

Regulatory Update

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1.0 FCA UPDATES & DEVELOPMENTS

1.1 FCA on Notification Window for TPR

The Financial Conduct Authority (FCA) has [announced on its website](#) an opening of the notification window for firms and funds wishing to enter the temporary permissions regime (TPR) and has published a [document](#) providing detailed instructions for doing this.

If the UK leaves the EU on exit day without an implementation period in place, the TPR will allow EEA based firms currently passporting into the UK, to continue new and existing regulated business within the scope of their current UK permissions. This will be allowed for a limited time period whilst they seek full FCA authorisation and it will also allow EEA-domiciled investment funds currently under a passport and marketed in the UK, to continue temporarily marketing in the UK.

Notifications will need to be submitted between 7 January 2019 and 28 March 2019 via the Connect system.

In relation to funds, the FCA published two directions on how to make notifications before exit day to:

- [operators of collective investment schemes](#) that are EEA undertakings for collective investment in transferable securities
- [operators of alternative investment funds \(AIFs\)](#), European venture capital funds (EuVECA), European social entrepreneurship funds (EuSEF) and certain EEA alternative investment fund managers (AIFMs).

In relation to the TPR, HM Treasury laid [the Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) Regulations 2019](#) before Parliament.

This instrument introduces regimes to support and amend the temporary permission and recognition regimes. The TPR provides a window to allow impacted firms to become UK authorised or recognised, and mitigate risks of disruption to UK businesses and consumers while this happens. The regimes under this instrument address those firms that do not enter the temporary regimes or exit them without a UK authorisation or recognition. As a result, EEA firms which did not notify to enter the TPR could be legally unable to service outstanding contracts.

HM Treasury has also published a draft version of [the Financial Services Contracts \(Transitional and Saving Provision\) \(EU Exit\) \(No 2\) Regulations 2019](#). This instrument amends EU Exit regulations to provide further transitional provision in respect of the performance of contracts entered into before exit day.

1.2 FCA on Advance Applications for CRAs and TRs

The FCA [has announced](#) opening a window for applications from credit rating agencies (CRAs) and trade repositories (TRs), which are looking to offer services in the UK after exit day (29 March 2019). The FCA added this information onto the [dedicated to the CRA webpage](#).

When the UK leaves the EU, the FCA will become the UK regulator of CRAs and TRs. Consequently, any legal person wishing to issue credit ratings, or any TR wishing to offer its services in the UK on or after exit day, will need to be registered, certified or recognised by the FCA. To support the process, the FCA [updated the dedicated TR webpage](#).

1.3 FCA on Temporary Authorisation for DRSPs

The FCA has [updated its webpage](#) on the Brexit temporary authorisation regime for data reporting services providers (DRSPs) to include information on the notification process for DRSPs wishing to enter the regime. DRSPs must notify the FCA by 15 February 2019 if they wish to use the temporary authorisation regime. If a DRSP does not notify the FCA by this date, it will be unable to provide a data reporting service within the deemed authorisation regime, and on exit day it will have to be authorised under the [Data Reporting Services Regulations 2017 \(SI 2017/699\)](#) to provide said service in the UK.

1.4 FCA Consults on Securitisation Repositories

FCA has published a consultation paper 'Recovering the costs of regulating securitisation repositories after the UK leaves the European Union' [CP19/1](#). This paper addresses the recovery of costs of regulating securitisation repositories post-Brexit and proposes to integrate securitisation repositories into the structure developed for credit

rating agencies and trade repositories. The deadline for comments is 11 February 2019. Feedback for the consultation and the resulting rules will be published in March 2019.

1.5 FCA Consults on Brexit

The FCA has published a consultation paper 'Brexit and Contractual Continuity' [CP19/2](#). This paper addresses contractual continuity after Brexit and implementation of the proposed financial services contracts regime (FSCR). The FSCR aims to enable firms in the EEA to fulfil existing contractual obligations after Brexit. It is proposed that the FSCR will work alongside the TPR, which enables inbound EEA firms to access the UK market while seeking full authorisation in the UK. The deadline for comments is 29 January 2019. The feedback will be published before exit day.

1.6 FCA Consults on Cryptoassets

The FCA has published a [consultation paper, 'Guidance on Cryptoassets' CP19/3](#) seeking guidance to help firms determine whether cryptoassets fall within FCA regulation. An increasing number of consumers are investing in cryptoassets and the consultation responds to industry calls for regulatory clarity in this area. The final guidance will help market participants understand whether the cryptoassets they use are subject to FCA regulation. The paper also contains key concepts on cryptoassets, Perimeter Guidance and FAQs.

The deadline for comments is 5 April 2019.

1.7 FCA Consults on SM&CR

The FCA has published a [consultation paper CP19/4](#) 'Optimising the Senior Managers & Certification Regime' and feedback [to DP16/4](#) 'Overall responsibility and the legal function' to clarify the application of the Senior Managers & Certification Regime (SM&CR) to the legal function. In particular, the consultation paper proposes that the Head of Legal be excluded from the requirement to be a senior manager.

The deadline for comments is 23 April 2019.

1.8 FCA 'Dear CEO' Letter

The FCA has published a ['Dear CEO' letter](#) addressed to CEOs of all the regulated firms to remind them of their responsibilities relating to the use of financial promotions.

The FCA states that it is aware of firms issuing financial promotions which suggest or imply that all the activities which they undertake are regulated by the FCA and/or the Prudential Regulatory Authority (PRA) when, in fact, some of them are unregulated activities.

The letter reminds senior managers and Boards of what constitutes fair, clear and unambiguous financial promotions and encourages all firms to read and reflect on this letter to ensure that they understand the FCA's rules relating to financial promotions.

1.9 FCA Handbook Notice

The FCA has published [Handbook Notice 62](#), which sets out recent changes made to the Handbook and other material produced by the FCA Board under its legislative and other statutory powers.

1.10 FCA Speech on LIBOR at ISDA

The FCA's Director of Markets and Wholesale Policy, Edwin Schooling Latter, [has given a speech](#) at the International Swaps and Derivatives Association (ISDA) annual legal forum.

In his speech, Mr. Latter discusses the final transition steps of how the use of the London Inter-Bank Offered Rate (LIBOR) is ending. His speech also contains following points:

- On a monthly basis, cleared sterling swaps referencing the Sterling Overnight Index Average (SONIA) is now higher than that for sterling LIBOR, which demonstrates that the derivatives market is moving away from LIBOR.
- In the FCA's view, the best and smoothest transition from LIBOR will be one in which contracts that reference LIBOR are replaced or amended before fallback provisions are triggered.
- Market participants should not rely on an option to use LIBOR for legacy contracts, as this may not be available.

2.0 PRA UPDATES & DEVELOPMENTS

2.1 BoE on Sterling LIBOR

The Bank of England's (BoE) working group on sterling risk-free reference rates has [published a paper](#) setting out potential considerations for loan market participants, in relation to new and legacy loan transactions that reference sterling LIBOR. The paper aims to help market participants prepare in advance of 2021, when LIBOR may cease to be available.

The paper highlights possible issues that could arise if LIBOR is replaced by alternative benchmarks (SONIA in particular), such as the impact on loan or hedging arrangements, the possibility that LIBOR might continue to be published (based on a different methodology) and the impact that a LIBOR replacement could have on the regulatory obligations of market participants.

2.2 PRA on SM&CR to Firms in TPR

The PRA has [published an update](#) that clarifies the interaction between the FCA's and the PRA's proposals for applying the SM&CR to firms in the temporary permissions regime (TPR).

The document includes a set of frequently asked questions on how the two sets of proposals would apply to dual-regulated EEA firms operating currently in the UK via an establishment passport through EEA branches.

2.3 PRA on Liquidity Reporting

The PRA has published a [policy statement on liquidity reporting \(PS1/19\)](#), which corrects the level of consolidation of the PRA110 reporting requirements and is relevant to banks, building societies, and PRA-designated investment firms.

Additionally, the PRA has published a [Supervisory Statement \(SS34/14\)](#) with guidelines for completing regulatory reports. This statement is addressed to all firms regulated by the PRA who are required to submit supervisory reports under the Regulatory Reporting, Close Links and Change in Control Parts of the PRA Rulebook.

2.4 PRA on Notification and Application Forms

The PRA has published a [policy statement \(PS2/19\)](#) on regulatory transactions and changes to its notification and application forms and includes:

- Amendments to the Insurance Special Purpose Vehicles Part, the Passporting Part, the Change in Control Part and the Notifications Part of the PRA Rulebook
- Updates to the forms including Branch Notification Form, Cross Border Services Notification Form, Passporting Declaration
- Removing the Controllers forms from the PRA Rulebook.

These changes came into effect on 19th January 2019. They are relevant to all PRA-authorized firms as well as firms that have or intend to acquire a qualifying holding in a PRA-authorized firm.

3.0 EU REGULATORY UPDATES

3.1 BCBS Announcements

Basel Committee on Banking Supervision (BCBS) has published revised standards on [the minimum capital requirements for market risk](#) that will serve as the Pillar 1 minimum capital requirement as of 1 January 2022, replacing the current minimum capital requirements for market risk as set out in Basel III and its subsequent amendments. The new market risk standards will come into effect on 1st January 2022.

The BCBS has also announced that its [Principles for Sound Liquidity Risk Management and Supervision](#) remain fit for purpose following the review. This guidance is arranged around seventeen principles for managing and supervising liquidity risk and advises banks and supervisors to remain vigilant of liquidity risks in financial markets.

3.2 EBA on High Risk Exposures

The European Banking Authority (EBA) has published its final [report](#) on guidelines with regard to exposures associated with high risk exposures under the Capital Requirements Regulation (CRR). The report contains two parts: (i) clarifying the notions of investments in venture capital and private equity firms and (ii) specifying the types of exposures which should be considered high risks. The guidelines will apply from 1st July 2019.

3.3 ESMA on Binary Options

The European Securities and Markets Authority (ESMA) has made a [decision](#) to renew the prohibition on the marketing, distribution or sale of binary options to retail clients under Article 40 of the Markets in Financial Instruments Regulation (MiFIR). This decision renews ESMA Decision (EU) 2018/795 on the same terms as the previous renewal decision and applies from 2 January 2019 for a period of three months.

3.4 ESMA on Crypto-Assets and ICOs

ESMA has also [published advice](#) addressed to the European Commission, the European Parliament and the Council of the EU, in regards to initial coin offerings (ICO) and crypto-assets.

The advice clarifies ESMA's position on gaps and issues in the current European financial regulatory framework that broadly falls into two categories:

1. For crypto-assets qualifying as financial instruments under the revised MiFID 2 certain requirements need interpretation or re-consideration in order to be applied effectively.
2. For crypto-assets that do not qualify as financial instruments under MiFID 2, investors face substantial risks and, at a minimum, anti-money laundering (AML) requirements should apply to all crypto-assets and related activities.

3.5 EBA on Crypto-Assets

The European Banking Authority (EBA) has [published a report](#) on crypto-assets addressed to the Commission. In its report, the EBA sets out the following:

- the relatively low level of crypto-asset activity does not impact financial stability
- certain crypto-asset activities falling outside the scope of EU financial services regulations give rise to potential issues, including consumer protection, operational resilience, market integrity and the level playing field
- the European Commission will have regard to the latest recommendations and any further standards or guidance issued by the Financial Action Task Force (FATF) and to take steps where possible to promote consistency in the accounting treatment of crypto-assets
- the need for a comprehensive cost/benefit analysis to determine level of action required by the EU.

3.6 ESMA Q&A on Transparency and Commodity Derivatives

ESMA has published updated questions and answers on:

- [Transparency](#) under the MiFID and associated regulation (MiFID II). It covers the publication of request for market data transactions, the default transparency regime for equity instruments and for bonds.
- [Commodity derivatives](#) topics that clarify the correct application of the field ‘price multiplier’
- [Benchmark Regulation](#): the update clarifies the scope of application of the Commission Delegated Regulations adopted under the Benchmarks Regulation, in relation to interest rate benchmarks, regulated data benchmarks and commodity benchmarks.
- The implementation of the [Central Securities Depository Regulation \(CSDR\)](#). Two new questions and answers have been added to the section relating to settlement discipline and the cash penalty mechanism.

3.7 EC Report on AIFMD

The European Commission has published a [report](#) on the operation of the Alternative Investment Fund Managers Directive (AIFMD). The report concluded that the AIFMD has played a major role in helping to create an internal market for AIFs and a harmonised regulatory and supervisory framework for AIFMs. It reports that the operational objectives were mostly achieved effectively, efficiently and coherently and remain relevant. However, some aspects were counteractive to the principles of effectiveness and efficiency. These aspects include:

- inadequate and duplicative reporting requirements, and overlapping reporting obligations with other EU legislation
- excessive investor disclosure requirements, which means they are ignored or prevent investors from obtaining a clear understanding of the AIF's investment proposal
- a lack of transparency regarding the differing national rules and supervisory processes relating to the marketing passport, due to Member States adopting different approaches about which activities constitute ‘marketing’.

3.8 EC Consults on Consumer Credit Directive

The European Commission launched a public consultation on the [Consumer Credit Directive](#) to assess if it remains fit for purpose. This directive gives consumers certain rights across the EU, including the right to cancel a credit contract within 14 days, and to receive easily comparable pre-contractual information on credit offers.

The deadline for comments is 8 April 2019.

3.9 EU Council on Investment Firms Legislation

The Council of the EU’s proposed [Investment Firms Regulation Directive](#), which will set out a new revised regulatory framework for investment firms, have been endorsed by EU ambassadors. The legislation will replace the requirements contained in the Capital Requirements Directive and associated regulation for certain investment firms.

All investment firms are currently subject to the same capital, liquidity and risk management rules as banks. Under the proposed legislation, investment firms would still be subject to the same key measures, but they will depend on the size, nature and complexity of the firm. This aims to provide proportionate and appropriate rules corresponding to the risk undertaken by investment firms.

3.10 ECB Letter on Variable Remuneration Policy

The European Central Bank (ECB) has published a [letter](#) on supervised firms’ variable remuneration policy. The letter states that the ECB pays close attention to the dividend and remuneration policies of supervised firms. In particular, it focuses on the impact of such policies on the firms’ capital base and advises to apply a policy that is consistent with a conservative path toward a capital requirement when making an award of variable remuneration.

4.0 FINANCIAL CRIME

4.1 Amendments to JMLSG Guidance

The Joint Money Laundering Steering Group (JMLSG) has [published an update](#) to the JMLSG guidance. The update contains minor changes in relation to the added restriction of anonymous safe-deposit boxes, accounts and passbooks and direction that before they can be used, customer due diligence be applied to all anonymous safe-deposit boxes in existence on 10 January 2019.

4.2 New Economic Crime Strategic Board

HM Treasury and the Home Office [have announced](#) the launch and first meeting of the Economic Crime Strategic Board, a new Government taskforce that will work with senior figures from the UK financial sector to tackle economic crime such as fraud, bribery, corruption and money laundering.

The new Economic Crime Strategic Board, which will meet twice a year, will set priorities, direct resources and scrutinise performance against the economic crime threat, which is set out in the Serious and Organised Crime (SOC) Strategy.

The board includes CEOs and chief executives from the banking institutions Barclays, Lloyds and Santander as well as senior representatives from UK Finance, the National Crime Agency (NCA) and the Solicitors Regulation Authority, Accountants Affinity Group and National Association of Estate Agents.

4.3 MLD4 on Exchange of Information

The Joint Committee of the European Supervisory Authorities (ESAs) has [published a multilateral agreement](#) on the exchange of information between the European Central Bank (ECB) and all competent anti-money laundering authorities responsible for supervising compliance of financial institutions with the Fourth Money Laundering Directive (MLD 4).

This agreement covers the information exchange processes, confidentiality and data protection, situations where requests for information can be refused, and procedures for settling disputes.

The agreement was approved by the ESAs on 10th January.

5.0 ENFORCEMENT ACTION

5.1 FCA Final Notices

The FCA has published its final notices for Mark Owen and Stewart Ford. Following a decision by the UK's Upper Tribunal against Stewart Owen Ford and Mark John Owen, former CEO and director of Keydata, the FCA has banned both men and imposed financial penalties of £76 million and £3.2 million on them respectively (see our November edition of Regulatory Updates).

The FCA and the Upper Tribunal found that they had breached Principles 1 (integrity) and 4 (relations with regulators) of the FCA's Statements of Principle for approved persons.

6.0 EU EXIT

6.1 Financial Conglomerates and Other Financial Groups

HM Treasury has published a draft version of the [Financial Conglomerates and Other Financial Groups \(Amendments etc\)\(EU Exit\) Regulations 2019](#). These regulations relate to the financial conglomerates and cover aspects of capital requirements, retained direct EU legislation, saving provisions and transfer of functions to the PRA and the FCA to review, vary, modify and revoke the decisions. The amendments ensure that regulatory regime for financial conglomerates operates effectively after Brexit.

6.2 FSMA 2000

HM Treasury has also published a draft version of [the Financial Services and Markets Act 2000 \(Amendment\)\(EU Exit\) Regulations 2019](#). This amendment ensures that the references to EU instruments in the Act and the secondary legislation are up to date at exit day.

6.3 Benchmarks

HM Treasury has published a draft version of [the Benchmarks \(Amendments and Transitional Provisions\) \(EU Exit\) Regulations 2019](#). This draft contains the following key implementations:

- Creating a UK register of benchmarks which will be maintained by FCA after exit day
- Migrating UK-approved benchmarks and benchmark administrators onto the UK register on exit day
- Temporarily migrating EU 27 approved benchmarks onto the UK register on exit day for a 24-month period
- Maintaining pre-exit day application refusal decisions within the EU until the application is approved in the UK
- The transfer of key functions of EU institutions to the appropriate bodies. Non-legislative functions of EU institutions will be transferred to the FCA while legislative functions will be transferred to HMT.

6.4 PRIIPs

[The Packaged Retail and Insurance-based Investment Products \(PRIIPs\)\(Amendment\) \(EU Exit\) Regulations 2019](#) have been laid before Parliament for approval by resolution of each House of Parliament. The amendments are made to ensure that the investors will receive the same information as before the exit. The EU PRIIPs Regulation introduced a standardised disclosure document (called a Key Information Document or KID) to be provided when packaged investment or PRIIPs are sold to retail investors in the EU.

6.5 Public Record, Disclosure of Information and Co-Operation (Financial Services)

HM Treasury has published a draft version of [the Public Record, Disclosure of Information And Co-Operation \(Financial Services\) \(Amendment\) \(EU Exit\) Regulations 2019](#). These regulations will make amendments to the FSMA 2000 to ensure that the UK has a robust framework for sharing confidential information between the UK and other UK regulators and ensures that the restrictions and protections on the sharing this confidential information with third-countries apply to EEA states after Brexit. It also removes requirements to seek the consent of the European Supervisory Authority of the EEA regulator before disclosing confidential information.

6.6 Official Listing of Securities, Prospectus and Transparency

HM Treasury laid a draft of [the Official Listing of Securities, Prospectus and Transparency \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) before Parliament. These regulations will act to ensure that the UK's listing regime and transparency framework continues to operate as intended in the UK once the UK has left the EU.

6.7 Equivalence Determination for Financial Services and Miscellaneous Provisions

The draft statutory instrument, [the Equivalence Determination for Financial Services and Miscellaneous Provisions \(Amendments\) etc\) \(EU Exit\) Regulations 2019](#) was laid before Parliament for approval. These amendments provide ministers with a temporary power in a no deal scenario, for up to twelve months after exit day, to make equivalence directions and exemption directions for the EU and EEA member states.

6.8 USR

HM Treasury has laid a draft of [the Uncertificated Securities \(Amendment and EU Exit\) Regulations \(USR\) 2019](#) before Parliament. These regulations are made to ensure the operation of systems which transfer securities continue to function correctly after exit. The instrument amends or revokes certain provisions which overlap with requirements currently the subject of the Central Securities Depositories Regulations (CSDR) 2017 regime. The

instrument also reflects the fact that operators of relevant systems (broadly systems that transfer securities electronically) are currently approved under the USR.

6.9 IEs, CHs and CSDs

[The Investment Exchanges, Clearing Houses and Central Securities Depositories](#) (Amendment)(EU Exit) Regulations 2019 have been laid before Parliament for approval. These amendments were made to ensure that the regulatory regime for recognised investment exchanges (RIEs), market operators (i.e. persons who manage or operate the business of a regulated market, and who may be the regulated market itself), clearing houses (CHs) (including central counterparties, or CCPs) and central securities depositories (CSDs) continues to be clearly defined and operable in UK domestic law after exit day in a no-deal scenario.

6.10 Financial Services (Distance Marketing)

A draft of [The Financial Services \(Distance Marketing\)](#) (Amendment and Saving Provisions) (EU Exit) Regulations 2019 was laid by HM Treasury before Parliament for approval of each House of Parliament. The regulations relate to the distance marketing (for example, by telephone, email or fax) of consumer financial services arising from the withdrawal of the UK from the EU. To ensure effective operation of the regulations, the references to EU and EEA bodies, territories and instrument have been omitted and the definition of the Distance Marketing Directive (DMD) is updated.

6.11 Money Market Funds

HM Treasury published a draft of [The Money Market Funds](#) (Amendment) (EU Exit) Regulations 2019. The Money Market Fund (MMF) is a fund that invests in liquid assets such as treasury bills, commercial paper and certificates of deposit. The key amendments achieve replacing and removing certain references to the Union or EEA institutions with references to the UK, assigning responsibilities to appropriate UK bodies and reflecting changes arising from other relevant regulations and provisions.

6.12 Transparency of SFTR

HM Treasury laid a draft version of the [Transparency of Securities Financing Transactions and of Reuse \(SFTR\)](#) (Amendment) (EU Exit) Regulations 2019 before Parliament for approval. The SFTR increases the transparency of SFTs by requiring all SFTs, except those concluded with central banks, to be reported to central databases known as trade repositories (TRs). Furthermore, SFTR requires information on the use of SFTs by investment funds to be disclosed to investors in regular reports and pre-investment documents issued by the funds. This statutory instrument makes amendments to ensure that the UK's regulation of SFTs can operate effectively at the point at which the UK leaves the EU.

6.13 Financial Regulators' Powers and MiFI

HM Treasury has laid a draft of the [Financial Regulators' Powers \(Technical Standards etc.\) and Markets in Financial Instruments \(MiFI\)](#) (Amendment) (EU Exit) Regulations 2019 before Parliament for approval by resolution of each House of Parliament. This instrument is being made in order to ensure that recently adopted Binding Technical Standards (BTS) continue to operate effectively after the UK from the EU.

6.14 ISDA FAQs on Brexit

The International Swaps and Derivatives Association (ISDA) has [published its 'Brexit FAQs'](#), which addresses the possible UK position post-Brexit in relation to ISDA documents.

ABOUT CCL

Established in the UK in 1988, 2006 in the UAE and 2012 in India, CCL provides specialist compliance services to firms regulated by the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA).

Consultancy Services & Support

- Regulatory Technology – CCL C.O.R.E
- Compliance Advisory
 - Assurance Reviews
 - Compliance Remediation
 - Compliance Support Services
 - Documentation
 - Financial Crime Prevention
 - Corporate Governance
 - Risk Management
- FCA Authorisation
- Prudential Rules & Regulatory Reporting
- Hot Topics
 - Senior Managers & Certification Regime (SM&CR)
 - Fifth Anti-money Laundering Directive (5MLD)

Training

- Compliance Skills
- AML & Financial Crime Prevention
- FCA Regulations
- Senior Managers & Certification Regime (SM&CR)
- Senior Management & The Board
- Finance Induction Training

If you wish to discuss how CCL can assist you with any of the issues raised in this Regulatory Update, please contact one of the directors using the details below:

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This Regulatory Update provides information about the consultative documents and publications issued by the FCA/PRA which are still current, proposed changes to the Rules and Guidance set out in the FCA and PRA Handbooks, actual changes to Rules and Guidance that have occurred in the months leading up to the update and other matters of relevance to FCA/PRA-regulated firms. This Regulatory Update is intended to provide general summarised guidance only, and no action should be taken in reliance on it without specific reference to the particular FCA/PRA document referred to.