Financial Regulation
Weekly Bulletin

21 July 2016 / Issue 870

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

Selected Headlines

**General**

EEA Agreement - Council decision to incorporate European Supervisory Authority Regulations published in the Official Journal

Ministerial and government appointments - Prime Minister’s Office publishes list

FCA Feedback Statement FS16/4: Feedback Statement on Call for Input on supporting the development and adopters of RegTech

Brexit

Opportunities presented by Brexit to improve competition - Treasury Committee publishes letter from challenger banks

Financial Conduct Authority - Speech by Andrew Bailey at Annual Public Meeting

Banking and Finance

BRRD - European Banking Authority consults on interim report on the minimum requirement for own funds and eligible liabilities

CRR - European Banking Authority publishes final draft technical standards on Internal Ratings Based assessment methodology

Draft Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and Prohibitions) (Amendment) Order 2016

Securities and Markets

EMIR - Commission Delegated Regulation on the clearing obligation published in the Official Journal

Licensing of data and indices on credit default swaps - Commission accepts commitments by ISDA and Markit

FCA Thematic Review TR16/5: UK equity market dark pools - Role, promotion and oversight in wholesale markets

Asset Management

AIFMD and UCITS V - European Securities and Markets Authority publishes call for evidence on asset segregation and custody services

Quick Links

Selected Headlines
- General
- Brexit
- Banking and Finance
- Securities and Markets
- Asset Management
- Insurance
- Financial Crime
- Enforcement

If you have any comments or questions, please 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.
Financial Stability Board

1.1 **FSB plenary meeting in Chengdu - FSB publishes outcome** - 21 July 2016 - The Financial Stability Board (FSB) has published the outcome of its plenary meeting held in Chengdu on 21 July 2016, prior to reporting to the G20 Leaders in September 2016. The press release details the FSB’s priority areas and outlines the key matters discussed at the meeting, including:

- developments in the global financial markets, including market volatility following the UK vote to leave the European Union;
- the draft FSB annual report, which will provide a country-by-country update on progress in implementing FSB reforms;
- progress on the joint work plan with the Committee on Payments and Market Infrastructures (CPMI), the International Organization of Securities Commissions (IOSCO) and the Basel Committee on Banking Supervision on central counterparty (CCP) resilience, recovery planning and resolvability;
- the draft annual FSB progress report on resolution; and
- an action plan to address the decline in correspondent banking relationships, which is to be produced in coordination with various bodies, including the Financial Action Task Force.

The press release is [here](#).

Official Journal of the European Union

to be taken by the European Union in the EEA Joint Committee regarding amendments to Annex IX (Financial Services) of the Agreement on the EEA, has been published in the Official Journal.

The Decision incorporates into the EEA Agreement the European Supervisory Authority (ESA) Regulations and a number of other legislative acts, including the European Market Infrastructure Regulation (648/2012/EU) (EMIR) and the Alternative Investment Fund Managers Directive (2011/61/EU) (AIFMD).

The Decision forms part of the extension of the European System of Financial Supervision (ESFS) to the EEA-EFTA countries: Norway, Iceland, and Liechtenstein.

The Decision entered into force on the date of its adoption, 19 July 2016.

The Decision is [here](#).

The original press release is [here](#).

3. **European Commission**


The remit of the Joint Forum includes the discussion of rules and policies to improve transparency and to generally promote compatibility with international standards. The Member of the Commission responsible for Financial Stability, Financial Services and the Capital Markets Union expects to meet with the United States Secretary of the Treasury once per year to review the functioning of the Forum.

A letter from the Commission to the US Treasury Secretary on the Forum is [here](#).

A letter from the US Treasury Secretary to the Commission is [here](#).

A joint statement on the Forum is [here](#).

A speech by Commission Vice-President Valdis Dombrovskis, which refers to the Forum, is [here](#).

4. **HM Government**

4.1 **Ministerial and government appointments - Prime Minister’s Office publishes list - 18 July 2016** - The Prime Minister’s Office has published the full list of new ministerial and government appointments. Philip Hammond MP has been appointed Chancellor of the Exchequer and David Gauke MP has been appointed Chief Secretary to the Treasury. David Davis MP is Secretary of State to the newly formed Department for Exiting the European Union and Liam Fox MP is Secretary of State for International Trade.

The Department for Business, Innovation & Skills has been reorganised into the Department for Business, Energy and Industrial Strategy, led by Secretary of State Greg Clark MP.

The full list of new ministerial and government appointments is [here](#).
5. Financial Conduct Authority

5.1 FCA Feedback Statement FS16/4: Feedback Statement on Call for Input on supporting the development and adopters of RegTech - July 2016 - The FCA has published Feedback Statement (FS16/4) commenting on responses received to its November 2015 Call for Input on the FCA’s work in promoting RegTech.

The Feedback Statement summarises the responses received and divides them into the following four themes:

- efficiency and collaboration;
- integration, standards and understanding;
- predict, learn and simplify (including the creation of adaptive automation); and
- new directions for technology in regulation.

The FCA outlines its approach for RegTech in 2016/17 and indicates that it is investigating how technology standards and guidance can be further developed.

FCA Feedback Statement FS16/4 is here.

The press release is here.

See the section on Brexit below for an item on remarks made by Commission Vice-President Valdis Dombrovskis on the UK’s future relationship with the European Union.

Brexit

6. European Commission


In the speech, Vice President Dombrovskis made remarks on the UK’s relationship with the European Union post-Brexit, stating:

“We want the UK to remain a close partner. But any future agreement concluded with the UK as a third country will have to balance rights and obligations. Access to the Single Market would require the UK to accept four freedoms: free movement of goods, services, capital and labour. The first step now needs to come from the UK. The new government has to set out what it wants from a future relationship with Europe. That would give us more predictability and a basis on
which to negotiate. It is worth emphasising that until the UK leaves, and there is at least two years negotiating period, it remains a full member of the European Union, with all the rights and obligations this entails.”

The speech is here.

7. House of Commons Treasury Committee

7.1 Opportunities presented by Brexit to improve competition - Treasury Committee publishes letter from challenger banks - 20 July 2016 - The House of Commons Treasury Committee has published a letter dated 30 June 2016 from a group of seven challenger banks noting, among other things, the opportunities presented by the UK’s departure from the European Union to improve competition in the banking sector.

The challenger banks note in the letter that, post-Brexit, the UK will be able to determine its own strategy for the regulation of banks. They also state that it would be helpful for the Competition and Markets Authority (CMA) to take into account the result of the Referendum in its work on the Retail Banking Market Investigation.

The letter is here.

The press release is here.

8. Financial Conduct Authority

8.1 Financial Conduct Authority - Speech by Andrew Bailey at Annual Public Meeting - 20 July 2016 - The FCA has published a speech given by the new FCA Chief Executive, Andrew Bailey, at the FCA 2016 Annual Public Meeting on the FCA’s recent work and future challenges.

In the speech, Mr Bailey discusses the impact of the UK’s decision to leave the European Union. In particular, he welcomes the statement by the Chancellor of the Exchequer that the UK will seek access to the Single Market in future negotiations, and states that the FCA will support the Government in putting in place new arrangements and trade agreements.

The speech is here.

See the General section above for an item on the new Joint EU-US Financial Regulatory Forum.

Banking and Finance

9. European Systemic Risk Board

9.1 Macroprudential policy beyond banking - ESRB publishes strategy paper - 19 July 2016 - The European Systemic Risk Board (ESRB) has published a strategy paper setting out the development of macroprudential policy beyond the banking sector.

The paper includes an analysis of financial stability risks originating outside the banking sector and summarises the existing legal and institutional framework governing macroprudential policies beyond banking. The report proposes a policy strategy to address the risks identified, comprising short-term policy options and a long-term agenda. Among other things, the ESRB proposes to analyse data that will become available under several pieces of EU legislation to monitor market trends and inform the development of a wider financial stability toolkit.
10. European Banking Authority

10.1 BRRD - EBA consults on interim report on MREL - 19 July 2016 - The European Banking Authority (EBA) has published an interim report addressed to the European Commission on the minimum requirement for own funds and eligible liabilities (MREL). The interim report is designed to inform future legislation on the implementation of the Financial Stability Board’s total loss-absorbing capacity (TLAC) standard in the EU and has been drafted in accordance with a mandate under the Bank Recovery and Resolution Directive (2014/59/EU) (BRRD).

The interim report sets out the EBA’s provisional recommendations, including:

- changing the reference base of the MREL requirement from total liabilities and own funds to risk-weighted assets;
- preventing Common Equity Tier 1 (CET1) from counting towards capital buffers and MREL;
- extending existing powers available to address breaches of MREL;
- considering specific business models when calibrating MREL to minimise differences in resolution strategies;
- enhancing transparency and disclosure for creditors, including by introducing mandatory subordination for some banks; and
- streamlining the requirement to include international recognition clauses in contracts giving rise to bail-inable liabilities under the BRRD.

The proposals are open to consultation, with the deadline for responses being 30 August 2016. The EBA intends to submit the final report to the Commission by 31 October 2016.

The Commission has committed to bring forward a legislative proposal implementing the TLAC standard by the end of 2016.

The interim report is here.

The press release is here.

10.2 BRRD - EBA publishes translated Guidelines on how information should be provided - 20 July 2016 - The EBA has published final and translated versions of its April 2016 Guidelines on the provision of confidential information under Article 84(3) of the Bank Recovery and Resolution Directive (2014/59/EU) (BRRD).

Member states are required to implement the Guidelines by six months from the date of publication of the translations.

The translated Guidelines are available on a dedicated webpage here.

The compliance form is here.
10.3 CRR - EBA publishes final draft technical standards on IRB assessment methodology - 21 July 2016 - The EBA has published final draft regulatory technical standards (RTS) to be used by competent authorities in assessing compliance with the requirements of the Internal Ratings Based Approach (IRB Approach) under the Capital Requirements Regulation (575/2013/EU) (CRR).

The RTS have been submitted to the European Commission for endorsement.

The final draft RTS are [here](#).

The press release is [here](#).

10.4 MiFID investment firms - EBA launches data collection exercise to support new prudential framework - 15 July 2016 - The EBA has launched a data collection exercise for investment firms authorised under the Markets in Financial Instruments Directive (2004/39/EC) (MiFID) as part of its response to the European Commission’s Call for Advice of 13 June 2016 on a new prudential framework.

The exercise is also relevant to firms under the Alternative Investment Fund Managers Directive (2011/61/EU) (AIFMD) and the Undertakings for the Collective Investment in Transferable Securities Directive (2014/91/EU) (UCITS V) that conduct MiFID activities or services.

The data instructions for MiFID investment firms are [here](#).

The data collection template for MiFID investment firms is [here](#).

The data instructions for UCITS and AIFMD firms are [here](#).

The data collection template for AIFMD and UCITS firms is [here](#).

The press release is [here](#).

11. Financial Conduct Authority

11.1 Cash Savings Market Study - FCA publishes update and data - 18 July 2016 - The FCA has published an update on its cash savings market study. The update includes data showing the lowest interest rates offered by a number of providers of easy access cash savings accounts and easy access ISAs, and the results of randomised controlled trials to assess the impact of potential remedies to improve competition in the cash savings markets. Research on the auto-renewal of fixed-term products has also been published.

Data on cash savings is [here](#).

Data on ISA rates is [here](#).

The updated webpage is [here](#).

The press release is [here](#).

11.2 Rent to own sector - FCA publishes update on regulation - 18 July 2016 - The FCA has published a webpage on the rent to own (RTO) sector. Responsibility for regulating the RTO sector transferred from the Office of Fair Trading (OFT) to the FCA in April 2014. The FCA indicates that it has received applications from 20 firms for full authorisation to replace interim permissions.
previously granted; seven of these firms have been granted authorisation while the remaining 13 continue to undergo assessment.

The FCA states that it is working with firms to address concerns over a number of issues, including affordability assessments; arrears handling and forbearance; and price transparency. The FCA has required the three largest firms to appoint an independent Skilled Person to assess the implementation of certain improvements. The Skilled Person reports are expected to be completed by early 2017.

The webpage is here.

12. Payment Systems Regulator

12.1 PSR Consultation Paper CP16/4: Consultation Paper and draft guidance on our approach to handling applications under sections 56 and 57 FSBRA - July 2016 - The Payment Systems Regulator (PSR) has published a Consultation Paper (CP16/14) setting out its general approach to granting access to regulated payment systems under section 56 of the Financial Services (Banking Reform) Act 2013 (FSBRA) and varying the terms of existing access under section 57. The Consultation Paper is accompanied by draft Guidance.

The deadline for comments is 16 September 2016.

The Consultation Paper is here.

The draft Guidance is here.

The consultation webpage is here.

12.2 Indirect access to payment systems - PSR publishes final findings from market review - July 2016 - The PSR has published the final conclusions of its market review (MR15/1.3) into competition in the supply of indirect access to payment systems. The final report summarises responses received to the PSR’s interim report of March 2016, which contained a number of proposals to improve indirect access.

The PSR concludes that, although progress has been made to improve competition in the supply of indirect access, there are still concerns around quality of access, limited choice for payment service providers and barriers to switching. The PSR indicates that it will continue to monitor and support developments to address concerns around the supply of indirect access. It notes in particular the Bank of England’s proposal to extend settlement account access to non-bank payment services providers.

The final report is here.

Responses to the interim report are here.

The webpage for the responses is here.

The final report webpage is here.

The press release is here.
13. Financial Ombudsman Service

13.1 Mortgage shortfalls and arrears - FOS publishes technical notes - 19 July 2016 - The Financial Ombudsman Service (FOS) has published a new technical note on mortgage shortfalls which outlines the FOS’s potential actions in circumstances where the proceeds of a sale of a property are insufficient and the mortgage company wishes to recover the outstanding debt from the borrower.

The FOS has also updated its technical note on mortgage arrears and charges to include new scenarios and guidance.

The technical note on mortgage shortfalls is here.

The technical note on mortgage arrears and charges is here.

14. Lending Standards Board

14.1 New Standards of Lending Practice - Published by the LSB - 20 July 2016 - The Lending Standards Board (LSB) has published its new Standards of Lending Practice to replace the existing Lending Code. The standards apply to loans, credit cards and current account overdrafts and cover a number of areas including financial promotions and communications; product sales; account maintenance and servicing; money management; financial difficulty; and customer vulnerability.

The standards will become effective on 1 October 2016. The LSB plans to publish standards for business lending in early 2017.

The Standards are here.

The Standards webpage is here.

The press release is here.

15. New legislation

15.1 The draft Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and Prohibitions) (Amendment) Order 2016 was published on 21 July 2016. The draft Order proposes to make several amendments to the UK’s bank ring-fencing regime, which is due to come into force on 1 January 2019.

The purpose of the draft Order is to deal with a number of technical issues that have become apparent and which have the potential to undermine the effectiveness of the regime. Amendments include clarifying the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014 (SI 2014/2080) so as to allow a ring-fenced bank (RFB) to buy and sell covered bonds from other RFBs or building societies to manage their liquidity risks. The Order also seeks to ensure that RFBs can deal in investments as principal where necessary in order to meet the conditions of membership of a central counterparty.

The draft Order is here.

The explanatory memorandum is here.
Securities and Markets

16. Financial Stability Board

16.1 Benchmarks - FSB publishes progress report on implementation of July 2014 recommendations

- 19 July 2016 - The Financial Stability Board (FSB) has published a report on its progress in the implementation of its 2014 recommendations to reform major interest rate benchmarks. This report is the second update on the FSB’s progress, following an initial progress report in June 2015.

In the report, the FSB notes that good progress has been made by the three major benchmarks of LIBOR, EURIBOR and TIBOR. It also notes that administrators should now focus on developing transition strategies to new benchmarks and decide how to anchor rates in transactions and objective market data to the greatest extent possible. The FSB indicates that more work remains in identifying and promoting the use of risk-free interest rate benchmarks.

The FSB intends to publish a final report on the implementation of the reforms in 2017.

The progress report is here.

The report webpage is here.

The press release is here.

17. Official Journal of the European Union

17.1 EMIR - Commission Delegated Regulation on the clearing obligation published in the Official Journal


The Delegated Regulation stipulates the classes of over-the-counter (OTC) derivatives subject to the clearing obligation, the categories of counterparties to which the obligation will apply, and the dates on which the clearing obligation will take affect (between 9 February 2017 and 9 August 2019).

The Delegated Regulation enters into force on 9 August 2016.

On 21 July 2016, a Corrigendum to the Delegated Regulation was published in the Official Journal, amending several dates from which the clearing obligation is due to apply.

The Delegated Regulation is here.

The Corrigendum is here.

18. European Parliament

18.1 MiFID II - European Parliament does not object to Delegated Directive on safeguarding of financial instruments and funds

- 15 July 2016 - The European Parliament has indicated that it does not object to the Delegated Directive (C(2016) 2031) on the safeguarding of financial
instruments and funds belonging to clients under the Markets in Financial Instruments Directive (2014/65/EU) (MiFID II).

The Delegated Directive, which contains rules on the safeguarding of client financial instruments and funds, product governance requirements and inducements, will now be published in the Official Journal of the European Union.

The procedure file is here.

The Delegated Directive as approved is here.

19. European Commission

19.1 Licensing of data and indices on credit default swaps - Commission accepts commitments by ISDA and Markit - 20 July 2016 - The European Commission has adopted a decision creating legally binding commitments to licence inputs for credit default swaps (CDS). The commitments have been offered by the International Swaps and Derivatives Association (ISDA) and the information service provider Markit, and are intended to address competition concerns relating to the licensing of intellectual property in the market for credit default swaps.

ISDA and Markit have each agreed, among others, to exclude CDS dealers from taking individual licensing decisions and prevent them from influencing such decisions, and to license relevant intellectual property rights on fair, reasonable and non-discriminatory terms.

The commitments will apply for ten years.

The press release is here.

A policy brief on the commitments is here.

The public case register is here.

20. European Central Bank

20.1 Eurosystem oversight policy framework - ECB publishes revised version - July 2016 - the European Central Bank (ECB) has published a revised version of the Eurosystem oversight policy framework for use by financial market infrastructures (FMIs). It updates and replaces the earlier framework of July 2011.

The document has been updated to reflect a number of significant developments, including the CPMI-IOSCO Principles for FMIs, the European Market Infrastructure Regulation (648/2012/EU) (EMIR), the Regulation on settlement and central securities depositories (909/2014/EU) (CSDR) and the ECB’s Regulation on oversight requirements for systemically important payment systems (795/2014) (SIPS Regulation).

The revised framework is here.

The Eurosystem page is here.
21. **European Securities and Markets Authority**


The Q&As are [here](#).

The press release is [here](#).

22. **Financial Conduct Authority**

22.1 **FCA Thematic Review TR16/5: UK equity market dark pools - Role, promotion and oversight in wholesale markets - July 2016** - The FCA has published a Thematic Review on the use of trading venues with no pre-trade transparency where the price and volume of all orders are hidden and anonymous, referred to as dark pools.

The Review outlines a number of areas where improvements could be made by both operators and users of dark pools. These include, among others:

- the need for operators to provide details on the design and operation of dark pools; and
- the need for users to conduct due diligence on the operation of dark pools.

The FCA also notes that rules under the Markets in Financial Instruments Directive (2014/65/EU) (MiFID II) may affect existing and proposed business models of dark pools. The FCA intends to write to the participants in the Review to request that action be taken to address areas of concern.

FCA Thematic Review TR16/5 is [here](#).

The Thematic Review webpage is [here](#).

The press release is [here](#).

22.2 **FCA Consultation Paper CP16/18: Changes to the FCA Handbook to reflect the direct application of the PRIIPs Regulation - July 2016** - The FCA has published a Consultation Paper (CP16/18) setting out proposed changes to the FCA Handbook to reflect the coming into force of the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation (1286/2014/EU) on 31 December 2016. The Consultation Paper proposes to amend disclosure provisions to ensure compatibility with the PRIIPs Regulation, in particular, with the requirement to prepare a Key Information Document (KID). The draft Handbook text is available in Appendix 1 of the Consultation Paper.

The deadline for responses is 19 September 2016.

FCA Consultation Paper CP16/18 is [here](#).

The online response form is [here](#).

The press release is [here](#).
23. European Securities and Markets Authority


The call for evidence follows ESMA’s December 2014 consultation on asset segregation under AIFMD, where the majority of respondents objected to the options proposed. ESMA now seeks views on asset segregation under both the AIFMD and UCITS V regimes to ensure assets are clearly identifiable as belonging to the relevant fund and to provide certainty in the event of insolvency.

The deadline for responses is 23 September 2016.

The call for evidence is here.

The response form is here.

The press release is here.

23.2 AIFMD and UCITS V - ESMA publishes updated Q&As - 19 July 2016 - ESMA has published updated Q&As on the application of AIFMD and UCITS V. The Q&As contain a new question and answer on the impact of the European Market Infrastructure Regulation (648/2012/EU) (EMIR) with respect to the valuation of centrally cleared OTC derivatives.

The updated AIFMD Q&A is here.

The AIFMD press release is here.

The updated UCITS V Q&A is here.

The UCITS V press release is here.

23.3 AIFMD passport - ESMA publishes advice to European Parliament, Council and Commission on extension to 12 non-EU countries - 19 July 2016 - ESMA has published its advice to the European Parliament, Council of the European Union and European Commission on the application of the AIFMD passport to non-EU AIFMs and AIFs in 12 non-EU jurisdictions. The passport is currently only available to EU entities.

The extension of the AIFMD passport would allow the 12 countries to market and manage funds throughout the EU. The twelve countries assessed were: Australia; Bermuda; Canada; Cayman Islands; Guernsey; Hong Kong; Japan; Jersey; Isle of Man; Singapore; Switzerland; and the US.

In short, according to ESMA’s advice, there are no obstacles impeding the application of the passport to Canada, Guernsey, Japan, Jersey and Switzerland. ESMA makes a number of observations regarding the regimes in Hong Kong, Singapore, Australia and the US, including in relation to market access conditions involving a public offering in the US. ESMA did not provide definitive advice in relation to Bermuda, the Cayman Islands or the Isle of Man.
24. Financial Conduct Authority

24.1 Collective investment schemes - FCA updates on action against Capital Alternatives - 15 July 2016 - The FCA has updated its webpage summarising action taken against Capital Alternatives and several other firms over the promotion and operation of collective investment schemes.

Following the Supreme Court’s refusal to give the defendants permission to make a further appeal, a trial in the High Court will take place on a date between 8 and 23 May 2017. The High Court will decide on the remaining aspects of the case, including claims around misleading statements made to investors.

The FCA webpage on the action is here.

Insurance

25. International Association of Insurance Supervisors

25.1 Risk-based global insurance capital standard - IAIS consultation - 19 July 2016 - The International Association of Insurance Supervisors (IAIS) has published a consultation document on the risk-based global insurance capital standard (ICS). The consultation seeks feedback on three components of the proposed ICS for confidential reporting purposes: valuation methodologies; qualifying capital resources; and the implementation of risk-based approaches to determine regulatory capital requirements. The IAIS issued its first ICS consultation document in December 2014.

The consultation closes on 19 October 2016. IAIS indicates that it intends to adopt Version 1 of the ICS for the purposes of confidential reporting in mid-2017 and that Version 2 will be adopted in late 2019.

The consultation document is here.

The questions for stakeholders are here.

The consultation webpage is here.

26. European Commission

26.1 Solvency II - Commission publishes request to EIOPA for advice on implementing measures - 18 July 2016 - The European Commission has published a letter requesting technical advice from the European Insurance and Occupational Pensions Authority (EIOPA) on implementing measures for Solvency II (2009/138/EC).

The technical advice is intended to remedy issues identified in the European Commission’s call for evidence in September 2015 on the functioning of the Solvency II framework. The Commission seeks advice on certain specific issues relating to the calculation of the Solvency Capital Requirements, with a view to achieving:

- a proportionate and simplified application of the requirements under Solvency II;
27. **Prudential Regulation Authority**

27.1 **Solvency II - PRA publishes ‘Dear CEO’ letter on market trends in the general insurance sector**

18 July 2016 - The Prudential Regulation Authority (PRA) has published a ‘Dear CEO’ letter to general insurance firms from Chris Moulder, Director of General Insurance. The letter contains analyses and observations from regulatory returns and the PRA’s monitoring the market questionnaire.

The PRA indicates that it has already received a significant increase in firm level information under the new reporting requirements under Solvency II (2009/138/EC) and that firms should expect questions based on this data. The PRA also expresses an intention to focus on trends from the introduction of the new regime on 1 January 2016.

The letter is [here](#).

The PRA Solvency II news page is [here](#).

27.2 **Insurance firms in run-off - PRA publishes ‘Dear CEO’ letter on engagement with the PRA**

18 July 2016 - The PRA has published a ‘Dear CEO’ letter addressed to insurance firms in run-off, reminding those firms of their continuing responsibilities in the way they interact with the PRA.

The letter follows a number of instances where firms have not engaged with the PRA at a sufficiently early stage. In particular, the PRA reminds firms of the requirements of Fundamental Rule 7 on dealing with regulators in an open and cooperative way.

Among other things, the PRA notes in the letter that it expects firms to notify it of any proposed action that would result in a material change in the firm’s capital adequacy or solvency, prior to making any formal regulatory submission.

The letter is [here](#).

28. **Insurance Europe**


20 July 2016 - Insurance Europe has published a position paper setting out the proposed format for a standardised Insurance Product Information Document (IPID). The format is for use by insurance distributors that are required to provide customers with an IPID about non-life insurance products under the Insurance Distribution Directive ((EU) 2016/97) (IDD).

Insurance Europe notes that the proposed IPID is designed to be consumer friendly, and can be used in paper and digital formats.
The proposed IPID formats are available [here](#).

The press release is [here](#).

## Financial Crime

### 29. Official Journal of the European Union

#### 29.1 Network and Information Security Directive - Published in the Official Journal - 19 July 2016 -


The Directive establishes common cybersecurity standards for ‘operators of essential services’, including banks and central counterparties, and seeks to increase cooperation across Member States.

The Directive will enter into force on 8 August 2016. Member States have until 9 May 2018 to transpose the Directive into national laws, with the transposed laws applying from 10 May 2018.

The NIS Directive is [here](#).

## Enforcement

### 30. Financial Conduct Authority

#### 30.1 Insider dealing - FCA fines and censures Gavin Breeze - 15 July 2016 -

The FCA has published a Final Notice imposing a fine of £59,557 on Gavin Breeze and ordering him to pay £2,109 in restitution for insider dealing. The FCA has also publicly censured Mr Breeze for improper disclosure. The FCA notes that Mr Breeze settled at an early stage in the investigation and received a ‘Stage 1’ 30% discount, without which the fine would have been £85,057.

The FCA found that, in September 2014, Mr Breeze attempted to sell his entire shareholding in a listed company whilst in possession of inside information regarding the company’s intention to raise funds through a discounted placing. Mr Breeze sold 10,000 of his 1,273,500 shares before the placing was announced. The individuals who bought Mr Breeze’s shares did so at a higher price than they would have done had the information known to Mr Breeze been public.

The FCA also found that Mr Breeze disclosed inside information to another shareholder who was not an insider, in breach of section 118(3) of FSMA 2000.

The Final Notice is [here](#).

The press release is [here](#).

#### 30.2 FCA Decision Notice cancelling permission - Referred to the Upper Tribunal - 15 July 2016 -

The FCA has published a Decision Notice dated 22 April 2016 cancelling the Part 4A permission of KWS Wealth Management Limited for failing to meet Threshold Condition 5 (suitability). The firm disputes the FCA’s decision and has referred the Decision Notice to the Upper Tribunal.

The FCA’s findings in the Decision Notice are provisional, pending the Upper Tribunal’s determination of the references. The Upper Tribunal will determine whether to dismiss the reference, or remit the matter back to the FCA with directions.
31. Office of the Complaints Commissioner

31.1 Annual Report 2015-16 - Published by the Office of the Complaints Commissioner - 20 July 2016 - The Office of the Complaints Commissioner has published its Annual Report on a review of how the financial services regulators (the FCA, the PRA and the Bank of England) considered complaints between 1 April 2015 and 31 March 2016.

The Complaints Commissioner states that it received 136 complaints and enquiries in the year, almost all of which concerned the FCA, and that 60 of these were concluded with a substantive response. The Report sets out a number of recommendations to the FCA on complaints handling and highlights themes emerging from some of the more complex cases.

The FCA has responded to the Annual Report, providing details of complaints received and their outcomes, and setting out planned actions in response to the themes and recommendations contained in the Complaints Commissioner’s report.

The Annual Report is here.

The FCA’s response is here.

32. Recent Cases

32.1 Julien Grout v FCA, [2016] UKUT 0302 (TCC), 7 July 2016

Third party rights - Upper Tribunal decision on the identification of a third party in FCA Notice - section 393 FSMA 2000

The Upper Tribunal (Judge Timothy Herrington and Mark White) has decided that Julien Grout was identified in a Final Notice issued by the FCA to JP Morgan Chase Bank N.A. on 18 September 2013.

Mr Grout was a trader on the firm’s synthetic credit portfolio (SCP), which sustained losses as a result of what has become known as the ‘London Whale’ trades. Mr Grout argued that references to ‘traders on the SCP’ in the Notice identified him, were clearly and obviously prejudicial to him, and that he had no opportunity to contest those references. Mr Grout made a reference to the Tribunal under section 393(11) of FSMA, which gives third parties certain rights in relation to warning and decision notices issued by the FCA.

In deciding whether Mr Grout had been identified in the notice, the Tribunal applied the same two-stage test as the Court of Appeal in FCA v Macris [2015] EWCA Civ 490. The Tribunal concluded, among other things, that references to the collective term ‘traders on the SCP’ were to be read as references to Mr Grout and that Mr Grout had therefore been identified in the ‘relevant sense and manner’ for the purposes of section 393 of FSMA.

The question was dealt with as a preliminary issue in accordance with Rule 5(3)(e) of the Tribunal Procedure (Upper Tribunal) Rules 2008. The parties have agreed a stay on proceedings pending the outcome of the Supreme Court judgment in Macris, which is currently awaited.

The Upper Tribunal financial services hearings and register states that the FCA has been granted permission to appeal to the Court of Appeal.
The judgment is here.

The Upper Tribunal financial services hearings and register is here.
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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