Financial Regulation
Weekly Bulletin

3 March 2016 / Issue No. 850

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

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If you have any comments or questions, contact Elizabeth Prentice.

Slaughter and May also produces a periodical Insurance Newsletter. If you would like to go on the distribution list, please contact Beth Dobson.
1. **Financial Stability Board**

1.1 **International regulatory reform - FSB letter from Mark Carney to the G20 on 2016 priorities - 27 February 2016** - The Chair of the Financial Stability Board (FSB) has written a letter to G20 Finance Ministers and Central Bank Governors on the FSB’s work programme for 2016. G20 Finance Ministers and Central Bank Governors have published a communiqué summarising their meeting in Shanghai on 27 February 2016.

The FSB’s priorities for 2016 include:

- supporting the implementation of post crisis reforms;
- addressing new and emerging vulnerabilities in the financial system - including potential risks associated with market-based finance, asset management activities, conduct, correspondent banking, and climate change;
- promoting robust financial infrastructure - working with the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO);
- drawing lessons from the practical application of macro-prudential policy frameworks and tools; and
- assessing the systemic implications of financial technology innovations and the systemic risks of operational disruption.

The FSB letter is [here](#).

The press release is [here](#).

The G20 communiqué is [here](#).
2. UK Parliament

2.1 Investigatory Powers Bill - introduced to the House of Commons and Home Office publishes related documents - 1 March 2016 - The Investigatory Powers Bill, which was introduced to the House of Commons on 1 March 2016, is due to have its second reading on 15 March 2016. The Home Office states that the legislation needs to be in force by 31 December 2016.

A draft Bill was published for pre-legislative scrutiny in November 2015, and considered by three Parliamentary committees. The Home Office states that the revised Bill responds to the vast majority of recommendations made by those committees. It has published explanatory material relating to the revised Bill, including a government response to pre-legislative scrutiny, various other overarching documents, and draft codes of practice.

Part 3 and Schedule 4 of the draft Bill describe the power to be given to the FCA to obtain communications data for the purpose of preventing or detecting crime, or exercising functions relating to the regulation of financial services and markets, or financial stability. One of the draft codes of practice published by the Home Office concerns communications data.

The Bill as introduced to the House of Commons is [here](#).

The explanatory notes are [here](#).

The Parliamentary webpage for the Bill is [here](#).

The Home Office page for the Bill is [here](#).

The overarching documents are available [here](#).

The draft codes of practice are available [here](#).

2.2 Scrutiny of appointments - Treasury Committee publishes report, and tables an amendment to the Bank of England and Financial Services Bill - 26 February 2016 - The House of Commons Treasury Committee has published a report on the Committee’s scrutiny of appointments. Among other things, it recommends that Parliament, in the shape of the Treasury Committee, be given effective veto over the appointment and dismissal of the Governor of the Bank of England and the Chief Executive of the FCA. In relation to the Chief Executive of the FCA, Mr Andrew Tyrie has tabled an amendment to the Bank of England and Financial Services Bill, to add a new clause to amend Schedule 1ZA of the Financial Services and Markets Act 2000 to provide for this.

The report is [here](#).

The press release is [here](#).

Amendments to the Bill tabled for consideration at the report stage are [here](#).

The Bill file is [here](#).
3. **Department for Business, Innovation & Skills**

3.1 **Terms and conditions, and consumer protection fining powers - BIS publishes call for evidence - March 2016**

The Department for Business, Innovation & Skills (BIS) has published a call for evidence, seeking views on how terms and conditions can be made more user-friendly for consumers. The call for evidence also consults on proposals to introduce civil fining powers for breaches of consumer protection legislation, including the unfair terms provisions of the Consumer Rights Act 2015. The PRA and the FCA are among the organisations being consulted.

The call for evidence closes on 25 April 2016.

BIS intends to make recommendations in spring 2016.

The call for evidence is [here](#).

The consultation webpage is [here](#).

4. **Prudential Regulation Authority and Financial Conduct Authority**

4.1 **SMR and SIMR - PRA and FCA update webpages on implementation - March 2016**

The Prudential Regulation Authority (PRA) and the FCA have updated their webpages on the implementation of the Senior Managers Regime (SMR) and the Senior Insurance Managers Regime (SIMR) in the light of implementation on 7 March 2016.

See also the **Banking and Finance** section below for items on PRA Policy Statement PS9/16: Strengthening individual accountability in banking: responses to CP1/16 and the Certification Part of CP29/15 (March 2016) and FCA Policy Statement PS16/6: Consequential Changes to the Senior Managers Regime.

The updated PRA webpage is [here](#).

The updated FCA webpage is [here](#).

5. **Prudential Regulation Authority**

5.1 **Regulatory reports - PRA updates Supervisory Statement SS34/15 - February 2016**

The PRA has updated Supervisory Statement SS34/15: Guidelines for completing regulatory reports, following CP3/16: Occasional Consultation Paper, to include guidelines for completing regulatory reports relating to the Close Links and Change in Control Parts of the PRA Rulebook.

Feedback is given in PRA Policy Statement PS8/16 (reported in the **Banking and Finance** section below).

Updated PRA Supervisory Statement SS34/15 is [here](#).

The press release is [here](#).

PRA Policy Statement PS8/16 is [here](#).

The webpage for PS8/16 is [here](#).
5.2 **PRA Policy Statement PS7/16: PRA Rulebook: Fees Part and responses to CP40/15 - February 2016**

- The Prudential Regulation Authority (PRA) has published Policy Statement PS7/16 providing feedback on Consultation Paper CP40/15, which set out proposals to redraft the FEES module of the PRA Handbook to conform to the PRA Rulebook style. The PRA has also published final rules (contained in three legal instruments) and Supervisory Statement SS3/16: Fees: PRA Approach and Application.

PRA Policy Statement PS7/16 is [here](#).

PRA Supervisory Statement SS3/16 is [here](#).

PRA Rulebook: Fees Instrument 2016 (PRA 2016/18) is [here](#).

PRA Handbook: Rulebook Consequentials (Fees) Instrument 2016 (PRA 2016/17) is [here](#).

PRA Rulebook: Rulebook Consequentials (Fees) Instrument 2016 (PRA 2016/16) is [here](#).

The webpage for PS7/16 is [here](#).

6. **Financial Conduct Authority**

6.1 **FCA Handbook Notice No. 30 - February 2016** - The FCA has published Handbook Notice No. 30 introducing the changes to the FCA Handbook made by the FCA Board on 5 and 25 February 2016 in eight legal instruments. The legal instruments are:

- Benchmarks (Amendment No 2) Instrument 2016 (FCA 2016/8);
- Handbook Administration (No 40) Instrument 2016 (FCA 2016/9);
- Accountability (Conduct Rules) (Breaches Reporting) Instrument 2016 (FCA 2016/10);
- Accountability (Foreign Branches) (Amendments) Instrument 2016 (FCA 2016/11);
- Fees (Handbook Separation) Instrument 2016 (FCA 2016/12);
- UKLA Fees and Other Fees Instrument 2016 (FCA 2016/13);
- Retail Distribution Review (Miscellaneous Amendments) Instrument 2016 (FCA 2016/14); and

Relevant Consultation Papers are CP15/18, CP16/1, CP15/34, and CP15/42.

The Handbook Notice is [here](#).

Recent FCA legal instruments can be found [here](#).
7. **Financial Services Vulnerability Taskforce**

7.1 **Vulnerable customers - Financial Services Vulnerability Taskforce publishes best practice recommendations - February 2016** - The Financial Services Vulnerability Taskforce has published nine best practice recommendations aimed at improving the way firms interact with vulnerable customers.

Key recommendations in the report include:

- allowing customers to give ‘one-stop’ notice of their personal circumstances within the same organisation;
- making it easier for family or friends to manage the finances of a vulnerable customer when requested; and
- allowing the frontline teams of institutions to take action that may be outside of normal procedures to ensure a customer is treated fairly.

The report is [here](#).

The press release is [here](#).

**Banking and Finance**

8. **Basel Committee**

8.1 **Basel III - Basel Committee publishes results of latest monitoring exercise - 2 March 2016** - The Basel Committee on Banking Supervision has published the results of its latest Basel III monitoring exercise, based on data as of 30 June 2015. The results have been published in parallel with the EBA’s exercise (reported below).

The monitoring report is [here](#).

The report webpage is [here](#).

The press release is [here](#).

9. **European Parliament**

9.1 **Virtual currencies and distributed ledger technology - ECON publishes draft report - 23 February 2016** - The European Parliament’s Committee on Economic and Monetary Affairs (ECON) has published a draft report into the opportunities and risks of virtual currencies and distributed ledger technology and the potential for smart regulation of them.

Among other things, the report calls for the creation of a horizontal task force on distributed ledger technology under the leadership of the European Commission.

A vote is scheduled in Committee for 25 April 2016 and in Plenary for 25 May 2016.
The draft report is here.

The Parliamentary procedure file is here.

10. **European Banking Authority**


For the first time, the monitoring exercise analyses the leverage ratio in conjunction with the risk-based capital ratio.

The report on the monitoring exercise is here.

The press release is here.

10.2 **EU colleges of supervisors - EBA publishes annual assessment for 2015** - 1 March 2016 - The EBA has published its report on the functioning of supervisory colleges in 2015. It also identifies key activities for the effective oversight of EU cross-border banking groups in 2016 (Annex II).

The report is here.

The press release is here.

10.3 **Work programme - revised 2016 version published** - 25 February 2016 - The European Banking Authority (EBA) has published a revised version of its 2016 annual work programme, which was first published on 30 September 2015. The EBA explains that the revised version takes into account an 11.5% reduced EBA budget, and has announced that several planned pieces of work will be delayed until 2017.

The revised 2016 work programme is here.

The press release is here.

11. **European Payments Council**

11.1 **SEPA - EPC publishes updated Direct Debit Rulebooks** - 3 March 2016 - The European Payments Council (EPC) has published the 2016 SEPA Direct Debit (SDD) Core Rulebook version 9.2 and the SDD B2B Rulebook version 7.2, which have been updated to include a new version of the amended Scheme Management Internal Rules. The SDD Core Rulebook version 9.2 and the SDD B2B Rulebook version 7.2 will replace the SDD Core Rulebook version 9.1 and the SDD B2B Rulebook version 7.1 as of 1 April 2016, and both will maintain the effectiveness date of 20 November 2016.

The updated webpage on 2016 SDD Rulebooks is here.
12. **Prudential Regulation Authority and Financial Conduct Authority**

12.1 **CRD IV bonus cap - PRA and FCA issue statement on compliance with EBA Guidelines on sound remuneration policies - 29 February 2016** - The PRA and FCA have notified the European Banking Authority (EBA) that they will comply with all aspects of the EBA Guidelines on sound remuneration policies, except that they will not apply the bonus cap (which limits variable remuneration to 100% of fixed remuneration, or 200% with shareholder approval) to smaller firms.

The PRA and FCA disagree with the EBA's interpretation of Article 92(2) of the Capital Requirements Directive (2013/36/EU) (CRD IV) in this regard, and consider that the proportionality principle applies.

The PRA and FCA will retain the current approach of requiring smaller firms to determine an appropriate ratio between fixed and variable remuneration for their business, whilst not applying the bonus cap.

The PRA and the FCA will consult in due course on any changes necessary to implement the EBA Guidelines in other respects.

The press release is [here](#).

13. **Prudential Regulation Authority**

13.1 **PRA Policy Statement PS8/16: Internal governance of third country branches and response to CP3/16 - February 2016** - The PRA has published Policy Statement PS8/16 issuing final rules on the internal governance arrangements of UK branches of non-EEA banks and PRA designated investment firms. The PRA has also published a Supervisory Statement (SS4/16) setting out the PRA’s expectations on internal governance of third country branches.

The proposals were consulted on in CP17/15, the main response to which was contained in PS19/15 (August 2015). The response to these proposals was delayed to take account of the Senior Managers and Certification regimes relating to third country branches.

The rules apply from 7 March 2016.

PS8/16 also contains final rules and an update to SS34/15 (reported in the General section above) in response to CP3/16: Occasional Consultation Paper.

PRA Policy Statement PS8/16 is [here](#).

The webpage for PS8/16 is [here](#).

PRA Supervisory Statement SS4/16 is [here](#).

PRA Rulebook: Non-CRR firms: Internal governance of third country branches Instrument 2016 (PRA 2016/19) is [here](#).

The Handbook (Rulebook Consequentials No.2) Instrument 2016 (PRA 2016/20) is [here](#).
13.2 PRA Policy Statement PS9/16: Strengthening individual accountability in banking: responses to CP1/16 and the Certification Part of CP29/15 - March 2016 - The Prudential Regulation Authority (PRA) has published Policy Statement PS9/16 on strengthening individual accountability in banking.

PS9/16:

• provides feedback on responses received from CP1/16 of January 2016 (on amending notification rules and forms in the light of the proposed removal, by the Bank of England and Financial Services Bill, of section 64B(5) of FSMA 2000, which would have required ‘relevant authorised persons’ to notify the PRA and/or the FCA if they knew or suspected that senior managers or others subject to the regulators’ conduct rules had failed to comply with those rules); and

• sets out the amended definition of ‘significant risk taker’ in the PRA’s Certification rules, as proposed in CP29/15: Occasional Consultation Paper, to align it more closely to the definition of ‘material risk taker’ in Commission Delegated Regulation (EU) No 604/2014 and the PRA’s Remuneration rules.

The changes are contained in the PRA Rulebook: CRR Firms, Non-CRR Firms: Individual Accountability (No.1) Instrument 2016 and amended Forms C, D, and L.

The new rules come into force on 7 March 2016.

See also the item above on PRA Policy Statement PS9/16: Strengthening individual accountability in banking: responses to CP1/16 and the Certification Part of CP29/15.

PRA Policy Statement PS9/16 is here.

The holding page is here.

PRA Rulebook: CRR Firms, Non-CRR Firms: Individual Accountability (No.1) Instrument 2016 is here.

14. Financial Conduct Authority

14.1 FCA Policy Statement PS16/6: Consequential Changes to the Senior Managers Regime - March 2016 - The FCA has published a Policy Statement (PS16/6) containing new rules and forms relevant to the Senior Managers & Certification Regime (SM&CR), consequential upon the proposed removal of the requirement on firms to report known or suspected breaches of FCA rules of conduct to the FCA (section 64B(5) FSMA 2000). PS16/6 also contains some minor technical amendments to the FCA’s Systems and Controls Sourcebook SYSC 1 Annex 1, which deal with how SYSC applies to foreign branches.

The new rules come into force on 7 March 2016.

See also the item above on PRA Policy Statement PS9/16: Strengthening individual accountability in banking: responses to CP1/16 and the Certification Part of CP29/15.

FCA Policy Statement PS16/6 is here.

The press release is here.

The FCA’s proposals include:

- guidance on the definition of ‘payment account’;
- guidance on the implementation of the provisions on packaged accounts;
- new regulatory reporting requirements in relation to switching and payment accounts with basic features;
- minor Handbook changes on packaged accounts and switching; and
- an update to the Decision Procedures and Penalties Manual (DEPP) and the Enforcement Guide (EG) on the FCA’s powers of enforcement.

The consultation period closes on 3 May 2016.

The switching, payment accounts with basic features, and packaged accounts provisions of the Directive take effect on 18 September 2016.

FCA Consultation Paper CP16/7 is [here](#).

The press release is [here](#).

14.3 **Mortgage Credit Directive - FCA updates FAQs** - *26 February 2016* - The FCA has updated its frequently asked questions on the Mortgage Credit Directive (2014/17/EU) (MCD) to include a question on permission applications by second charge mortgage brokers.

The webpage is [here](#).

15. **Competition and Markets Authority**

15.1 **Corporation tax surcharge and bank levy - CMA finds no strong evidence of adverse effect on competition in retail banking** - *26 February 2016* - As part of its retail banking market investigation, the Competition and Markets Authority (CMA) has published a paper on the effect on competition of the corporation tax surcharge (CTS) and reduced bank levy (announced in the 2015 summer budget). The CMA’s conclusion is that:

“...there is no strong evidence at this time that the introduction of the CTS combined with the changes to the bank levy will deter entry or expansion or will result in banks exiting”.

The deadline for comments on the paper is 11 March 2016.

The paper is [here](#).

The investigation webpage is [here](#).
16. Financial Ombudsman Service

16.1 Equity release - FOS creates technical notes webpage - 29 February 2016 - The Financial Ombudsman Service (FOS) has published technical notes on equity release schemes, including common complaints and case studies.

The equity release webpage is here.

The common complaints and case studies webpage is here.

See also the General section above for an item on the Financial Services Vulnerability Taskforce publishing best practice recommendations.

Securities and Markets

17. Financial Stability Board

17.1 Shadow banking - FSB publishes report on measures of non-cash collateral re-use - 23 February 2016 - The Financial Stability Board (FSB) has published for consultation a report on possible measures of non-cash collateral re-use, and the related data elements, that could potentially be included in the FSB’s global securities financing data standards.

The deadline for submitting comments is 22 April 2016.

The report is here.

The report webpage is here.

The press release is here.

18. International Organization of Securities Commissions

18.1 Financial benchmarks - IOSCO publishes report on second review of implementation of the Principles - 26 February 2016 - The International Organization of Securities Commissions (IOSCO) has published a report into its second review of the implementation of the IOSCO Principles for Financial Benchmarks (July 2013) by administrators of LIBOR, the Euro Inter-bank Offer Rate (EURIBOR), and the Tokyo Inter-bank Offer Rate (TIBOR).

In the second review IOSCO indicates that the administrators of all three benchmarks have been proactively engaged in addressing the issues raised by the first review. In relation to the Principles on governance, transparency and accountability, the second review found that all the administrators had developed and improved their policies and procedures in a number of areas including conflicts of interest, consultation with stakeholders and internal oversight. In relation to the Principles related to the quality of the benchmark, the second review found that all three administrators are in the process of conducting work to evolve the three benchmarks to further anchor them in transactions.

The review makes a number of recommendations to each administrator on further implementation of the Principles.

As well as analysing trends, the report examines the following four potential risk areas in depth:

- corporate bond market liquidity (Chapter 3);
- risks associated with the use of collateral in financial transactions (Chapter 4);
- harmful conduct in relation to retail financial products and services (Chapter 5); and
- cyber threats (Chapter 6).

It also contains a discussion on asset management.

The Securities Markets Risk Outlook 2016 is here.

The press release is here.

19. European Commission

19.1 MAR - Commission publishes Delegated Regulation on accepted market practices - 26 February 2016 - The European Commission has published a Commission Delegated Regulation of 26 February 2016 (C(2016) 1087) laying down regulatory technical standards (RTS) on the criteria, procedure and requirements for establishing an accepted market practice under the Market Abuse Regulation (596/2014/EU) (MAR). The Annex to the Delegated Regulation contains a template for notifying the intention to establish accepted market practices.

Subject to scrutiny by the European Parliament and the Council of the EU, the Delegated Regulation will enter into force on the day after its publication in the Official Journal of the European Union, and is to apply from 3 July 2016.

The Delegated Regulation is here.

The Annex is here.

19.2 MAR - Commission publishes Delegated Regulation on notifications to competent authorities - 1 March 2016 - The European Commission has published a Commission Delegated Regulation of 1 March 2013 (C(2016) 1224) laying down regulatory technical standards (RTS) on the details of financial instruments to be included in the instrument reference data reported to competent authorities under Article 4 of the Market Abuse Regulation (596/2014/EU) (MAR).

Subject to scrutiny by the European Parliament and the Council of the EU, the Delegated Regulation will enter into force on the day after its publication in the Official Journal of the European Union, and is to apply from 3 July 2016.
The Delegated Regulation is here.

The Annex is here.

19.3 EMIR - Commission publishes Delegated Regulation on the clearing obligation - 1 March 2016 -
The European Commission has published a Commission Delegated Regulation of 1 March 2016 (C(2016) 1165) containing regulatory technical standards on the clearing obligation under the European Market Infrastructure Regulation (648/2012/EU) (EMIR) for certain over-the-counter (OTC) credit derivative contracts (set out in the Annex to the Delegated Regulation).

Subject to scrutiny by the European Parliament and the Council of the EU, the Delegated Regulation will be due to enter into force on the twentieth day following its publication in the Official Journal of the European Union, and be phased in over three years. There are frontloading requirements for financial counterparties in categories 1 and 2.

The Delegated Regulation is here.

The Annex is here.

The press release is here.

20. European Securities and Markets Authority

20.1 EMIR - ESMA publishes report on systemic risk and cost implications of interoperability arrangements for CCPs - 1 March 2016 - The European Securities and Markets Authority (ESMA) has published a final report on possible systemic risks and cost implications of interoperability arrangements between central clearing houses established under the European Market Infrastructure Regulation (648/2012/EU) (EMIR).

The report provides a description of interoperability arrangements, and the current arrangements between EU CCPs for different products types (EU equities, government bonds, and exchange traded derivatives). The report considers the impact on costs for the relevant parties and assesses risk management systems. The key risk under consideration is the counterparty credit risk resulting from exposures between interoperable CCPs. ESMA concludes that the evidence collected on the current CCP practices show that EU CCPs have set-up mechanisms to adequately mitigate potential risk of under-collateralisation, even in cases where re-use is permitted.

The report has been sent to the European Commission and may feed into a Commission report on the topic.

The report is here.

The press release is here.


21.1 Sterling risk-free reference rates - Bank publishes minutes of Working Group meeting - 3 March 2016 - The Bank of England has published the minutes of the meeting of the Working Group on Sterling risk-free reference rates (RFR) held on 22 January 2016. The meeting discussed: progress on RFR;
potential secured benchmark providers; update on the Bank’s Sterling Overnight Index Average (SONIA) project; Euro benchmark reform; and future work.

The minutes are here.

See also the General section above for an item on the Investigatory Powers Bill.

See also the Insurance section below for an item on HM Treasury consulting on a new framework for insurance linked securities.

See also the Enforcement section below for an item on the FCA banning Michael Ross Curtler following a conviction in the United States relating to LIBOR manipulation.

Asset Management

22. Official Journal of the European Union


The corrigendum is here.

23. Financial Conduct Authority

23.1 Liquidity management for investment firms - FCA publishes good practices - 29 February 2016 - The FCA has created details of good practices observed in large investment firms in managing liquidity. This follows work by the FCA, in collaboration with the Bank of England, on assessing risks posed by open-ended investment funds which invest in the fixed income sector. The FCA states that the good practices are applicable across the investment fund industry.

The webpage contains information on:

- why managing liquidity risk is important - to ensure that portfolios can continue to meet redemption obligations and other liabilities, and remain suitable for their specific investor base;
- disclosure of liquidity risks to investors;
- good practice on liquidity risk management and oversight;
- good practice on fund dealing; and
- implementation of exceptional liquidity tools and measures.
The FCA goes on to highlight (i) tools, processes and underlying assumptions; (ii) operational preparedness; and (iii) disclosure, as areas for firms to evaluate when assessing their liquidity management.

The webpage is here.

See also the Securities and Markets section above for an item on IOSCO’s Securities Markets Risk Outlook 2016, which includes a discussion of asset management.

## Insurance

### 24. European Insurance and Occupational Pensions Authority


The European Insurance and Occupational Pensions Authority (EIOPA) has published a letter (dated 24 February 2016) from the European Commission, requesting technical advice on possible delegated acts under the Insurance Distribution Directive (EU) 2016/97.

The Commission indicates that its delegated acts will cover:

- product oversight and governance (Article 25(2));
- conflicts of interest (Articles 27 and 28(4));
- inducements (Article 29(2)); and
- assessment of suitability and appropriateness, and reporting (Article 30(5)).

The Commission invites EIOPA to provide final technical advice on those areas by 1 February 2017.

The European Commission also suggests that EIOPA liaises with ESMA because of the close links with MiFID II (2014/65/EU).

The letter is here.

### 25. HM Treasury

#### 25.1 Insurance linked securities - HM Treasury consults on new framework - February 2016

HM Treasury is consulting on a new regulatory and tax framework to attract insurance linked securities (ILS) business to the UK. The aim is to help the UK maintain its position as leading global hub for specialist reinsurance. The global ILS market has so far been dominated by two types of deal: the Catastrophe bond (or CAT bond) and Collateralised Reinsurance.

The consultation considers:

- authorisation and supervision of insurance special purpose vehicles (ISPVs) (Chapter 2);
• corporate structure for ISPVs (Chapter 3); and

• taxation of ISPVs (Chapter 4).

The consultation period closes on 29 April 2016.

HM Treasury aims to produce draft regulations later in 2016.

The consultation is here.

The consultation webpage is here.

26. Financial Conduct Authority

26.1 FCA Thematic Review TR16/2: Fair treatment of long-standing customers in the life insurance sector - March 2016 - The FCA has published its Thematic Review (TR16/2) into the treatment of ‘closed-book’ long-standing customers in the life insurance sector. The review did not assess how policies were originally sold, but how these customers are treated by firms now. Examples of good and bad practice are set out in Annex 2 of TR16/2. The FCA is consulting on draft non-Handbook guidance on its expectations against four high-level outcomes at various points in Chapter 3 of TR16/2. The FCA has also made a Statement in which it announces investigations into six named firms.

The Thematic Review looked at four high-level outcomes:

• Does the firm’s strategy and governance framework result in the fair treatment of closed-book customers;

• Do the firm’s closed-book customers receive clear and timely communications about policy features at regular intervals and key points in the product lifecycle that enable them to make informed decisions;

• Does the firm give adequate consideration to, and take proper account of, fund performance and policy values in a way that ensures it treats its closed-book customers fairly and proportionately; and

• Are the firm’s closed-book customers able to move from products that are no longer meeting their needs in a fair and reasonable manner.

One of the purposes of the FCA’s review was to gain an understanding of the levels of exit and paid-up charges being incurred by long-standing customers, and firms’ behaviour in applying those charges.

The FCA found a mixed picture, with most of the eleven firms it looked at demonstrating good practice in one or more areas, and poor practice in other areas.

The FCA:

• is, as mentioned above, consulting on non-Handbook guidance in treating closed-book customers fairly;
• will convene an industry-wide discussion with a view to industry reaching a voluntary solution to capping or removing exit and/or paid-up charges on investments of the type that were the subject of this Thematic Review - individual personal pensions (including SIPPs and Retirement Annuity Contracts), whole-of-life (individual), endowments, and investment bonds. These products can be provided either as with-profits investments or unit-linked investments; and

• has commenced investigations into the behaviour of six firms (which it has named) in relation to disclosure to customers of exit and paid-up charges after December 2008, and in relation to two of them, whether they convened regulatory requirements in a number of other areas assessed in the thematic review after that date.

The deadline for comments on the non-Handbook guidance contained in TR16/2 is 3 June 2016.

The Association of British Insurers (ABI) has published a brief response.

Thematic Review TR16/2 is here.

The webpage for TR16/2 is here.

The FCA’s Statement is here.

The ABI response is here.

26.2 FCA Feedback Statement FS16/1 on DP15/4: general insurance value measures - March 2016 -

The FCA has published Feedback Statement FS16/1, which provides feedback on Discussion Paper DP15/4: Developing general insurance add-ons market study - remedies: value measures (June 2015). The FCA announces that it will pilot the publication of general insurance ‘scorecards’ on a small number of general insurance products. The scorecard will include claims frequencies, claims acceptance rates and average claims payouts, potentially with the inclusion of an average premium metric.

The FCA intends to launch the scorecard pilot in the summer. The FCA envisages that the pilot will cover two one-year periods (with two data publication points one year apart).

The result of the pilot will help inform any decision to consult on proposals.

FCA Feedback Statement FS16/1 is here.

The holding page for FS16/1 is here.

The press release is here.

Financial Crime

See the General section above for an item on the Investigatory Powers Bill, which includes new powers for the FCA, to be used in relation to the prevention and detection of financial crime.

See also the Securities and Markets section above for an item on IOSCO’s Securities Markets Risk Outlook 2016, which includes a discussion of cyber threats.
Enforcement

27. Financial Conduct Authority

27.1 LIBOR manipulation - FCA bans Michael Ross Curtler - 2 March 2016 - The FCA has made a total prohibition order against Michael Ross Curtler, a former trader at Deutsche Bank AG, on the grounds that he is not a fit and proper person because he lacks honesty and integrity, following a criminal conviction in the United States relating to USD LIBOR manipulation.

The FCA states that the seriousness of the misconduct was aggravated by the fact that:

- Mr Curtler was an approved person and an experienced employee at the firm;
- the improper activity was engaged in over a prolonged period of time; and
- LIBOR is of central importance to the operation of the UK and worldwide financial markets, and doubts about the integrity of LIBOR threatens confidence in those markets.

Mr Curtler is currently awaiting sentencing by the US court.

The final notice is here.

The US indictment of Mr Curtler is here.

The press release is here.

27.2 Breach of the general prohibition - FCA decides to take no legal or enforcement action in respect of Katherine of Alexandria Ltd - 25 February 2016 - The FCA has announced that although it believes that Katherine of Alexandria Ltd, a company set up to produce a film that was released in April 2015, established and operated a collective investment scheme without FCA authorisation, the FCA does not believe it would be in the investors’ best interests for it to pursue legal or enforcement action at the current time to close down either the company or the film investment scheme. The announcement sets out the options for investors in the company.

The press release is here.

See also the General section above for an item on the Investigatory Powers Bill.

See also the Insurance section above for an item on FCA Thematic Review TR16/2: Fair treatment of long-standing customers in the life insurance sector, which refers to a statement made by the FCA that it has commenced investigations into six named insurance companies.
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 banking groups in relation to banking structural reforms, including the ring-fencing regime;
- UK Asset Resolution on the sale of a £13bn asset portfolio to Cerberus Capital Management;
- Palamon Capital Partners and Corsair Capital on their joint acquisition of Currencies Direct;
- international and specialist insurer and reinsurer, Catlin Group Limited, on the acquisition of it by global insurer and reinsurer, XL Group plc;
- Deutsche Bank in relation to several simultaneous investigations in multiple jurisdictions relating to LIBOR and a global financial services institution on the investigation by a number of regulators into foreign exchange trading, including in relation to a settlement involving the FCA which was announced in November 2014;
- Banco Santander on a pan-European and global asset management joint venture with leading global private equity firms Warburg Pincus and General Atlantic;
- a number of multi-national clients in relation to the UK, EU, and US economic and trade sanctions regimes.

If you would like to find out more about our Financial Regulation Group or require advice on a financial regulation matter, please contact one of the following or your usual Slaughter and May contact:

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