



# FIG Bulletin

Recent developments  
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**Hogan  
Lovells**

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# General

## Future of UK financial services: Treasury Committee inquiry written evidence

The House of Commons Treasury Committee has published [written evidence](#) to the committee's inquiry into the future of financial services in the UK after Brexit. The written evidence includes, for example, a [response](#) from the Financial Conduct Authority (FCA) which submits evidence under three headings: opportunities for the UK's financial services sector after EU withdrawal; development and scrutiny of financial services policy making after EU withdrawal; and the current challenges facing regulators.

## UK FCA temporary permissions regime: landing slots and guidance

The FCA has published a [webpage](#) on landing slots for firms in the temporary permissions regime (TPR). The FCA states that it has started to email formal directions to firms in the TPR confirming their "landing slots" – the dates within which the firms must make their applications for FCA authorisation.

Among other things, the FCA webpage includes a Q&A section in which the FCA states that it can change any firm's opening or closing date at its discretion, for example, to align the dates of a group of firms. In response to a question on whether a firm can change its landing slot, the FCA states that it will be as flexible as it can, but it is not obliged to change a firm's dates and the FCA expects all firms to be organised and prepared. While the FCA will consider requests to change a landing slot, normally such requests must be received within 20 working days of a firm's closing date. However, the FCA is unable to defer a closing date beyond 31 December 2022. It warns that firms that fail to apply for authorisation during their landing slot, may have their temporary permissions cancelled.

The FCA has also published new webpages on how the FCA [supervises](#) the TPR and on [cancelling a temporary permission](#).

## MiFID II: FCA product governance review

The FCA has published a [report](#) on its review of product governance in a sample of asset management firms. The review examined how eight asset management firms, as product providers (manufacturers), consider the product governance rules in its Product Intervention and Product Governance sourcebook (PROD), originating from the second Markets in Financial Instruments Directive (MiFID II), throughout the product lifecycle.

The FCA found that some asset managers were not complying with the PROD regime, and it believes there is significant scope for asset managers to improve their product governance arrangements.

The FCA also noted that reliance on intermediated services in the UK investment market means manufacturers commonly rely on those who distribute their products to give them relevant information on the end consumer. It found that distributors rarely pass this information on to asset managers, hindering their ability to effectively meet best practice on product governance. The FCA states that asset managers and product distributors need to prioritise effective cooperation and information sharing to address the potential harm to consumers from poor product design and distribution processes.

The FCA report details its key observations under four main areas headings: product design; product testing; distributors; and governance and oversight.

The FCA will continue to focus on product governance and is likely to undertake further work on this subject, including whether it needs to make further changes to PROD, for both asset managers/manufacturers and distributors.

The FCA states that it expects firms to ensure their activities prioritise good customer outcomes and that they comply with the relevant regulatory rules and requirements. Where it identifies potential breaches of its rules, the FCA will consider whether to act, in the form of opening investigations or other appropriate measures.

## **FCA Handbook Notice 85**

The FCA has published [Handbook Notice 85](#), which sets out changes to the FCA Handbook made by the FCA Board on 25 February 2021. The Handbook Notice reflects changes made to the Handbook by the following instruments:

- [Consumer Credit \(Debt Respite Moratorium\) Instrument 2021 \(FCA 2021/4\)](#), in force on 4 May 2021;
- [Handbook Administration \(No 55\) Instrument 2021 \(FCA 2021/5\)](#), which came into force on 26 February 2021; and
- [Supervision Manual \(Reporting No 15\) Instrument 2021 \(FCA 2021/6\)](#), which came into force on 4 March 2021.

## **DB pension transfer redress: FCA statement on RPI changes**

The FCA has published a [statement](#) about its intention to amend, in mid-March 2021, its finalised guidance ([FG17/9](#)) for firms on how to calculate redress for unsuitable defined benefit (DB) pension transfers. It is making the amendments to reflect changes to the way that the Retail Prices Index (RPI) inflation measure is calculated, which the government announced in its November 2020 Spending Review. These changes are due to take effect from February 2030.

The FCA explains that the finalised guidance refers to both the RPI and the Consumer Prices Index (CPI), an alternative inflation measure. The RPI change means that, from February 2030, the -1% adjustment to the RPI assumption used in the guidance to calculate the CPI assumption will not reflect the assumed difference between the RPI and the CPI. It will be too large, and some consumers may not receive the correct amount of redress. This will affect consumers who transfer out of DB pensions that are up-rated annually in line with the CPI.

Therefore, the FCA intends to update the CPI adjustment in the guidance to ensure that these consumers continue to receive appropriate redress. It will do this by mid-March 2021. It does not plan to carry out any prior consultation as this would delay the correct amount of redress paid to consumers. It will backdate the change to 25 November 2020, and this will apply to all calculations carried out from that date.

The FCA then sets out the actions that firms should take if they believe that a calculation of a pension transfer redress offer done in accordance with the guidance on or after 25 November 2020 might have unduly disadvantaged a customer.

## **Regulating of pre-paid funeral plans: FCA CP21/4**

The FCA has published a consultation paper, [CP21/4](#), on its approach to regulating pre-paid funeral plans (CP21/4). In January 2021, the government legislated to bring activities involving the provision and distribution of pre-paid funeral plans subject to FCA regulation from 29 July 2022. The FCA is now consulting on its draft rules and guidance for this sector.

The FCA wants to see improved outcomes for consumers and is mindful of the presence of vulnerable customers in this market, with better value products, better sales practices and better controls in place so consumers can be confident they will receive the funerals they have agreed. Its proposed rules will also set a level playing field for all firms that want to carry on business in this sector.

Large parts of CP21/4 are concerned with the application of rules formalising basic standards the FCA expects of all firms. It explains that many of the concepts set out in the proposed rules will be recognisable to businesses in the sector because they reflect good business practice. There is also some overlap with the requirements of the Funeral Planning Authority (FPA), the existing industry regulator. The FCA considers that many well-run businesses will already be meeting these standards or be very close to them. However, for a subset of businesses, meeting the standards will require a significant change in practices. The FCA also proposes some requirements that are specific to the sector and the risks it can pose.

Many parts of the Handbook will be amended, and the FCA plans to introduce a new sourcebook, the Funeral Plan: Conduct of Business sourcebook (FPCOB).

All businesses in the sector are advised to start making the necessary preparations for regulation. They will need to apply to the FCA for authorisation as soon as possible after the application gateway opens in September 2021. Applications made after 1 November 2021 may incur a higher application fee.

The consultation period closes to comments on 13 April 2021.

HM Treasury is considering further legislative changes to ensure that the Financial Services Compensation Scheme would be effective for consumers if it covered funeral plans. The FCA will consult later in 2021 on any further changes.

## **EU money laundering and terrorist financing risks: EBA opinion**

The European Banking Authority (EBA) has published an [opinion](#) on the risks of money laundering (ML) and terrorist financing (TF) that are affecting the EU's financial sector. The opinion looks at cross-sectoral and sector-specific ML and TF risks.

The EBA sets out proposed actions addressed to competent authorities, which are based on the detailed analysis and findings set out in the report annexed to the opinion. The opinion, together with the report, also provides information for the European Commission's Supranational Risk Assessment (SNRA) and risk assessments carried out by competent authorities.

The EBA is issuing the opinion as part of its new mandate to lead, coordinate and monitor the fight against ML and TF in the EU financial system. The other European Supervisory Authorities were also closely involved in its preparation.

As a complement to the opinion, the EBA has developed and published an [interactive tool](#) that gives European citizens, competent authorities, and credit and financial institutions, a user-friendly way to access all the ML/TF risks covered in the opinion.

## **MLD4: EBA final report setting out revised AML and CTF risk factors guidelines**

The EBA has published its [final report](#) setting out revised guidelines on customer due diligence and the factors credit and financial institutions should consider when assessing ML and TF risk associated with business relationships and occasional transactions under Articles 17 and 18(4) of the Fourth Money Laundering Directive (MLD4). The EBA consulted on a draft of the revised

guidelines in February 2020 and explains in the report how it has amended the revised guidelines in response to feedback received.

The final revised guidelines (known as the "risk factors guidelines") are addressed to both firms and supervisors. The EBA explains that the update considers changes introduced by the Fifth Money Laundering Directive (MLD5), as well as the identification of new risks and challenges.

The revised guidelines will be translated into the official EU languages and published on the EBA website. Competent authorities will then have two months to report whether they comply. The revised guidelines will apply three months after publication of the official language versions, at which time they will repeal and replace the original June 2017 version.

### **EU Taxonomy Regulation: EBA final report on KPI disclosure obligations**

On 1 March 2021, the EBA published its [final report](#) and a related [opinion](#) (dated 26 February 2021) setting out advice to the European Commission under Article 8 of the Taxonomy Regulation, specifying the information to be provided by credit institutions and investment firms to comply with their disclosure obligations under the Non-Financial Reporting Directive (NFRD). [Annex I](#) and [II](#) to the opinion have been published separately.

The EBA launched two surveys while preparing its advice. A summary of the main feedback is set out in Annex IV to the report.

In the report and opinion, the EBA underlines the importance of the green asset ratio (GAR), supported by other key performance indicators (KPIs), as a key means to understand how institutions are financing sustainable activities and meeting the Paris Agreement targets. It elaborates on the KPIs that institutions should disclose, on the scope and methodology for calculating those KPIs, and on the qualitative information they should provide. In addition, the EBA includes some policy recommendations to the Commission on means to facilitate institutions' disclosures and the eventual extension of the KPIs to all relevant assets, including sovereign and central banks' exposures.

The EBA has developed its advice in parallel and consistently with its [consultation paper](#) on Pillar 3 disclosures on environmental, social and governance (ESG) risks.

The [European Insurance and Occupational Pensions Authority](#) (EIOPA) and the [European Securities and Markets Authority](#) (ESMA) have also published their final reports setting out technical advice to the European Commission on KPIs under Article 8 of the Taxonomy Regulation.

### **EU Taxonomy Regulation: ESMA final report on KPI disclosure obligations**

On 1 March 2021, ESMA published its [final report](#) (dated 26 February 2021) setting out advice to the European Commission under Article 8 of the Taxonomy Regulation, specifying the information to be provided by non-financial undertakings and asset managers to comply with their disclosure obligations under the NFRD.

ESMA consulted on draft proposals in November 2020. The report provides an overview of responses and explains how ESMA amended the draft advice to reflect some of the comments received.

The Commission is required to adopt, by 1 June 2021, a delegated act specifying the content, presentation and methodology of the KPI information to be disclosed by firms.

[EIOPA](#) and the [EBA](#) have also published their final reports setting out technical advice to the European Commission on KPIs under Article 8 of the Taxonomy Regulation.

### **Assessing and mitigating proliferation financing risk: FATF consultation**

The Financial Action Task Force (FATF) is consulting on [draft guidance](#) on assessing and mitigating proliferation financing risk.

The draft guidance is focused on the new obligations on proliferation financing risk assessment and mitigation, which were introduced in October 2020 by way of amendments to FATF recommendation 1. At that time, the FATF advised that this change was designed to ensure financial institutions are aware of the risks involved in their business, and do not unwittingly support or become part of proliferation financing networks or schemes.

The aim of the new guidance is to help both private and public sectors implement the new FATF requirements to identify, assess, understand and mitigate proliferation financing risk (set out in recommendation 1). The new guidance focuses on conducting risk assessments in the context of proliferation financing, applying corresponding risk mitigation measures, and supervising the risk assessments and mitigation measures.

The consultation closes on 9 April 2021. The FATF will consider responses and revise the text of the draft guidance for discussion, and possibly adoption, at its June 2021 meeting.



# Banking and Finance

## LIBOR transition: Working Group's best practice guide for GBP loans and Q&A

The Working Group Sterling Risk-Free Reference Rates published a best practice [guide](#) for GBP loans. Alongside the guide, the Working Group also published a GBP loan market [Q&A](#). The publications aim to support market participants in transitioning away from GBP LIBOR and meet the Working Group's recommended milestones to cease new issuance of GBP LIBOR-linked loans by the end of March 2021.

## Adoption of Basel III standards: European Commissioner speech

The European Commission has published a speech by Mairead McGuinness, European Commissioner for Financial Services, Financial Stability, and Capital Markets Union (CMU) in which she outlines her priorities, including work relating to the implementation of the final Basel III standards. Commissioner McGuinness explains that the European Commission intends to adopt a legislative proposal on the implementation of the final Basel III standards in July 2021.

## CRR II corrigendum

A corrigendum to the Capital Requirements Regulation II has been published in the Official Journal of the EU (OJ). The corrigendum amends provisions in the CRR II relating to, among other things, reforms concerning own funds and eligible liabilities, global systemically important institutions (G-SIIs), counterparty credit risk and market risk.

## CRR: European Commission adopts draft RTS on standardised approach for counterparty credit risk

The European Commission has adopted a draft [Delegated Regulation](#) supplementing the Capital Requirements Regulation (CRR) with regard to regulatory technical standards (RTS) on the standardised approach for counterparty credit risk under articles 277(5) and 279a(3) of the CRR.

The final draft RTS specify:

- the method for identifying the material risk drivers of derivative transactions under Article 277 of the CRR; and
- for the purposes of Article 279a(3)(a) and (b) in the standardised approach for counterparty credit risk:
  - the formula for calculating the supervisory delta of call and put options mapped to the interest rate risk category; and
  - the method of determining whether a transaction is a long or short position in the primary risk driver or in the most material risk driver in the given risk category.

The Council of the EU and the European Parliament will now scrutinise the draft Delegated Regulation, which will enter into force 20 days after its publication in the OJ.

## CRR: European Commission adopts draft RTS relating to economic downturn

The European Commission has adopted a draft Delegated Regulation supplementing the CRR with regard to RTS on the specification of the nature, severity and duration of an economic downturn referred to in Articles 181(1)(b) and 182(1)(b) of the CRR.

Institutions will use the final draft RTS to identify the relevant downturn periods to take into account for loss given default (LGD) and conversion factors (CF) estimation.

The Council of the EU and the European Parliament will now scrutinise the draft Delegated Regulation. It will enter into force 20 days after its publication in the OJ and apply from 1 January 2021.

### **CRR: EBA consults on draft ITS on Pillar 3 disclosures on ESG risks**

The EBA has published a [consultation paper](#) and [factsheet](#) on draft implementing technical standards (ITS) on prudential disclosures relating to environmental, social and governance (ESG) risks under Article 449a of the CRR. It has also published separately [Annex I](#) (templates), [Annex II](#) (instructions), and two infographics: "[ESG disclosures for financial institutions](#)" and "[Summary of ESG disclosures Pillar 3](#)".

Large institutions with securities traded on a regulated market of any EU member state will be subject to the disclosure requirements, which will apply from June 2022 on an annual basis during the first year, and biannually afterwards. The ITS, mandated under Article 434a of the CRR, must specify uniform formats and associated instructions for the disclosure of this information in a way that conveys sufficiently comprehensive and comparable information for users of that information to assess the risk profile of institutions.

The draft ITS will amend the final draft ITS on institutions' public disclosures under the CRR, which the EBA submitted to the European Commission in June 2020. This reflects the EBA's objective of defining a single, comprehensive Pillar 3 framework under the CRR that should integrate all the relevant disclosure requirements.

The EBA recommends that, to obtain a complete picture of the ESG disclosure framework for banks, the consultation paper should be read in conjunction with its [advice](#) to the Commission on key performance indicators and the methodology for disclosures under Article 8 of the Taxonomy Regulation, which has also been published.

The consultation closes on 1 June 2021.

### **SSM Regulation: ECB guide to setting administrative pecuniary penalties**

The European Central Bank (ECB) has published a [guide](#) on the method for determining administrative pecuniary penalties for regulatory breaches under Article 18(1) and (7) of the Regulation establishing the Single Supervisory Mechanism (SSM Regulation). The guide outlines the principles and methods for calculating the penalties used by the ECB.

# Consumer Finance

## Breathing Space Regulations: FCA PS21/2

Following its consultation in CP20/21, the UK Financial Conduct Authority (FCA) has published a policy statement, [PS21/2](#), on changes to its Handbook in light of the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 (Breathing Space Regulations), which come into force on 4 May 2021.

The Breathing Space Regulations establish a scheme in England and Wales giving someone in problem debt the right to legal protections from creditor action for a defined period while they receive debt advice and potentially enter an appropriate debt solution.

A consumer can access a 60-day moratorium after being advised and assessed as eligible by an FCA-authorized debt advice firm or a local authority. There is an alternative mechanism which a consumer receiving mental health crisis treatment may access after being certified by an Approved Mental Health Professional and confirmed as eligible by a debt adviser (the "mental health crisis moratorium"). There is no 60-day limit to a mental health crisis moratorium period, which will usually end 30 days after the mental health crisis treatment has concluded.

The Breathing Space Regulations impose obligations on debt advice firms to assess applications for, and to initiate, the moratorium, and on consumer credit lenders, mortgage lenders and other regulated firms, to comply with the restrictions and obligations imposed by the moratorium in respect of collecting and enforcing debts and applying interest and other charges.

The FCA is making the changes it proposed in CP20/21 to its Consumer Credit sourcebook (CONC). These changes clarify how the FCA's rules apply where the Breathing Space Regulations also apply, and to avoid duplicating the effects of the Regulations in a disproportionate way. The FCA also confirms that, as proposed in its consultation, the FCA is not making changes to rules or guidance in the Mortgages and Home Finance Conduct of Business sourcebook (MCOB) or in CONC 8 (debt advice).

The final rules come into force on 4 May 2021.

The FCA notes that it does not have powers under the Breathing Space Regulations to supervise or to enforce compliance. However, systematic non-compliance with the Breathing Space Regulations is likely to be of concern to the FCA as it may call into question whether a firm is meeting the specific rules in the FCA Handbook, the suitability requirements in the Threshold Conditions or breaching one of the Principles for Businesses, such as Principle 6 (treating customers fairly).

# Payments

## Contactless payments: FCA PS21/2 on amendments to single and cumulative transaction thresholds

Following its consultation in CP21/3, the UK Financial Conduct Authority (FCA) has published a policy statement, [PS21/2](#), on amendments to the single and cumulative transaction thresholds for contactless payments.

The FCA summarises the responses it received on proposed changes relating to the contactless payments limits and confirms that it has decided to amend the contactless exemption in Article 11 of its technical standards on strong customer authentication (SCA-RTS) to increase the single transaction threshold for contactless card payments from £45 to £100 and the cumulative transaction threshold from £130 to £300.

The aim of the FCA's amendments is to ensure that its regulation of payments provides industry with greater flexibility to respond to changing consumer behaviour.

The FCA states that an increase in the single transaction threshold will enable consumers to use contactless card payments for higher value transactions such as purchasing fuel and weekly groceries without needing to authenticate with strong customer authentication. It also explains that the change to the cumulative transaction threshold replaces the supervisory flexibility the FCA introduced to support the industry during the coronavirus pandemic. This means that firms can set limits up to these thresholds but not exceed them.

In making use of the new limits, the FCA cautions that firms must ensure they sufficiently mitigate the risk of unauthorised transactions and fraud, including by having the necessary fraud monitoring tools and systems in place and taking swift action where appropriate. The FCA may take appropriate measures, including enforcement action, where breaches are identified.

The FCA's amendments to Article 11 are set out in the [Technical Standards on Strong Customer Authentication and Common and Secure Methods of Communication \(Amendment\) Instrument 2021](#) (FCA 2021/7), which came into force on 3 March 2021.

The FCA plans to publish a further policy statement on all the other issues it consulted on in CP21/3 later in 2021. The deadline for responses to those questions is 30 April 2021.

## APP scams: LSB publishes CRM Code review roadmap

The Lending Standards Board (LSB) has [announced](#) its publication of a [roadmap](#) outlining the activity the LSB will undertake in 2021 as part of its review of the Contingent Reimbursement Model Code (CRM Code) for authorised push payment (APP) scams. The roadmap includes updates to the wording of the CRM Code, a call for input in Q1 2021 and ongoing activity with key stakeholders.

Alongside the activity outlined in the roadmap, the LSB has begun work on a follow up review of [provision R2 1\(c\) – approach to reimbursement of customers](#), the outcomes of which will be published later this year.

# Securities and Markets

## Brexit and Debt Capital Markets transactions: some practical perspectives

Following the end of the Brexit transition period, debt capital markets participants may now need to consider both EU rules and the parallel UK rules for EU and UK transactions, particularly those that are cross-border. Although UK rules currently largely follow the EU rules (as these were onshored wholesale), there are certain differences and practical issues to consider in documentation. There is also a risk that the EU rules and the UK rules may diverge over time.

Read our separate article [here](#), which looks at some practical perspectives to consider when documenting debt capital markets transactions in the EU and UK.

## UK Listing Review report

HM Treasury has published the [report](#) of the UK Listing Review. The UK Listing Review, led by Lord Hill, was launched by Chancellor Rishi Sunak in November 2020 to further enhance the UK's position as an international destination for equity listings.

The Review examined how companies raise equity capital on UK public markets, and it makes a series of recommendations to improve the process, whilst maintaining the high standards of corporate governance, shareholder rights and transparency. The Review's recommendations include:

- modernising listing rules to allow dual class share structures in the London Stock Exchange's (LSE) premium listing segment, giving directors (in particular, founders) enhanced voting rights on certain decisions, with safeguards to maintain high corporate governance standards;
- reducing free float requirements – the amount of a company's shares that are in public hands - from 25% to 15% and allow companies to use other measures to demonstrate liquidity;
- an annual report on the state of the City, and its competitive position, delivered to Parliament by the Chancellor;
- rebranding and repositioning the LSE's standard listing segment to increase its appeal to companies of all sizes and types;
- a fundamental review of the prospectus regime so that in future, admission to a regulated market and offers to the public are treated separately. This will ensure it reflects the breadth and maturity of UK capital markets and the evolution in the types of business coming to market;
- liberalising the rules regarding special purpose acquisition companies (SPACs), with appropriate safeguards for investors;
- making it easier for companies to provide forward-looking guidance when raising capital;
- considering how technology can help retail investors participate in stewardship;
- updating the Financial Conduct Authority's (FCA) statutory objectives to include a duty to take into account the UK's attractiveness as a place to do business;
- tailoring information to meet investors' needs better;
- improving the efficiency of the listing process; and
- addressing issues in the wider financial ecosystem.

The government will now examine the Review's recommendations closely and set out next steps. Many of the recommendations, including changes to the listings regime, will require consultations by the FCA. Commenting on the publication of the report, the Chancellor said that

he is keen to move quickly to consult on the recommendations. The FCA has [welcomed](#) the report and said that, where appropriate, it will act quickly with the aim of publishing a consultation by the summer and making relevant rules by late 2021.

## **UK MiFIR double volume cap: FCA revised Statement of Policy**

The FCA has published an update on its power to suspend the use of pre-trade transparency waivers for a trading venue under the double volume cap (DVC) mechanism, under the retained EU law version of the Markets in Financial Instruments Regulation (UK MiFIR). It has also published an updated [Statement of Policy](#).

The FCA explains that dark trading in equities takes place when the terms on which participants are willing to trade in equity instruments are not made publicly available before the trade is executed. The DVC limits the level of dark trading to a certain proportion of total trading in an equity. A temporary power under UK MiFIR allows the FCA to choose to apply the DVC if the FCA considers it necessary to advance its integrity objective, for example if dark trading is harming the ability of market participants to make well-informed decisions.

The FCA states that, in December 2020, it announced that it would not automatically apply the DVC to UK equities. The FCA is now extending this to all equities.

In the revised Statement of Policy, the FCA sets out that it is willing to use its temporary powers flexibly and amend its approach to the DVC if another jurisdiction makes an equivalence decision in respect of the UK.

## **COVID-19: MiFID "quick fix"**

On 26 February 2021, the [Directive](#) amending the Markets in Financial Instruments Directive (MiFID) to help the EU's economic recovery from the COVID-19 pandemic was published in the Official Journal of the EU (OJ).

The areas addressed by the Directive form part of the European Commission's capital markets recovery package. They include amendments to the rules on client information and product governance requirements, and the energy derivatives markets. In addition, the Directive extends the transposition deadline for the fifth Capital Requirements Directive (CRD V), as it applies to investment firms, to 26 June 2021.

The Directive will enter into force on 27 February 2021.

## **MiFID: ESMA's 2021/22 annual transparency calculations for equity and equity-like instruments**

The European Securities and Markets Authority (ESMA) has [published](#) the results of its annual transparency calculations for equity and equity-like instruments, which will apply from 1 April 2021. ESMA's annual transparency calculations are based on the data provided to the ESMA financial instruments transparency system (FITRS) by trading venues and approved publication arrangements relating to the 2020 calendar year.

Currently, there are 1,432 liquid shares and 982 liquid equity-like instruments other than shares subject to MiFID/MiFIR transparency requirements. Market participants are invited to monitor the release of the transparency calculations for equity and equity-like instruments daily to obtain the estimated calculations for newly traded instruments and the four-weeks calculations applicable to newly traded instruments after the first six-weeks of trading.

The full list of assessed equity and equity-like instruments is available through [FITRS](#) in the XML files with publication date from 1 March 2021 and through the [register web interface](#).

The calculations apply from 1 April 2021 until 31 March 2022. From 1 April 2022, the next annual transparency calculations for equity and equity-like instruments, to be published by 1 March 2022, will become applicable.

### **Transparency Directive: ESMA proposes improvements after the Wirecard case**

ESMA has [written](#) to the European Commission with proposals to improve the Transparency Directive (TD) following the Wirecard case. The proposed modifications to the TD are based on ESMA's experience gained while coordinating the enforcement of financial information in Europe, notably, when preparing reports, discussing supervisory cases or preparing statements and opinions.

ESMA recommends that the Commission consider modifying the TD to meet four aims (detailed further in the letter):

- enhance cooperation between authorities across the EU;
- enhance the coordination and governance on a national level;
- strengthen the independence of national competent authorities (NCAs); and
- strengthen the harmonised supervision of information across the EU.

In addition, the letter addresses some of the deficiencies encountered when conducting the ESMA Peer Reviews on the application of Guidelines on Enforcement of financial information in 2017 and in the context of the Wirecard case.

### **EU Crowdfunding Regulation: ESMA consults on draft technical standards**

ESMA has published a [consultation paper](#) on draft technical standards under the Regulation on European crowdfunding service providers for business (the Crowdfunding Regulation or the ECSP Regulation). The Crowdfunding Regulation requires ESMA to develop eight draft regulatory technical standards (RTS), including two in close cooperation with the European Banking Authority (EBA) and four draft implementing technical standards (ITS). ESMA is consulting on seven RTS and two ITS that are due to be submitted by it to the European Commission by 10 November 2021. The remaining two RTS and two ITS must be delivered to the Commission by 10 May 2022. (In addition, the EBA is mandated to develop two RTS in cooperation with ESMA.)

The consultation ends on 28 May 2021.

### **EU Securitisation Regulation: ESMA updates documents**

ESMA has [announced](#) the publication of:

- revised version of its [Q&As](#) on the EU Securitisation Regulation, including four new questions and eleven modifications to existing answers. The new Q&As include instructions on how to report split and merged underlying exposures. The updated Q&As include revised instructions on how to report income fields for buy-to-let residential real estate mortgages; and
- updated versions of its [reporting instructions](#) and [XML schema and validation rules](#) for disclosure templates to help market participants comply with the [disclosure RTS and ITS](#) made under the EU Securitisation Regulation.

## SRB Banking Union resolution dossier for FMIs

The Single Resolution Board (SRB) has published a [Banking Union Resolution "Dossier" for financial market infrastructures](#) (FMIs). The document provides a brief overview of the resolution tools available in the Banking Union and their impact on the ability of a bank in resolution to maintain continuity of access to financial market infrastructure (FMI) services.

The document covers:

- the resolution framework (institutional set-up, objectives and decision processes);
- why it is important to preserve access to FMI services for a bank in resolution;
- how the legal framework supports continued access to FMIs for a bank in resolution;
- how the legal framework protects the operations of FMIs in the event of the resolution of a bank; and
- the potential impact of the four resolution tools (bail-in, sale of business, bridge institution and asset separation) on FMIs.

## IOSCO 2021-2022 work programme

The International Organization of Securities Commissions (IOSCO) has published its [work programme](#) for 2021-2022. The work programme identifies IOSCO's eight priority areas, the first two of which are new:

- financial stability and systemic risks of non-bank financial intermediation activities;
- risks exacerbated by the COVID-19 pandemic;
- sustainable finance;
- passive investing and index providers;
- market fragmentation in securities and derivatives markets;
- cryptoassets (including stablecoins);
- artificial intelligence and machine learning;
- retail distribution and digitalisation.

IOSCO will review and refresh the two-year work programme at the end of 2021.



# Insurance

## COVID-19: FCA final guidance on proving presence of COVID-19 in BI insurance claims

Following consultation, the UK Financial Conduct Authority (FCA) has published [final guidance](#) on proving the presence of coronavirus (COVID-19) in business interruption (BI) insurance claims, following its BI insurance test case.

The guidance is for policyholders, insurers (including managing agents at Lloyd's) and insurance intermediaries on how the presence of COVID-19 in a particular area may be proved. It is based on the High Court's [judgment](#) and [declarations](#) and the additional statements from the [Supreme Court](#) in the context of insurers' obligations under the FCA's rules to handle claims fairly.

The guidance is intended to

- provide clarity for all parties;
- help ensure that the process of proving the presence of COVID-19 is made as simple as possible for eligible policyholders; and
- enable those policyholders to receive claim payments as early as possible.

The guidance is the FCA's view and does not prevent policyholders using other sources of evidence or putting forward their own arguments in respect of the sources of evidence referred to. The FCA plans to publish a COVID-19 calculator to help policyholders to carry out the calculations in chapters 7, 8 and 9 of the guidance. Policyholders will be able to use the results of the calculator to evidence whether COVID-19 was likely to be present in their policy area. However, it is also open to policyholders to carry out calculations themselves. The calculator should be available soon.

The guidance comes into effect immediately and ceases to have effect on 31 January 2022, by which time the FCA expects that all issues relating to proving the presence of COVID-19 will have been resolved.

## Solvency II: EEA Joint Committee Decision incorporating into EEA Agreement Implementing Regulation on mapping of credit assessments of ECAIs

[Decision 111/2018](#) of the EEA Joint Committee has been published in the Official Journal of the European Union (OJ). The Decision concerns incorporating Commission Implementing Regulation (EU) 2018/633 on the mapping of credit assessments of external credit assessment institutions (ECAIs) under the Solvency II Directive into Annex IX (Financial Services) of the EEA Agreement.

The Decision was made on 21 September 2018. Its date of entry into force is specified as the later of 22 September 2018 (provided that all notifications under Article 103(1) of the EEA Agreement have been made) or the date of entry into force of [Decision 62/2018](#) of 23 March 2018 relating to the incorporation of delegated and implementing regulations under Solvency II.

## Solvency II: EIOPA comparative study on non-life underwriting risk in internal model

The European Insurance and Occupational Pensions Authority (EIOPA) has [announced](#) the launch of an EU-wide comparative study on non-life underwriting risk in internal models under

the Solvency II Directive. The related documents are accessible on a dropdown menu on its [webpage](#), including an instruction document, surveys and a Q&As template.

Firms have until 15 September 2021 to submit results to their national competent authorities (NCAs). NCAs then have until 1 October 2021 to submit information to EIOPA. Firms are advised to submit a first batch well before the deadline so that potential re-workings do not create unnecessary additional submissions.

## **EU Taxonomy Regulation: EIOPA final report on KPI disclosure obligations**

Following consultation, EIOPA has published its [final report](#) setting out technical advice to the European Commission on key performance indicators (KPIs) under Article 8 of the Taxonomy Regulation, specifying the information to be provided by insurers and reinsurers to comply with their disclosure obligations under the Non-Financial Reporting Directive (NFRD).

EIOPA proposes requiring two most relevant KPIs on sustainability that depict the extent to which:

- the insurer or reinsurer carries out taxonomy-aligned activities - in terms of non-life gross premiums written; and
- the insurer or reinsurer is funding or financing taxonomy-aligned economic activities - in relation to total investments.

EIOPA considers that these KPIs on sustainability provide relevant information to financial markets, depicting fairly the insurers' and reinsurers' business models, underwriting policies and investments, and allows for comparisons with other financial sectors and non-financial undertakings.

The [European Banking Authority](#) and the [European Securities and Markets Authority](#) have also published their technical advice to the European Commission on KPIs under Article 8 of the Taxonomy Regulation.

## **EIOPA and Japanese FSA insurance sector cooperation**

EIOPA has [announced](#) that, on 26 February 2021, it exchanged letters with the Financial Services Agency of Japan (JFSA) on cooperation in the areas of insurance regulation and supervision. The letters from [EIOPA](#) and the [JFSA](#) have also been published.

The exchange of letters aims to promote mutual understanding, exchange of information and technical assistance between the two authorities. The JFSA and EIOPA will continue to engage in a dialogue to seek to identify areas for cooperation and share information on regulatory developments of mutual interest, including the development of international standards.

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