Financial Regulation
Weekly Bulletin

15 December 2016 / Issue 891

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 Financial services legislation - Commission publishes overview of level 2 measures - 7 December 2016 - The European Commission Directorate-General for Financial Stability, Financial Services and Capital Markets Union has published an overview of the level 2 financial services measures that have been or are due to be adopted. Measures already adopted are highlighted in orange.

The overview document is here.
2. Joint Committee of the European Supervisory Authorities

2.1 Financial conglomerates - Joint Committee publishes 2016 list - 9 December 2016 - The Joint Committee of the European Supervisory Authorities (ESAs) has published its 2016 list of 79 identified financial conglomerates with the head of group located in the European Union or the European Economic Area. The ESAs also identify a financial conglomerate with the head of group in Switzerland, one in Bermuda, and two in the United States.

The 2016 list is here.

The press release is here.

3. Prudential Regulation Authority

3.1 PRA Policy Statement PS35/16: Responses to CP26/16 - December 2016 - The Prudential Regulation Authority (PRA) has published a Policy Statement (PS35/16) containing feedback on responses to its July 2016 Occasional Consultation Paper (CP26/16), final rules, and an updated Supervisory Statement SS24/15: ‘The PRA’s approach to supervising liquidity and funding risks’ (Appendix 5).

PS35/16 contains final rules on:

- Internal Liquidity Adequacy Assessment (Appendix 1);
- Solvency II firms: Conditions Governing Business Part (Appendix 2);
- CRR firms: Regulatory Reporting (Appendix 3); and
- CRR firms: Capital Buffers and the Leverage (Appendix 4).

The PRA indicates that changes to Supervisory Statement SS34/1: ‘Guidelines for completing regulatory reports’ are being implemented in Policy Statement PS36/16: ‘Responses to Chapter 3 of CP17/16 - financial statements’ (reported in the Banking and Finance section below).

PRA Policy Statement PS35/16 is here.

The Appendices are available from here.

4. Financial Conduct Authority

4.1 FCA Consultation Paper CP16/42: Reviewing the funding of the Financial Services Compensation Scheme - December 2016 - The FCA has published a Consultation Paper (CP16/42) opening discussion on the funding of the Financial Services Compensation Scheme (FSCS) and consulting on specific changes to the scheme rules. This fulfils a promise made at the time of the creation of the PRA to review the funding model of the FSCS in 2016. CP16/42 also discusses recommendations made by the Financial Advice Market Review (March 2016).

Areas under discussion include:

- the professional indemnity insurance (PII) market — the FCA is considering proposals to make PII more effective through the introduction of mandatory terms;
introducing product provider contributions towards intermediation claims;

changing funding classes for intermediation activities — the FCA is examining various options;

updating compensation limits and activities — in the light of pension freedoms; and

risk-based levies — the FCA is exploring the potential for FSCS levies to better reflect the risks posed by particular practices.

Specific changes now being consulted on include:

- introducing FSCS coverage for debt management firms;
- extending coverage in respect of fund management;
- applying FSCS protection to advice and intermediation of structured deposits;
- requiring contributions from Lloyd’s of London in certain circumstances;
- amending payment arrangements so that firms may be asked to pay a proportion of the levy on account; and
- ‘minor changes’.

The consultation period closes on 31 March 2017.

The FCA expects to publish a Policy Statement with final rules and a Consultation Paper on proposed changes in autumn 2017.

The FCA intends to carry out a review of the PII market in 2017.

FCA Consultation Paper CP16/42 is [here](#).

The consultation webpage is [here](#).

The press release is [here](#).

4.2 FCA Handbook Notice No. 39 - December 2016 - The FCA has published Handbook Notice No. 39, which contains changes to the FCA Handbook made by the FCA Board on 10 November and 8 December 2016, and rules and standard terms made by the Financial Ombudsman Service on 23 November 2016. Handbook Notice No. 39 advertises the following legal instruments:

- the Pension Schemes (Restrictions on Early Exit Charges) Instrument 2016 (FCA 2016/72);
- the Fees (Tariff Data for Insurers 2017/2018) Instrument 2016 (FCA 2016/73);
- the Recovery and Resolution Directive (Amendment) Instrument 2016 (FCA 2016/74);
- the Mortgage and Payment Shortfalls (Conduct of Business) Instrument 2016 (FCA 2016/75);
The Credit Unions Sourcebook (Amendment No 9) Instrument 2016 (FCA2016/77);
The Consumer Credit (Total Charge for Credit) Instrument 2016 (FCA 2016/78);
The Wind-down Planning Guide Instrument 2016 (FCA 2016/79); and
The relevant Consultation Papers and Guidance Consultations are GC16/5, CP16/16, CP16/17, CP16/21, CP16/22, and CP16/23.

The Handbook Notice is here.
The latest Handbook Instruments are available here.

5. Financial Ombudsman Service

5.1 Plans and budget for 2017/18 - FOS consults - December 2016 - The Financial Ombudsman Service (FOS) has published for consultation its proposed plans and budget for 2017/18. Among other things, the FOS is proposing freezing the case fee paid by businesses at £550, and freezing its compulsory jurisdiction levy at £24.5m. The FOS intends funding three-quarters of its workload through the group-account charging arrangement that covers the eight largest businesses responsible for the most complaints. The FOS notes that there is still uncertainty about the impact of payment protection insurance complaints, following the FCA’s announcement that it is delaying publication of final rules (see an item in the Banking and Finance section below).

The consultation period closes on 31 January 2017.
The FOS’s plans and budget are here.
The press release is here.

5.2 Publication of complaints data - FOS publishes feedback statement - December 2016 - The FOS has published a feedback statement to its October 2016 consultation on the publication of complaints data. Among other things, the FOS indicates that it intends to maintain the same frequency of data publications, move endowments to investment products, and not publish the uphold rate for Plevin-affected PPI cases for a limited period of time.

The feedback statement is here.

Brexit

6. European Parliament

6.1 The role of the UK in the single market for financial services and third-country equivalence - European Parliament publishes and updates briefings - 9 December 2016 - The European Parliament has produced a briefing note on the role of the UK in the single market for financial services, highlighting the activities that rely upon passporting. It covers banking, asset management, insurance and reinsurance, and market infrastructure and other services. The briefing has been prepared using publicly available information, including a variety of reports and data published by third parties.
The European Parliament has, in addition, updated its November 2016 briefing on third-country equivalence in EU banking legislation (although it also includes reference to asset management, insurance, and market infrastructure legislation). It is now dated 9 December 2016. The updated briefing includes comments from the Secretary of State for Exiting the European Union, David Davis, on his view at the possible features of a new UK-EU relationship.

The briefing on the role of the UK is [here](#).

The briefing on third-country equivalence is [here](#).

### 7. UK Parliament

#### 7.1 Brexit and financial services - House of Lords EU Financial Affairs Sub-Committee publishes report and evidence - 15 December 2016

The House of Lords EU Financial Affairs Sub-Committee has published a report on the likely impact of Brexit on the financial services sector.

The Committee states that a key priority for the Government should be to ensure that there is an adequate transition period. It comments that the equivalence provisions are “patchy, unreliable and vulnerable to political influence”, and calls on the Government to bolster the equivalence regime in the event that the current passporting regime is not maintained. The report draws attention to the London ‘ecosystem’, concluding that it would not be in the EU’s economic interest for services to be provided less efficiently.

The Sub-Committee has also published the oral and written evidence it has taken.

The report is [here](#).

The press release is [here](#).

The evidence is [here](#).

#### 7.2 Transitional arrangements - Treasury Committee calls for written submissions - 12 December 2016

The House of Commons Treasury Committee has called for written submissions on transitional arrangements, as part of its inquiry into the UK’s future economic relationship with the EU. It is calling for evidence on the desirability, design, and negotiation of transitional arrangements. Included in its questions are the pre-emptive action that might be taken by the private sector in the absence of a credible commitment to transitional arrangements during the Article 50 negotiations. It defines transitional arrangements as any arrangements that take effect between the point at which the UK formally leaves the EU, and the point at which the UK’s final and settled relationship with the EU becomes effective.

The deadline for written submissions is 31 January 2017.

Comments made by the Chancellor of the Exchequer, Philip Hammond, in evidence to the Treasury Committee, that there was “an emerging view” that a transitional deal would be needed, have been widely reported in the press.

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

A transcript of the Chancellor’s evidence is [here](#).
7.3 UK’s negotiating objectives - Brexit Secretary, David Davis, gives evidence to the Exiting the EU Committee - 14 December 2016 - The Secretary of State for Exiting the EU, David Davis, has given his first evidence to the House of Commons Exiting the European Union Committee, as part of its inquiry into the UK’s negotiating objectives in the withdrawal negotiations. Among other things, he was asked for his view on transitional arrangements.

His oral evidence is here.

The press release is here.

7.4 Brexit and options for trade with the EU - House of Lords European Union Committee publishes report - 13 December 2016 - The House of Lords European Union Committee has published a report on the options for trade relationships with the other 27 member states and the rest of the world post-Brexit.

The report sets considers the possible trading relationships with the EU (European Economic Area (EEA) membership, a customs union, a Free Trade Agreement, or operating through World Trade Organisation (WTO) rules), and whether they might be modified to achieve a bespoke outcome. The report concludes that fundamental modifications to ‘off-the-shelf’ models are unlikely. The report considers that a free trade agreement would provide the greatest flexibility, but does not think it will be possible to negotiate one within two years, so the government should focus on trading under WTO rules. The Committee believes a transitional agreement “will almost certainly be necessary”.

The report is here.

7.5 Brexit and acquired rights - House of Lords European Union Committee publishes report - 14 December 2016 - The House of Lords European Union Committee has published a report on EU rights (including the right of any EU national to live and work in a member state of their choosing) post-Brexit.

The report considers the limitations on the doctrine of acquired rights, and recommends that any EU rights that are to be safeguarded on the UK’s withdrawal from the EU should be protected in the withdrawal agreement, with a mechanism where UK law can take account of relevant developments in EU law, and vice versa.

In addition, the report calls for the Government to give a unilateral guarantee now that the rights of EU citizens in the UK will be safeguarded.

The report is here.

8. The Bar Council

8.1 Brexit - The Bar Council publishes Brexit Papers on legal concerns arising from Brexit - 12 December 2016 - The Bar Council has published the Brexit Papers, a set of papers covering legal aspects of Brexit across a number of sectors and legal areas, and making recommendations to government. The Papers include:

- jurisdictions and the enforcement of judgements (Paper 1);
- the impact of Brexit on international arbitration (Paper 3);
• the implications of Brexit for insolvency and restructuring (Paper 4);
• Brexit and intellectual property (Paper 5);
• the impact of Brexit on UK tax (Paper 6); and
• Brexit and competition law (Paper 9).

The Brexit Papers are here.

The press release is here.

**Banking and Finance**

9. **European Banking Authority**

9.1 **BRRD - EBA publishes final report on the implementation and design of MREL - 14 December 2016** - The European Banking Authority (EBA) has published its final report on the implementation and design of the minimum requirement for own funds and eligible liabilities (MREL) under the Bank Recovery and Resolution Directive (2014/59/EU) (BRRD). The report recommends a number of changes to reinforce the MREL framework and integrate the international standards on total loss-absorbing capacity (TLAC) in the EU's MREL. It also estimates the potential financing needs of European Union banks under various scenarios.

The EBA’s recommendations to the European Commission are intended to:

• reaffirm resolution strategies as the primary driver of MREL calibration;
• enhance resolvability by introducing mandatory subordination requirements;
• improve consistency between MREL and capital requirements; and
• enhance transparency to support market discipline and facilitate the emergence of a market for MREL instruments.

The final report is here.

FAQs on the report are here.

The press release is here.

9.2 **CRR - EBA publishes final Guidelines on revised Pillar 3 disclosures requirements - 14 December 2016** - The EBA has published its final Guidelines on regulatory disclosure requirements under Part Eight of the Capital Requirements Regulation (575/2013/EU) (CRR), following the revision of Pillar 3 requirements by the Basel Committee on Banking Supervision in January 2015.

The Guidelines cover the content of the revised Pillar 3 framework, with the exception of securitisation requirements and disclosure requirements covered in other places (such as own funds and leverage ratios). The Guidelines apply to global and other systemically important institutions (G-SIs and O-SIs), but competent authorities may require other institutions to comply with some or all of them.
The Guidelines apply from 31 December 2017, but G-SIs are encouraged to comply with a subset of the Guidelines as soon as 31 December 2016.

The Guidelines are here.

The Guidelines webpage is here.

The press release is here.

9.3 PSD2 - EBA publishes final draft RTS on cooperation and exchange of information under passporting - 14 December 2016 - The EBA has published its final draft regulatory technical standards (RTS) on the framework for cooperation and exchange of information between competent authorities for passport notifications under the Second Payment Services Directive (EU) 2015/2366 (PSD2). The EBA has also published a practical guide for competent authorities on which PSD2 templates to use.

The final draft RTS are here.

The practical guide is here.

The press release is here.

9.4 Guidelines on remuneration policies for sales staff - EBA publishes translations - 13 December 2016 - The EBA has published the translated versions of its Guidelines on remuneration policies and practices for sales staff selling retail banking products and services.

The EBA indicates that the deadline for compliance with the Guidelines is 13 February 2017.

The Guidelines will apply from 18 January 2018.

The Guidelines are available under related links on the Guidelines webpage here.

10. European Central Bank

10.1 EU macroprudential policy framework - ECB publishes response to European Commission consultation - December 2016 - The European Central Bank (ECB) has published its contribution to the European Commission’s August 2016 consultation on the review of the EU macroprudential policy framework. The response contains a number of suggested issues for the review to consider.

The ECB’s response is here.

11. Prudential Regulation Authority

11.1 Regulatory reporting for the banking sector - PRA Policy Statement PS36/16, PRA Consultation Paper CP46/16, and PRA CP45/16 and FCA CP16/41 - December 2016 - The Prudential Regulation Authority (PRA) has published a package of measures on regulatory reporting for the banking sector. These include a Policy Statement (PS36/16) on financial statements, a Consultation Paper (CP46/16) on changes to reporting requirements arising from the introduction of International Financial Reporting Standard 9 (IFRS 9) from 1 January 2018, and a joint PRA and FCA Consultation Paper (PRA CP45/16 and FCA CP16/41): Amendments to Notes for completion of the MLAR. PRA Policy Statement PS35/16: Responses to CP26/16 and an updated Supervisory Statement SS24/15:
‘The PRA’s approach to supervising liquidity and funding risks’, are reported in the **General** section above.

**Policy Statement PS36/16: Financial statements - responses to Chapter 3 of CP17/16**

PS36/16 includes feedback to Chapter 3 of the PRA’s April 2016 Consultation Paper (CP17/16), final rules on the new reporting requirements relating to balance sheet and P&L data, an update to Supervisory Statement SS34/15, ‘Guidelines for completing regulatory reports’, and new returns and instructions.

The PRA has maintained an implementation date of 1 January 2018, but firms that do not have an accounting year end of 31 December 2017 will be able to apply for a rule modification (via the “modification by consent” process) which will enable them to delay application of the new rules and new format reporting until the start of their financial year beginning in 2018.

The PRA is to publish details of the systems which will be used by firms to report the new returns by Tuesday 28 February 2017 on its ‘CRD firms - Reporting Requirements’ webpage.

**Consultation Paper CP46/16: IFRS 9: changes to reporting requirements**

CP46/16 contains proposed changes to reporting requirements for banks and building societies that apply IFRS 9. The proposals affect firms’ existing reporting requirements for credit quality, including arrears and impairments. Affected firms would be required to report using certain EBA Financial Reporting FINREP templates from the EBA instead of the current FSA015 return, on an individual and consolidated basis.

The consultation closes on 13 March 2017.

The proposed implementation date for the proposals is the start of a firm’s accounting year beginning on or after 1 January 2018, to coincide with the implementation date of IFRS 9.

**Joint PRA and FCA Consultation Paper (PRA CP45/16 and FCA CP16/41): Amendments to Notes for completion of the MLAR**

The PRA and the FCA have jointly published a Consultation Paper (PRA CP45/16 and FCA CP16/41) covering proposed updates to the PRA’s notes to the Mortgage Lenders & Administrators Return (MLAR), notes for the completion of the MLAR in the FCA’s Supervision manual (SUP), and the MLA-D1 form for reporting second charge lending. The changes have been proposed to reflect the transposition of the Mortgage Credit Directive (2014/17/EU) (MCD) into UK law in March 2016.

The regulators indicate that the proposed updates and clarifications do not introduce any material changes to the notes and do not result in any new reporting requirements.

The consultation period closes on 13 March 2017.

PRA Policy Statement PS36/16 is [here](#).

The webpage is [here](#).

Updated Supervisory Statement SS34/15, ‘Guidelines for completing regulatory reports’ can be accessed from [here](#).
PRA Consultation Paper CP46/16 is here.

The consultation webpage is here.

The joint PRA/FCA Consultation Paper is here.

The consultation webpage is here.

Links to all the elements of the package on regulatory reporting for the banking sector are here.

12. Financial Conduct Authority

12.1 FCA Market Study MS16/2: Mortgages Market Study - Terms of Reference - December 2016 - The FCA launched a Market Study (MS16/2) to consider whether competition in the mortgage sector can be improved to benefit consumers. This follows a call for input in October 2015, and a feedback statement in May 2016. More details of the Market Study can be found in the Terms of Reference.

The Market Study will look at first charge residential mortgages and examine two questions:

- at each stage of the consumer journey, whether the available ‘tools’ (including advice) help mortgage customers make effective decisions; and

- the extent to which commercial arrangements between lenders, brokers and other players lead to conflicts of interest or misaligned incentives, to the detriment of consumers.

The FCA will also consider whether there are opportunities for better technological solutions.

The FCA is not consulting specifically on the Terms of Reference, but welcomes comments by 12 January 2017.

The FCA intends to issue an interim report in summer 2017, and a final report in Q1 2018.

The Terms of Reference for Market Study MS16/2 are here.

The Market Study webpage is here.

The press release is here.

12.2 FCA Policy Statement PS16/25: Home finance customers with a payment shortfall: minor Handbook changes and feedback to CP16/16 - December 2016 - The FCA has published a Policy Statement (PS16/25) containing feedback to Consultation Paper (CP16/16) (June 2016), and changes to the Mortgages Conduct of Business Sourcebook (MCOB) for firms with customers who are experiencing mortgage or Home Purchase Plan (HPP) payment shortfalls. The Mortgage and Home Purchase Plan Payment Shortfalls (Conduct of Business) Instrument 2016 (FCA 2016/75) came into force on 15 December 2016.

FCA Policy Statement PS16/25 is here.

12.3 FCA Thematic Review TR16/10: Early arrears management in unsecured lending - December 2016 - The FCA has published its Thematic Review (TR16/10) into early arrears management in unsecured lending, looking at how lenders treated customers in the early stages of arrears. The
review examined a range of unsecured lending products, including personal loans, credit cards, store cards, and retail finance.

The FCA found that a lot of change prompted by the introduction of FCA regulation was recent and ongoing. The majority of firms missed early opportunities to identify customers in financial difficulty and offer appropriate forbearance, and the forbearance and repayment solutions offered varied significantly. Firms' intentions towards assisting companies in arrears also varied.

The FCA indicates that it has provided firm-specific feedback to firms involved, and expected them to review their practices accordingly and make relevant changes. The FCA indicates that it may take further action against firms that have demonstrated unfair practices.

The FCA encourages all firms involved in the collection of consumer credit debts to read TR16/10, consider their approach in the light of it, and make improvements where necessary. The FCA encourages all firms to continue to focus on achieving fair customer outcomes as well as regulatory compliance.

FCA Thematic Review TR16/10 is here.

The Thematic Review webpage is here.

The press release is here.

12.4 FCA Feedback Statement FS16/13: Interim feedback to the call for input to the post-implementation review of the FCA’s crowdfunding rules - December 2016 - The FCA has published a Feedback Statement (FS16/13) containing interim feedback on its post-implementation review of the loan-based and investment-based crowdfunding market. The FCA plans to consult on some new rules in Q1 2017.

FCA Feedback Statement FS16/13 is here.

The Statement webpage is here.

The press release is here.

12.5 Payment protection insurance complaints - FCA delays final rules consulted on in CP16/20 - 9 December 2016 - The FCA has published a brief statement regarding its timetable for rules and guidance for complaints concerning payment protection insurance (PPI) consulted on in CP16/20 (August 2016). The original intention had been to make final rules and guidance in December 2016. Due to the large amount of feedback received, the FCA now intends to make a further announcement in Q1 2017.

The statement is here.

13. The UK’s interbank payments systems operators

13.1 An introduction to the UK’s Interbank Payment Schemes - published by the UK’s interbank payment schemes - December 2016 - The UK’s interbank payments system operators (Bacs Payment Schemes Ltd, CHAPS, the Cheque and Credit Clearing Company, Faster Payments, and LINK) have published an introductory guide for payment service providers (PSPs) on the UK’s
interbank payment schemes. The guide provides an overview on the UK’s payment schemes, what each one offers, and how the schemes can be accessed.

The guide is here.

The press release is here.

14. Recent cases

14.1 SV Capital OÜ v EBA, Case C-577/15 P, 14 December 2016

Jurisdiction of the Joint Board of Appeal of the European Supervisory Authorities

The European Court of Justice (First Chamber) ruled against SV Capital OÜ in its latest attempt to challenge a refusal by the EBA to initiate an investigation against the Estonian and Finnish Supervision Authorities relating to an alleged breach of European Union law regarding the suitability of key function holders in a Finnish bank with a branch in Estonia.

The judgment is here.

See also the Securities and Markets section below for an item on the Commission Implementing Regulation extending the transitional periods for own funds requirements for exposures to CCPs under the CRR and EMIR being published in the Official Journal.

Securities and Markets

15. Financial Stability Board

15.1 Climate-related financial disclosures - Task Force consults on recommendations - 14 December 2016 - The Task Force on Climate-related Financial Disclosures, an industry-led task force established by the Financial Stability Board (FSB) in December 2015, has published for consultation its recommendations for voluntary and consistent disclosures by companies to investors, lenders, and insurance underwriters about the financial risks companies face from climate change.

The task force recommends that disclosures be made in mainstream financial filings, and makes four recommendations covering governance, strategy, risk management, and metrics and targets. It recommends specific disclosures that organisations should include in their financial filings. The report also includes guidance for all sectors, and supplemental guidance for financial and non-financial sectors.

The consultation period closes on 12 February 2017.

The Task Force intends to present final recommendations to the G20 Leaders in advance of their Hamburg Summit in July 2017.

The recommendations are here.

The recommendations webpage is here.

A speech by Bank of England Governor and FSB Chair Mark Carney is here.

The FSB’s press release is here.

16.1 CRR and EMIR - Commission Implementing Regulation extending the transitional periods for own funds requirements for exposures to CCPs published in the Official Journal - 10 December 2016 - Commission Implementing Regulation (EU) 2016/2227 of 9 December 2016, extending the transitional periods related to own funds requirements for exposures to central counterparties (CCPs) under the Capital Requirements Regulation (575/2013/EU) (CRR) and the European Market Infrastructure Regulation (648/2012/EU) (EMIR) has been published in the Official Journal of the European Union.

The Regulation extends the transitional periods in Article 497(2) CRR and the second subparagraph of Article 89(5a) EMIR by an additional six months to 15 June 2017.

The Regulation entered into force on 13 December 2016.

The Regulation is [here](#).


The Regulation enters into force on 4 January 2017.

The Regulation is [here](#).

17. European Securities and Markets Authority

17.1 EMIR - ESMA consults on draft standards regarding data to be made publically available by trade repositories - 15 December 2016 - The European Securities and Markets Authority (ESMA) has published a consultation paper containing draft RTS on the data to be made publicly available by trade repositories under Article 81 EMIR. The proposed RTS include provisions on avoiding the double counting of cleared derivatives, data aggregations for commodity derivatives and derivatives using benchmarks, and general technical aspects of the publication of aggregate data.

The consultation period closes on 15 February 2017.

The consultation paper is [here](#).

The consultation webpage is [here](#).

The press release is [here](#).

18. Association of Financial Markets in Europe

18.1 Proposed Securitisation Regulation - AFME expresses concerns - 8 December 2016 - The Association of Financial Markets in Europe (AFME) has raised a number of concerns with the European Parliament’s negotiating position on the Simple Transparent and Standardised (STS) Securitisation package, part of the Capital Markets Union (CMU) Action Plan. It states that unless
the text is not significantly recalibrated, then all securitisation will become ‘prohibitively burdensome’ in Europe. AFME lists five key areas it believes need to be addressed.

The procedure file is here.

AFME’s comments are here.

19. **Financial Markets Law Committee**

19.1 **IOSCO Multilateral Memorandum of Understanding - FMLC publishes paper on data protection concerns** - 9 December 2016 - The Financial Markets Law Committee (FMLC) has produced a paper responding to concerns raised by the Article 29 Data Protection Working Party (WP29) in relation to the International Organization of Securities Commission’s (IOSCO) Multilateral Memorandum of Understanding (MMoU) on the exchange of information and international transfers of personal data. The FMLC concludes that it does not agree with WP29’s position, but makes some suggestions for a side letter or appendix to the MMoU to address its concerns.

The paper is here.

See also the Banking and Financing section above for an item on FCA Feedback Statement FS16/13: Interim feedback to the call for input to the post-implementation review of the FCA’s crowdfunding rules.

See also the Asset Management section below for an item on a new FCA webpage on initial advice charges for lump sum investments.

See also the Insurance section below for an item on a DWP and FCA joint report on workplace pension scheme fees and charges.

**Asset Management**

20. **Financial Conduct Authority**

20.1 **Initial advice charges for lump sum investments - new FCA webpage** - 15 December 2016 - Responding to a recommendation of the Financial Advice Market Review (FAMR), the FCA has published a webpage drawing attention to the flexibility in its rules that allow payment by instalments of initial advice charges for advice on lump sum investments to retail clients. It also draws attention to the consumer credit implications.

The webpage is here.

21. **Private Equity Reporting Group**


The report is here.

The press release is here.
Insurance

22. European Commission

22.1 Insurance Block Exemption Regulation - Commission confirms Regulation will expire on 31 March 2017 - 13 December 2016 - The European Commission has announced that the Insurance Block Exemption Regulation (267/2010/EU) (IBER), which exempts certain types of cooperation between insurers from EU antitrust rules, will expire on 31 March 2017.

The item is included in the Commission’s daily news for 13 December 2016 here.

The European Commission’s competition webpage on insurance is here.

23. European Insurance and Occupational Pensions Authority

23.1 Guidelines on facilitating the dialogue between insurance supervisors and statutory auditors - published by EIOPA - 12 December 2016 - The European Insurance and Occupational Pensions Authority (EIOPA) has published Guidelines on facilitating an effective dialogue between insurance supervisors and statutory auditors. The Guidelines were consulted on in February 2016, and a feedback statement has been included.

The Guidelines will apply by 31 May 2017, but earlier application is encouraged.

The final report is here.

The final report holding page is here.

24. Department for Work & Pensions and Financial Conduct Authority

24.1 Workplace pension scheme fees and charges - DWP and FCA issue joint report - December 2016 - The Department for Work & Pensions (DWP) and the FCA have published a report of the findings from their joint review of industry progress in remedying poor value workplace pension schemes. It finds that the industry has made significant progress in reducing costs and charges, but there are some providers where costs and charges remain above 1%. The FCA and DWP will be contacting these providers by January 2017 for an explanation, and steps will be taken by 30 June 2017.


The FCA press release is here.

25. Prudential Regulation Authority

25.1 PRA Consultation Paper CP47/16: Maintenance of the ‘transitional measure on technical provisions’ under Solvency II - December 2016 - The Prudential Regulation Authority (PRA) has published a Consultation Paper (CP47/16) covering proposed updates to the PRA’s Supervisory Statement SS6/16 ‘Recalculation of the ‘transitional measure on technical provisions’ under Solvency II. The PRA intends to amend SS6/16 to clarify the PRA’s expectations for maintaining the calculation of the Transitional Measure on Technical Provisions (‘TMTP’), both at the outset and over the transitional period.

The consultation closes on 15 March 2017.
PRA Consultation Paper CP47/16 is here.

The press release is here.

25.2 PRA Consultation Paper CP48/16: Solvency II: Matching adjustment - illiquid unrelated assets and equity release mortgages - December 2016 - The PRA has published a Consultation Paper (CP48/16) proposing a Supervisory Statement on the PRA’s expectations of firms investing in illiquid, unrated assets within their Solvency II matching adjustment (MA) portfolios. It includes proposals relating to the valuation approach and fundamental spread mapping to be used for restructured equity release mortgages when determining their contribution to a firm’s overall MA benefit. CP48/16 also provides feedback received to the PRA’s March 2016 Discussion Paper (DP1/16) on equity release mortgages.

The consultation period closes on 14 March 2017.

The PRA intends to implement the proposals in H2 2017.

PRA Consultation Paper CP48/16 is here.

The press release is here.

26. Financial Conduct Authority

26.1 FCA Finalised Guidance FG16/8: Fair treatment of long-standing customers in the life insurance sector - December 2016 - The FCA has published Finalised Guidance (FG16/8) setting out its expectations for the fair treatment of closed-book customers in the life insurance sector. The FCA states that it should also be applied to actively marketed products in which long-standing customers are invested. It follows a thematic review (TR16/2) published on 3 March 2016, and includes feedback to consultation.

The Guidance contains the FCA’s expectations concerning four overarching outcomes, and various sub-outcomes. The four outcomes are:

- Outcome 1: The firm’s strategy and governance framework results in the fair treatment of closed-book customers;
- Outcome 2: The firm’s closed-book customers receive clear and timely communications about policy features at regular intervals and at key points in the product life cycle that enable them to make informed decisions;
- Outcome 3: The firm gives adequate consideration to and takes proper account of fund performance and policy values in a way that ensures it treats it closed-book customers fairly and proportionately; and
- Outcome 4: The firm’s closed-book customers are able to move from products that are no longer meeting their needs in a fair and reasonable manner.

The FCA expects firms to review their business practices in light of the Guidance by 9 March 2017, and make any necessary changes.

FCA Finalised Guidance FG16/8 is here.
The Guidance webpage is here.

The press release is here.

See also the Banking and Finance section above for an item on the FCA delaying final rules on payment protection insurance complaints.

Financial Crime

27. Council of the European Union


The Presidency compromise text is here.

The procedure file is here.

28. UK Parliament

28.1 Criminal corporate liability - Government intends to issue call for evidence - 8 December 2016 - In answer to a Parliamentary question, the Attorney General, Jeremy Wright QC, has indicated that the Government intends shortly to publish a call for evidence on options for further reform to corporate criminal liability, following the offence of failing to prevent bribery under the Bribery Act 2010, and the proposed new offence of failing to prevent tax evasion, contained in the Criminal Finances Bill currently going through Parliament.

The relevant section of House of Commons Hansard for 8 December 2016 is here.

The Criminal Finances Bill webpage 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.

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, and of NRAM plc, to Cerberus Capital Management;
- Värde Partners on the sale of NewDay to Cinven and CVC Capital Partners;
- esure Group plc and Gocompare.com Group plc in relation to a demerger of Gocompare.com through a separate listing on the main market of the London Stock Exchange;
- 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;
- Funds advised by Pollen Street Capital on the sale of Target Group to a wholly-owned subsidiary of Tech Mahindra Limited;
- A range of financial services clients on responding to the legal and structural implications of the UK’s exit from the EU; and
- 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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