: Why 2020 is the year for action and what the Bank of England is doing to help - speech by Andrew Hauser, Executive Director of Markets at the Bank of England - 26 February 2020** - Andrew Hauser (Executive Director of Markets at the Bank of England) has delivered a speech addressing the need for decisive acceleration in efforts to replace the London interbank offered rate (LIBOR) with risk-free rates during 2020. In his speech, Mr Hauser announces two new initiatives which aim to further support LIBOR transition to risk-free rates, including: (i) a Discussion Paper on the publication of a compounded sterling overnight index average (SONIA); and (ii) a market notice regarding increasing haircuts on LIBOR-linked collateral up until LIBOR's planned cessation at the end of 2021.

The Discussion Paper seeks sterling market participants' views on the Bank's intention to publish a daily compounded SONIA index from July 2020 in order to help support the use of SONIA in as wide a range of financial products as possible by simplifying the calculation of compound interest rates. The Bank is also considering publishing a simple set of compounded SONIA period averages, subject to a clear consensus from the market on the preferred conventions to be used. The Bank seeks responses to these questions by 9 April 2020.

The market notice informs market participants that from October 2020 the Bank will progressively increase haircuts on LIBOR-linked collateral that it lends against, with haircuts scheduled to reach 100% at the end of 2021. The Bank also confirms that any LIBOR-linked collateral issued after October 2020 will be ineligible for use at the Bank of England.

### [Speech by Andrew Hauser \(Executive Director of Markets at the Bank of England\) on accelerating the transition from LIBOR to risk-free rates in 2020](#)

#### [Webpage](#)

### [Bank of England Discussion Paper on supporting LIBOR transition by publishing a daily compounded SONIA index](#)

#### [Webpage](#)

### [Market notice on haircuts for LIBOR-linked collateral](#)

[Selected Headlines](#)  
[Asset Management](#)

[General](#)  
[Insurance](#)

[Brexit](#)  
[Financial Crime](#)

[Banking and Finance](#) [Securities and Markets](#)

## 15. Prudential Regulation Authority

- 15.1 PRA Policy Statement PS3/20: Responses to CP25/19 (Chapters 2 and 3) - 24 February 2020 -** The PRA has published a Policy Statement (PS3/20) setting out its final policy regarding its proposals to: (i) replace references to LIBOR in certain Supervisory Statements with ‘market rates’ as a general term encompassing market-derived rates, where appropriate; and (ii) update certain Supervisory Statements following the extension of the Senior Managers and Certification Regime (SMCR) to banks and insurers. These matters were consulted on in CP25/19, which was published in October 2019.

The PRA confirms that it received no responses to its consultation on these matters and has therefore decided to proceed with its proposals. The changes take immediate effect.

[PRA Policy Statement \(PS3/20\): Responses to CP25/19 on LIBOR references and updates on SMCR](#)

[Supervisory Statement 20/15 ‘Supervising building societies’ treasury and lending activities’](#)

[Statement of Policy ‘The PRA’s methodologies for setting Pillar 2 capital’](#)

[Supervisory Statement 28/15 ‘Strengthening individual accountability in banking’](#)

[Supervisory Statement 35/15 ‘Strengthening individual accountability in insurance’](#)

## 16. Financial Conduct Authority

- 16.1 Short Selling Regulation - FCA updates process for the submission of notifications of net short positions - 24 February 2020 -** The FCA has updated its process for submitting notifications of net short positions under Regulation (236/2012/EU) on short selling and certain aspects of credit default swaps (Short Selling Regulation). In order to submit a short selling notification to the FCA on behalf of a position holder, the person making the notification must now be registered with the FCA by creating an Electronic Submission System (ESS) account and submitting the relevant Short Selling Regulation registration form.

The FCA has also published a user guide for the ESS, explaining how to access the ESS and submit short selling notifications in greater detail.

[FCA user guide for the ESS and the submission of notifications under the Short Selling Regulation](#)

[Webpage](#)

## 17. International Capital Market Association

- 17.1 SFTR - ICMA publishes guide on reporting repo transactions - February 2020 -** The International Capital Market Association’s (ICMA’s) European Repo and Collateral Council (ERCC) has published a guide on reporting repo transactions under the Securities Financing Transaction Regulation (EU) 2015/2365 (SFTR). The guide aims to help ICMA members interpret the new regulatory reporting framework introduced by the SFTR, and sets out complementary best practice recommendations.

The new SFTR reporting regime will start its phased implementation in April 2020 and will require EU-incorporated entities, or entities located in the EU, to provide detailed reporting of all

securities financing transactions (including repo and reverse repo) to authorised trade repositories. The new regime is being introduced to improve the transparency and regulatory oversight of the EU securities financing transaction (SFT) market, and includes granular daily reporting requirements for repos and other types of SFTs.

#### [ICMA guide on reporting repo transactions under the SFTR](#)

#### [Press release](#)

### 18. International Swaps and Derivatives Association

- 18.1 EMIR - ISDA publishes industry best practice matrix on reporting - February 2020** - The International Swaps and Derivatives Association (ISDA) has published an industry best practice matrix for reporting under the European Market Infrastructure Regulation (648/2012/EU) (EMIR). The matrix covers 87 data points across 61 reporting fields, including over-the-counter (OTC) and exchange-traded derivatives, and was developed in order to improve the accuracy and efficiency of trade reporting and to reduce compliance costs.

#### [ISDA EMIR reporting industry best practice matrix](#)

#### [Press release](#)

### 19. FICC Markets Standards Board

- 19.1 FICC markets - FMSB publishes annual report - February 2020** - The Fixed Income, Currency and Commodities (FICC) Markets Standards Board (FMSB) has published its 2019 annual report. The report summarises the progress made by the FMSB to enhance standards of behaviour in the wholesale FICC markets, and outlines its areas of focus and key priorities for 2020.

The report states that the FMSB's key priorities and planned work in 2020 include progressing the work undertaken by its interbank offered rate (IBOR) transition working group in considering the conduct risks arising from the transition from IBOR benchmarks to near risk-free rates for FICC market participants.

#### [FMSB Annual Report 2019](#)

#### [Press release](#)

## Asset Management

### 20. Financial Conduct Authority

- 20.1 LIBOR transition - FCA publishes 'Dear CEO' letter to asset management firms - 27 February 2020** - The FCA has published a 'Dear CEO' letter from Nick Miller (Head of Asset Management Supervision at the FCA) to all UK-regulated asset management firms setting out the FCA's supervisory expectations of firms' preparations ahead of the planned cessation of the London interbank offered rate (LIBOR) by the end of 2021. The letter summarises how previous regulatory guidance applies to asset management firms and addresses several topics, including:

- regulators' LIBOR transition priorities and target milestones;

[Selected Headlines](#)  
[Asset Management](#)

[General](#)  
[Insurance](#)

[Brexit](#)  
[Financial Crime](#)

[Banking and Finance](#) [Securities and Markets](#)

- governance and planning requirements, such as the requirement to ensure a LIBOR transition plan is adopted; and
- the need to amend existing LIBOR-linked products to reference alternative rates or to include sufficient fallback provisions and offering new products referencing alternative rates.

The FCA notes that this guidance intends to support the industry's smooth transition to alternative rates ahead of LIBOR's planned cessation at the end of 2021, and that it expects firms to take all reasonable steps to ensure that markets are not disrupted and that consumers are not harmed.

[FCA 'Dear CEO' letter to asset management firms on LIBOR transition](#)

## Insurance

### 21. International Association of Insurance Supervisors

**21.1 Risk-based global Insurance Capital Standard - IAIS publishes statement on implementation - 21 February 2020** - The International Association of Insurance Supervisors (IAIS) has published an update on the first phase of the implementation of version 2.0 of the risk-based global Insurance Capital Standard (ICS). The ICS is a consolidated group-wide capital standard for internationally active insurance groups (IAIGs), which is designed to enhance global convergence among group capital standards.

The statement encourages IAIGs, particularly those that participated in the ICS field testing exercises, to confidentially report ICS results during the initial five year monitoring period starting in 2020. IAIS explains that the ICS monitoring period aims to monitor the performance of the ICS, rather than IAIGs' capital adequacy.

[IAIS statement on the implementation of the ICS](#)

### 22. European Systemic Risk Board

**22.1 2020 Solvency II Review - ESRB publishes report on enhancing macroprudential policy in the insurance sector - February 2020** - The European Systemic Risk Board (ESRB) has published a report on macroprudential policy for the insurance sector. The report aims to inform the European Commission's ongoing review of the Solvency II Directive (2009/138/EC), which is expected to be completed by the end of 2020. The report considers three types of supervisory tools that national competent authorities (NCAs) should be able to use to reduce systemic risk in the insurance sector, including:

- solvency tools for preventing and mitigating insurers' procyclical investment behaviour;
- liquidity tools for addressing risks stemming from specific activities, such as hedging with derivatives and selling insurance products with redemption features; and
- tools for addressing risks stemming from the provision of credit to the economy (when insurers originate mortgage loans or invest in corporate bonds) with a view to ensuring consistency in macroprudential policy across sectors.

These proposals were summarised in the ESRB's response to the European Insurance and Occupational Pensions Authority's (EIOPA's) consultation on the review of Solvency II, which it submitted in January 2020.

### [ESRB report on enhancing macroprudential policy in the insurance sector](#)

#### [Press release](#)

## 23. [European Insurance and Occupational Pensions Authority](#)

- 23.1 Risk-based global Insurance Capital Standard - EIOPA publishes statement - 20 February 2020 -** EIOPA has published a statement by Gabriel Bernardino (Chairman of EIOPA) on the development and implementation of version 2.0 of the risk-based global ICS by the IAIS. Mr Bernardino addresses several points, including that, from an EIOPA standpoint, the main objective remains the setting up of a single risk-based ICS that promotes a level playing field between IAIGs headquartered in different parts of the world, reducing arbitrage opportunities and supporting financial stability. Moreover, he states that European legislators should endorse the ICS and make any necessary adjustments to the Solvency II Directive to ensure that European IAIGs are required to use only one internationally-recognised capital framework.

### [EIOPA statement on the development and implementation of the IAIS ICS](#)

- 23.2 PEPP Regulation - EIOPA publishes consultation on draft ITS for supervisory reporting and cooperation arrangements - 20 February 2020 -** EIOPA has published for consultation draft implementing technical standards (ITS) on the format of supervisory reporting, cooperation and the exchange of information between NCAs under Regulation (EU) 2019/1238 on a pan-European Personal Pension Product (PEPP Regulation).

The draft ITS specify the annual supervisory reporting requirements for submission to NCAs under Article 40 of the PEPP Regulation, and formalise the notifications required to facilitate efficient processes in cooperation arrangements between EIOPA and NCAs. In particular, EIOPA seeks stakeholder feedback on: (i) the information to be reported to NCAs and whether it is sufficient for them to fulfil their legal duties; (ii) whether any other information should be covered by the proposed regular data requests; and (iii) the frequency and scope of the data requests.

The consultation period closes on 20 May 2020. EIOPA intends to publish a final report on the matter once it has considered the feedback received in response to the consultation, and is required to submit the draft ITS to the European Commission by 15 August 2020.

### [EIOPA Consultation Paper on draft ITS for supervisory reporting and cooperation arrangements under the PEPP Regulation](#)

#### [Webpage](#)

#### [Press release](#)

## Financial Crime

### 24. HM Treasury

- 24.1 AML/CTF controls in overseas jurisdictions - HM Treasury updates advisory notice - 24 February 2020** - HM Treasury has updated its advisory notice on anti-money laundering (AML) and counter-terrorist financing (CTF) controls in higher risk jurisdictions under the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (MLRs). The updated advisory notice takes into account two statements published by the Financial Action Task Force (FATF) on 21 February 2020, identifying jurisdictions with strategic deficiencies in their AML and CTF frameworks.

[HM Treasury advisory notice on AML and CTF controls in higher risk overseas jurisdictions](#)

[Webpage](#)

### 25. Financial Markets Law Committee

- 25.1 Transposition of 5MLD - FMLC publishes response to consultation on extending the Trust Registration Service - 21 February 2020** - The Financial Markets Law Committee (FMLC) has published its response to a joint consultation by HM Treasury and HM Revenue & Customs (HMRC), published in January 2020, on draft Regulations and additional proposals to expand the Trust Registration Service to comply with the Fifth Money Laundering Directive (EU) 2018/843 (5MLD).

The FMLC states that the trusts registration requirements could be disproportionately burdensome for several UK trusts. It recommends further exemptions from the registration requirements be introduced in relation to clearing, securities settlement and payment systems where express trusts are used as legitimate and efficient legal devices to reduce systemic and other risks. The FMLC observes that this is part of a wider issue concerning the ubiquity of trusts in financial markets arrangements which is a unique feature of common law jurisdictions.

Although not specifically addressed in the consultation, the FMLC also highlights the importance of legal entity identifiers (LEIs) in the context of the expansion of the AML regulatory regime to cover virtual currencies.

[FMLC response to HM Treasury and HMRC consultation on extending the Trust Registration Service to comply with 5MLD](#)

[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](#).

The Group's recent work includes advising:

- A number of global banks, insurance and asset management groups on their preparations for Brexit;
- A number of banking groups in relation to banking structural reform, including the UK ring-fencing regime;
- Prudential plc on the proposed demerger of its UK & Europe business (M&G Prudential) from Prudential plc, resulting in two separately-listed companies;
- Standard Life plc on the recommended all-share merger with Aberdeen Asset Management and the subsequent sale by Standard Life Aberdeen plc of its capital-intensive insurance business to Phoenix;
- UK Asset Resolution and Bradford & Bingley plc in relation to the disposal of legacy buy-to-let mortgage assets to Prudential plc and funds managed by Blackstone for a total consideration of £11.8bn;
- On the legal implications of developments across a broad Fintech waterfront for clients such as Euroclear, TreasurySpring, Bupa, TrueLayer, WorldRemit and Stripe, as well as other established businesses, challengers and start-ups; and
- A number of multi-national clients in relation to the UK, EU, and US economic and trade sanctions regimes.

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