Financial Regulation
Weekly Bulletin

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

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1. European Commission

1.1 Fitness check of supervisory reporting requirements in financial services legislation - Commission invites feedback on roadmap - 17 October 2017 - The European Commission has published for consultation a roadmap (Ares(2017)5063271) on its fitness check of supervisory reporting requirements in financial services legislation.

The European Commission is carrying out a fitness check of EU reporting requirements in the financial sector to assess whether the requirements are meeting their objectives, whether the different reporting frameworks are consistent with one another, and whether the cost and burden of the reporting obligations is reasonable and proportionate. Regulatory reporting was one of the most widely raised issues following the European Commission’s September 2015 ‘Call for Evidence’ on the cumulative impact and interaction of EU rules governing the financial sector. The fitness check will include a new public consultation, which is expected to be launched in Q4 2017.

The deadline for providing feedback on the roadmap is 14 November 2017.

The roadmap is [here](#).
2. **HM Treasury**


The updated MoU is [here](#).

The holding page is [here](#).

3. **Financial Conduct Authority**

3.1 **Understanding the financial lives of UK adults - FCA publishes findings from Financial Lives Survey 2017 - October 2017** - As part of the commitment made in its Mission (April 2017) to be more transparent about the way it works, the FCA has published the initial results of its Financial Lives Survey 2017. The FCA surveyed just under 13,000 UK consumers aged 18 and over concerning themselves and their experiences of retail financial products and services. The report, which contains an executive summary, presents key findings over six different age groups (from those aged 18-24 to those aged 65 and over). It also comments on product ownership, assets and debts, and other emerging findings, including potential vulnerability and exclusion.

The FCA intends to review further insights from its 2017 survey over the year ahead, publish further analysis, and use the data to design new ways to protect consumers.

In September 2017, the FCA published Occasional Paper No. 31: Ageing Population and Financial Services, and it is expected to publish its ‘Approach to Consumers’ later this autumn.

The FCA states that it welcomes feedback on the report.

The report is [here](#).

The webpage, including links to the weighted data tables, is [here](#).

The press release is [here](#).

## Brexit

4. **European Commission**

4.1 **Brexit negotiations - joint statement by President Jean-Claude Juncker and Prime Minister Theresa May - 16 October 2017** - The European Commission has published a joint statement by President Jean-Claude Juncker and Prime Minister Theresa May. It includes:

> “The Prime Minister and the President of the European Commission reviewed the progress made in the Article 50 negotiations so far and agreed that these efforts should accelerate over the months to come.”
A statement agreed by the EU27 leaders is to be released at the EU summit on Friday, outlining their view on whether sufficient progress has been made to move the Brexit negotiations onto discussions about the future trade relationship between the UK and EU and possible transitional arrangements. A draft circulating in advance suggests that it is unlikely to be favourable.

The statement is [here](#).

5. **European Commission and UK government**

5.1 **Future global trading arrangements - European Commission and UK government letter to WTO members - 11 October 2017** - The European Commission and the UK government have sent a joint letter to World Trade Organisation members setting out their intentions with regard to the implications of the UK withdrawal from the EU.

The letter is [here](#).

The UK government’s press release is [here](#).

The European Commission’s press release is [here](#).

6. **HM Treasury**

6.1 **Brexit-related spending authority - HM Treasury statement and letter to government departments - 12 October 2017** - The Chief Secretary to the Treasury, Elizabeth Truss, has made a Written Ministerial Statement on spending authority to prepare for Brexit, and HM Treasury and the Department for Exiting the European Union have written to government departments on the subject.

The Chief Secretary to the Treasury's Written Ministerial Statement is [here](#).

The letter to government departments can be found [here](#).

7. **TheCityUK**

7.1 **Brexit transitional arrangements - TheCityUK publishes paper and calls for “rapid progress” - 17 October 2017** - TheCityUK has published a summary paper on transitional arrangements, and called for agreement to be reached by Q1 2018 at the latest.

The paper summarises the need for transitional arrangements, the method of delivering transitional arrangements, and the design of interim arrangements.

The summary paper is [here](#).

The press release is [here](#).

8. **University of Cambridge**

8.1 **The transitional period - University of Cambridge briefing paper on legal questions - 16 October 2017** - The University of Cambridge Faculty of Law’s Centre for European Legal Studies and Centre for Public Law have published ‘Implementing Transition: how would it work?’ The Brexit briefing paper examines the legal questions from both EU and domestic perspectives. It concludes that, while the political obstacles to extending the two-year negotiation period set by Article 50 of the
Treaty on European Union are substantial, such an approach — coupled with the deferral of ‘exit day’ for domestic law purposes — would represent the cleanest and most straightforward legal solution.

The report can be found [here](#).

The press release is [here](#).

See also the **Securities and Markets** section below for an item on the European Commission publishing a consolidated version of its EMIR 2.2 proposal.

See also the **Financial Crime** section below for an item on the Sanctions and Anti-Money Laundering Bill (intended to give the UK the necessary legal powers to continue to implement sanctions, and introduce new measures, post-Brexit) having its first reading in the House of Lords.

**Banking and Finance**

9. **Basel Committee on Banking Supervision**

9.1 **Basel III - Basel Committee publishes thirteenth progress report** - October 2017 - The Basel Committee on Banking Supervision has published its thirteenth progress report on the adoption of Basel III standards as of end-September 2017. It includes implementation status by jurisdiction starting at page 5, with the UK’s progress starting on page 44.

The progress report is [here](#).

The progress report webpage is [here](#).

The press release is [here](#).

10. **European Banking Authority**

10.1 **PSD2 - EBA publishes final Guidelines on procedures for complaints of alleged infringements** - 13 October 2017 - The European Banking Authority (EBA) has published its final Guidelines on the procedures to be followed by competent authorities following complaints about alleged infringements of the revised Payment Services Directive (EU) 2015/2366 (PSD2).

The Guidelines will apply from 13 January 2018.

The final Guidelines are [here](#).

The press release is [here](#).

11. **European Payments Council**

11.1 **SEPA payment scheme rulebooks - EPC publishes updated versions** - 18 October 2017 - The European Payments Council (EPC) has published updated rulebooks for all of its Single Euro Payments Area (SEPA) payment schemes: the SEPA Credit Transfer scheme; the SEPA Instant Credit Transfer scheme; the SEPA Direct Debit Core scheme; and the SEPA Direct Debit Business-to-Business scheme. The EPC states that the updates have no operational impact and are designed to reflect regulatory changes stemming from the guide for the assessment of the SEPA payment
schemes against the Eurosystem oversight standards. The EPC has also published updated SEPA Scheme Management Internal Rules.

The updated versions replace the previous 2017 versions. They come into force on 19 November 2017, save for the SEPA Instant Credit Transfer rulebook, which comes into force on 21 November 2017.

The press release, which contains links to the relevant documents, is here.

12. Financial Conduct Authority

12.1 FCA Market Study MS16/2: Mortgages Market Study - FCA delays publication of interim report - 12 October 2017 - The FCA has announced that the publication of its interim report on its Mortgage Market Study (MS16/2) has been delayed until spring 2018. The FCA intends to produce a final report in Q4 2018.

The MS16/2 webpage is here.

12.2 PSD2 - FCA accepts applications and updates webpages - 13 October 2017 - Applications under the revised Payment Services Directive (EU) 2015/2366 (PSD2) can now be submitted to the FCA. The FCA has updated a number of its webpage(s) on PSD2 accordingly. PSD2 will take effect on 13 January 2018.

FCA webpages on PSD2 start here.

12.3 Debt management sector - FCA commences thematic review - 19 October 2017 - The FCA has launched its thematic review of the debt management sector (retail lending), in line with the commitment in its Business Plan 2017/18. The FCA expects to complete the review in Q1 2019.

The announcement is here.

13. International Association of Deposit Insurers

13.1 Resolution issues for financial co-operatives - IADI launches public consultation - 17 October 2017 - The International Association of Deposit Insurers (IADI) has published for consultation two research/guidance papers:

- Resolution Issues for Financial Cooperatives - Overview of Distinctive Features and Current Resolution Tools; and

- Sharia governance for Islamic deposit insurance systems.

The closing date for both consultations is 17 November 2017.

The consultation paper on resolution issues for financial co-operatives is here.

The discussion paper on Sharia governance for Islamic deposit insurance systems is here.

The holding page is here.
14. Recent cases

14.1 **UBS AG (London branch) and others v Kommunale Wasserwerke Leipzig GmbH and others**, [2017] EWCA Civ 1567, 16 October 2017

*Single tranche collateral debt obligations – bribe paid by corrupt financial adviser to managing director of the bank’s client – arrangement whereby financial adviser would advise their clients to enter into such products with the bank, regardless of the clients’ interests – rescission*

By a majority, the Court of Appeal (Lord Briggs of Westbourne and Lord Justice Hamblen, Lady Justice Gloster dissenting) has refused an investment bank’s appeal against a decision that a Leipzig municipal water company was entitled to rescind complex derivative products entered into by the company with the bank.

The company had been persuaded to enter into the products by its corrupt financial advisers, Value Partners Group AG, assisted by a bribe of around US$3 million paid by Value Partners to one of the company’s managing directors. Although the bank was not aware of the bribe, it had entered into an arrangement with Value Partners whereby Value Partners would advise their clients to enter into such products with the bank, regardless of the clients’ interests. The majority of the Court of Appeal considered that by virtue of its dishonest assistance in Value Partner’s abuse of its fiduciary duty to the company, it would be unconscionable for the bank to be able to enforce the product. In addition, the product was unenforceable by reason of the bank’s knowledge of, and dishonest assistance in, Value Partner’s abuse of its duty to provide disinterested advice to the company. The knowledge of the managing director who had accepted the bribe was not, for these purposes, to be attributed to the company, so that the company could not be taken to have consented to that conflict of interest.

The whole Court of Appeal (subject to one point) did find, however, that Value Partners was not acting as the bank’s agent when it paid the bribe.

It has been reported in the press that the bank intends to appeal.

The judgment is here.

See also the Securities and Markets section below for an item on the Bank of England announcing the implementation date for its SONIA reforms, and publishing a key features and policies document.

See also the Financial Crime section below for an item on the European Commission consulting on broadening access to centralised bank account registries.

See further the Financial Crime section below for an item on the Wolfsberg Group publishing two documents on correspondent banking and international payment services.

**Securities and Markets**

15. Official Journal of the European Union

Commodity Futures Trading Commission (CFTC) as equivalent to certain requirements of article 11 of the European Market Infrastructure Regulation (648/2012/EU) (EMIR), has been published in the Official Journal of the European Union.

The Decision enters into force on 3 November 2017.

The Implementing Decision is here.

The European Commission’s press release is here.

16. European Commission and the Commodity Futures Trading Commission

16.1 Derivatives trading venues - European Commission and CFTC announce common approach - 13 October 2017 - The European Commission and the US Commodity Futures Trading Commission (CFTC) have announced a common approach for the mutual recognition of EU and US derivatives trading venues.

The aim of the common approach is to ensure that EU counterparties can comply with the trading obligation in article 28 of the Markets in Financial Instruments Regulation (600/2014/EU) (MiFIR) by executing mandated derivatives on EU-authorised trading venues or CFTC-authorised swap execution facilities (SEFs) and designated contract markets (DCMs). It also aims to ensure that US counterparties can comply with the trade execution requirement under section 2(h)(8) of the Commodity Exchange Act by executing swaps on certain EU-authorised trading venues that are exempted from SEF registration, as well as on SEFs and DCMs.

Both parties are working towards adopting the necessary legal acts.

The European Commission and the CFTC’s joint statement is here.

Remarks by European Commission Vice-President Valdis Dombrovskis are here.

The European Commission’s press release is here.

17. European Commission

17.1 EMIR 2.2 proposal - European Commission publishes consolidated version - 13 October 2017 - The European Commission has now published a consolidated version (COM(2017) 331 final/2) of 20 September 2017 of its proposal (COM(2017) 331) of 13 June 2017 for a Regulation amending the ESMA Regulation (1095/2010/EU) and the European Market Infrastructure Regulation (648/2012/EU) (EMIR) regarding the procedures and authorities involved for the authorisation of central counterparties (CCPs), and requirements for the recognition of third country CCPs, as amended by COM(2017) 539 of 20 September 2017. The amendment is an additional paragraph (-a) to new Article 44b of EMIR (tasks and powers of the CCP Executive Session).

The Commission states that the consolidated version should be read together with the explanatory memorandum in COM(2017)539.

The proposal is open to feedback until 8 December 2017.

COM(2017) 331 final/2 of 20 September 2017 is here.

COM(2017) 539 of 20 September 2017 is here.
17.2 Cost and past performance of retail investment, insurance and pension products - European Commission asks ESAs to produce recurrent reports - 13 October 2017 - The European Commission has asked the European Supervisory Authorities (the EBA, EIOPA, and ESMA) to issue recurrent reports on the cost and past performance of the main categories of retail investment, insurance and pension products. This was announced in the European Commission communication on the Mid-Term Review of the Capital Markets Union of 8 June 2017.

The intention is that reporting should be based on data and information originating from disclosures and reporting already required by Union law (e.g. UCITS, MiFID/MiFIR, IDD, IORP and PRIIPs) or national legislation. The European Commission accepts there will be difficulties in accessing the full set of data and making resources available for the work to be undertaken and envisages a pragmatic and staggered approach.

The request is here.


The European Commission’s overall conclusion is that, to a large extent, the FSB recommendations on SFTs have been addressed in the EU through the adoption of SFTR and specific provisions in sectoral financial services legislation and guidelines. As such, there does not seem to be a need for further regulatory action at this stage. The European Commission will continue to thoroughly monitor developments in SFT markets and the international regulatory space. The European Commission will reassess the added value of qualitative standards and haircut floors on the basis of a report to be prepared by ESMA once comprehensive SFT data is available.

The report is here.

18. European Securities and Markets Authority

18.1 MiFID II/MiFIR - ESMA publishes FAQs on interim transparency calculations - 18 October 2017 - The European Securities and Markets Authority (ESMA) has published FAQs on interim transparency calculations for non-equity instruments in relation to the implementation of the Markets in Financial Instruments Regulation (600/2014/EU) (MiFIR) and Directive (2014/65/EU) (MiFID II).

The FAQs are here.

18.2 MiFID II/MAR - ESMA launches second phase of the Financial Instruments Reference Data System - 16 October 2017 - ESMA has launched the second phase of its Financial Instruments Reference Data System (FIRDS), together with instructions for market participants on how to access the data and download the relevant machine-readable files. The launch is intended to allow market participants to prepare their reporting systems ahead of MiFID II (2014/65/EU) and MiFIR (600/2014/EU) being implemented on 3 January 2018.
18.3 MiFID II - ESMA publishes responses to consultation on certain aspects of the suitability requirements - 18 October 2017 - ESMA has published the responses to its consultation paper on draft Guidelines on certain aspects of the suitability requirements under MiFID II (2014/65/EU). ESMA intends to publish a final report in Q1 or Q2 2018.

The responses can be found here.

The press release is here.

18.4 New Prospectus Regulation - ESMA publishes responses to consultation - 13 October 2017 - ESMA has published the responses to its July 2017 consultation papers containing draft technical advice on the Prospectus Regulation (EU) 2017/1129. ESMA intends to deliver the technical advice to the European Commission by 31 March 2018.

The responses can be found here.

The press release is here.

18.5 Benchmarks Regulation - ESMA announces arrangements for register of administrators and third country benchmarks - 13 October 2017 - ESMA has announced that it will start publishing a register of administrators and third country benchmarks, in accordance with article 36 of the Benchmarks Regulation (EU) 2016/1011, on 1 January 2018.

ESMA’s webpage on benchmarks is here.

The webpage on which the register will be published is here.

19. European Central Bank

19.1 EMIR 2 proposal - ECB publishes Opinion - 11 October 2017 - The European Central Bank (ECB) has published an Opinion (CON/2017/42) on the proposed Regulation (COM(2017) 208) amending EMIR (648/2012/EU) regarding the clearing obligation; the suspension of the clearing obligation; the reporting requirements; risk-mitigation techniques for OTC derivatives not cleared by a CCP; registration and supervision of trade repositories; and the requirements for such repositories.

The Opinion is here.

The procedure file is here.

20. Bank of England

20.1 The reform of SONIA - Bank of England announces implementation date and publishes key features and policies document - 16 October 2017 - The Bank of England has confirmed that its reforms to the Sterling Overnight Index Average (SONIA) interest rate benchmark will take effect on 23 April 2018. The Bank of England has also published a key features and policies document.

The key features and policies document is here.
The announcement is here.

21. Financial Conduct Authority

21.1 MiFID II - FCA opens applications for commodity position limits exemptions - 18 October 2017 - Non-financial entities, as defined in article 2(1) of Commission Delegated Regulation (EU) 2017/591 (RTS 21), can now apply to the FCA for an exemption from position limits.

The FCA’s webpage on commodity derivatives is here.

See also the General section above for an item on the FCA publishing findings from Financial Lives Survey 2017, including information on products, assets, and debts.

See also the Enforcement section below for an item on the FCA fining Rio Tinto plc £27m for breach of the DTRs.

See further the Enforcement section below for an item on Berkeley Burke SIPP Administration LLP v Charlton, regarding a complaint concerning a self-invested personal pension scheme.

Asset Management

22. Financial Conduct Authority

22.1 Asset management authorisation hub - launched by FCA - 16 October 2017 - The FCA has launched the first phase of its new asset management authorisation hub. The hub is intended to support new entrants to the market with the authorisation process and afterwards. This phase offers new firms pre-application meetings, dedicated case officers and access to the new website portal. Further phases of the hub will be rolled out throughout 2018.

The webpage for phase one of the asset management authorisation hub is here.

A flowchart on the steps to becoming regulated is here.

The press release is here.

23. Alternative Investment Management Association

23.1 Due diligence questionnaire for investment managers - revised by AIMA - 13 October 2017 - The Alternative Investment Management Association (AIMA) has published a new edition of its due diligence questionnaire (DDQ) for investment managers. The DDQ now covers private credit and private equity strategies, as well as hedge funds. The DDQ is only available to AIMA members.

The DDQ can be found here.

The press release is here.

See also the Securities and Markets section above for an item on the European Commission asking ESAs to produce recurrent reports on cost and past performance of retail investment, insurance and pension products.

See also the Enforcement section below for an item on Berkeley Burke SIPP Administration LLP v Charlton, regarding a complaint concerning a self-invested personal pension scheme.
Insurance


24.1 Solvency II Delegated Regulation on infrastructure corporates - Corrigendum published in the Official Journal - 13 October 2017 - A Corrigendum to Commission Delegated Regulation (EU) 2017/1542 of 8 June 2017 amending the Solvency II Delegated Regulation (EU) 2015/35 concerning the calculation of regulatory capital requirements for certain categories of assets held by insurance and reinsurance undertakings (infrastructure corporates) has been published in the Official Journal of the European Union. It changes one of the equations in article 1(4)(c) of the amending Regulation.

The Corrigendum is [here](#).

25. European Parliament

25.1 IDD - ECON calls for delay in implementation to 1 October 2018 - 16 October 2017 - The European Parliament’s Committee on Economic and Monetary Affairs (ECON) has asked the European Commission to consider whether the application of the Insurance Distribution Directive (EU) 2016/97 could be delayed from 23 February 2018 to 1 October 2018.

Insurance Europe has published a press release expressing its support for the delay.

The request is [here](#).

The webpage for ECON’s meeting of 16 October 2017 is [here](#).

The Insurance Europe press release (dated 17 October 2017) is [here](#).

26. European Insurance and Occupational Pensions Authority

26.1 Solvency II - EIOPA publishes Q&As - 19 October 2017 - The European Insurance and Occupational Pensions Authority (EIOPA) has published two new sets of Q&As relating to Solvency II (2009/138/EC):

- Q&As on Commission Implementing Regulation (EU) 2015 /2450 on the templates for the submission of information to supervisory authorities; and
- Q&As on Commission Delegated Regulation (EU) 2015/35 supplementing Solvency II.

The new Q&As on Commission Implementing Regulation (EU) 2015 /2450 can be found [here](#).

The new Q&As on Commission Delegated Regulation (EU) 2015/35 can be found [here](#).

The press release is [here](#).

27. Prudential Regulation Authority

27.1 PRA Policy Statement PS25/17: Solvency II: Data collection of market risk sensitivities - October 2017 - The PRA has published a Policy Statement (PS25/17) containing feedback to CP7/17, and Supervisory Statement 7/17 ‘Solvency II: Data collection of market risk sensitivities’.
PS25/17 is here and the webpage is here.

SS7/17 is here and the webpage is here.

27.2 Solvency II - PRA publishes insurance data release - 18 October 2017 - The PRA has published data on the UK Insurance Sector regarding Solvency II Day 1 and Quarterly Returns as at Q4 2016.

The data release is here.

The press release is here.

27.3 Solvency II - PRA publishes summary of roundtables on solvency and financial condition reports - 18 October 2017 - The PRA has published summaries of three roundtables with insurers, investors, credit analysts and equity analysts, held in September 2017, to discuss the first round of solvency and financial condition reports published by EU insurers in 2017. The summary sets out feedback from the preparers and users of the reports.

The summary is here.

27.4 PRA Consultation Paper CP16/17 - PRA provides indicative fee rates for life insurers - 13 October 2017 - The PRA has now provided some indicative fee rates for life insurers for the 2017/18 fee year based on 2016 Solvency II reported data and the proposals set out in CP16/17.

The update is contained on the consultation webpage for CP16/17 here.

28. Financial Conduct Authority

28.1 General insurance renewals - FCA assesses implementation of rules, and identifies broad concern about implementation of regulatory change - 19 October 2017 - The FCA has published a webpage setting out its assessment of how general insurance firms have implemented its April 2017 reforms on general insurance renewals, which were designed to improve transparency and levels of consumer engagement. The FCA reports that it has seen several examples of firms having failed to comply fully with the new rules. It also expresses a broader concern that this evidences a failure to manage regulatory change effectively. In the light of forthcoming changes such as the implementation of the Insurance Distribution Directive (EU) 2016/97 and changes to the Senior Managers and Certification Regime, the FCA reminds all firms of the need to ensure that regulatory changes are managed effectively in future.

Key failings identified by the FCA include:

- providing incorrect premium information;
- failing to present the premiums and shopping around message clearly, accurately and in a way which draws the reader’s attention;
- not implementing the rule changes for all products and customers; and
- failing to properly identify a ‘renewal’ as defined by FCA rules.

The FCA has worked with firms to address issues, and in several cases has required firms to provide follow-up communications to consumers.
The FCA expects firms to review their processes and documentation (both direct to consumer and online) to ensure they are compliant and have captured all necessary renewals.

The FCA also reminds firms that they must ensure that the last year’s premium and additional shopping around messages are presented as key information in a clear prominent position and in a way which draws attention.

The webpage is here.

PS16/21 (August 2016) is here.

See also the Securities and Markets section above for an item on the European Commission asking ESAs to produce recurrent reports on cost and past performance of retail investment, insurance and pension products.

See also the Enforcement section below for an item on Berkeley Burke SIPP Administration LLP v Charlton, regarding a complaint concerning a self-invested personal pension scheme.

Financial Crime

29. Financial Stability Board

29.1 Cybersecurity regulatory and supervisory practices - FSB publishes stocktaking report - 13 October 2017 - The Financial Stability Board (FSB) has published the findings of a stocktake, prepared for the G20. It concerns cybersecurity regulations, guidance and supervisory practices in the financial sector, including financial market infrastructures, trading venues, banks, insurance companies, broker-dealers, asset managers and pension funds. It is based on the responses of FSB member jurisdictions and international bodies to a survey, and themes raised in an FSB workshop in September 2017 that brought together public and private sector participants.

The summary report is here.

The detailed analysis is here.

The webpage is here.

The press release is here.

30. European Commission

30.1 Broadening access to centralised bank account registries - European Commission launches public consultation - 17 October 2017 - The European Commission has launched a consultation on broadening law enforcement access to centralised bank account registries.

The proposal for a Fifth Money Laundering Directive (COM(2016) 0450) includes provisions which would require Member States to establish centralised bank account registries and allow access to them to Financial Intelligence Units and competent authorities to prevent money laundering. The provision establishing centralised registers is likely be included in the final text to be adopted by the co-legislators later in 2017. In the Action Plan to step up the fight against terrorist financing (COM (2016) 50 final), the European Commission announced that it would also explore the possibility of a self-standing legislative instrument to allow for a broader access to centralised bank and payment account registries for other law enforcement investigations and by other
Financial authorities (e.g. tax authorities, asset recovery offices, other law enforcement services, anti-corruption authorities). The European Commission consulted on an inception impact assessment for this in August 2017. The European Commission is now consulting stakeholders before finalising its proposal.

The consultation period closes on 9 January 2018.

The background information document is here.

The consultation webpage is here.

The procedure file for the proposed Fifth Money Laundering Directory is here.

31. The Wolfsberg Group

31.1 Correspondent banking and international payment services - the Wolfsberg Group publishes two documents - 15 October 2017 - The Wolfsberg Group has published:

- the new Wolfsberg Correspondent Banking Due Diligence Questionnaire — available to the banking community and Know Your Customer (KYC) utilities, this has been comprehensively updated in line with increased regulatory expectations and industry practices. When completed, the Wolfsberg Group expects this questionnaire to satisfy Financial Action Task Force (FATF) Recommendation 13. This means that for ‘cross-border correspondent banking’ additional due diligence requirements must be undertaken, including for so called ‘high risk’ correspondent banks; and

- the revised Wolfsberg Payment Transparency Standards — these additional standards are intended be used by parties working on the introduction of new payment methods and platforms, including for domestic payments, where covered by FATF Recommendation 16. They clarify the roles and responsibilities and expectations for originators (e.g., what it means to include name, address and account number). They also set out expectations for intermediaries and beneficiaries, On Behalf Of payments and Money or Value Transfer Services (MVTS), and provide a view on the use of so-called Legal Entity Identifiers (LEI).

The Wolfsberg Group is an association of thirteen global banks which aims to develop frameworks and guidance for the management of financial crime risks, particularly with respect to KYC, Anti-Money Laundering and Counter-Terrorist Financing policies.

The webpage for the due diligence questionnaire is here.

The 2017 payment transparency standards are here.

The holding page is here.

32. UK Parliament

32.1 Sanctions and Anti-Money Laundering Bill - first reading in the House of Lords - 18 October 2017 - The Sanctions and Anti-Money Laundering Bill had its first reading in the House of Lords on 18 October 2017. The second reading is scheduled for 1 November 2017.

The government states that the new legislation will give the UK the necessary legal powers to continue to implement sanctions and introduce new measures post-Brexit. It will enable the UK to
maintain existing sanctions regimes currently imposed through EU law, while providing the necessary legal underpinning for the UK to decide when and how to take action against new threats.

The government consulted on the UK’s future legal framework for imposing and implementing sanctions in April 2017 and published a government response in August.

The Bill (as introduced) is here.

The explanatory notes are here.

The Bill’s webpage is here.

The press release is here.

The consultation webpage is here.

32.2 **Money laundering in South Africa - House of Lords question on the role of UK banks - 19 October 2017** - The government has answered a question in the House of Lords from Lord Hain about the action being taken to prevent money laundering through British banks by families and business people linked to the government of South Africa. Lord Bates indicated that Lord Hain’s letter to the Chancellor of 25 September 2017 has been referred to the relevant authorities.

Hansard for the relevant Q&A is here.

33. **National Crime Agency**

33.1 **Suspicious Activity Reports - NCA publishes Annual Report 2017 - 11 October 2017** - The National Crime Agency (NCA) has published its annual report on Suspicious Activity Reports (SARs), for the period October 2015 and March 2017. Future annual reports on SARs will cover the period from April to March.

The UK Financial Intelligence Unit (UKFIU) has continued to experience a yearly increase in the number of SARs received, as well as a huge growth in the number of cases where a ‘defence against money laundering’ (DAML) has been requested. March 2017 saw the highest number received on record for both.

In July 2016, the UKFIU reviewed its policy and operating procedures relating to requests for ‘consent’ under the Proceeds of Crime Act 2002 and the Terrorism Act 2000. As part of the new approach, the UKFIU has reduced the use of the term ‘consent’ and instead uses the terms DAML or ‘defence against terrorism financing’. The UKFIU has also introduced a more robust prioritisation process, and in October 2016, moved to communication with reporters predominantly in writing. A post-implementation review of the new DAML process is to take place.

The report includes the UKFIU’s new strategy for 2017-2018.

The Annual Report 2017 is here.

The press release is here.
34. **Gambling Commission**

34.1 **Duties and responsibilities under the Proceeds of Crime Act 2002 - Gambling Commission publishes advice to operators - October 2017** - The Gambling Commission has published the fourth edition of its advice for gambling operators (excluding casino operators) on their obligations under the Proceeds of Crime Act 2002 (POCA). POCA places an obligation on gambling operators to be alert to attempts by customers to gamble money acquired unlawfully, either to obtain legitimate or ‘clean’ money in return (and, in doing so, attempting to disguise the criminal source of the funds) or simply using criminal proceeds to fund gambling. Both modes of operation are described as money laundering. This advice is directed at all holders of operating licences issued by the Gambling Commission, excluding non-remote and remote casino operating licence holders who are provided with separate guidance in relation to anti-money laundering (AML) and counter-terrorist financing.

The guidance is [here](#).

35. **New legislation**

35.1 **The Policing and Crime Act (Financial Sanctions) (Overseas Territories) Order 2017 (SI 2017/984)** was made on 11 October 2017.

Under section 152(1) of the Policing and Crime Act 2017, the Treasury has the power, by regulations, to create a temporary financial sanctions regime to implement a financial sanctions regime imposed by a new United Nations Security Council Resolution. Section 156 of the Act enables these temporary regime measures and temporary deemed designations to be extended to the British overseas territories. The Order (SI 2017/984) provides for them to be extended to the British overseas territories specified in the Schedule to the Order, with certain modifications.

Articles 1 to 6 of the Order come into force on 2 November 2017. Articles 7-14 (the modifications) come into force on the day that the regulations made under section 152(1) of the Act first come into force.

The Regulations are [here](#).

35.2 **The Criminal Finances Act 2017 (Commencement No. 2 and Transitional Provisions) Regulations 2017 (SI 2017/991)** were made on 12 October 2017. They concern obligations to report suspicions of money-laundering. They bring the following provisions of the Criminal Finances Act 2017 into force on 31 October 2017:

- section 10 (power to extend moratorium period in the Proceeds of Crime Act 2002 (POCA));
- section 11 (sharing of information within the regulated sector) so far as it applies to relevant undertakings within section 339ZG(5)(b)(a) of POCA;
- section 12 (further information orders);
- section 15 (forfeiture of certain personal (or moveable) property) so far as it inserts sections 303G and 303H into POCA and so far as not already in force;
- section 17 (Serious Fraud Office);
section 36 (sharing of information within the regulated sector) so far as it applies to relevant undertakings within section 21CF(6)(b) of the Terrorism Act 2000;

section 37 (further information orders);

section 43 (enforcement in other parts of the United Kingdom) so far as not already in force; and

section 53 (minor and consequential amendments); and

certain other provisions.

The explanatory note within the Regulations provides more detail.

The Regulations are here.

See also the Enforcement section below for an item on Berkeley Burke SIPP Administration LLP v Charlton, regarding a complaint concerning a self-invested personal pension scheme that included an investment in a fraudulent company.

### Enforcement

36. Financial Conduct Authority

36.1 Breach of Disclosure and Transparency Rules - FCA fines Rio Tinto plc £27m - 17 October 2017 -

The FCA has fined Rio Tinto plc £27,385,400 for breaching the FCA’s Disclosure and Transparency Rules (DTR 4.2.4R(1) and DTR 1.3.4R) in 2012 by failing to account correctly for mining assets based in the Republic of Mozambique when publishing its interim results.

The FCA considers that it “demonstrated a serious lack of judgement” in failing to carry out an impairment test when there were indicators of impairment that should have led to the carrying out of such a test, as required by International Accounting Standards (IAS). Had it carried out an impairment test, a material impairment would have been required to be reported to the market. The FCA therefore found that the company’s financial reporting was inaccurate and misleading and that this continued until 17 January 2013 when Rio Tinto finally announced an impairment of the company it had acquired, writing off approximately 80% of its value.

The company agreed to settle at an early stage of the FCA’s investigation and therefore qualified for a 30% discount, without which the fine would have been £39,122,007.

DTR 4.2.4R(1) states: “If an issuer is required to prepare consolidated accounts, the condensed set of financial statements must be prepared in accordance with IAS 34”.

IAS 34 requires that interim financial statements recognise losses from the impairment of assets and comply with IAS 36, which states that “[a]n entity shall assess at the end of each reporting period whether there is any indication that an asset may be impaired. If any such indication exists, the entity shall estimate the recoverable amount of the asset” (emphasis added).

DTR 1.3.4R states: “An issuer must take all reasonable care to ensure that any information it notifies to a RIS is not misleading, false or deceptive and does not omit anything likely to affect the import of the information”.
The US Securities and Exchange Commission has announced that it has charged the company, and two former senior executives, with fraud.

The FCA final notice is here.

The FCA press release is here.

The SEC press notice is here.

37. House of Commons Treasury Committee

37.1 Section 166 report into the RBS GRG - Treasury Committee and the FCA agree scrutiny process - 17 October 2017 - The Chair of the House of Commons Treasury Committee, Nicky Morgan, and the chief executive of the FCA, Andrew Bailey, have agreed on a process for the Committee to appoint a legal adviser — Andrew Green QC — to review the FCA’s summary of the section 166 report on RBS Global Restructuring Group (GRG). The FCA is relying on the ‘self-help’ gateway set out in paragraph 3(1)(a) of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (SI 2001/2188) in order to disclose confidential information that would otherwise be protected under section 348 of the Financial Services and Markets Act 2000 (FSMA). This gateway permits a disclosure to enable or assist the FCA to carry out a public function. One of the FCA’s public functions is to give general guidance, and it states it intends to publish its account as such guidance under section 139A FSMA.

The FCA has suggested one minor change to the proposals set out in Nicky Morgan’s letter of 11 October 2017. That is, to the extent that counsel considers that the FCA’s account omits information included in the section 166 report, he also considers the justification and reasonableness of any explanation for such an omission.

The intention is that the scrutiny process would be completed prior to the appearance of Andrew Bailey before the Committee on 31 October 2017.

Nicky Morgan’s letter of 11 October 2017 is here.

The terms of reference referred to are here.

The proposed arrangements between the FCA and the advisers appointed by the Treasury Committee are here.

A press release dated 13 October 2017 is here.

Andrew Bailey’s response of 16 October 2017 is here.

A further letter by Nicky Morgan to Andrew Bailey dated 17 October 2017 is here.

A press release dated 17 October 2017 is here.

38. Information Commissioner’s Office

38.1 Illegal marketing texts and e-mails - ICO fines a Bradford bank £75,000 - 10 October 2017 - The Information Commissioner’s Office (ICO) has fined Vanquis Bank Limited £75,000 for instigating a campaign to send 870,849 spam text messages and 620,000 spam emails to promote its credit cards. The penalty was imposed under section 55A of the Data Protection Act 1998, for “serious

The penalty notice is here.

The press release is here.

39. Recent cases

39.1 Berkeley Burke SIPP Administration LLP v Charlton, [2017] EWHC 2396 (Comm), 3 October 2017

Complaint concerning a self-invested personal pension scheme — agreement to have FOS decision reconsidered not an arbitration agreement — whether the FOS has the power to reconsider a complaint — section 228(5) and paragraph 14 of Schedule 17 to the Financial Services and Markets Act 2000

The Commercial Court has decided that that an agreement between Mr Charlton and Berkeley Burke SIPP Administration LLP in 2014 to have Mr Charlton's complaint to the Financial Ombudsman Service (FOS) reconsidered by a second ombudsman, avoiding the need for the applicant to bring formal judicial review proceedings to quash the original decision, was not an arbitration agreement within the meaning of the Arbitration Act 1996 (the Act). Accordingly, an application for permission to appeal the decision of the second ombudsman, pursuant to section 69 of the Act, was dismissed.

On the question of whether the FOS has the power to reconsider a complaint, Mr Justice Teare said:

“...It is true that the relevant legislation (Schedule 17 to the Financial Services and Markets Act 2000, paragraph 14) does not contain an express power for an Ombudsman to reconsider a complaint. But I consider that Mr Strachan QC, on behalf of FOS, was right in his submission that the power to reconsider a complaint is part and parcel of FOS's duty to consider a complaint which has been properly brought before it. Of course, where the decision of the Ombudsman has been accepted by the complainant it is binding upon the respondent to the complaint (see section 228(5) of the FSMA 2000) and the role of the Ombudsman is at an end (save possibly where the complaint has been dismissed and new evidence has come to light; see paragraph 3.3.4(6) of DISP 3, the Dispute Resolution rules of FOS). But in this case, whilst Mr Charlton initially accepted the decision of the Ombudsman, the effect of the agreement reached between the parties was, as it was put by Mr Strachan, that that acceptance was withdrawn. That appears to me to be implicit in the agreement reached between the parties...

Thus in my judgment the parties continued to participate in the complaint resolution scheme established by the FSMA 2000 after August 2014.”

Mr Charlton’s complaint was in respect of the loss of his personal pension which he had invested in a self-invested personal pension scheme (SIPP) administered by the firm in 2011. The investments in the SIPP included an interest in Sustainable AgroEnergy PLC, a company which purported to extract biofuel from trees grown in Cambodia, and entered receivership following intervention by the Serious Fraud Office as part of a criminal investigation. In what is seen by some in the industry as a controversial decision, both ombudsmen ruled in favour of Mr Charlton. The firm has issued
an application seeking judicial review of the second ombudsman’s decision, and that application was stayed pending the determination of this application.

The judgment is here.

See the Banking and Finance section above for an item on the EBA publishing final Guidelines on procedures for complaints of alleged infringements of PSD2.
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.

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- A number of banking groups in relation to banking structural reform, including the ring-fencing regime;
- Standard Life plc on the recommended all-share merger with Aberdeen Asset Management;
- RSA Insurance Group on its disposal of £834 million of UK Legacy liabilities to the Enstar Group;
- 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;
- A range of financial services clients responding to the legal and structural implications of the UK’s exit from the EU, including co-authoring a report ‘Navigating the legislative landscape outside the single market’ with the BBA (now UK Finance);
- Major financial institutions and non-financial corporates on the impact of the MiFID II regime and related measures;
- On the legal implications of developments across a broad fintech waterfront for clients such as Euroclear, Bupa, and Stripe, as well as other established businesses through to challengers and start-ups;
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