

Being better informed

FS regulatory, accounting and audit bulletin



PwC FS Risk and Regulation Centre of Excellence

April 2016

In this month's edition:

- FCA reveals closed book review findings
- Government's plans to improve access to financial advice and guidance
- FCA issues guidance on Payment Accounts Regulations implementation
- Basel Committee consults again on standardised measurement approach for operational risk
- In-depth analysis of the changing capital landscape for banks

Executive summary



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Welcome to this edition of 'Being better informed', our monthly FS regulatory, accounting and audit bulletin, which aims to keep you up to speed with significant developments and their implications across all the financial services sectors.

Easter is traditionally a time for new beginnings. As we moved into the new tax year, regulators and governments looked ahead to what the next 12 months will bring. The Chancellor set out his tax plans in the Budget, and the FCA revealed its latest business plan, setting out its key priorities and agenda for 2016/17.

The FCA signalled its continuing focus on culture in the business plan, making it clear that it expects to see progress in a number of areas over the next year. So firms should not take a break from accountability since the SM&CR went live in March 2016.

In the insurance sector, the FCA announced a review of the effectiveness of workplace pensions Independent Governance Committees. Firms would be well advised to review the contribution of their committees in advance of this. The FCA recognised the importance of technology and innovation in encouraging competition – one piece of work in the pipeline is to look at how technology can make AML procedures more efficient.

And in the wholesale market, the FCA outlined a number of pieces of work to ensure the effectiveness of the UK's primary markets. The FCA also called out for the first time the very real risk that volatile markets and financial pressures lead to firms taking their eye off good conduct.

In March, the FCA published the findings of its long-awaited thematic review into the fair treatment of closed-book life insurance customers. It was particularly concerned about the way some firms have communicated with their customers about exit and paid-up charges. The FCA signalled its intention for further work in this area, so insurers should read the findings carefully. The regulator also wants to discuss with the industry a voluntary cap or ban on exit and paid-up charges, so commercial challenges may lie ahead for insurers.

Also in the retail market, the FCA and HMT published a package of recommendations aimed at improving access to financial advice and guidance. Their FAMR final report proposed a consultation on amending the definition of regulated advice so it is based upon a personal recommendation, in line with the EU definition set out in MiFID. If adopted, this narrower definition would give firms greater flexibility to give customers guidance without fear of straying into regulated financial advice. We'll be watching with keen interest to see what impact this has on online advice and guidance models.

Consumer protection remains high on the policy making agenda. The Government may give the CMA and the FCA more enforcement powers to tackle consumer protection law breaches. In a call for evidence, DFBS said there is a gap in

regulators' toolkits and they need deterrent fining powers. It plans to issue recommendations before the end of spring.

Banks are facing more disclosure requirements under Pillar 3. The Basel Committee published a consultation on various additions and revisions to the Pillar 3 disclosure rules, including on TLAC and counterparty credit risk. Elsewhere in the prudential space, the Basel Committee has been busy. It issued its second consultation on a standardised measurement approach for calculating operational risk capital. This is in response to concerns that previous proposals would have had a disproportionate impact on certain business models. As in the first consultation, the Committee wants to scrap the advanced models approach, but is now proposing banks use ten years of historical operational loss data in their calculations. The Basel Committee also came out in favour of putting more constraints on the use of IRB models in calculating credit risk weights, in a proposal published late last month.

Transaction reporting standards under the SFTR began to take shape in March. In a discussion paper, ESMA sought to align transaction reporting standards with those under existing frameworks such as MiFIR and MAR. But unfortunately for firms, the paper highlights that complete harmonisation won't be possible and SFTs will need different reporting fields and

principles in areas such as collateral information.

Our feature article focuses on the changing capital landscape for banks, which has sparked some fierce debate in recent months. We look at what capital buffers being introduced under the CRD will mean for firms, how different components of the capital regime fit together, and whether the era of rising capital requirements is over. It seems opinion is divided on how much capital is needed overall in the banking system, in business as usual as well as to deal with another crisis.

In the coming weeks and months, we expect to see MiFID II finalised delegated acts, further developments on the Government's pension reforms and the PSR's final report on the supply of indirect access to payment systems. By the end of Q2 2016, the FCA also plans to issue an interim report for its investment and corporate banking market study, and a feedback statement on competition in the mortgage sector.

We hope you had a relaxing Easter break and enjoy reading the latest updates.



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Contents

<i>Executive summary</i>	<i>1</i>
<i>Banking capital: How much is enough?</i>	<i>4</i>
<i>Cross sector announcements</i>	<i>8</i>
<i>Banking and capital markets</i>	<i>29</i>
<i>Asset management</i>	<i>43</i>
<i>Insurance</i>	<i>45</i>
<i>Monthly calendar</i>	<i>50</i>
<i>Glossary</i>	<i>60</i>
<i>Contacts</i>	<i>66</i>

How to read this bulletin?

Review the Table of Contents the relevant Sector sections to identify the news of interest. We recommend you go directly to the topic/article of interest by clicking in the [active links](#) within the table of contents.

Banking capital: How much is enough?



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Banks are facing a raft of regulatory changes relating to capital requirements, both in the UK and the EU. And as they navigate this shifting landscape, they face the added challenge of a spiky debate between regulators and academics over whether or not capital requirements should continue to rise.

In December 2015 the BoE created a blueprint for the level of capital it expects UK banks to hold by 2019. In its *Framework of capital requirements for UK banks*, the BoE aimed to provide clarity to firms and draw to a close the post-crisis era of continuously rising capital requirements. But by declaring UK banks to be ‘within a hair’s breadth of capital strength’, the BoE attracted the criticism of well-respected figures such as Sir John Vickers and sparked a colourful debate on how tough capital requirements should be to prevent future financial crises. Against this backdrop, the FPC is consulting on its *Framework for the Systemic Risk Buffer* – the final thread in the intricate web of capital requirements facing UK banks. So how do the different components of the capital regime fit together? And has the era of rising capital requirements come to an end?

Will minimum capital requirements change?

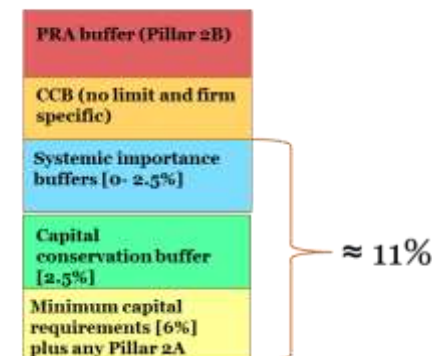
On the whole, minimum capital requirements will remain the same. The BoE expects banks to continue to hold sufficient capital to meet 8% of RWAs as a minimum capital requirement - known as the Pillar 1 requirement. Of this capital, a minimum of 4.5% must be met with the highest quality CET1 capital, supplemented by a maximum of 1.5% of Additional Tier 1 instruments and a maximum of 2% Tier 2 instruments. For firm-specific risks, banks will still be required to meet their Pillar 2A requirement (additional capital to address risks not captured by Pillar 1). But the BoE expects some of these risks to be transferred into Pillar 1. This shift is required because of shortcomings in the measurement, for example of trading book risk, which will be addressed by the upcoming revisions to existing regulations - commonly referred to as Basel IV.

Adding it all up

The BoE has said the appropriate amount of Tier 1 capital (CET1 + Additional Tier 1) for the UK banking system is 11% of RWAs, with CET1 capital comprising 9.5% of this amount. As can be seen from the diagram opposite, the 11% is made up of the 6% minimum, the capital conservation buffer of 2.5% and the 2.5% systemic importance buffer. The FPC considers that approximately half of the going concern

equity requirement should be met by buffers rather than hard minimum capital requirements. Their view is that buffers provide capacity for loss absorption in times of stress, without forcing banks to withdraw services such as credit provision whereas minimum requirements must be met at all times. To address shortcomings in the measurement of RWAs, the BoE currently requires additional capital of 2.5% RWAs, bringing today’s Tier 1 capital target for the banking system to 13.5%. By 2019 the BoE expects these shortcomings to have been addressed through Basel IV, and that a gold standard of Tier 1 capital amounting to 11% of precisely measured RWAs will prevail.

2019 Tier 1 Capital Requirements



The role of capital buffers

Buffers are intended to be used in times of stress to avoid a breach in minimum capital requirements. The CRD introduces various buffers which together are described as the combined buffer. In the UK the PRA may also set an additional buffer where it considers the combined buffer to be insufficient to absorb losses in a time of stress. Where a bank breaches the combined buffer, the CRD introduces mandatory restrictions on bonuses and dividends. This approach has been the subject of some debate. The BoE wrote to the EC arguing that by deterring banks from eating into their buffers, the rules harm the economy because they incentivise banks to cut lending instead.

Capital conservation buffer

This buffer is being phased in between 2016 and 2019 in increments of 0.625% per year and will be offset by reductions in the PRA buffer. It is intended to set a basic level of capacity across the financial system to absorb losses. By the end of the transition period the buffer will amount to 2.5% of RWAs. As with all buffers, it must be met with CET1 capital.

Systemic importance buffer (G-SII & O-SII)

These buffers reflect a bank's size or its importance to economic activity. The G-SII buffer is firm-specific, with banks allocated to a sub category based on the methodology drafted by the EBA, although the PRA can

assign a G-SII to a higher sub-category. In practice, these buffers range from 1%-2.5%, with categories in 0.5% increments. The G-SII buffer is being phased in between 2016 and 2019. The UK has decided not to apply an O-SII buffer.

Systemic importance buffer (systemic risk buffer)

This buffer is intended to capture non-cyclical macro-prudential risks which could have a serious negative impact on the financial system or real economy. The UK has opted to apply this buffer to ring-fenced banks and building societies. These firms are considered to have the potential to damage the economy if they reduced their household and corporate lending.

Although the FPC is responsible for creating the systemic risk buffer framework, the PRA has the power to set a different rate or waive the requirement. The approach taken by the FPC is to use total assets as a proxy for systemic importance. A firm with assets exceeding £175bn will be subject to a systemic risk buffer of between 1% and 3%, although no UK banks currently fall into the highest category of 3%. For banks subject to both a G-SII and systemic risk buffer, the higher of the G-SII and SRB will apply.

The BoE views the systemic risk buffer as a complement to the G-SII buffer, because it targets risks posed to the UK rather than the global economy. As a result of its calibration and interaction with the G-SII buffer, the BoE expects the systemic risk buffer will

only add capital equivalent to 0.5% of RWAs to the system as a whole. Because it relies on the ring-fencing regime to be in place, banks are not required to comply with the systemic risk buffer until 1 January 2019.

CCB

This buffer comes with a time-varying dimension, because it can be adjusted by the macro-prudential authority depending on the risks facing a particular country's financial system. Each bank will have its own unique CCB because it is calculated as a weighted average of the rates that apply in the jurisdictions where the bank has exposures. A macro-prudential authority can set it at any rate in 0.25% increments. But if the rate of one macro-prudential authority exceeds 2.5% then the home authority of a bank with exposures in that jurisdiction does not need to reciprocate rates that exceed 2.5%. The FPC said it intends to set a rate of 1% in a standard risk environment (where risks are judged to be neither subdued nor elevated). In addition, the FPC's 2016 remit from the Chancellor includes ensuring its policy actions are as predictable as possible so 1% is likely to be regarded as a default setting. At its meeting on 23 March 2016 the FPC decided to raise the UK's CCB to 0.5% as the FPC believed the UK had emerged from its post-crisis repair phase and is now entering a standard risk environment. Firms will have 12 months to comply with the move.

PRA buffer

This is set by supervisors for individual banks to capture specific risks not addressed by other buffers and applied from 1 January 2016. It covers banks with risk management and governance weaknesses and those with risk weights that are more sensitive to economic conditions, either or both of which may be expected to require large buffers to absorb stress. After the FPC's decision to raise the CCB to 0.5%, the PRA published [*a statement on the interaction between the PRA buffer and the CRD IV combined buffer*](#). The statement explicitly says that where a firm's PRA buffer is sufficient to accommodate it, the CCB and capital conservation buffer will be offset by an equal reduction in the PRA buffer. This means firms with a PRA buffer of 3% or more will not see an absolute increase in capital buffers.

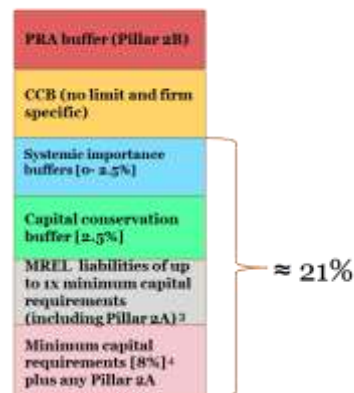
Gone concern loss absorbency

In case buffers prove to be insufficient to absorb losses such that banks no longer remain a going concern, regulators also require sufficient gone concern loss absorbency so that bank shareholders and creditors, rather than taxpayers, foot the bill as banks are resolved. A TLAC standard requested by the G20 and introduced by the FSB aims to ensure sufficient loss absorbency in G-SIBs. It will require additional loss absorbency of 10% of RWAs on top of minimum capital requirements of 8% to meet the total requirement of 18% in 2022 (16% in 2019). TLAC can be met either

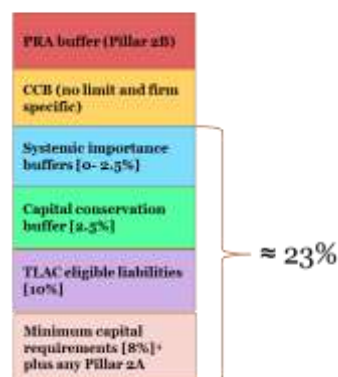
with equity or debt which meets the eligibility criteria set out in the FSB's term sheet. Buffers are not permitted to count towards TLAC so in total the biggest G-SIBs will hold, at a minimum, loss absorbing capacity amounting to 23% of RWAs (18% plus the 2.5% capital conservation buffer and the 2.5% G-SII buffer).

In the EU, TLAC is being implemented through BRRD's MREL provisions, although MREL applies more broadly to all banks and 730k investment firms. For large banks that are not G-SIBs, which are subject to MREL and not TLAC, a requirement to hold twice their minimum capital requirements (Tier 1 and 2) will apply from 2020. For most banks, this aggregate amount is likely to add up to a figure not much lower than the requirement for G-SIBs. In the UK similar liabilities will count for MREL as for TLAC. And just like for TLAC, capital buffers cannot count for MREL because the BoE has sought to align the two requirements. The diagrams opposite illustrate how a large UK bank subject to MREL will compare to a UK G-SIB once the respective dates for compliance are reached.

2020¹ Loss Absorbency for large banks (non- G-SIBs)



2022² Loss Absorbency for G-SIBs



¹ MREL requirements to take effect from 1 January 2020

² TLAC standard to take full effect from 1 January 2022

³ MREL and TLAC both include minimum capital requirements

⁴ This assumes a Pillar 2A of 0%

Debating the optimum level of capital

Regulators and academics have been engaged in a war of words over capital requirements in recent months, with the BoE's approach coming under fire. Alongside its supplement to the December 2015 Financial Stability Report, the BoE released a Financial Stability Paper which explained its calibration of the optimum level of capital - estimated at 10-14% of RWAs. The BoE's 2019 target of 11% lies comfortably in this range. The BoE recognises the range is lower than the 16-19% suggested by a study conducted by the Basel Committee in the wake of the crisis. The reason for the difference is that the BoE's approach takes into account the impact of post-crisis regulatory reform, particularly resolution frameworks.

Resolution frameworks refer to the creation of a resolution regime with bail-in powers, the introduction of TLAC requirements and structural reform of the UK banking sector. They are credited with reducing both the probability of crises and their cost when they do arise. To measure the impact of resolution frameworks, the BoE used the same method as the FSB's TLAC impact assessment. It found resolution frameworks reduce the probability of a crisis by 30%, due to increased market discipline imposed on banks by their creditors and shareholders who are no longer cushioned by state guarantees. It also identified three factors which reduce the expected net

present value of financial crises from 75% of annual GDP to just under 50%:

- swifter, more efficient outcomes due to resolution frameworks
- reduced pressure on government finances (a likely consequence of bail-out)
- reduced transmission of this pressure to the private sector through borrowing linked to government borrowing costs.

But the BoE acknowledges that the possibility of contagion created by bail-in is relatively untested and may negate these benefits in practice.

In February 2016, Sir John Vickers publicly criticised the BoE's capital framework. He queried why loss absorbency of 3% RWAs recommended by the Independent Commission on Banking and implemented through the systemic risk buffer framework had effectively been reduced to a range of 1-2.5%. He also questioned relying on resolution frameworks as a substitute for capital, and accused BoE Governor Mark Carney of going 'dovish' on the banks. Last month, Deputy Governor of the PRA, Andrew Bailey, responded to Vickers, defending resolution frameworks and the authorities entrusted with performing resolution. He argued that those in favour of higher equity requirements – the 'big equity' school – fail to take into account the short-term costs involved in increasing capital requirements. The BoE paper

addresses the economic cost of transition (the short term effect on bank lending and GDP), finding that when included in a cost benefit analysis, it reduces the optimum capital requirement by 3% of RWAs. Bailey also explained why the highest rate of systemic risk buffer of 3% is set too high to capture any UK banks. He said this threshold is meant to deter banks from taking on additional complexity.

Notably, in this paper the BoE chose to focus on the capital required under normal risk conditions rather than mirror the Basel Committee study which used data relating to the full range of the credit cycle. The paper's authors believed it would be inefficient to capitalise the banking system for elevated risks at all times. This view is echoed by the FPC and will make the FPC's application of macro-prudential tools such as the CCB even more critical.

Alex Brazier, Executive Director of Financial Stability Strategy and Risk at the BoE, also made his contribution to the debate in a *speech* in March 2016 where he acknowledged the economic cost of reduced bank lending that could be sparked by higher capital requirements. He accepted that a bank's total funding costs rise as debt is replaced with equity and that data suggests this cost effect is driven by more than just the differential tax treatment of debt and equity. While this incremental cost effect is often attributed to the presence of a 'too big to fail' government guarantee for bank debt, Brazier believes it may also

reflect an equity holder preference for returns to be high and volatile so making banks safer doesn't reduce the return demanded by shareholders as much as it should. Given the uncertainty, he would like to see further research. This view attracted criticism from a long-standing proponent of the 'big equity' school and scourge of too big to fail banks, Anat Admati of Stanford University. She said Brazier's analysis was based on flawed research.

Echoing Brazier's concern for the economy, a *discussion paper* released by the IMF in March 2016 recommended that capital requirements should be imposed gradually given the transition costs and that supervisors should encourage banks to increase loss absorption by raising equity rather than shrinking assets. An ECB paper also published in March 2016 recommended that during times of weak economic activity, banks should remedy a capital shortfall by raising capital. During times of expansion it suggested shrinking the asset side rather than raising equity might better serve the macro-prudential outcome of dampening the financial cycle.

How much capital is needed to deal with another crisis?

The IMF discussion paper found that for the majority of past banking crises in advanced economies, loss absorbing capacity in the range of 15–23% of RWAs would have been sufficient to absorb losses. But it added that a minimum requirement could be set lower, owing to the use of bail-in debt and banks'

tendency to hold more capital than the regulatory minimum. The IMF's estimate included TLAC instruments, providing support for the range of loss absorbency suggested by the FSB and the Basel Committee for systemically important banks. It is also in line with the BoE's expectation for the UK's largest banks (at least 23% of RWAs for the largest G-SIBs). A *literature review* on capital requirements released by the Basel Committee found the optimal range was 'not dissimilar to the current calibration of the Basel III requirements once all regulatory buffers have been included and banks' own voluntary surplus above these requirements has been taken into account'.

It could be argued that a financial crisis poses more risk to the UK economy when compared with other advanced countries because of the size of the UK financial sector relative to GDP. But as one of only seven countries to have the full suite of resolution powers recommended by the FSB, the UK leads the way in resolution framework quality. The effectiveness of resolution frameworks is yet to be tested though, so some industry commentators remain unconvinced. Bailey believes resolution has to work because the alternative (government bail outs) is a far worse option. How much confidence can we place in authorities for predicting the effectiveness of new and untried regulation? Will it one day matter that no UK bank was subject to the 3% tier of the systemic risk buffer

recommended by Vickers? The truth is that we cannot know for sure until the next crisis strikes, we can only hope to discover more about the effectiveness of the post-crisis regulatory framework as time goes on.

The debate over capital highlights the increasingly prominent role of macro-prudential concerns.

There is a growing consensus that authorities need to consider the macroeconomic impact of increasing capital requirements, such as a reduction in bank lending. This view is consistent with the FPC's secondary objective - to support the Government's economic policy. But on the other hand, there are clearly many who remain unconvinced that the time has come to draw a line under rising capital requirements. The BoE may have set out its stall on capital requirements, but the issue is far from decided, particularly with Basel IV and its associated uncertainty looming. The era of rising capital requirements could be drawing to a close, but banks should certainly keep the issue high on their agendas.

Cross sector announcements

In this section:

Regulation	8
Capital and liquidity	8
Client assets	9
Competition	9
Conduct	10
Consumer issues	12
Corporate governance	13
Financial crime and enforcement	14
Financial stability	15
Market-based finance	18
Market infrastructure	18
MiFID II	21
Operational resilience	22
Payments	23
Reporting	23
Retail products	24
Supervision	25
Trading	27
Accounting	28
PwC Publications	28
Reporting	28

Regulation

Capital and liquidity

FCA studies bond market liquidity

The FCA leapt into the global policy debate on the effects of post-crisis reform on corporate bond market liquidity when it published an *Occasional Paper* on 17 March 2016. The regulator concluded liquidity has in fact moderately risen post-crisis and regulatory interventions have not had a negative impact on either the direction of liquidity or its sensitivity to moderate market shocks. The FCA argued its study addressed counterarguments reliant on proxy measures because it had harnessed its transaction data and applied respected liquidity tests around average price impact and bid-ask spreads, among others. But the FCA did observe its focus was limited to the UK market.

The FCA's core finding was that while UK dealer inventories had diminished, this did not have a material impact on liquidity. Though avoiding a definitive conclusion explaining such a link, the FCA suggested regulations may have left market-making abilities intact despite reducing other forms of proprietary trading. Similarly, the FCA considered improvements in data analysis and technology allowed dealers to manage their portfolios more effectively than before. The FCA's research could inform some of

the EC's review of post-crisis regulation as part of the larger CMU initiative.

Council agrees to commodity firms exemption

The Council *agreed* on 23 March 2016 to extend the exemption from own funds and large exposure requirements that is provided under the CRR for commodities firms until 31 December 2020. The exemption expired on 31 December 2017. But because a review of the prudential supervision of commodity dealers and investment firms more generally is still underway, any new legislation would only be adopted after 31 December 2017. The Council therefore decided to extend the exemption to save commodity dealers from an unstable regulatory environment in the short term. A proposed regulation will be submitted to the EP for approval and then to the Council for adoption.

UK countercyclical buffer requirement increases

The BoE published the *FPC statement from its policy meeting, 23 March 2016* on 29 March 2016. An increase in the UK CCB rate from 0% to 0.5% was the FPC's most significant decision. The new rate will be effective from 29 March 2017. Along with the CCB rate, the FPC set the countercyclical leverage ratio buffer at 35% of CCB. It will impact UK banks, building societies,

investment firms not exempted by the FCA and UK branches of EU banks.

The FPC plans to increase the CCB rate gradually over the coming years to get to 1% in a standard risk environment. It raised the rate to 0.5% because it judges that, while the resilience of the core banking system has improved, the outlook for the UK's financial stability has deteriorated, and investors expect weak profits from banks in the future.

Under the new annual cyclical scenario framework, the BoE included global and domestic risks, which will be a part of the 2016 stress scenario for major UK banks.

The FPC's review of the developments in financial market liquidity is currently in progress. The FPC aims to understand whether international regulations need to be refined to enhance liquidity without compromising resilience. It intends to publish the report later in 2016.

Slow demise of model approaches

The Basel Committee published *Consultative Document Reducing variation in credit risk-weighted assets – constraints on the use of internal model approaches* on 24 March 2016.

Proposed changes to the advanced and foundation internal ratings-based (IRB) approaches are in three areas. Firstly, to remove the option to use IRB approaches

for certain exposures where the Basel Committee judges that banks cannot estimate model parameters with sufficient reliability. This includes exposures to banks and other financial institutions, large corporates and equities. Secondly, to adopt exposure-level, model parameter floors to ensure a minimum level of prudence for IRB approaches that remain available. Finally, to limit the range of estimation practices applied to model parameters. The affected parameters include probability of default, loss given default, exposure at default, maturity and credit risk mitigation.

The Basel Committee has already consulted on and is still considering the related issue of the design of aggregate capital floors based on standardised approaches – a replacement for the Basel I floor. The treatment of sovereign exposures is subject to a separate ongoing review. The consultation closes on **24 June 2016**.

Commodity dealers aren't risky

Commodity dealers look set to continue to benefit from an exemption from some prudential rules after the ECB published an opinion on 3 March 2016. The Council asked the ECB to put forward an opinion on the application of the CRR to commodity dealers. Specifically, the Council asked the ECB to consider whether it would be appropriate for commodity dealers to be subject to the CRR requirements concerning large exposures and own funds. The current temporary exemption ends on 1 January 2018.

The ECB said it had not identified any concrete indications of systemic risk caused by commodity dealers that would make it necessary to remove the exemption. It said commodity dealers in the EU are generally less leveraged and have more resilient capital structures than banks. But the ECB said the exemption should only be temporary. It explained the EC is due to present a proposal for a comprehensive review of the prudential regulation of investment firms. Therefore the temporary extension should be confined to the period before the EC completes this review.

Client assets

FCA takes forward CASS P2P plans

The FCA is taking forward proposals to change client money rules for P2P platforms which hold money in relation to P2P and business to business (B2B) arrangements. It published PS16/8: FCA Handbook changes regarding the segregation of client money on loan-based crowdfunding platforms, the Innovative Finance ISA (IFISA), and the regulated activity of advising on P2P agreements on 21 March 2016. PS16/8 confirmed that proposals consulted on in January 2016 to allow P2P platforms to elect to hold all lenders' monies (both P2P and B2B) under CASS 7 will be taken forward. The FCA decided to provide a transitional provision: if making the election means a firm will be classified as CASS medium or CASS large solely as a result of its monies in relation to non-P2P agreements, it will have until the following

annual stratification exercise in January 2017 before it has to submit a client money and assets return (CMAR). But such firms must still provide CMAR data if the FCA requests it.

PS16/8 also set out the FCA's response to its consultation on Handbook changes to reflect the introduction of the IFISA and the regulated activity of advising on P2P agreements. It proposed to take forward the proposals, with minor changes to provide greater clarity to firms. The IFISA allows investors to lend through a P2P platform and receive interest tax-free. The FCA will apply its suitability rules to firms making personal recommendations about P2P agreements and ban commission for advice on P2P agreements given as a personal recommendation. It will not apply the appropriateness test to P2P agreements sold on a non-advised basis, but says it may revisit this in future.

The FCA said it will consider the recommendations of the FAMR, published in March 2016, and as a result may need to make changes to the approach outlined in PS16/8 at a later date. The rules relating to client money for P2P platforms came into force on 21 March 2016. All other rules contained in PS16/8 came into force on 6 April 2016.

Competition

FCA welcomes pension provider action

The FCA welcomed action taken by certain pension providers to review and strengthen

their compliance with competition law in an update issued on 11 March 2016. The FCA's statement followed its retirement income market study report in which it committed to engage with a number of firms to better understand their distribution arrangements. Following a review, the FCA found that some of the firms' meetings relating to the performance of distribution agreements operated without any competition compliance protocol to prevent the disclosure of commercially sensitive information.

The FCA wrote to these firms putting them on notice of the potential for infringing competition law. As a result, these firms carried out the following initiatives to strengthen competition compliance:

- reviewing and self-assessing the arrangements they have in place
- introducing and/or reviewing and updating their competition compliance protocols
- ensuring all key staff receive competition law training, and regularly reviewing and updating this.

The FCA encouraged other firms to review their distribution and marketing arrangements to make sure they comply with competition law.

Clean and honest competition

Promoting clear and honest competition that serves customers well is what the FCA's competition objective means in practice,

according to Deb Jones, Director of Competition at the FCA. In a speech, *The FCA's Competition Powers*, delivered on 23 March 2016, Jones disregarded fears that greater competition would lead to a 'race to the bottom', with firms competing at the expense of innovation, quality and price or exploiting customer weakness like behavioural biases. Rather, the FCA's view is that competition and the consumer go hand in hand creating a 'virtuous circle' in which active, engaged and confident consumers shop around, driving competition in price, quality and innovation.

Jones also said that market studies weren't the only way in which the FCA advances its competition objective. She talked about 'on notice' letters – similar to CMA warning letters – that set out behavioural concerns and give firms the chance to look into the areas flagged. The FCA also uses 'advisory letters', which are more educational and intend to increase competition law awareness and compliance. Jones said the FCA issued two on notice and three advisory letters during the course of its retirement income market study. She also confirmed the FCA was taking active steps towards launching its first Competition Act investigation, but could offer no further details on the scope or subject matter area.

Competition at the PRA

The PRA could do more to integrate its secondary competition objective (SCO) into day-to-day operations. That was the

outcome of the BoE's Independent Evaluation Office (IEO) report, *Evaluating the PRA's approach to its SCO*, on 24 March 2016. The SCO, which came into force in March 2014, requires the PRA to 'facilitate effective competition' when it makes prudential policy in pursuit of its primary objectives. But only so far as is reasonably possible.

The IEO found the PRA made headway embedding the SCO, noting it had set-up the New Bank Unit with the FCA to help new entrants enter the market and gave airtime to competition issues at all levels of the organisation. But it highlighted six areas in which there was space for improvement. This included clear articulation of the PRA's approach to the SCO, identifying and prioritising competition issues and embedding the SCO in to policymaking.

The PRA welcomed the IEO's evaluation in its *response* and said it helped focus its thinking. The regulator rationalised the findings under three headings: input into policy decisions, infrastructure supporting policy decisions and outputs of policy decisions. The PRA also reasoned that initial progress in embedding and communicating the SCO may have been slow because of legacy concerns over the SCO conflicting with its primary objectives.

Recipe for redress schemes

Firms might be able to get an additional 20% deducted from a penalty imposed by the FCA for a competition law breach if they

put in place a competition law redress scheme. In *FG 16/3 – voluntary redress schemes under the Competition Act 1998* on 30 March 2016, the FCA set out how it will exercise its powers to use and enforce competition redress schemes. It covered the processes around application, approval and enforcement. It explained what information firms need to provide, how the FCA will treat information it receives, its approach towards settlement and how firms should deal with complaints about the scheme. The guidance came into force the same day.

Conduct Regulators show commitment to the SM&CR

The FCA, the PRA and the PSR have applied the SM&CR to their own organisations. All three regulators published documentation - PRA *Senior Managers Regime*, FCA *Senior Managers Regime* and the *PSR Statements of Responsibility and Management Responsibilities Map* on 7 March 2016.

Each regulator set out in detail the governance structures and list of individuals performing SMFs. The FCA also set out individual statements of responsibilities and board terms of reference.

Expanding the retail single market

Consumers and industry support the proposed expansion of consumer financial services across the single market, EC Commissioner Lord Jonathan Hill *said* at the EC's public hearing on the retail finance

green paper. The hearing on 2 March 2016 previewed the EC's initial findings.

The green paper considered a single market for consumer financial products would offer a greater selection of bank accounts, pensions and life or health insurance options across the EU. It noted structural barriers to the portability of these retail products keep prices artificially high and the quality of services is low in Member States with no competition.

Hill said that the EC had received 200 responses, 90% from individuals, as at 2 March 2016. Commentators said that consumers seek access to products beyond their own borders with clear descriptions and pricing. They also advocated proportionate regulation, and supported innovation by leveraging digitalisation to improve the availability of services.

The comment period closed on 18 March 2016.

Publishing and advertising prospectuses

EC Delegated Regulation on RTS for approval and publication of the prospectus and dissemination of advertisements was published in the Official Journal on 4 March 2016. The regulation supplemented the Prospectus Directive as required under the Omnibus II Directive and also amended the Prospectus Regulation.

The RTS require issuers to:

- publish a final prospectus in a searchable electronic format
- make the prospectus publicly accessible so access isn't subject to completing a registration process, accepting a disclaimer limiting legal liability or paying a fee
- publish the prospectus and related notices in publications with sufficient distribution
- amend advertisements if they are no longer accurate and highlight discrepancies to the public
- refrain from disclosing information that contradicts information in the prospectus.

The EC published the *draft delegated regulation* on 30 November 2015 and made no material changes to the final version. The delegated regulation came into force on 24 March 2016.

Standing in the way of innovation

Most respondents to the FCA's June 2015 *call for input: regulatory barriers to innovation in digital and mobile solutions* questioned how the rules on consumer communications apply to digital and mobile solutions. In its *feedback statement (FS16/2)* on 9 March 2016, the FCA addressed concerns around:

- communications
- customer due diligence in AML checks

- payments systems and services
- data storage, privacy and protection
- financial advice
- regulation and its relationship with technology.

The FCA plans to incorporate feedback into other measures, such as its smarter communications work and the FAMR initiative. The FCA intends to work more closely with other stakeholders, including the HMT and the JMLSG in implementing AMLD4 and the Information Commissioner's Office in implementing the forthcoming General Data Protection Regulation.

Advice definition changing under FAMR?

The FCA and HMT examined how to improve access to financial advice and guidance on 14 March 2016. In *FAMR: Final report*, the FCA and HMT set out recommendations on affordability, accessibility and liabilities and consumer redress.

HMT plans to consult on amending the definition of regulated advice so it is based upon a personal recommendation in line with the EU definition set out in MiFID. According to the report, the FCA should consult on guidance on the cross-subsidy rules, and allow advisers to work for up to four years under supervision to obtain an appropriate qualification. This will give

firms more flexibility to train up a new generation of advisers.

Consumers should be allowed to use a small part of their pension pot before retirement age to pay for pension advice to improve access, according to the FCA and HMT. They also recommended a review of the terms 'guidance' and 'advice'.

The report said the FCA's 2016 review of FSCS funding should specifically look at risk-based levies and reforming the funding classes. It also said the FCA should consider a review of the availability of professional indemnity insurance for small advice firms, and the FOS should publish more data on its uphold rates. The FCA and HMT decided not to introduce a long-stop limitation period for referring complaints to the FOS.

The FCA and HMT are due to report on progress in 12 months' time, and plan to review FAMR's outcomes in 2019.

FCA shares insights

The FCA launched a new *Insight webpage* on 17 March 2016 to promote access to some of the analysis and research it carries out to help financial markets work effectively. The content includes technical reports, articles, speeches and videos from FCA events. The FCA intended for this to stimulate public debate on a range of regulatory topics although it noted that material shouldn't be taken to represent the official views of the FCA.

News from the Ombudsman

The FOS published its latest edition of *ombudsman news* on 22 March 2016, focusing on the problems it sees with complaints about debt management companies and how these could be prevented. The FOS set out case studies of complaints about financial issues connected to motor vehicles including insurance and finance arrangements.

In this edition, the FOS also reminded firms of the *upcoming change to the 'next business day rule'* and provided some guidance. It outlined that from 30 June 2016, firms will have until the end of the third business day from receiving a complaint to resolve it informally. If a firm resolves the complaint to the customer's satisfaction, it will need to let the customer know they can still refer the complaint to the FOS in a new 'summary resolution communication'.

FOS plans for 2016/17

FOS published its *plans and budget for 2016/17* on 21 March 2016. FOS outlined the expected level of demand for its service over the next year, noting it expected to take on 306,000 new cases and resolve 406,000 cases. The comparative figures for 2015/16 are not yet available. A significant amount of the organisation's work will continue to focus on resolving PPI complaints, with the organisation noting the decline in these complaints hasn't been as steep as expected. It discussed the developments arising from

the *FCA's consultation* on introducing a deadline for making PPI complaints and on proposed rules and guidance in light of the decision in *Plevin v Paragon Personal Finance Ltd*. According to FOS, 90,000 of its cases about PPI are currently difficult to progress due to the uncertainties around the Plevin case. Based on feedback from stakeholders, FOS also increased the number of new complaints it expects to receive about packaged bank accounts, from 15,000 to 30,000. FOS will continue to freeze the individual case fee paid by firms at £550 and set an operational income budget of £226.5m, a small decrease from its last budget forecast of £227.2m for 2015/16.

FCA updates Handbook

In *Quarterly Consultation No. 12*, published on 18 March 2016, the FCA outlined a number of proposed changes to its Handbook. The consultation seeks views on rule changes relating to the implementation of the MCD and the Transparency Directive, warning notice statements, reporting requirements and FCA powers over UK ELTIFs.

Under the proposals, changes will be made to the Glossary, its SUP, Mortgages: Conduct of Business rules and the prudential source book for mortgage and home finance firms and insurance intermediaries. These changes clarify how the MCD implementing rules apply to passporting firms. Proposed updates to the Listing Rules aim to ensure the

requirements around reverse takeovers are not circumvented while changes to the Disclosure Rules and Transparency Rules will impose new reporting requirements on issuers. The FCA also plans to update the Prospectus Rules to take account of recent ESMA Prospectus Opinions.

The FCA also outlined plans to update the Enforcement Guide to reference the new UK ELTIFs. In future, it is going to issue a discontinuance notice on its website where it does not intend to take any further action against a firm in relation to a previously issued warning notice statement. In addition, it set out other changes to its supervision manual.

The consultation closes on **18 April 2016** for comments on Handbook changes in relation to the MCD. Comments on all other matters are requested by **18 May 2016**.

NewDay credit card redress for thousands

The FCA *announced* on 24 March 2016 that credit card provider NewDay will provide £4m in redress to over 180,000 customers. It follows disclosures NewDay made to the FCA after it completed a review of its business in preparation for the FCA's new regulatory regime for credit. The regime started in April 2014. NewDay identified in its review that in some circumstances default fees and other charges triggered unfair additional charges. NewDay has since made changes to address the issue and proposed to provide redress to impacted

customers. The credit card provider will write to affected customers over the next three months.

PPI complaints rise

The FCA reported that firms received 2.1 million complaints in the second half of 2015, a decrease of 1.4% compared to the preceding six-month period. On 30 March 2016, the FCA *released* its latest *six-monthly complaints data* covering 2,798 firms for the period between 1 July and 31 December 2015. PPI remained the most-complained-about product, accounting for 44% of all complaints, with the number of complaints increasing by 6% from the previous period. But there was a 10% drop in complaints about current accounts, the second most-complained-about product, and a 15% drop in complaints about savings accounts. The total redress paid to consumers was £1.97bn, only slightly lower than the £1.98bn paid in the first half of 2015. Firms upheld 54% of complaints compared with 55% in the previous period. The FCA noted that in future publications it plans to provide more information to contextualise complaints data. It will also require firms to publish this on their own websites from February 2017.

Consumer issues

Card protection redress scheme closes

The FCA *announced* the closure of a redress scheme on 18 March 2016 for consumers who purchased card security products such as Card Protection and Sentinel. If

consumers received a letter from the scheme administrators and wanted to claim compensation, they needed to do so by 18 March 2016. The scheme administrators will not consider compensation claims submitted after this date other than in exceptional circumstances. For example, this would cover a consumer who had been outside their usual country of residence for at least four months since the scheme started in 2015. If exceptional circumstances apply, affected consumers should send a claim form to the scheme administrators by 19 September 2016.

Punishing consumer law breaches?

The Government may give the CMA and the FCA more enforcement powers to tackle consumer protection law breaches. In a call for evidence, *Terms & Conditions and Consumer Protection Fining Powers*, released on 3 March 2016, DFBIS explained there is a gap in enforcers' toolkits when it comes to consumer protection measures. These measures typically aim to remedy imbalances caused by unfair terms by striking them out rather than punishing offenders. DFBIS saw a need for deterrent and punitive fining powers.

DFBIS also set out seven ways in which terms and conditions could be enhanced. This covered how key terms are presented (in bold and upfront), the use of tick boxes (standard use of a tick to either opt-in or out) and tracking changes in long term contracts.

The call for evidence closes on **25 April 2016**. The Government plans to issue recommendations in spring 2016.

Waving goodbye to MAS

HMT proposed scrapping the Money Advice Service (MAS) as part of an overhaul of financial guidance in *Public financial guidance review: proposal for consultation*, published on 16 March 2016. Following a consultation on financial guidance issued in October 2015, HMT also proposed merging The Pensions Advisory Service (TPAS) and Pension Wise (the service set up to deliver free guidance to support consumers taking up the pension freedoms). It said the current arrangements are 'inefficient', and removing duplication will cut costs. HMT suggested a new 'slimmed down' money guidance body be set up, charged with equipping consumers to make more effective financial decisions by:

- identifying gaps in the financial guidance market
- commissioning targeted debt advice, money guidance and financial capability projects or services to fill any gaps
- providing funding to third parties to deliver these projects or services.

Under the proposals, the new money guidance body would not provide services directly or have a consumer-facing brand.

Levies on the financial services and pensions sectors will fund the new money

guidance body and the merged pensions guidance body. HMT said there will be a 'partnership agreement' between the two organisations to ensure consumers are referred between them as appropriate.

The Government is seeking views on how to set up and evaluate the new guidance bodies by **8 June 2016**. It plans to publish a final response in autumn 2016. MAS, TPAS and Pension Wise will continue to provide guidance for at least the next two financial years.

Fair terms for consumers

The CMA issued *Unfair Terms explained for businesses: full guide* on 23 March 2016, to help businesses understand how they can ensure their consumer contracts are fair and compliant with the Consumer Rights Act 2015. The guide forms part of the CMA's wider guidance on Writing Fair Contracts: guidance for businesses.

Corporate governance Registering who has significant control

The Government published the *Register of People with Significant Control Regulations 2016* on 21 March 2016. The regulations will come into force on 6 April 2016 and require unlisted companies and limited liability partnerships incorporated in the UK to hold a register of people with significant control. The measure aims to increase accountability by enhancing the transparency of company ownership.

Updating securities listing guidance

The FCA published a consultation in its *Primary Market Bulletin No. 13* on 29 March 2016, seeking stakeholder feedback on proposed amendments to the 'Knowledge Base', the UKLA's repository of non-handbook commentary. These amendments are focused on securities listing and corporate governance rules. For example, the regulator sought to provide guidance around the appropriateness of obtaining shareholder votes ahead of hypothetical transactions. The FCA said these votes will not be possible for premium-listed issuers if the negotiations have not advanced enough for the issuer to give shareholders all the information required by the listing circular.

In addition, the FCA proposed guidance around appropriate procedures for removing listed equity shares of open-ended investment funds. Many of the other de-listing procedures are unavailable to such funds. So the FCA pointed to administrative proceedings where de-listing occurs when the securities have matured or ceased to exist because redemption is aligned with fund closure for sub-funds of such investment companies.

The FCA also consulted on guidance for other related issues, including reverse takeovers, transfer restrictions for open-ended investment companies and record-keeping requirements. The consultation closes on **10 May 2016**.

PRA sets out expectations of boards

The PRA released *Corporate governance: Board responsibilities – PS13/16* on 31 March 2016, which sets out the feedback it received to CP18/15. The PRA chose to provide greater clarity on the scope of the expectations on subsidiary boards by changing the terminology used to describe subsidiaries to 'significant' rather than 'material'. At the same time the PRA published its final rules in *Corporate governance: Board responsibilities – SS5/16*. The statement set out the aspects of governance to which the PRA attaches the greatest importance, and on which it intends to focus in the course of its supervisory activities. SS5/16 is not intended to be a comprehensive guide, but to act as a complement to the SM&CR and Senior Insurance Managers Regime.

ECB weighs in on LEI use

The ECB broadly supported the EC's proposed amendments to the Prospectus Directive. But in an *opinion* on 17 March 2015, it also observed that capital markets measures like the Prospectus Directive should do a better job of utilising the identifiers that have become central to transaction reporting. The ECB observed the Prospectus Directive fails to mandate use of International Securities Identification Numbers (ISIN), even though it requires the identification of securities being offered. The ECB considered this could encourage use of non-standardised identifiers. For debt securities, it believed alternative

identifiers are a bigger issue, and would often be used to reduce traceability. In a similar vein, the ECB recommended including a requirement to use LEIs where appropriate in the Prospectus Directive, adding its voice to the call to utilise LEIs beyond transaction reporting.

Finally, the ECB welcomed the clarification that the Prospectus Directive excludes non-equity securities issued by the ECB and national central banks, ensuring that Eurosystem monetary policies are not hampered.

Financial crime and enforcement

Aligning MAR and MiFIR notifications

The EC adopted a *Delegated Regulation* on 1 March 2016 setting out notification requirements in relation to financial instruments subject to MiFIR and MAR.

Twin articles in MAR (Article 4) and MiFIR (Article 27) establish a requirement for instrument reference data to be provided to the Member State competent authorities. A dual obligation on the competent authorities requires them to provide this data to ESMA so ESMA can publish it on its website. The reference data required for each instrument which includes a unique identifier, the instrument classification, issuer approval, the trading currency and price information details should be submitted on a form attached as an *annex* to the Delegated Regulation. The regulation is intended to provide transparency to

market participants and ensure that Member State competent authorities possess the necessary tools to fulfil their supervisory duties under MAR and MiFIR.

The Delegated Regulation applies from 3 July 2016.

SFO drops FX investigation

The SFO closed its investigation into allegations of fraudulent conduct in the foreign exchange (FX) market *in a statement* on 15 March 2016. The SFO undertook an independent one-and-a-half-year investigation, involving over half a million documents, after the FCA referred material to the SFO in July 2014.

The SFO said there were reasonable grounds to suspect serious or complex fraud but it decided not to pursue a prosecution in the courts due to insufficient evidence. Although the investigation will no longer be pursued in the UK, the SFO is continuing to work with the US Department of Justice, which is pursuing an ongoing FX investigation.

Another twist in data protection

The House of Commons *introduced the Investigatory Powers Bill* on 1 March 2016. The bill will provide a new framework to govern the use and oversight of investigatory powers by law enforcement and the security and intelligence agencies.

The Home Office stated the bill will alter the previous law on investigatory powers by:

- uniting law enforcement and security/intelligence agencies' existing powers to obtain information and data about communications
- introducing a 'double-lock' for interception warrants, so that warrants will only be issued following the Secretary of State's authorisation as well as approval by a judge – including the creation of a new Investigatory Powers Commissioner to oversee how these powers are used
- establishing provisions for the retention of internet connection records for law enforcement to identify the communications service to which a device has connected.

The House of Commons also published *six documents on codes of practice*. These are noteworthy as they describe technical and operational measures for such investigatory powers, including equipment interference and retention and use of bulk personal data sets.

The Home Office aims for the new bill to undergo scrutiny by both Houses of Parliament and come into force by 31 December 2016. Firms should review this latest twist in the controversial topic of the investigation of communications and personal data.

Inside insider lists

The EU published *Commission Implementing Regulation (EU) 2016/347*

on 11 March 2016 setting out the correct format for insider lists to comply with transparency and disclosure requirements in MAR.

Under MAR, transaction issuers and emission allowance market participants must create and maintain a list of individuals within their organisation who have access to inside information. The lists are intended to ensure that market integrity is maintained and that competent authorities have the information necessary to investigate possible market abuse.

The lists must contain specific personal information about the insiders such as date of birth and national insurance number. Standard templates included in the annex to the regulations are intended to facilitate the uniform application of the requirement.

The regulations entered into force on 12 March 2016 and apply from 3 July 2016.

ESMA takes action against DTCC

ESMA announced *supervisory action* against DTCC Derivatives Repository Ltd. on 31 March 2016, comprising both a public notice and a fine of €64,000. These steps signalled ESMA's commitment to use its direct supervisory authority over trade repositories under EMIR. They also showed the challenges trade repositories face in achieving compliance with the regulation's requirements. DTCC's core infringement was the failure to make transaction reports submitted by counterparties available to regulators in a timely fashion, specifically

on the first working day following submission. DTCC initially made such reports available a day late, but this gap widened to a peak of 62 working days late in October 2014. ESMA noted the impact of the failures was magnified by the scale of transaction data that needed to be appropriately processed: DTCC received over 3.6 billion transaction reports during the period of non-compliance. Further, ESMA's decision was informed by DTCC's delays in taking remedial action and failure to adequately incorporate new valuation and collateral reporting requirements. While the fine is relatively light, ESMA signalled that trade repositories need to be vigilant in meeting their EMIR obligations.

Making sanctions compliance easier

The Office of Financial Sanctions Implementation (OFSI) was born with a *fanfare* on 31 March 2016. A body within HMT, OFSI is expected to provide private sector firms with high quality advice to ensure financial sanctions are properly understood, implemented and enforced.

Investigator and prosecutor, not regulator

The Serious Fraud Office (SFO) stood by its stance of not providing advice or assistance on compliance policies in a *speech* to compliance professionals on 29 March 2016. In the speech Alun Milford, SFO General Counsel, emphasised that the SFO is not a regulator. He also said that other bodies were better placed to provide guidance, noting that the Secretary of

State's guidance on the Bribery Act had been well received. But Milford did set out the SFO's approach to claims of privilege over witness accounts and he illustrated the process by which deferred prosecution agreements are negotiated.

ESMA consults on MAR

ESMA *proposed* guidelines on information expected or required to be disclosed on commodity derivatives markets or related spot markets under the MAR on 30 March 2016. MAR will replace the current Market Abuse Directive from 3 July 2016.

MAR widens of the definition of inside information relating to commodity derivatives to cover price sensitive information relevant to the related spot commodity contracts as well as the derivative. Transactions in commodity derivatives based on inside information relating to underlying spot transactions will be expressly prohibited.

In addition, the prohibitions include transactions in derivatives markets that either manipulate or are manipulated by the related spot commodity transaction. The definition of inside information in relation to a commodity derivative must relate directly or indirectly to the commodity derivatives or directly to the related spot commodity contract. On this basis, the proposed guidelines distinguish between three categories of information expected or required to be disclosed:

- information relating directly to a commodity derivative
- information relating indirectly to a commodity derivative and
- information relating directly to a spot commodity contract.

ESMA's proposed guidelines set out the types of information that would be considered inside information for commodity derivatives or spot transactions by establishing a non-exhaustive indicative list of information that would be reasonably expected or required to be disclosed.

The consultation closes on **20 May 2016**. ESMA intends to publish its final report by late Q3 2016.

Financial stability

China focuses on structural reform

Details of the *First G20 Finance Ministers and Central Bank Governors Meeting in 2016 Held in Shanghai* were released on 1 March 2016. Ministers and Governors agreed that while the global recovery continues, downside risks have increased, stressing the use of individual but also collective policy tools such as monetary, fiscal and structural tools. They agreed to improve the structural reform agenda by developing priorities and guiding principles and creating an indicator system to enhance the assessment and monitoring of the progress of structural reforms.

The Finance Minister of China, Lou Jiwei, emphasised the importance of structural reforms that correct distortions and improve resource allocation. As an example he referred to the reduction in China's reliance on investment to power growth in 2015, replaced by the increased contribution of consumption. But he also welcomed the increase in technology and equipment investment, because it has improved the allocation of resource. Zhou Xiaochuan, Governor of the People's Bank of China, stated that China had entered a period of 'new normal' where growth has decelerated from high to medium speed. China restored the International Financial Architecture Working Group under its G20 Presidency with discussions expected to focus on the IMF's governance reform, sovereign debt restructuring, debt sustainability, capital flows, the global and financial safety net and an increased role for Special Drawing Rights.

The second G20 Finance Ministers and Central Bank Governors Meeting is expected to be held in Washington D.C. on 14-15 April 2016.

IOSCO scans for emerging risks

On 2 March 2016, IOSCO released its 2016 *Securities Markets Risk Outlook* on emerging risks threatening the securities market.

The key risks for the coming year include:

- Unlike the primary bond market, liquidity in the secondary market for corporate bonds is being negatively affected by regulatory changes. Long-term global data is not available to assess the risks effectively.
- The increase in regulatory requirements for high-quality collateral to mitigate credit and counterparty risks may result in high concentration among providers of collateral management services. This merely substitutes credit and counterparty risk for increased liquidity risk and asset encumbrances.
- Mis-selling of unsuitable complex investments is the most prevalent risk to retail investors. Survey respondents cited examples of investment advisers selling bundled products on commission and misleading pricing of structured products.
- The increased interconnectedness within financial services has spawned an increase in cyber attacks.
- The low interest rate environment may lead unit investors to redeem en masse, increasing liquidity risks for asset managers.

IOSCO's forward-looking report informs the risk identification processes of the G20, FSB, IMF and other global standard-setting bodies.

Carney considers financial stability risks

The FPC published the *Record of the meeting between the Governor of the BoE and the Chancellor of the Exchequer to discuss the December 2015 Financial Stability Report* on 9 March 2016. The meeting was held on 27 January 2016. BoE Governor Mark Carney said the FPC remained alert to the financial stability risks arising from the rapid growth in buy-to-let and is also monitoring developments in commercial real estate. Chancellor George Osborne said his recent measures on buy-to-let tax relief and stamp duty were based partly on macro-prudential concerns.

The BoE is seeking to test the resilience of markets to widespread redemptions through plausible redemption scenarios for EU investment funds, estimating the scale of resulting asset sales and assessing whether markets could absorb such sales without a disruptive price impact. The Bank expects to bring the activity of investment funds into the system-wide stress testing while continuing efforts by the FSB to internationalise its work. The FPC intends to assess the costs and benefits of the cumulative impact of regulatory reforms including unintended consequences for market liquidity in core financial markets. The FPC is now considering the appropriate setting of the CCB. The PRA board is currently reviewing individual firms' buffer requirements, meaning an increase from the current setting of 0% to 1% would not

necessarily lead to a change in the overall capital requirements for UK banks. The FPC said it intended to review the appropriate buffer setting in March 2016.

New perspectives on current account deficit

External MPC member Kristin Forbes gave a speech titled *The UK Current Account Deficit: Risky or Risk-Sharing?* on 21 March 2016. She said international investment income has recently been more important than trade in explaining movements in the UK's current account deficit. But most analysis does not incorporate how financial flows can mitigate or aggravate the risks that can arise from large current account deficits. The share of UK borrowing in the form of equities, which Forbes considered to be risk sharing, has increased in recent years but is still lower than the nine OECD countries with a floating exchange rate. Another more important form of risk sharing arises because 90% of the UK's assets in the net international investment position are denominated in foreign currencies compared to 60% of liabilities. This means the heightened UK risk will lead the exchange rate to depreciate and increase the value of the assets held by the UK by a greater amount than the value of its liabilities to foreigners. These risk sharing effects are lower when considering the impact of heightened global risk. Forbes concluded that the UK's current account

deficit is both 'risky' and a form of 'risk sharing'.

BoE comments on EU settlement

BoE Governor Mark Carney *wrote* to Andrew Tyrie, Chairman of the TC, on 7 March 2016 confirming the BoE's views on the UK's proposed renegotiated settlement with the EU. Carney said the settlement's provision allowing the UK to retain responsibility for the implementation of regulation (including supervision, resolution and macro-prudential responsibilities) is particularly welcome. The proposed settlement recognises that prudential requirements for credit institutions and other measures to ensure financial stability should contain specific provisions for Banking Union Member States. This allows for deeper integration of the euro area countries while recognising the BoE's desire to retain responsibility for financial stability. The BoE welcomed this flexibility given the size and complexity of the financial sector in the UK. Carney set out his view that fiscal protections over contributions to emergency measures for Member States whose currency is not the euro also enhance the financial stability of the UK.

Euro monetary policy relaxed further

The ECB published a *press release on adding corporate sector purchase programme (CSPP) to the asset purchase programme (APP) and announced changes to APP* on 10 March 2016.

The ECB announced the combined monthly purchases under the APP will increase from €60bn to €80bn on 1 April 2016. In addition, the ECB will start to accept investment grade euro denominated bonds under the new CSPP. But the new programme is a subset of the existing APP. The purchases will begin towards the end of Q2 2016. The ECB hopes these changes will increase the financing conditions of the real economy.

FPC to focus on stability

Chancellor George Osborne wrote to Mark Carney, Governor of the BoE, setting out *the Remit and Recommendations for the FPC* on 16 March 2016. Osborne is required to do so at least once a year by the BoE Act 1998. The Chancellor said that, now the FPC has established a capital framework, its focus should be to implement a stable regulatory environment. He welcomed the FPC's work to conduct a series of in-depth analyses of sectors outside the core banking system to assess their transmission channels to financial stability. He recommended the FPC should consider market issues and systemic non-financial risks (such as cyber security) that could materially impact financial stability. Osborne said the FPC is rightly broadening its focus to other sectors such as financial markets, institutional investors or insurance. He also recommended the FPC consider the impact of its policy actions on the ability of the financial sector to provide finance for productive investment. Osborne

said the FPC should support the Government's overall strategy for financial services, including its desire to see more competition and innovation in all sectors but particularly in retail banking. The Chancellor added the Government wishes the UK to remain an attractive domicile for internationally active financial institutions. He said the FPC should consider whether there is a material risk of public funds being required when exercising its responsibilities and provide clear messages so its policy actions are as predictable as possible.

MPC leaves rate unchanged

At the *MPC meeting* on 16 March 2016 members voted unanimously to maintain the Bank rate at 0.5% and the stock of purchased assets financed by the issuance of central bank reserves at £375bn. Consumer Price Index inflation in January was 0.3%, well below the MPC's target of 2%. This was due to continuing downward pressure from food and energy prices. Core inflation was also subdued due to the past strength of sterling, weak global inflation and restrained domestic cost growth. Growth in UK GDP was estimated at 0.5% in Q4 of 2015. The MPC found that growth of private domestic demand is solid but this should be set against the increased uncertainty surrounding the referendum on UK membership of the EU. It thought this uncertainty is the likely driver behind the recent decline in sterling. The MPC expected advanced economies to continue to benefit from low commodity prices and

relatively accommodative monetary and fiscal policy. But it anticipated emerging countries will grow more slowly than they have in recent years.

EU markets' risks and vulnerabilities

ESMA's *Trends, Risks and Vulnerabilities Report No. 1 2016* from 17 March 2016 validated its September 2015 financial stability concerns. The report analysed market developments from the final two quarters in 2015. It showed, among other things, that EU financials' stock declined by 27% and fund inflows dropped by 50%. Articles in this edition included: bail-inable instruments' MREL/TLAC requirements; the implications, risks and benefits of financial innovation; the EU's central clearing landscape and the drivers behind the cost of obtaining high-quality collateral. The first *Risk Dashboard* in 2016, released the same day, was materially unchanged from previous quarters. But systemic stress reverted down to second quarter levels after a rocky third quarter.

Harmonising EU insolvency requirements for entrepreneurs

The EC revisited its long-standing priority to create a pan-EU entrepreneur-friendly insolvency framework. In its first attempt under CMU to address insolvency measures, the EC's *Consultation on an effective insolvency framework within the EU* on 22 March 2016 focused on early restructuring opportunities and expedited discharge periods. It explored how to implement policy proposals originally laid out in the

2014 *EC Recommendation on a new approach to business failure and insolvency (C(2014) 1500)*, which Member States adopted varyingly. The recommendation excluded credit institutions, insurers and market infrastructure (such as CCPs) to avoid conflicts with recovery and resolution requirements.

The EC wanted to explore the extent to which entrepreneurs desire harmonised rules around restructuring plans. At the most basic level, it considers debtors should get equal access to insolvency proceedings across the EU. The consultation explores whether the thresholds used when a majority of creditors approve insolvency plans and the protections for dissenting creditors could be aligned through the EU. For the EC, insolvency plans are critical because they help EU entrepreneurs avoid unnecessary liquidation and safeguard debtor assets.

Also up for discussion is the wisdom of uniform, and lenient discharge periods enabling entrepreneurs who have entered insolvency to quickly shed the restrictions imposed by bankruptcy and re-enter the economy. The EC had earlier recommended a maximum three year discharge period and it's likely to return to this standard in any proposed regulation.

Finally, the EC sought comments on whether it would be appropriate to harmonise minimum standards on the

ranking of insolvency claims and the ability for various parties to claim avoidance actions.

The [EU survey page](#) for the consultation closes for comments on **14 June 2016**.

Risks rise according to ESRB

The ESRB published [ESRB risk dashboard](#) and [The ESRB risk dashboard: an overview](#) on 24 March 2016. The dashboard showed that the market's perception of systemic risk increased in 2016 signalling greater investor risk aversion which affected bank funding costs. Economic recovery in the EU continued with a gradual recovery in the labour market. But debt sustainability in the public and non-financial private sector remained a concern. Bank lending continued its recovery and banks continued to repair their balance sheets although profitability remains a challenge. The dashboard revealed that the non-bank and non-insurance sectors continue to grow and investment funds' increased their risk taking. The ESRB also published [Annex 1](#) which sets out the methodology behind the measures of risk, and [Annex 2](#) which describes the indicators of risk.

A single European voice

The EU seeks to consolidate its role in economic and financial matters on the international stage. On 17 March 2016, the EP published its [Report on the EU role in the framework of international financial, monetary and regulatory institutions and bodies](#).

To ensure the EU's concerns are heard, the supranational legislature proposes to unify its voice globally by:

- obtaining full membership and participation for the EU in international economic and financial institutions such as the IMF and OECD
- coordinating the efforts of Member States and national authorities to ensure, by binding agreement if necessary, that their positions at the global level do not contradict democratically-adopted EU legislation
- imposing an EU code of conduct on transparency, integrity and accountability to ensure the EC is accountable for representing the interests of EU citizens in international organisations.

The EP further supports the creation of an international treaty-based financial organisation empowered to impose minimum binding standards and appropriate sanctions. The drafters of the report's minority opinion object to this EP's motion for a resolution on the grounds that it unduly compromises the national sovereignty of Member States.

Market-based finance

P2P authorisations update

The FCA published a [statement](#) on P2P applications for full authorisation on 31 March 2016. It highlighted that authorisation timelines are dependent on

the quality of the applications firms submit. It also noted it had received a lot of applications and would need to consider recent P2P regulations when making its authorisation decisions.

The FCA said it authorised eight firms to operate P2P platforms to date. A further 86 firms are still waiting for an authorisation decision and the FCA has provided interim permission to 44. Firms operating under an interim authorisation may continue their activities until the FCA publishes a full authorisation decision.

P2P lenders should note their loans are not eligible for the Innovative Finance ISA until they receive full authorisation. The FCA plans to publish its authorisation decisions over the course of 2016.

Market infrastructure

Cooperation working well for FMI's

Supervision of FMI's hasn't led to any material duplication for Regulated Information Exchanges and Recognised Clearing Houses, according to the FCA and BoE. In a [2015 performance statement](#) published on 4 March 2016, the FCA said a survey of industry respondents hadn't flagged any issues. The [MoU](#), last amended in September 2014, will therefore stay intact.

ESMA's approach to FinTech innovation

ESMA Executive Director Verena Ross [spoke](#) at the London Business School and

BoE Conference on 7 March 2016 on 'the real Fintech revolution'. Ross described ESMA's approach to regulation and supervision of financial technology. ESMA has developed an assessment framework which promotes investor protection, financial stability and orderly markets. A careful emphasis on proportionate regulation is intended to appropriately distinguish innovations which promote economic growth from those that increase the likelihood of financial instability.

ESMA established the Financial Innovations Standing Committee to review market intelligence from industry participants, consumer groups and academia. Made up of representatives from all 28 national competent authorities, the committee monitors markets, participants and distribution channels to develop opinions, advice, statements, warnings and interventions authorised under MiFIR. It has employed a scoring methodology of qualitative and quantitative data to rate 80 innovations to date.

CCP interoperability is a good thing

ESMA published its [Final report: Possible systemic risks and cost implications of CCP interoperability arrangements](#) on 1 March 2016. ESMA found that clearing members had benefited from broader market access and higher netting efficiencies as a result of higher interoperability between CCPs. It noted the key risk of interoperability was the increase in credit risk between firms.

But ESMA determined that as CCPs are managing this extra risk in a prudent manner it will not review the probability of default of individual CCPs. ESMA also highlighted that the complexity of interoperability increased operational risk for CCPs. Firms should pay particular attention to operational risk because this is not specifically addressed in its CCP guidelines and recommendations. ESMA concluded the benefits of interoperability ultimately outweighed the risks it brought to the financial system and individual CCPs.

Granting US CCPs equivalency

The EC issued a regulatory-level *equivalency determination* on 15 March 2016, allowing an important subset of US CCPs to rely on CFTC regulatory substituted compliance when offering clearing services to EU entities under EMIR. US CCPs will still need to individually apply to ESMA and be subject to its facility-specific equivalency assessments.

The EC noted that many key EMIR requirements are not addressed by direct CFTC regulation of the majority of CCPs. But clearing houses that US regulators designate as systemically important have additional risk management requirements that do address some of the discrepancies. These CCPs also have to establish internal policies and procedures that take legal effect upon authorisation.

So the EC has indicated it will only extend equivalency determinations to individual

US clearing houses if they are regulated as systemically important (or opt into the higher requirements) and their internal rules incorporate the following EMIR requirements:

- a liquidation period of two days calculated on a net basis for clearing members' proprietary positions in exchange-traded derivatives
- 25% buffer of calculated margins to limit procyclicality during rapid margin increases (to address procyclicality)
- measures ensuring that margin requirements are not lower than those that would be calculated using volatility over a ten-year historical period
- financial resources to withstand the default of its two (as opposed to one) largest clearing members.

It is expected that eligible US CCPs will accommodate these requirements in their internal rules, to facilitate cross-border equivalence under EMIR.

Importantly, the equivalence decision only applies to the CFTC rules for swaps clearing, and does not include the still-developing SEC rules for security-based swaps. Because EMIR fails to create a regulatory division between these swap categories, US equivalency determinations of EMIR rules will initially be more encompassing.

Mandatory clearing on the horizon

The first wave of mandatory clearing under EMIR will begin soon, after the EC published a *Delegated Regulation* on 1 March 2015. Under the Regulation, EU untranch index CDS settled in euros will be subject to the EMIR clearing obligation. The dates by which firms must comply with the obligation are staggered and depend on which of the four categories of counterparties they fall under according to the Delegated Regulation.

The first category of counterparties is clearing members for the derivatives subject to the clearing obligation. The second is counterparties that do not meet the category one criteria, but are AIFs or EMIR FCs in a group whose aggregate month-end average of outstanding gross notional amount of non-centrally cleared derivatives for the first three months of 2016 exceeds €8bn. The third contains counterparties that do not meet the category one or two criteria, but are AIFs or EMIR FCs. The final category is EMIR NFCs not belonging to categories one, two or three.

Category one firms must comply with the clearing obligation nine months after the regulation enters into force, while category four firms have three years to comply. The EP and Council must approve the Delegated Regulation before it enters into force.

LEI's approach to corporate parentage data

The LEI Regulatory Oversight Committee (ROC) outlined its Phase 1 approach to collecting corporate parentage data from legal entities subject to LEI registration requirements. It published *Collecting data on direct and ultimate parents of legal entities in the Global LEI System* on 10 March 2016. The ROC has proposed an incremental approach, focusing first on direct and ultimate parents of legal entities before attempting to capture more granular corporate relationships. It noted that adding data on parent entities was recommended by the FSB as early as 2012.

The ROC intends implementation of this requirement to begin in Q4 2016. Corporate parentage would be determined by accounting definitions of control under US GAAP and IFRS. And the LEI reporting requirements would initially only focus on both the lowest and highest entities that consolidate the legal entity (reporting of intermediary parents may be rolled out at a later date).

While the 'child' legal entity is expected to report the parent's information, the LEI ROC anticipates instances when the reverse will be acceptable. LEI ROC said it will not encourage any use of alternative identifiers for those circumstances when a legal entity's parent fails to have an LEI.

This renewed focus on using LEIs to aggregate corporate relationship data will

make it easier for regulators to identify systemic risk from transaction reporting. It will also allow them to use the LEI system more effectively to monitor banking exposure and conduct issues such as money laundering.

BoE reviews FMI supervision

The BoE published its *Supervision of FMIs – Annual Report* on 4 March 2016, highlighting how regulatory developments have made UK FMIs even more central to the financial system. This has increased the complexity of the BoE's supervisory task, and the mandatory central clearing for certain OTC derivatives classes under EMIR will increase the systemic importance of UK CCPs. As a result, the BoE plans to prioritise participation in global efforts to establish appropriate recovery and resolution standards for CCPs, as well as continuing its efforts to assess recovery plans under existing requirements.

The BoE plans to also closely look at the link between technology and stability, including considering the effectiveness of cybersecurity for more traditional forms of infrastructure and assessing the market risks posed by emerging Fintech. In line with the increasing complexity of FMI regulation, the BoE intends to look to boards to ensure an effective compliance and operational framework for FMIs. While the creation of board risk committees at CCPs is a mandatory requirement under EMIR, the BoE said it would continue its focus on initial margin model governance.

Likewise, the BoE plans to continue its focus on board 'effectiveness' for all FMIs by assessing the quality of challenge in board decisions, among other areas.

Significant progress towards T2S

A truly single market for EU-wide post-trade settlements is slowly coming into existence since the Eurosystem platform settlement system launched on 22 June 2015. The ECB's T2S Advisory Group released the Sixth T2S Harmonisation Progress Report on 18 March 2016, outlining significant progress and room for improvement.

The report indicates three main areas of focus:

1. definitions – while 17 out of 24 activities are defined, adoption of the CSDR level 2 technical standards will add some of the remaining definitions e.g. settlement discipline regime, freedom of issuance and market access.
2. monitoring – all market activities are fully monitored for compliance with harmonisation standards across 16 top priority activities e.g. messages and schedule of settlement day.
3. compliance – individual markets decreased the number of compliance issues that need monitoring since the last progress report. Remaining regulatory, legal and technical barriers will be resolved by the CMU and the

establishment of the European Post-Trading Forum.

The third T2S migration occurs on 12 September 2016. The Advisory Group plans to release its seventh progress report just before the fourth and final migration on 6 February 2017, by which time 21 European markets will have joined T2S.

The future of LIBOR

ICE Benchmark Administration (IBA) outlined future plans for LIBOR in a *roadmap* published on 18 March 2016. Over the past year and a half, IBA has consulted on how LIBOR should evolve to meet the needs of those who use it and enhanced regulatory standards. IBA hopes the measures it outlines for LIBOR will make it robust and sustainable in the long term. The roadmap sets out the IBA plan to implement a uniform submission methodology for LIBOR panel banks.

The FSB has made clear that it wants LIBOR to be transaction-based as far as possible. To ensure this is the case, IBA has designed a waterfall of submission methodologies. The waterfall comprises three levels:

- level 1: the Volume Weighted Average Price (VWAP) of eligible transaction
- level 2: submissions derived from transactions (including adjusted and historical transactions, interpolation and parallel shift)

- level 3: expert judgement, appropriately framed.

Looking to the future, IBA is examining the feasibility of evolving LIBOR to a centralised calculation using an algorithm to calculate the benchmark in diverse market circumstances. It expects to complete this feasibility study before Q3 2016. If the study results are positive, IBA expects to liaise with the FCA to gain regulatory non-objection to the algorithm, processes and controls during Q3 2016. It should then enable panel banks to connect with IBA for real-time transmission of transaction data, which is currently received by a daily file transfer. If these steps are followed, IBA anticipates it will have full centralised responsibility for the formulation of LIBOR by 2017.

Evolving Eurosystem financial market infrastructure

The infrastructure of the Eurosystem continues its incremental evolution towards a truly single market. On 22 March 2016, Yves Mersch, a member of the ECB's Executive Board, delivered the opening remarks on *Shaping the future of Europe's financial market infrastructure* at the information session on the consultative report on real-time gross settlement systems (RTGS) services. Mersch discussed the drivers, consequences and future of changes to the financial services infrastructure within the Eurozone.

Since the advent of the euro, integration and increasing efficiency have been the key drivers spurring the development of TARGET2 the RTGS system for the eurozone, Correspondent Central Banking Model, SEPA and T2S to be followed by the imminent consolidation of trading and clearing systems.

The ongoing evolution of financial services market structures has consequences for Eurosystem's role as:

- owner and operator of payments and settlement systems – Eurosystem is taking advantage of technological advancements to combine TARGET2 and T2S into a single platform
- central bank oversight for payment, clearing and settlement systems – Eurosystem must increase vigilance over cyber security and resilience to ensure the smooth functioning of digital systems. With the increase in new entrants, the Eurosystem must also ensure continued competition by maintaining a level playing field
- catalyst to improve market efficiency – Eurosystem must ensure that digitalisation of financial services does not result in obstacles to a single market for payments and securities.

The post-2020 infrastructure will continue to focus on synergies between platforms such as TARGET2 and T2S to settle large-value payments and securities, enhancing

TARGET2 for the settlement of instant retail payments, and developing a common system for collateral management.

UK/Australia cooperation on innovation regulation

The FCA and the Australian Securities and Investment Commission published their plans to collaborate in a *Co-operation Agreement* on 23 March 2016. Both bodies currently run innovation hubs. These hubs provide a dedicated team to help innovative businesses navigate the regulatory landscape in each authority's jurisdiction. The Co-operation Agreement set out how both innovation hubs will collaborate. The authorities said the agreement serves as guidelines for working together; it does not supersede any current laws and is not legally binding. Under the agreement, the authorities plan to refer businesses that are interested in working in each other's markets between the two innovation hubs. Both authorities also plan to share information regarding issues that affect innovation in their respective jurisdictions. They have agreed to treat information received from the other party as confidential. If a receiving authority was permitted by law to disclose such information, the referring authority would be notified.

MiFID II

Clarifying HFT and package trade rules

The EP took the opportunity to propose amendments to other MiFID II Level 1 requirements while amending MiFID II to postpone the implementation date by one year. On 2 March 2016, ECON proposed two revisions to clarify issues market participants requested.

In *Amendment 2 on the proposal for a directive of the EP and the Council amending MiFID II as regards certain dates*, ECON explained that the prohibition on high-frequency trading firms from using the trading on own account exemption applies to direct members of a regulated market or MTF who do not use a high-frequency algorithmic trading strategy. The amendment ensures that non-financial firms hedging foreign exchange risks are not inadvertently brought into the scope of MiFID II, EMIR and CRD IV.

In *Amendments 1 – 3 on the proposal for a regulation of the EP and Council amending MiFIR, MAR and CSDR*, ECON clarified when pre-trade transparency doesn't apply to package transactions or their component parts. It proposed a definition of package transactions and set out applicable waiver requirements. The parliamentary committee further recommended that MiFIR's Titles II and III transparency requirements do not apply to securities financing transactions.

The EC announced that delegated acts and technical standards will likely be published in Q2 2016. EU co-legislators are developing legislation to postpone the MiFID II implementation date to 3 January 2018.

MiFID II minutes

On the 14 March 2016, the FCA published the minutes of its *MiFID II Implementation - Trade Association Roundtable* which was held on 22 February 2016. Attendees discussed whether MiFID II delays could result in amended implementing measures and the FCA's MiFID II implementation consultation paper.

Attendees identified transparency requirements for packaged transactions and authorisation requirements for members of foreign exchange venues as implementing measures requiring amendment. The FCA noted the EC consultation on the burden of cumulative regulation received feedback on these specific issues and may shape the MiFID II level two text.

The FCA requested that responses to its consultation should focus specifically on multilateral systems. Attendees flagged the concern that inconsistent application of the transparency regime between Member States could create complexity. The FCA expected progress on implementing measures 'soon'. Further roundtables are scheduled for 17 March, 25 April, 26 May and 6 July 2016.

ESMA on staff's MiFID II knowledge

ESMA published its *Guidelines for the assessment of knowledge and competence* on 22 March 2016. ESMA outlined criteria for assessing the knowledge and competence of staff under Article 25(1) of MiFID II. It covered four areas:

- standards for knowledge and competence of employees providing information on investment products, services or ancillary services
- standards for knowledge and competence of employees providing investment advice
- organisational requirements for testing, enhancing and refreshing knowledge and competence
- data to be published by national competent authorities.

In addition to the above, it provided examples to help firms with the scope of the guidelines. The guidelines apply from 3 January 2017. Firms should use the guidelines to ensure they provide employees with adequate training, in line with MiFID II requirements.

PRA consults on MiFID II implementation

The PRA published *CP9/16 Implementation of MiFID II: Part 1* on 24 March 2016. It proposed rules to transpose the MiFID II passporting regime and systems and controls for algorithmic trading firms. The PRA said it wanted to give firms clarity in

these two areas. It also explained it could not outline proposals for all MiFID II areas as it is still waiting for ESMA to publish finalised delegated acts.

The EC has expanded the existing MiFID passporting regime to cover a broader range of investment services and activities. The revised regime includes provision of an organised trading facility and the new emissions allowance financial instrument. The PRA noted that firms' existing MiFID passports will remain valid but may need adjusting to reflect the revised scope of the regime. It advised firms to assess whether they require any amendment to their passports and to notify it if they do. Additionally, the PRA proposed deleting its existing MiFID notification forms and replacing them with a link to EU notification forms instead. It did not propose any changes to notifications under CRD.

On algorithmic trading, the PRA pointed out it had not previously had rules focused on this topic. It proposed creating a new section in the PRA handbook covering this area. The PRA also noted these new rules would apply to CRR firms that traded algorithmically or provided direct electronic access to a venue. Its proposals for firms trading algorithmically focused on the soundness of firms. They included ensuring:

- trading systems have sufficient capacity and are resilient

- trading thresholds and limits are in place
- incorrect orders are mitigated
- business continuity plans are in place.

With respect to direct electronic access, the PRA proposed replicating the requirements outlined in Article 17 (5) of MiFID II.

The consultation period closes on **27 May 2016**. Firms should continue to look out for the second part of the implementation consultation, which the PRA plans to issue after ESMA publishes its final delegated acts.

EC rejects three MiFID II RTS

Indirect sources indicate the EC rejected three key technical standards ESMA proposed under MiFID II. MEP Markus Ferber issued a *press release* on 17 March 2016 reporting the EC sent the draft RTS back to ESMA requesting swift revision without causing further delay to the MiFID II timeline. According to Ferber, who is also the EP rapporteur for MiFID II, the draft RTS on non-equity transparency, ancillary activity exemption and position limits are 'far from being acceptable'.

While the EC's letters on each RTS are not yet public, references to the letters from DG-FISMA Commissioner Olivier Guersent appear in *responses* from ESMA Chair Steven Maijoor. In three individual responses, Maijoor pointed out the EC followed neither the process nor the format for objecting to draft technical standards by

the December 2015 deadline. While acknowledging the exceptional circumstances that the complexity of MiFID II brings about, Maijoor granted a concession to ensure legal certainty as soon as possible. ESMA confirmed its assumption that Guersent's letters are an official notice of objection and the content of each fully reflects the requested amendments. ESMA plans to proceed with the revisions on this basis if the EC does not contradict these assumptions by 29 March 2016.

Operational resilience MEPs examine Privacy Shield credentials

Civil Liberties Committee Members of the EP (MEPs) *debated* the new Privacy Shield framework, which is set to replace the now defunct Safe Harbour agreement, on 17 March 2016. Privacy Shield aims to protect personal data originating in the EU and transferred to the US.

The hearing was aimed at assessing whether Privacy Shield offers adequate protection for EU citizens. Representatives from the EC and the US Government stressed the new system would provide more privacy guarantees to EU citizens by limiting government access to their data and allowing them to defend their rights in US courts. Several MEPs also pointed out that the new arrangement was better than the previous one for the same reasons. But others raised concerns that Privacy Shield would not provide sufficient safeguards

against mass surveillance and bulk data collection.

The new Privacy Shield deal was announced by the EC and the US Department of Commerce on 2 February 2016. The EP must give its opinion before the EC can adopt an adequacy decision declaring that Privacy Shield offers sufficient data protection, a prerequisite for the deal to enter into force.

FSCS management levy for 2016/17

The FCA published policy statement *PS16/10: FSCS – Management Expenses Levy Limit (MELL) 2016/17* on 29 March 2016. The statement confirmed that the approved MELL for 2016/17 is £72.2m and applied from 1 April 2016. The MELL ensures the FSCS has sufficient funds to carry out its functions efficiently. It is separate from the compensation costs levy, which pays claims and is determined by the FSCS.

Payments

FAQs on payment settlement hours

The BoE published *Frequently Asked Questions* on 16 March 2016, which provide information about the decision by the BoE, CHAPS Co and Euroclear UK & Ireland (EUI) to extend the CHAPS and CREST settlement hours. The extension aligns the cut off time for settling high value payments and securities more closely to typical business day hours. To facilitate the changes, the BoE is also extending the operating hours of the Real Time Gross

Settlement (RGTS) infrastructure so it is open until 6pm on business days. Previously it closed at 4.20pm. Settlement services for CHAPS and CREST are available from 6am.

The change means that a CHAPS payment can now be made up to 6pm. The timings of CREST payments will depend on the nature of the transactions but will shift in line with the extended settlement times. The contingency window which exists in the event that operational issues prevent payments being made within 'business-as-usual hours' will extend for both CHAPS and CREST to 8pm.

An overseeing body comprised of the BoE, CHAPS & Co and Euroclear UK & Ireland will implement the changes, while a new market-wide forum will address cross-market issues resulting from the changes.

The extended settlement day will take effect from 20 June 2016.

Reporting

New LCR templates

The EC published *amending Implementing Regulation (EU) No 680/2014 laying down implementing technical standards with regard to supervisory reporting of institutions of the liquidity coverage requirement* in the Official Journal on 10 March 2016. It applies to all CRR firms.

Firms must use two new templates to report the LCR and related memorandum items. Credit institutions need to use the template specified in Annex XXII, and

CRR firms the one in Annex XII. The EC also published instructions for completing the templates.

Firms should use the new templates from 10 September 2016 onwards for their monthly reporting.

Ready for liquidity metrics reporting?

The EC published *amending Implementing Regulation (EU) No 680/2014 with regard to additional monitoring metrics for liquidity reporting* on 8 March 2016 in the Official Journal. All CRR firms should start reporting additional monitoring metrics (based on the concentration, maturity and rollover of funding) from April 2016.

The additional reporting will provide a more complete overview of firms' liquidity positions which will help competent authorities. Most firms should report the information on a monthly basis, but those that meet certain criteria can report quarterly. The EC did not include the maturity ladder as part of the reporting, arguing the approach is outdated, and has advised the EBA to update it. The regulation will enter into force 20 days after its publication in the Official Journal.

Consulting on SFTR transaction reporting

ESMA published *Discussion Paper - Draft RTS and ITS under SFTR* on 11 March 2016. ESMA is clearly seeking to align SFTR transaction reporting with other existing frameworks to create a consistent reporting approach across regulations. At a technical

level, it proposed requiring the same reporting format - ISO 20022 - on SFTR as under MiFIR, MAR and others. Likewise, ESMA applied many of the reporting principles that have been developed under EMIR and other regulations (e.g. for when trades that are subsequently centrally cleared are treated as one or two reportable transactions). Similarly, it looks to apply many of the same rules for reporting lifecycle events as under EMIR.

But ESMA's proposed standards also illuminate how SFTs will require different reporting fields and, in some instances, a different set of reporting principles than under EMIR and other regulations. For example, EMIR only has counterparty and transaction data as the main categories of reportable information. But ESMA proposed an additional section devoted to collateral information. This focus on collateral will pose unique reporting challenges, which ESMA discusses in terms of linking collateral data for bilateral netting of SFT exposures. In addition, SFTR covers activity by EU branches of non-EU entities and global branch activity of EU entities, in stark contrast to EMIR's more limited approach, and so SFTR reporting will require branch-specific fields.

ESMA also provided proposed technical standards for TRs. For firms, the most relevant standard involves TR feedback requirements to participants. This requirement would provide a valuable mechanism by which firms could assess

whether or not the TRs are happy with their submissions.

The comment period for the discussion paper closes on **22 April 2016**.

Criteria for derivatives leverage ratio reporting

The EC published *Implementing Regulation (EU) No 680/2014 laying down ITS with regard to supervisory reporting of institutions as regards the reporting of the Leverage Ratio* in the Official Journal on 31 March 2016. This will impact all CRR firms.

New criteria are in place for reporting the leverage ratio for derivatives. The criteria include total volume and value of derivatives as well as their share of total exposures. The EC wants to give sufficient time for firms to adapt to those new reporting requirements. So it deferred the first reporting date to six months from the date the regulation was published. The regulation will enter into force 20 days after its publication in the Official Journal.

Retail products

Changes to pension freedoms

On 7 March 2016, the Government responded to its November 2015 consultation to ensure pension freedoms are operating as intended. In *Occupational and Personal Pension Schemes and the Pension Protection Fund Regulations and Call for Evidence on the Valuation of Pensions with a Guaranteed Annuity Rate (GAR)*, the Government confirmed it will

push ahead with a requirement for pension credit members with safeguarded pension credit rights worth over £30,000 to take financial advice.

But it will delay a requirement for pension schemes to notify members' former spouses that the member has applied to take flexible benefits from their pension pot. The Government plans to explore the possibility of issuing guidance on this issue.

The Government confirmed that occupational pension schemes should issue risk warnings to members planning to access their pension flexibly. But it has revised the policy so schemes are not required to issue risk warnings on pension transfers.

The Government also recognised that pension providers are struggling to assess GARs to determine whether pension members need to take financial advice. It proposed an amendment to the way GARs are assessed for this purpose, on which it plans to consult in summer 2016.

TPR changing pension schemes' supervisory approach

TPR consulted on its *Compliance and enforcement policy for occupational defined contribution (DC) pension schemes* on 22 March 2016. It is proposing broadening its proactive work beyond thematic reviews, in light of changes in the DC sector brought about by auto-enrolment. TPR says this will allow it to engage with schemes on a more regular basis and target

actions where it sees the greatest risks to non-compliance.

It is also seeking views on its approach to calculating penalties and its procedure for exercising powers under the Occupational Pension Schemes (Charges and Governance) Regulations 2015. For a breach of the requirement to produce a chair's statement, TPR proposes a minimum penalty of £500, which will increase by 10p per member with money purchase benefits up to a maximum of £2,000. Where the scheme has a professional trustee in place, the penalty will generally be £2,000.

In the consultation document, TPR also set out what it sees as the key risks to DC schemes:

- poor standards of governance
- poor investment governance and inadequate cost controls
- poor administrative practices
- scams and the misappropriation of scheme assets.

The consultation closes on **3 May 2016**.

Osborne commits to FAMR in Budget

Chancellor George Osborne delivered his 2016 *Budget* on 16 March 2016. HMT committed to implementing all the recommendations of the FAMR, which was also published in March 2016. It gave further details on some of these recommendations, announcing that the £150 Income Tax and National Insurance

relief for employer-arranged pension advice will increase to £500. HMT also said people aged under 55 will be allowed to withdraw up to £500 tax-free from their defined contribution pension to pay for financial advice. Separately, HMT committed to ensuring the industry launches a pensions dashboard by 2019, which will allow individuals to view all their retirement savings in one place.

Osborne did not announce any changes to the pensions tax relief system, after consulting on a potential overhaul of the system in the July 2015 Budget. But HMT did publish a summary of responses to the consultation alongside the Budget, and could announce changes at a later date.

FCA's rules on first charge mortgages

In *PS16/7 Future regulatory treatment of CCA regulated first charge mortgages* published on 18 March 2016, the FCA summarised feedback and gave its response to an earlier consultation. PS16/7 applies to mortgages entered into before 31 October 2004 and regulated under the CCA and the FCA Consumer Credit sourcebook.

The FCA's response confirmed that firms should apply all existing Mortgages: Conduct of Business rules in relation to pre-contractual disclosure requirements, arrears charges, contract variations and conduct of business standards when administering pre-2004 first charge CCA mortgages. Dispute Resolution rules are also applicable but the prudential source book for mortgage and

home finance firms and insurance intermediaries rules will not apply.

It also set out final rules which came into force on 21 March 2016. They will only be mandatory from 21 March 2017 when first charge mortgages become regulated, but firms can choose to apply the rules earlier.

HMT tidies up P2P and mortgages

In the *Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016* (the Order) made on 16 March 2016, HMT updated FSMA to reflect a number of regulatory changes, particularly in relation to P2P lending. The Order extends the scope of the regulated activity of operating an electronic system to include all actions involved in undertaking the activity, including facilitating the transfer of rights under a P2P loan between lenders. Other changes include making the provision of advice to P2P investors a regulated activity.

The Order also captures some residual effects of the implementation of the MCD by granting a transitional period until 21 March 2017 for all first charge mortgages entered into before 31 October 2004 to become regulated mortgage contracts. In addition, the Order draws into scope all activities undertaken in respect of these mortgages contracts such as advising or arranging the contracts.

A minor amendment is made to the Small and Medium Sized Business (Finance Platforms) Regulations 2015 to make clear

that finance applications made by brokers are out of the scope of these regulations.

The Order took effect on matters relating to the regulation of mortgages from 20 March 2016 and for all other matters from 6 April 2016.

Supervision

Lobbying for a lobbyist register

The EC is to increase transparency in the EU policy-making process by mandating registration of lobbying activities within EU institutions. The executive body of the EU issued a *Public Consultation on a proposal for a mandatory Transparency Register* on 1 March 2016, seeking:

- views on the functioning of the current register
- input on a proposed interinstitutional mandatory register.

The EP and the EC jointly operate the current Transparency Register, which is not mandatory, nor does it include the Council. The EC implemented reforms in 2014, requiring organisations to register before meeting Commissioners. Now, the Council may be included in an interinstitutional mandatory Transparency Register.

The system tracks lobbying, interested representation and advocacy actively influencing the EU policy-making process. Stakeholders such as lobbyists, trade associations, law firms and individuals must publish their names, interests and budgets.

Religious organisations, governments, and political parties are not subject to registration requirements. As of February 2016, the public register contained more than 9,100 individuals and firms who are subject to a code of conduct. This number includes 6,100 individuals with access badges to the EP.

The consultation closes on **1 June 2016**.

Quality over quantity

It was all about 'legislating less but legislating better' for Jonathan Hill, EC Commissioner for Financial Stability, Financial Services and Capital Markets Union (CMU). *Talking* at the Danish Bankers' Association in Copenhagen on 4 March 2016, Hill reaffirmed the EC's commitment to better regulation to provide business with the certainty they need to invest. He said CMU is expected to play a central role in achieving this objective. He also spoke about the EC's call for evidence to assess existing legislation, noting three themes that had emerged from the responses received:

- legislation is not sufficiently proportionate
- legislation weighs negatively on the amount of financing available to the economy
- the compliance burden is too high due to unexpected interactions, duplications and inconsistencies.

Hill mentioned that investment firms want regulators to make a distinction between the capital requirements imposed on large bank-like investment firms and those imposed on smaller firms. With the EMIR review currently underway, he said the evidence received would be fed in and that the EC will assess if requirements could be safely amended to lower the burden for non-financial firms here.

In response to concerns about market liquidity, he said that upcoming measures like the NSFR and the leverage ratio will be implemented in a way that makes sense for the EU, taking into account the implications for liquidity and EU businesses. He expects that the same approach will apply when implementing TLAC and deciding whether or not to apply Basel floors for mortgage credit institutions.

FCA's approach to assessing interventions

The FCA published an *occasional paper Economics for Effective Regulation* on 10 March 2016. It described the FCA's new approach to economic analysis of financial services, which it has developed to help ensure financial services markets work well for consumers. The approach aims to improve understanding of the various root causes of market problems and the ways in which regulatory interventions affect market outcomes.

The FCA believes that the new approach will be valuable for addressing more complex problems in markets because:

- effective regulation of financial services starts at the level of the market, rather than individual firms or products
- poor market outcomes are often driven by interactions of multiple underlying causes, which need to be understood and addressed together
- effective regulation will normally require close focus on how the demand side interacts with other factors that shape market outcomes, and on how providers respond to any gaps in consumers' defences
- looking at how markets work in the round and flexibility in applying the regulatory toolkit are important steps for regulators in changing how markets work and ensuring better consumer outcomes.

The approach involves three key stages. First, the FCA will diagnose the problem to develop an understanding of how the market works and build an overview of drivers of poor outcomes resulting from underlying market problems. Second, it will design interventions for identified problems. And in the third stage, it will carry out an impact assessment to consider how the preferred intervention will deliver better outcomes and change how market participants interact with each other.

The FCA said its new approach may need to be revised over time to reflect lessons learnt.

FCA taking over claims management regulation

HMT and the MoJ published their jointly commissioned final report *Independent review of claims management regulation* on 16 March 2016. The Government confirmed in the *Budget* that it accepts the report's recommendations and intends to transfer supervisory responsibility of the claims management sector to the FCA. FCA regulation is set to include a senior managers regime for CMCs. All firms will need to be reauthorised by the FCA.

Claims management companies have been regulated by the Claims Management Regulation Unit within the MoJ since April 2007. The report was commissioned to examine the nature and extent of problems in the claims management market and make recommendations to improve the regulatory regime. HMT and the MoJ said the existing regulatory regime needs to be strengthened in a number of areas. The report's recommendations include:

- the regulator should re-authorise all firms which wish to continue trading under a robust new process, tailored to the specific sector they operate in
- individuals wishing to perform controlled functions for a regulated firm should be required to pass a fit and proper persons test, and be held

personally accountable for rule breaches they are responsible for

- the regulator should develop a concise standardised disclosure document to help consumers compare services and fee structures
- claims management companies should signpost consumers to alternative claims resolution channels, such as an ombudsman, at appropriate times.

The report analysed the various options for future supervision of the claims management market. It noted the most suitable option would be a new, stand-alone and independent regulator focused solely on claims management company regulation but acknowledges this is unlikely to be accepted by the Government. HMT and the MoJ suggested strengthening the existing regulator or transferring regulation to the FCA as alternatives.

FCA amends listing and prospectus sourcebook

The FCA published its *Prospectus Rules Sourcebook (Omnibus 2 Directive Regulatory Technical Standards Instrument 2016)* on 18 March 2016. It revised the definitions, listing and prospectus rules modules of its Handbook.

The FCA revised its glossary of definitions and listing rules sourcebook to include reference to the Prospectus Regulation (2016/301/EC). The EC published the Prospectus Regulation in November 2015 to

supplement the Prospectus Directive (2003/71/EC). The regulation outlined specific requirements for the production, agreement and dissemination of prospectuses in a bid to harmonise practices across the EU.

The FCA also revised its prospectus rules sourcebook to align content with the Prospectus Regulation 2015. It replicated the Prospectus Regulation requirements in the following areas:

- submission for approval
- changes to drafts
- final submission
- approval
- publication in electronic form and newspapers
- publication of final terms
- dissemination of advertisements
- consistency.

The FCA board approved the changes on 17 March and the instrument came into force on 24 March 2016.

The FCA's latest Handbook changes

The FCA published *Handbook Notice 31* on 18 March 2016. It outlined changes to the FCA Handbook in the following areas:

- training and competence sourcebook - updated the appropriate qualifications list

- SMEs (*credit information*) – aligned to Small Business Enterprise & Employment Act 2015 to improve SME credit data
- SMEs (fees) - introduced fee structures for designated credit reference agencies
- PSR - created rules on funding the PSR
- FSCS - changed to implement the Management Expenses Levy Limit for 2016/17
- mortgage contracts - brought pre-2004 first charge CCA loans into the mortgage regime
- MCD - amended rules to implement HMT's draft MCD legislation
- CASS - simplified rules for firms operating loan-based crowdfunding platforms holding money relating to regulated and unregulated business
- P2P lending - amended to reflect the new Innovative Finance ISA and the regulated activity of advising on P2P agreements
- supervision manual - enhanced guidance note quality for compliance submissions
- prospectus rules sourcebook - incorporated Prospectus Regulation RTS.

The changes will be effected throughout March and April 2016.

PRA proposes future fees

The PRA consulted on its fees and levies for 2016/17 on 24 March 2016. In *CP10/16: Regulated fees and levies: rates proposals 2016/17*, the PRA proposed its Annual Funding Requirement for 2016/17 to be £257.3m, a slight decrease of £500,000 compared to last year. The Annual Funding Requirement is made up of the budgeted cost of the PRA's ongoing regulatory activities and a proportion of transition costs arising from establishing the PRA. The paper outlined that the implementation of the Financial Services (Banking Reform) Act 2013 requires the PRA to undertake a significant amount of work through to 2019 when the ring-fencing regime takes effect. From 2016/17, the PRA proposed recovering the costs of this work through a ring-fencing implementation fee which will apply to firms that are ring fencing their core activities in line with the Act. The budgeted ring-fencing implementation fee will be £7.9m compared with £3.5m in 2015/16. Other proposals in the paper include:

- a £4.5m refund to fee payers of the Annual Funding Requirement in 2015/16
- no special project fees for Solvency II in 2016/17 as implementation of the directive is now embedded into business-as-usual activities.

The consultation closes on **24 May 2016**. The PRA plans to publish the policy

statement with feedback on the consultation and final rules in June 2016.

Regulators' complaint scheme changes

The FCA and PRA published a joint *policy statement* (FCA PS16/11 and PRA PS14/16) on a revised version of the FCA, PRA and BoE complaints scheme on 31 March 2016. The changes to the scheme do not differ from those *consulted on in February 2016*. The scheme has been amended to reflect changes to the FS Act 2012 requiring the Complaints Commissioner to publish an annual report that is more prescriptive than current arrangements. The report must include information on trends emerging from the Commissioner's investigations and recommendations on responding to these trends. The Commissioner must also review the regulators' effectiveness in handling and resolving the complaints it investigates, assess procedural fairness from businesses and individual complainants' points of view and recommend procedural improvements where relevant.

Trading

Costs of not clearing

The ESAs largely maintained consistency in their recently proposed EMIR bilateral margin rules. In their *draft RTS on risk mitigation techniques for OTC derivatives not cleared by a CCP under EMIR*, published on 8 March 2016, they set out standards in line with previous consultation papers. So no major surprises in the draft RTS – especially because the consultation

versions followed BCBS-IOSCO global standards that both the United States and EU worked to. But the ESAs did provide some important clarification around the substitution of collateral and documenting the obligations of counterparties not subject to the requirements.

Bilateral margin rules cover OTC derivatives transactions that are not centrally cleared (either voluntarily or as a result of an EMIR requirement) and require the exchange of both variation and initial margin. But the ESAs carved out an exemption from the initial margin obligations for certain categories of FX instruments. They also established a sequence of thresholds and effective dates, with margin requirements triggered when both counterparties belong to groups that exceed a certain aggregate notional exposure. The focus on looking at group obligations aims to prevent market participants evading the obligations through a proliferation of subsidiaries. But the ESAs confirmed that investment funds under the same asset manager will be considered separate entities, and not a 'group'.

The first wave of margin exchange is due to begin on 1 September 2016. This requirement applies to transactions where the counterparties belong to groups that each have aggregate an average notional amount exceeding €3trn. All transactions between groups exceeding a €8bn threshold come into scope by 1 September 2020.

MAR trading notification templates

The EC set out technical standards relating to the timing, format and template for submitting information to regulators about financial instruments traded throughout the day in *Commission Implementing Regulation (EU) 2016/378* on 17 March 2016.

By no later than 9pm each day, a trading venue must notify its regulator of activities relating to all newly traded financial instruments or instruments that ceased to trade. In turn, regulators must notify ESMA by 11.59pm each day. The annex includes the tables to be used for notifications.

The regulation applies from **3 July 2016**.

Accounting

PwC Publications

IFRS and UK GAAP quarterly update

Our *Year-end accounting reminders for – IFRS and UK GAAP March 2016* considers reporting requirements as at 31 March 2016. It includes the new standards, interpretations and other guidance that apply at this date. It also includes the new IFRS and UK GAAP standards that are published but effective at later dates, and therefore have to be disclosed by IFRS and UK GAAP reporters. The document also provides a summary of the latest topical issues including: impairment reviews, fair value measurement and related disclosures, requirement to disclose information on

related undertakings, accounting for pension assets, competitive audit tenders and audit committee disclosures, cash flow statement presentation, taxation, debt restructuring, supplier finance arrangement, cash-pooling agreements and audit exemption disclosure.

Reporting

Input to new UK GAAP review

The FRC *requested feedback from stakeholders* on 22 March 2016 on their experiences implementing the new UK GAAP, particularly FRS 102. The responses will inform the development of proposals for changes to accounting standards, which will be subject to formal consultation at a later date. The FRC should consult some time in 2017, in advance of a planned effective date of 1 January 2019.

Stakeholders may provide comments at any time during the triennial review process.

Comments received by **31 October 2016** will be taken into account in developing formal proposals for changes; comments received after this date will be taken into account in the later stages of the review.

FRS 102 fair value disclosures amended

Preparing disclosures about financial instruments for financial institutions and retirement benefit plans has got simpler. In *Amendments to FRS 102, 'Fair value hierarchy disclosures'* on 8 March 2016, the FRC more closely aligned the relevant disclosure requirements with those in IFRS

13, 'Fair value measurement'. The amendments are effective for accounting periods beginning on or after 1 January 2017, with early application permitted.

Banking and capital markets

In this section:

Regulation	29
Bank structures	29
Capital and liquidity	31
Client assets	34
Compensation schemes	34
Competition	35
Conduct	35
Financial crime and enforcement	37
Financial stability	37
Market-based finance	38
Market infrastructure	38
Operational resilience	38
Payments	39
Reporting	40
Retail products	41
Supervision	42



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Regulation

Bank structures

More guidance on ring fencing

The FCA directed attention to ring fencing ahead of the 1 January 2019 deadline by which ring-fenced bodies must comply with the new rules. In *FG16/1 - Guidance on the FCA's approach to the implementation of ring fencing and ring-fencing transfer schemes*, released on 4 March 2016, the FCA did not substantially change its approach from that proposed in its consultation GC15/5. But it made a number of clarifying amendments.

The FCA said that consumers who are not direct customers (e.g. counterparties) should be considered in the skilled persons report but that bank employees, shareholders and pension scheme members can be excluded. The FCA also confirmed that skilled persons will not be required to comment on competition dynamics generally. Considering adverse effects on competitors will only be necessary where the transferor/transferee provides a service that may be affected by the proposed scheme.

The FCA agreed with respondents that it would be helpful for the skilled person to have an understanding of the FCA's regulatory assessments and outcomes and

feedback on firms' plans. When assessing adverse effects the FCA narrowed the scope slightly to the specific impacts of the scheme, not requiring the skilled person to take into account legacy issues not arising from the scheme. The FCA also considered it reasonable for firms to rely on their own data and reporting and confirmed that the skilled person will not be required to disclose confidential information in the scheme report.

The FCA also released notes entitled *Ring-fencing transfer schemes - approval of a skilled person* jointly with the PRA. These publications provide further information to applicants on considerations which the PRA and FCA consider relevant to the review and assessment of the skilled person.

Making the ring fence reality

The PRA outlined its position on ring-fencing transfer schemes (RFTS), reminding us that the 1 January 2019 deadline to comply with ring-fencing rules is edging closer. It published its *Statement of Policy (SoP)* alongside feedback to CP33/15 in *PS10/16 on the implementation of ring-fencing: the PRA's approach to RFTS* on 4 March 2016. RFTS are the mechanism by which ring fencing will be carried out. They require a 'skilled person' (as defined in FSMA) to report on whether any persons, other than the transferor (i.e. the firm undergoing the ring-fencing process), are

likely to be adversely affected by the scheme. In which case, the skilled person then considers if the adverse effect is likely to be greater than is reasonably necessary to achieve the objectives of ring fencing.

In PS10/16, the PRA hasn't made any major changes to the final SoP compared to the overall approach set out in the draft. But there were some amendments. The PRA confirmed it expects skilled persons to flag to firms where an alternative group arrangement/structure may lead to materially fewer adverse effects so the firm can consider the alternative. It also clarified that groups of affected persons can be subdivided (e.g. into different types of depositors). And it stated that skilled persons will not be covered by the immunity granted for reports written under s.166 of FSMA.

The SoP itself includes details on the expected chronology of the RFTS process (the PRA will first approve or nominate the skilled person and then approve the form of the report). It also sets out, unequivocally, that the PRA doesn't want skilled persons undertaking 'excessive preliminary work' until after the PRA approves their appointment. This is to mitigate the risk that their independence is compromised or perceived to be compromised.

ECON makes Banking Union recommendations

The ECON released its *Report on the Banking Union – Annual Report 2015* on 4

March 2016. The EP called for a systematic review of comprehensive assessments of ECB-supervised institutions which are deemed sound but run into trouble, or whose stress test methodology is exposed as flawed. Regarding RRPs, the EP called on the EC to adopt the RTS on MREL with a binding standard of 8% for all SRB banks. The EP also suggested an assessment of whether the SRB and National Resolution Authorities are equipped with sufficient early intervention powers and instruments. It recommended the EC presents proposals to further reduce the legal risks of claims under the no-creditor-worse-off principle.

Embedding contractual recognition of bail-in

The PRA proposed changes to the 'contractual recognition of bail-in' part of its rulebook and published a supervisory statement on its expectations on the impracticability of contractual recognition. It issued *CP8/16 – The contractual recognition of bail-in: amendments to PRA rules* on 15 March 2016.

Current PRA rules require BRRD firms to include in non-EU law contracts a term by which the creditor recognises that the liability might be bailed in. BRRD firms raised concerns about the broad scope of the requirement and on 25 November 2015 the PRA introduced a *modification by consent* in cases of contracts (other than those for unsecured debt liabilities) where compliance was impracticable.

The PRA now proposed amendments to the rules which have the same effect as the modification and will apply from 1 July 2016. In addition the PRA took the opportunity to include some technical amendments to its rules to reflect the wording of the final draft EBA RTS on the contractual recognition of bail-in.

The draft supervisory statement gave examples of where impracticability might apply. For instance, BRRD firms may have liabilities under contracts governed by international protocols which they have no power to amend or where local law would not permit contractual recognition of bail-in. But the PRA did not consider loss of competitiveness or profitability to be grounds for impracticability.

The PRA expected BRRD firms to make their own assessment on impracticability and be prepared to justify their views. Firms can also expect the PRA and BoE to ask about progress on the inclusion of contractual recognition language as part of regular updates on their resolution plans.

The consultation closes on **16 May 2016**.

Slow progress on resolution

The FSB set the global standards with its *Key Attributes of Effective Resolution Regimes for Financial Institutions* in 2014. But, in its *Second Thematic Review on Resolution Regimes* published on 18 March 2016, it highlighted that national authorities need to do more to implement the key attributes fully.

The FSB's main findings were:

- less than a third of the FSB members have resolution powers fully in line with the key attributes - six EU members and Switzerland lead the field
- there has been some progress on recovery planning but less on resolution planning and resolvability assessments
- conditions for the use of resolution powers and their level of detail vary significantly across FSB jurisdictions.

To address these gaps, the FSB recommended that its members:

- introduce any missing resolution powers - particularly bail-in, a stay on early termination rights and continuity of critical services
- extend the resolution regime to bank holding companies
- apply RRP requirements to all banks that are potentially systemic in failure
- ensure authorities have powers to make banks take action to improve their resolvability.

For its part, the FSB plans to provide further guidance and promote the sharing of experiences and practices by workshops and technical assistance. Members have until December 2016 to report to the FSB the actions taken or planned (including timescales) to ensure compliance with the

recommendations. The next thematic review will report on any progress made.

SRF's investment rules

The EC published its *Delegated Regulation (EU) 2016/451 laying down general principles and criteria for the investment strategy and rules for the administration of the SRF* in the Official Journal on 30 March 2016. It comes into force on 19 April 2016 and applies, retrospectively, from 1 January 2016.

The SRB must follow the general principles and criteria for the investment strategy set out in the Delegated Regulation and review its strategy annually. It should specifically use derivatives only for risk management purposes.

Given the unique nature of the SRF, the SRB must provide the EC with a first report on the practical application of the regulation by 31 December 2016.

EC consolidates eight BRRD RTSs

The EC adopted a bumper *Delegated Regulation supplementing Directive 2014/59/EU - C(2016) 1691 final* on 23 March 2016 which combined eight final draft RTSs issued by the EBA under the BRRD. It explained that the separate RTSs were closely linked and firms, authorities and market participants should all benefit from the consolidation into a single regulation. The Delegated Regulation covers:

- content of recovery plans

- minimum criteria for authorities to assess recovery plans and group recovery plans
- content of resolution plans and group resolution plans
- conditions for group financial support
- requirements for independent valuers
- contractual recognition of bail-in powers
- procedures and contents of notification requirements and notice of suspension
- operational functioning of resolution colleges.

The EC has not made any substantial changes to the final draft RTSs. But it took the opportunity, particularly with the ones dealing with recovery and resolution plans, to make the requirements more structured and simpler to follow. The Delegated Regulation will come into force 20 days after publication in the Official Journal.

Disclosure policy for non-RFBs

The FCA published its *Policy Statement PS 16/9 – Ring-fencing: Disclosures to consumers by non-ring-fenced bodies* (NRFBs) on 24 March 2016. It summarises the feedback it received to consultation *CP15/23* and sets out near-final form rules.

To protect depositors, the ring-fencing regime requires a banking group with more than £25bn of deposits to hold deposits within its RFB unless an account holder falls within certain categories. This includes

individuals with money and transferable securities of at least £250,000. But NRFBs must disclose required information to these individuals to enable them to make an informed decision concerning the entity that holds their deposit.

The FCA expected to bring its final rules into force later this year by introducing a new section 4.3 in the Banking: Conduct of Business sourcebook. By publishing the rules in near-final form, banking groups will be aware of their obligations before they implement transfer schemes to separate RFBs from the rest of the group.

The FCA stated that the final rules will not 'bite' on a bank until immediately before its own structural separation. It also clarified that NRFBs do not have to send the required disclosures until it expects to receive a declaration of eligibility from an individual. This was the one change made to the draft rules.

Capital and liquidity

Pillar 3 keeps expanding

The Basel Committee published *Consultative Document Pillar 3 disclosure requirements – consolidated and enhanced framework* on 11 March 2016. The disclosure requirements apply to all internationally-active banks.

Banks must disclose information on their regulatory capital and risk exposures to enable market participants to gain transparent information and compare the

risk profiles. This is the second phase of the review and it covered:

- enhancements to the revised framework
- revisions and additions based on ongoing reforms
- consolidation of existing and prospective disclosure requirements.

There are three enhancements to Pillar 3 disclosures. The Committee proposed a set of key regulatory metrics that banks need to disclose, including metrics on TLAC. Originally, banks had to disclose hypothetical capital requirements for credit risk calculated according to the standardised approach. But the Committee now expanded this requirement for counterparty credit risk, market risk and the securitisation framework. Banks will need to provide an additional breakdown of the prudential valuation adjustments.

Further revisions and additions relate to TLAC, operational risk, market risk and interest rate risk in the banking book. The Committee proposed new templates in line with regulatory developments in these four areas.

To facilitate access to comprehensive regulatory information, a single and coherent Pillar 3 framework was introduced. Banks will need to disclose capital requirements, capital and liquidity ratios and remuneration as per this framework. Apart from minor stylistic changes, the Committee largely retained the

existing templates in the consolidated framework.

The consultation closes on **10 June 2016**.

EBA guidance on systemic importance

On 29 February 2016 the EBA *revised its guidelines on the further specification of the indicators of global systemic importance and their disclosure*. It also set out the data required for reporting in templates.

Each relevant entity must disclose the templates on their website with financial year-end information no later than four months after the end of the financial year. Data should be identical to that submitted to the Basel Committee.

Competent authorities should notify the EBA on whether they intend to comply with the guidelines by 2 May 2016.

More Basel III monitoring reports

The Basel Committee and the EBA respectively published the latest editions of the *Basel III Monitoring Report* and *CRD IV-CRR/Basel III Monitoring Exercise* on 2 March 2016. The reports show further improvements in the capital adequacy positions of banks, and include data on the LCR, the NSFR and the leverage ratio. The EBA exercise analyses the leverage ratio in conjunction with the capital adequacy ratio for the first time. The EBA identified that the leverage ratio is a regulatory constraint for a significant proportion of the banks in its sample. The Basel Committee and

the EBA publish these reports every six months, with this round based on data as at 30 June 2015.

Defending the BoE's capital framework

Andrew Bailey, Deputy Governor for Prudential Regulation at the BoE, spoke on *Bank Capital: Debating again* on 9 March 2016. He defended the BoE against those who argue for substantially higher equity requirements. He said these would require an implausibly long transition period and rest on the assumption that banks are too big to oversee and value - which he disagrees with. Bailey regarded narrow banking as a more logical alternative to the current approach than that put forward by the 'big equity' school. But he thought the consequent migration of risk to the shadow banking sector would need to be prevented, with more risk contained in banks attracting the greater equity funding required, which he thought was implausible. He also said the highest tier of 3% for the systemic risk buffer is unpopulated to create a disincentive against further complexity.

Banking Union progresses

The EP adopted a resolution on the state of the Banking Union on 10 March 2016. In a *press release* announcing the news, the EP said the EC and the ESAs should conduct an in-depth assessment of the effect of increasing capital requirements on credit supply.

In the resolution, EP members called the establishment of the SSM a success, but identified a number of problems and significant margins of improvement. The EP criticised the ECB Supervisory Board for being too rigid on the maximum distributable amount. It called on the board to be more flexible to avoid negative impacts on the bond market and financial stability.

During a plenary debate on the resolution, MEPs argued the EDIS should be accompanied by risk reduction in the EU banking system, achieved by all Member States transposing the BRRD.

The resolution noted that credit dynamics are still subdued in many jurisdictions and a large stock of non-performing loans weighs on many EU banks' balance sheets, limiting their ability to finance the economy. MEPs believed banks should be able to write off or sell on non-performing loans, to free up capital to fund new loans.

Stress testing Islamic financial institutions

The Islamic Financial Services Board (IFSB) published *Exposure Draft: TN-2: Technical Note on Stress Testing for Institutions Offering Islamic Financial Services (IIFS)* on 21 March 2016. The IFSB finds that stress testing for risk management is one of the most underdeveloped areas within the IIFS industry. But it said that when designing suitable stress tests, it is important to bear in mind the credit,

market and operational risk profiles of Islamic financial instruments do not correspond exactly to those of conventional financial instruments. Islamic financial instruments may be exposed to other risks. The technical note is intended to be used as guidance in developing, conducting and assessing stress testing. It covered basic requirements for conducting stress tests, guidance on solvency and liquidity stress tests and recent developments in stress testing. The IFSB welcomes comments by **21 June 2016**.

BoE 2016 stress test revealed

The BoE published *Stress testing the UK banking system: key elements of the 2016 stress test* on 29 March 2016. The stress test is designed under a new annual cyclical scenario framework. The 2016 scenario reflects the judgement of the FPC and the PRA Board that overall, domestic risks to the UK banking system have risen beyond their subdued levels during the immediate post-crisis period but are not yet elevated. Global risks are judged to be heightened, particularly in China and some other emerging market economies.

The 2016 stress test contains three types of stresses, as in 2015 – macroeconomic, traded risk and misconduct. The macroeconomic component envisaged a synchronised global downturn in output growth, with growth in China and Hong Kong particularly adversely affected. Investors' risk appetite also diminishes, leading to volatility in financial markets. In

addition, property prices fall globally but particularly in Hong Kong and China while UK commercial real estate prices fall by 42% and UK GDP falls by 4.3%, accompanied by a 4.5% rise in unemployment. Further, UK productivity growth remained weak, limiting the recovery in UK economic activity through the latter part of the stress horizon. The traded risk component required banks to apply an instantaneous price shock to their market risk positions. Banks also had to provide stressed projections for misconduct costs which have a low likelihood of being exceeded too. The BoE also explained the key differences between the 2016 stress test and the 2014 and 2015 tests.

On the same day the BoE published *Stress testing the UK banking system: 2016 guidance for participating banks and building societies* and *Stress testing the UK banking system: guidance on the traded risk methodology for participating banks and building societies*.

Prepayment risk and capital calculation

The EBA published *Consultation Paper: Guidelines on corrections to modified duration for debt instruments under Article 340(3) of Regulation (EU) 575/2013* on 22 March 2016. This impacts all CRR firms that calculate capital requirements for general interest rate risk on debt instruments.

Article 340 of CRR describes the duration-based approach for calculating capital requirements. Firms need to use the formula provided in the CRR article. But this formula applies only to instruments that do not carry prepayment risk. If a debt instrument carries prepayment risk, the CRR states the formula should be modified. It gave the EBA the mandate to issue guidelines on how to apply the modification, which is the focus of this consultation paper.

The EBA outlined two approaches in the consultation. Both involve changing the calculation based on movements in interest rates. The first approach suggested firms treat the debt as two parts: the first part behaves like a normal debt and the second provides the option for customers to prepay the debt. The second part therefore carries the prepayment risk. This approach asked firms to apply the interest rate movement only to the part that behaves like a normal debt. Under the second approach, the EBA proposed firms apply the interest rate movement to the entire debt instrument.

The consultation closes on **22 June 2016**.

More Basel III guidance for supervisors

The Basel Committee published *Regulatory Consistency Assessment Programme (RCAP) Handbook for jurisdictional assessments* on 17 March 2016. To facilitate the implementation of Basel III the Basel Committee adopted RCAP in 2012. Based

on experience to date, the Basel Committee updated its procedures and processes for conducting jurisdictional assessments into one document – this handbook. The Basel Committee also considered that the handbook and associated questionnaires will help all supervisory authorities evaluate their own progress with implementation of Basel III and identify areas for improvement.

SME supporting factor still immature

It's not clear how effective the SME supporting factor (SF) has been so far. But in the *EBA's Report on SMEs and SME SF* on 23 March 2016, early indications suggest the SME SF hadn't increased lending to SMEs in comparison to lending to large corporates. The SME SF reduces the regulatory capital requirement for lending to this sector.

The EBA noted its data covered a limited period and geographic scope (i.e. not all EU countries provided full data). In addition, anecdotal evidence from industry pointed to delays in embedding the SF as well as a muddying of the waters caused by CRD IV implementation. Given this, the EBA concluded it needed to assess the SME SF's impact over a longer period.

Securitisations' risk transfer under ECB scrutiny

The ECB published *Public guidance on the recognition of significant credit risk transfer* on 24 March 2016. It applies to significant Eurozone banks that transfer

assets in securitisation transactions - originators.

Originators can exclude from the calculation of their RWAs assets that are subject to significant credit risk transfer in a securitisation. But this is subject to meeting certain conditions. This guidance addressed the notification in advance and information provision requirements that are part of the process enabling originators to recognise these risk transfers.

The guidance indicated that originators should not recognise risk transfers until the ECB approves the transactions. In addition, originators must meet the conditions for risk transfers throughout the life of the transactions and the ECB expects to receive information for monitoring purposes at least quarterly.

More Basel III monitoring help

The Basel Committee published *Frequently asked questions on Basel III monitoring* on 24 March 2016. The purpose is to help banks complete the Basel III monitoring questionnaire. The Basel Committee uses the responses to the questionnaires in its semi-annual assessment of the impact of Basel III.

This is an update to an earlier version published on 1 February 2016. The changes include new and revised questions as well as revised instructions relating to large exposures and operational risk.

PRA buffers may fall for some

The PRA published its *statement on the interaction between the PRA buffer and the CRD IV combined buffer* on 29 March 2016. The PRA clarifies its approach to changes to firms' PRA buffers as the CRD IV combined buffer (made up of the systemic, capital conservation and countercyclical buffers) is phased in over the period to 2019.

PRA intends to ensure that:

- the transition to the new capital framework avoids double counting of capital buffers to cover the same risks and
- firms with no or low PRA buffers have sufficient time to build-up capital to transition to the end-2019 capital buffer requirement levels.

The PRA uses firm specific supervisory judgement to set the PRA buffer (Pillar 2B). This is informed by the impact of stress testing, taking into account where appropriate of other factors including leverage, systemic importance and weaknesses in firms risk management and governance.

The capital conservation buffer transitions at rate of 0.625% per year for four years starting in 2016. The FPC also announced on 29 March 2017 the introduction of a UK countercyclical buffer of 0.5%. This takes effect from March 2017. The PRA intends to assess, on a firm by firm basis, the extent to which a firm's PRA buffer already reflect

risks captured by the countercyclical buffer and the capital conservation buffer and adjust their PRA buffer where that buffer is large enough to accommodate the reduction. If a firm's PRA buffer is too low the firm will need additional capital.

The PRA indicates that it will undertake buffer assessments and any adjustments only when the capital conservation and countercyclical buffers come into effect to avoid volatility in firms' overall level of capital.

Treatment of equity release mortgages

The PRA published *Equity release mortgages – Discussion Paper 1/16* on 31 March 2016. It asked for views on equity release mortgage (ERM) valuation, capital treatment, risk management and associated matters, and sought views on good practice for managing the risks introduced by investing in this asset class. While the DP is most relevant to insurers with ERM exposure, it also seeks input from a wide range of other stakeholders. These include banks, building societies, other lenders, trade bodies, brokers, credit rating agencies, consultants, actuaries and auditors to consolidate views from across sectors. The discussion period ends on **27 May 2016**.

Client assets

Faster pay outs in sight

HMT intends to change the Investment Bank Special Administration Regime (SAR) and the FCA the CASS rules in response to the Bloxham review – *Final review of the*

Investment Bank Special Administration Regulations 2011. HMT and the FCA published consultation: *Reforms to the investment bank SAR* and discussion paper: *CASS 7A and the SAR Review (DP16/2)* respectively on 9 March 2016.

The implementation of the SAR in 2011 required the regulation to be reviewed within two years of it coming into force. This led to the Bloxham review which recommended the SAR should be retained, and proposed 72 reforms to strengthen the regime. The Government accepted the substance of all the review's recommendations. It considered the measures proposed will speed up and simplify the process of SAR, bring benefits to clients, creditors and others involved in the insolvency process. But the FCA indicated it will not proceed with the 'speed proposals' made in consultation paper: *Review of the client asset regime for investment businesses (CP13/5)*. HMT and the FCA suggested that due to the interaction between the SAR and the CASS rules, the consultation and discussion paper should be read together to obtain a clear view of how both sets of rules are intended to work following an investment firm failure.

The FCA intends to consult later in 2016 on detailed changes to the CASS 7A rules once the legislative changes to the SAR have been finalised, and also to re-consult on additional changes to CASS 7A that it originally raised in CP13/5. The HMT

consultation closes on **20 April 2016**. The FCA discussion paper closes for comments on **9 May 2016**.

Compensation schemes

New risk-based levies for FSCS

The PRA consulted on proposed changes to the Depositor Protection part of the PRA rulebook and a new statement of policy for the calculation of firms' contributions to the FSCS. The PRA published its paper *Implementing risk-based levies for the FSCS deposits class (CP7/16)* on 4 March 2016. The Depositor Protection part of the PRA's rulebook currently requires the FSCS to calculate firm levies only on the basis of covered deposits. But Article 13 of the DGSD requires that contributions to DGSs, like the FSCS, should be adjusted according to the degree of risk incurred by each DGS member. CP7/16 sets out proposals to implement the Article 13 requirements and also reflects the EBA's *guidelines on calculating contributions under DGSD* published in May 2015.

The PRA proposed to amend the Depositor Protection part of its rulebook to require the FSCS to adjust compensation cost levies for the degree of risk incurred by a DGS member, which will apply to levies raised from July 2017 onwards. It also proposed similar risk adjustments for legacy costs levies. In addition, the PRA is consulting on a new statement of policy setting out how it intends to calculate the degree of risk

incurred by a DGS member. The consultation closes on **3 June 2016**.

Competition

Summer deadline for CMA banking review

The CMA confirmed a revised statutory deadline of 12 August 2016 for its retail banking market investigation, in an updated case timetable released on 7 March 2016. An accompanying notice cited the further work the CMA needs to do to create a reasonable and comprehensive remedies package as the main reason behind the delay.

It also published a supplemental notice of possible remedies the same day setting out the scope of its work on overdraft users. The CMA sought views on enhancements to the switching package, such as including information on overdraft eligibility and overdraft limits on price comparison websites. It also set out a raft of measures aiming to:

- increase customer awareness and engagement with their overdraft usage and charges
- help customers manage overdraft usage
- limit the cumulative effective of unarranged overdraft charges
- incentivise current account providers to improve overdraft users' engagement and outcomes.

The CMA's supplemental notice closed for comments on 21 March 2016.

Helping SMEs compare prices

The CMA looked to the Nesta challenge prize to deliver a website for SMEs to use in comparing banking services. In the role of comparison sites for SMEs in addressing the adverse effect on competition, published on 7 March 2016, the CMA said its thinking had evolved since it published its remedies notice in October 2015. In particular, subsequent research it commissioned from Optimisa Research (also published on 7 March 2016) found SMEs may find 'one stop shop' websites more valuable than those that just provide price comparison information. These websites would also cover information on customer eligibility, service quality – and they may even seamlessly link to providers.

The CMA favoured the Nesta option over two others. The first option suggested increasing current SME-focused websites' scope to include price comparisons information, like the Federation of Small Businesses and British Chambers of Commerce's Business Banking Insight service. The second option involved the CMA mandating an industry-funded price comparison website. For the CMA, the Nesta challenge prize - which awards innovative and sustainable solutions - was the most promising. But it also acknowledged the risks in pursuing this avenue, such as maintaining existing services like the Business Banking Insight.

The CMA also saw the need to create a mechanism so it could remain involved after the retail banking market investigation concludes to ensure the prize winner delivers its objectives.

The CMA's paper closed to comments on 21 March 2016.

Conduct

SM&CR breach notifications

Firms no longer have to notify the FCA and PRA of all known or suspected breaches of conduct rules under the SM&CR. FCA policy statement PS16/6 Consequential changes to the Senior Managers Regime and PRA policy statement PS9/16 Strengthening individual accountability in banking: responses to CP1/16, and the Certification Part of CP29/1, published on 2 March 2016, confirm when a firm should report conduct rule breaches resulting in disciplinary action.

The FCA confirmed the breach reporting rule will not apply to those defined as 'other conduct rule staff', including junior staff, until 7 March 2017. It applies to all other individuals who are subject to the conduct rules and who fall under the broad definition of an 'employee' under FSMA.

Firms are only required to notify the FCA and PRA of disciplinary action after the firm confirms a conduct rule breach. Notification isn't required where there has been a temporary suspension pending an investigation of whether or not a breach

happened. Breach notifications should be made at the point when internal disciplinary action is first taken. Firms should not wait for individuals to exhaust appeals processes before making such notifications.

The PRA also changes its definition of 'significant risk taker' to align with the definition of a material risk taker in the Material Risk Takers Regulation. This broadens the definition, but the PRA believes that any additional individuals would already be subject to the certification requirements under the FCA's regime.

A consumer perspective on banking culture

The FSCP commissioned research into Banking culture: a customer perspective and called for measures to improve culture in banks. On 7 March 2016 it set out the research findings and its recommendations in Consumer Panel Position Paper – Banking Culture.

Consumers believe a bank with a positive culture puts customers' needs at the centre of what it does, but their overall experiences with banks did not live up to the cultural standards they expect. Consumers identified the following issues:

- banks putting profit before customer needs
- a systems-driven approach that means customers are not treated as individuals
- firms failing to take responsibility when things go wrong.

The FSCP concluded that ‘significant failings’ remain in UK banking culture. It developed a set of indicators to measure a bank’s culture from the perspective of personal and micro-enterprise customers, and to enable changes to be tracked over time. It is calling on banks, the Banking Standards Board and the Chartered Banker Professional Standards Board to use these indicators to track changes in banking culture.

The Panel also recommended the Government bring forward an amendment to FSMA to require financial services providers to owe their customers a reasonable duty of care. This duty would be enforceable by the FCA as part of its consumer protection objective.

Are banks up to standard?

Almost three years after the Parliamentary Commission on Banking Standards recommended the creation of a new professional body to improve banking standards, the Banking Standards Board (BSB) published its first Annual Review on 8 March 2016. The *Annual Review* reports on the BSB’s work over its first 11 months and its plans for the coming year.

The BSB’s focus in 2015 was on a pilot assessment of ten member firms. It questioned each firm’s board on their approach to culture, behaviour and competence and tested the results with the workforce. The BSB will not publish the

individual reports issued to each firm. But it set out the key themes:

- the alignment of a firm’s purpose, values and culture
- the difference between a focus on culture and on compliance
- leadership and key person risk
- incentive and reward structures and practices
- challenge and speaking up
- staff training and support.

The BSB intends to develop formal standards, common metrics or benchmarks to raise standards across the sector as it learns the lessons from annual assessments.

As well as undertaking the 2016 assessment, the BSB will progress existing projects on promoting professionalism across the banking sector, exploring the relationship between law, regulation and ethics, and developing voluntary standards to support better service for customers.

Given the FCA’s decision at the end of 2015 to abandon its thematic review on banking culture - partly due to the overlap with the BSB’s work - the public expects much of the BSB. This will be truly tested next year when it issues its second Annual Review.

Swaps case moved to Financial List

Sir Terence Etherton, Chancellor of the High Court, decided the claims in *Property Alliance Group Ltd v Royal Bank of*

Scotland Plc

merited moving the case to the Financial List. The *judgment* of 27 January 2016 was widely released on 2 March 2016. The Chancellor found the claimants’ allegations around the alleged mis-selling of four interest rate swaps and allegations relating to improper conduct further to fixing LIBOR rates involved issues of general market significance. Also, he considered other cases would be impacted by the trial judgment and that decisions over the bank’s limitation of liability clauses for claims relating to negligence will be relevant elsewhere. Taken together, he was satisfied the Financial List was the best place for the case.

The Financial List is a specialist cross-jurisdictional list made up of judges from the Commercial Court and the Chancery Division list for financial claims. It was set up in October 2015. The trial is set to start on 23 May 2016.

EBA report shows more high earners

An EBA report on remuneration practices released on 30 March 2016 shows an increase in the number of high earners in EU banks and a decrease in the average ratio variable and fixed remuneration. *Benchmarking of remuneration practices at the EU Level and data on high earners* highlights a significant increase in the number of high earners and those subject to remuneration rules in the EU between 2013 and 2014. The EBA attributes this increase

mainly to the more accurate definition of regulatory identified staff, which appeared in its RTS on identified staff. This came into force in 2014.

The EBA explains the introduction of the bonus cap had an impact on remuneration practices. This led to EU banking institutions shifting remuneration for identified staff towards the fixed component. So the average ratio between fixed and variable remuneration became aligned with legislative requirements. But the bonus cap did not seem to have a significant effect on institutions’ financial stability or cost flexibility.

The EBA also highlighted that institutions’ remuneration practices were still not sufficiently harmonised across the EU. This is due to differences in national implementation of the rules.

The report was submitted to the EC to inform its review of remuneration provisions. The EBA will continue to monitor trends and evaluate developments on remuneration in the banking sector.

Banks ease bereavement burden

The BBA *published* a set of *bereavement principles* to help improve the process personal banking customers face when alerting banks about a bereavement. Six of the largest UK banks and building societies agreed on those principles, released on 30 March 2016. They should be put into practice by the end of 2016. The new code includes a commitment from firms to put in

place a one-stop notification system. This will enable banks to notify their relevant brands about specific accounts under the deceased's name, as requested by the notifier. It will also allow necessary payments from the deceased's accounts to cover any funeral bills, probate fees or inheritance tax. The principles are intended to complement banks' existing processes and provide consistent standards of service in relation to bereavement matters.

PSR tackles super-complainants

The PSR set out how designated super-complainants can ask it to investigate a feature or features of the payments market that may be significantly damaging the interests of service-users. In *Super-complaints Guidance* published on 22 March 2016, the PSR stated that the super-complainant must write to it explaining why it considers an investigation is warranted. But super-complainants are encouraged to discuss the matter with the PSR prior to submission.

Features of the market include: market structure and a market participant's conduct or any conduct that affects consumers. The complainant does not need to show actual damage, but it must evidence why service users' interests are at risk of damage. On receipt of a complaint, the PSR considers whether it presents a reasoned case of detriment and investigates where necessary. It is required to publish a response to a super-complaint within 90 days, setting out what action it proposes to

take. This may include: regulatory action, initiating a review, issuing guidance or deciding that no action should be taken.

HMT designated the following organisations super-complainants in February 2016: Age UK, the Consumers' Association, the General Consumer Council for Northern Ireland, the National Association of Citizens Advice Bureaux and the National Federation of Self Employed and Small Businesses Limited.

Keeping an eye on retail products

The EBA set out 12 *guidelines on product development and governance arrangements for retail banking products* on 22 March 2016 to help firms establish appropriate internal procedures for product design, marketing, and life-cycle review.

Naturally, manufacturers are expected to keep a keen eye on their products. They should ensure products go through risk management approval and testing processes, that they are directed at and reach an appropriate target market and that they are distributed through appropriate channels. Once the product is on the market, the manufacturer should continue to monitor it and distributors should be given clear, current and accurate information about the product. And when a distributor takes a product to market, it should have sound knowledge of the target market, as well as ensuring that appropriate product oversight and governance arrangements are in place.

The guidelines apply to the manufacture and distribution of products that fall within the scope of CRD IV, PSD, MCD and the Electronic Money Directive 2000/46/EC. Under the guidelines, manufacturers include: credit institutions, creditors and payment and electronic money institutions, while distributors are those firms that sell or offer the product for sale. Relevant products are those offered and sold to consumers such as certain mortgage credit agreements, deposits, payment accounts, payment services, travellers' cheques and electronic money.

The guidelines apply from 3 January 2017.

Financial crime and enforcement

Combating fraud at the ECB

The ECB sets out the basis on which the European Anti-Fraud Office (EAFO) can investigate its affairs in *ECB Decision (EU) 2014/456 concerning the terms and conditions for EAFO investigations in relation to the prevention of fraud, corruption and any other illegal activities affecting the financial interests of the Union*, published in the Official Journal on 30 March 2016. The Decision applies to staff, members of ECB governing bodies and those working for the ECB in other capacities, including national central bank staff who participate in the meetings of the ECB's Governing, General Councils and Supervisory Board. The Decision places a range of duties on these individuals,

including cooperation and reporting information about illegal activity.

Financial stability

ECB defends monetary policy

Vítor Constâncio, Vice-President of the ECB, spoke *In defence of Monetary Policy* on 11 March 2016. He defended the ECB's decision to adopt further monetary easing measures, acknowledging that while structural reform is essential for long-term growth potential, other measures are needed to spur global demand. Constâncio reiterated the importance of considering what would have happened if policy actions to effect monetary easing had not been adopted. The ECB estimates there would have been permanent deflation since 2015 without policy action and that two thirds of 1% of registered growth was down to the ECB's monetary policy. Constâncio also defended the use of negative interest rates, saying that banks have seen their profitability increase in the last year as securities prices have risen. Meanwhile, impairments have decreased and negative rates in the money markets have reduced the funding costs for banks.

Reaping the benefits of capital

Alex Brazier, BoE Executive Director for Financial Stability and a Member of the FPC, gave a speech *A macroprudential approach to bank capital: Serving the real economy in good times and bad* on 7 March 2016. He drew attention to the improved resilience of banks, allowing them to

withstand stresses imposed by the current state of the global economy. He acknowledged that funding costs increase with higher capital requirements and said effective resolution regimes can help to minimise the economic costs imposed by these higher funding costs. Brazier also emphasised the importance of a baseline capital position standard and maintaining the flexibility to raise and lower capital buffers. These developments are prompting the BoE to assess whether targeted amendments to the design of regulations could benefit the real economy without creating more risk.

ESRB discusses systemic risks

The ESRB put out a press release on its *General Board meeting in Frankfurt* on 24 March 2016. The board emphasised weaknesses in banks' balance sheets as a key vulnerability in the EU banking sector and highlighted the importance of addressing issues related to asset quality. It noted there was a substantial increase in the use of macro-prudential measures implemented or planned in 2015, mostly as a result of CRD IV. It expects the ESRB to publish its annual review of macro-prudential policy in the EU in the second quarter of 2016. The board discussed the EU Shadow Banking Monitor, which provides an assessment of structural changes and an overview of key risks associated with the shadow banking sector's activities. It will eventually become an annual publication. The ESRB should

publish the first edition of the EU Shadow Banking Monitor in the coming months.

More time for EBA's funding report

The ESRB published *Recommendation of the European Systemic Risk Board of 21 March 2016 amending Recommendation ESRB/2012/2 on funding of credit institutions (ESRB/2016/2)* on 31 March 2016. The ESRB recommends merging the interim and final reports on Recommendation A(5) regarding incentivising sustainable funding structures for credit institutions into a single report, to be provided by the EBA. It also recommended extending the time limit of the report by 12 months to 31 March 2017. It did not believe this will jeopardise the orderly functioning of financial markets or lead to Recommendation A(5) not being implemented.

Market-based finance Strengthening securitisation regulation

Responding to a request from the Council, the ECB published an *opinion* on 11 March 2016 outlining a number of ways that the proposed securitisation regulation under CMU should be strengthened. The ECB was broadly supportive of the regulation's rationale of balancing uniform standards for all securitisations with heightened requirements for high quality securitisations.

But it argued there should be even more focus on improving the asset quality of the

new category of safe, transparent and standardised (STS) securitisations. For example, the ECB seeks strict standards for the amount of time that performing loans were restructured prior to inclusion in any STS instrument. Likewise, the ECB recommends a much stricter residual maturity cap for asset-backed commercial paper instruments, down from six years to one year.

Also, the ECB believed the current sanctions regime under the proposed regulation is too onerous, arguing that criminal sanctions should be removed and civil sanctions should be imposed for negligence, rather than on a strict liability basis.

Market infrastructure Blockchain – disrupting central banks?

Ben Broadbent, Deputy Governor of Monetary Policy of the BoE, *spoke* about the impact of blockchain technology on central banks on 2 March 2016. He highlighted three potential outcomes for central banks:

- blockchain could eradicate the need for a central bank as a trusted third party or settlement agent
- central banks might issue their own digital currency
- blockchain could reduce funds to central banks, and hence their ability to supply credit.

Distributed ledger systems such as blockchain allow financial transactions to

be verified and recorded without the need for a trusted third party, in a role that central banks currently perform for commercial banks.

Broadbent said while clearing payments through a distributed ledger rather than a central bank may not have any significant macroeconomic effects in itself, what would prove significant is how the technology could be used to widen access to the central bank's balance sheet beyond the commercial banks it currently serves.

Broadbent said any shift towards a widely accessible central bank digital currency would make commercial banks safer. This is because deposits are backed mainly by illiquid loans. But he said taking deposits away from banks could impair their ability to grant loans, as they would be more reliant on wholesale markets. He added that banks considering whether to issue digital currencies to meet the competitive threat posed by private sector rivals should consider what doing so might mean for banks' funding and the supply of credit.

Operational resilience Calculating operational risk capital

The Basel Committee published its second consultative document on *Standardised Measurement Approach for operational risk* on 4 March 2016. The most significant change is the introduction of historical operational loss data for calculating operational risk capital.

In the first consultative document, the Committee proposed ending the advanced models approach. Instead, banks will need to use a single non-model based standardised measurement approach for calculating operational risk capital. This position remains unchanged in the second consultative document.

To enhance risk sensitivity in the new approach, banks would have to use ten years of good quality historical operational loss data. On an exceptional basis, banks could use five years of historical loss data in the operational risk capital calculation. But this provision would be available only during the transition period.

Firms argued that the previous proposal could result in disproportionate capital treatment for certain business models. The latest proposal aims to address this issue by calculating capital based on income or expenses, whichever is higher. Banks would not need to include both income and expenses in the calculation.

Following a consultation period, the Committee plans to finalise its approach, including deciding the implementation timeframe. The consultation closes on **3 June 2016**.

Payments

SEPA Rules OK!

The SEPA Credit Transfer Scheme Rulebook, the SEPA Core Direct Debit Scheme Rulebook (SDD) and the SEPA

Business to Business Direct Debit Scheme Rulebook set out binding rules and technical standards that govern the two SEPA schemes – Credit Transfer and Direct Debit. Following consultation, the EBA updated the Rulebooks on 3 March 2016 along with the Scheme Management Internal Rules (SMIR) which govern the administration of the SEPA Schemes.

The 2016 SDD now reduces the notification period for a direct debit collection by a payment services provider to a credit institution from five days to one day, and simplifies the information to be notified. The EBA also introduced minor administrative changes which have no operational impact.

The SMIRs were amended to reflect changes to the EPC's governance and funding. Other changes include measures to enhance transparency and encourage end user participation in the SEPA rulemaking process. The SMIRs are binding on both the EPC and the scheme participants. Changes to the Rulebooks take effect between April and November 2016 and remain in effect until November 2017.

Regulating account switching services

The PSR consulted on its approach to regulating firms providing account switching services in CP 16/1: The application of the Payment Accounts Regulations 2015 in respect of alternative arrangements for switching accounts and

accompanying draft guidance on 15 March 2016.

HMT has designated the PSR and the FCA as the competent authorities for implementing, monitoring and enforcing the Payment Accounts Regulations 2015 (PARs) in the UK. The regulators' duties are split, with the FCA given responsibility for ensuring that payment services providers (PSPs) offer customers appropriate account switching services. The PSR, meanwhile, is responsible for appointing and monitoring firms offering 'alternative arrangements for switching' such as the Current Account Switching Service. The consultation considered the PSR's application and designation process as set out in the accompanying draft guidance as well the fees payable.

Applicant firms must demonstrate that their scheme is:

- in the interest of the consumer
- does not impose upon the consumer any additional obligations to those imposed upon the PSP customer
- ensures the procedure for switching is completed at least within the same overall timeframe by which PSPs are bound.

A one-off application fee of £5,000 is payable and once designated, firms will be subject to an annual fee of £12,000. The consultation closed on 12 April 2016.

PSR pushes for direct access

The PSR published an interim report of its market review into the supply of indirect access to payment systems on 10 March 2016. The review is part of the PSR's assessment of the competitive nature of the payments market. It is investigating how easy it is for payment service providers (PSPs) to access payment systems.

The PSR's initial findings revealed that for smaller PSPs that must depend on an indirect access provider to provide services to its customers, access is limited, compared to larger PSPs. Price was not an issue but some PSPs reported concerns with the quality of technical access. All PSPs faced barriers to switching which prevented them securing the best possible price and quality of service.

The PSR expects its ongoing wider programme of work will address those issues, along with other industry initiatives. Solutions include:

- the PSR's work to promote direct access coupled with emerging direct access models
- work by the Payment Strategy Forum to develop simplified access
- information requirements to promote greater transparency around pricing
- measures to promote market entry and expansion.

Comments on the PSR's interim findings are requested by **5 May 2016**. The PSR plans to present its final report in July 2016 along with any required consultation on remedial measures.

Merchants look for their Caps

The PSR updated its website [FAQ page](#) on 24 March 2016 in response to concerns raised by merchants that acquirer organisations have failed to apply the interchange fee cap (IFC).

The IFC applies to the cost to the merchant of processing a card payment and is capped at 2% for debit card payments and 3% for credit card payments but merchants reported not having seen a reduction in their merchant service charge (MSC). Responding to the concerns, the PSR noted that the interchange fee was only one part of the MSC but recommended that merchants discuss their concerns with their acquirer and consider shopping around for alternative rates.

The IFC came into force on 9 December 2015.

PSR regulates interchange fees

In a series of papers published on 24 March 2016, the PSR set out how it will fulfil its role as the main competent authority for regulating the Interchange Fee Regulation (IFR) and how it will be applied in the UK. The IFR, which introduces a cap on the interchange fees on EEA debit and credit

card transactions, requires each member state to appoint a regulating body.

In *PS 16/1: The application of the Interchange Fee Regulation in the UK - Phase 1*, the PSR clarifies that the cap applies to four party payment card schemes, but not to three party schemes which issue and acquire their own transactions. But this exemption is subject to a market share ceiling of 3% for all UK transactions.

The PSR also clarifies the meaning of cross-border and domestic transactions along with the types of cards to which the IFR relates. Specifically, the IFR does not relate to transactions made with commercial cards.

In its *Guidance on the PSR's approach as a competent authority for the EU Interchange Fee Regulation*, the PSR confirms that it will monitor the IFR by requiring schemes and payment service providers captured by IFRs to submit evidence that the cap has been applied to their merchant service charges. Complaints records will also be used as a compliance indicator.

The IFR cap entered into force on 9 December 2015. Other elements of the IFR that grant merchants the right to be able to steer their customers towards a specific payment instrument take effect from 9 June 2016.

PSR publishes board minutes

The PSR published *minutes* on 23 March 2016, of its board meeting held on 27 January 2016. Among the topics covered were issues of governance, recruitment and strategy.

The board confirmed the role of its Executive Committee as the decision maker for non-contentious issues relating to the outcome of market reviews and announced plans to recruit a non-executive director.

The board signed off its Annual Plan and Budget, which it developed in consultation with the PSR Panel and HMT. Following discussions about the PSR's overlapping responsibilities with other UK financial services regulators, the board requested a joint paper from the FCA and PSR to consider the over or underlap of the organisations' respective responsibilities in respect of payment systems.

Reporting

More prudent valuation supervisory reporting

The EBA intends to require additional supervisory reporting of prudent valuation data. The EBA consulted in *Draft ITS amending Commission Implementing Regulation (EU) 680/2014 on supervisory reporting of institutions (EBA/CP/2016/02)* on 4 March 2016. The consultation concerns additional valuation adjustments (AVAs) to accounting fair values of all assets held at fair value. AVAs arising are already deducted from CET 1 capital and reported in aggregate

within capital adequacy reporting; the EBA proposes new templates and reporting instructions for reporting detailed AVA data.

The reporting reflects the prudent valuation requirements recently published in *RTS for prudent valuation under CRR Article 105(14)* that came into force on 16 February 2016. The consultation closes on **30 March 2016**.

EBA issues revised reporting standards

The EBA issued its *final draft* ITS amending the EC's Implementing Regulation (EU) No 680/2014 on supervisory reporting under the CRR on 8 March 2016.

The draft ITS should reflect the Single Rule Book at reporting level but recent changes to the Single Rulebook Q&A from updated answers have necessitated publication of the amendment. The EBA also took the opportunity to correct legal references and typographical errors.

The extent of the changes introduced by the draft ITS has resulted in a number of changes to the annexes to the reporting requirements. For ease, these annexes were replaced in whole with the annexes set out in the draft ITS.

The amendments are expected to be applicable for reporting from 1 December 2016.

Retail products

FCA issues guidance on PARs

The FCA issued *CP16/7: Payment Accounts Regulations 2015 (PARs) – draft Handbook changes and draft guidance* on 2 March 2016 to help payment services providers implement the PARs. The PARs establish requirements in relation to basic bank accounts, account switching and packaged bank accounts, and require the FCA to make changes to its Handbook.

In the consultation the FCA seeks views on:

- a definition of a ‘payment account’ specific to the PARs
- draft guidance on the operation of packaged accounts
- new regulatory reporting requirements on switching and basic payment accounts
- Handbook changes that take account of the provisions on packaged accounts and switching
- updates to its Decision Procedures and Penalties Manual and Enforcement Guide to reflect the powers of enforcement granted to the FCA under the PARs.

The FCA intends to publish its final Handbook changes and guidance before the PARs take effect on 18 September 2016. The consultation closes on **3 May 2016**.

EBA formulates MCD benchmark rate

The EBA finalised its formula for mortgage lenders to use as a benchmark rate in the European Standardised Information Sheet (ESIS) for variable rate mortgages. It published its *Final Report on the Decision of the EBA specifying the benchmark rate under Annex II of the MCD* on 21 March 2016.

Under the MCD, prospective lenders must prepare personalised pre-contractual information in an ESIS. Consumers can then compare different mortgage offers, assess their implications and make an informed decision.

For a variable rate mortgage, the lender must show the impact of interest rate changes on the annual percentage rate of charge and provide an illustration of a maximum instalment amount. The lender must use the EBA benchmark rate to calculate these illustrative examples if the following conditions apply:

- the variable rate does not have a cap
- the lender does not use an external reference rate
- the competent authority of the relevant Member State has not set a benchmark rate.

The formula is based on historic underlying rates in the Member State in which the consumer gets the ESIS. This is the ECB’s main refinancing rate for Eurozone countries and the national central bank

refinancing rate for non-Eurozone Member States.

In time the formula will be based on underlying rates for the 20 years before the date of the ESIS. But initially lenders in all Member States will use data only going back to 1 January 1999 - the earliest start date for ECB data.

The EBA requires lenders to calculate the benchmark rate on an annual basis on the first working day of each year in each Member State. But for 2016 only, the calculation date is 21 March 2016 (the start date of the MCD).

Second charge mortgages escape LTI limit

The PRA released *Policy Statement PS11/16 Amendments to the PRA’s rules on loan to income (LTI) ratios in mortgage lending* on 24 March 2016. The PS sets out final rules intended to ensure that second and subsequent charge mortgages are excluded from the LTI limit implemented by the FPC.

The exemption is necessary as the MCD expands the definition of a regulated mortgage contract to include second and subsequent charge mortgage contracts from 21 March 2016. The PRA did not make any material changes to the rules it proposed in CP6/16. It intends to consult on including these loans in the limit when loan level data becomes available in the course of 2017.

A new mortgage regime

The MCD entered into force on 21 March 2016, heralding a new approach to mortgage lending in the UK and EU. The MCD aims to improve consumer protection measures across the EU by introducing EU-wide responsible lending practices. The FCA marked its introduction by publishing a series of webpages setting out how the implementation of MCD affects: *first* and *second* charge mortgage lenders and mortgage administrators, *first* and *second* charge mortgage advisers, *consumer buy-to-let loans* and *shared equity and second charge schemes*.

The changes introduced by the MCD include:

- the requirement for a minimum seven-day cooling off period following a mortgage offer
- an adequate explanation of the mortgage contract to be given to the customer
- information disclosure via a European Standardised Information Sheet (ESIS), including commission disclosure data reporting.

The MCD also introduces new conduct rules for consumer buy-to-let mortgages including pre-contract illustrations, creditworthiness assessments and arrears management procedures. Housebuilders operating second charge and shared equity schemes should ensure that they hold the correct permissions and must apply the

Mortgage Conduct of Business (MCOB) rules to all existing and new loans.

Also published on 21 March 2016 by the EBA was a list of the national authorities designated under the MCD as being able to issue passports to firms wishing to conduct mortgage activities in an EEA state. The list confirms the FCA as the UK competent authority.

Firms must comply with the new rules from **21 March 2016**.

BoE consults on underwriting standards

The PRA proposed a *Draft Supervisory Statement on Buy-to-Let Underwriting Standards* in *CP 11/16 Underwriting standards for buy-to-let mortgage contracts* on 29 March 2016. The PRA has set minimum standards for underwriting buy-to-let mortgage (BTLM) contracts that do not currently fall within the regulatory remit of the FCA. It follows a PRA review of buy-to-let underwriting standards which raised concerns that firms were failing to conduct their buy-to-let business in a prudent manner.

The consultation propose:

- affordability testing
- interest rate affordability stress testing
- the definition and treatment of portfolio landlords
- banks' risk management approach

- use of the CRR 'SME supporting factor' (Article 501, CRR).

The PRA set out its expectation that all firms use either an Interest Coverage Ratio test or an income affordability test when assessing a BTLM contract. Firms will be expected to give consideration to costs associated with the renting the property, tax liability and the borrower's personal financial circumstances. Firms will also need to take account of potential changes in BTLM interest rates.

Portfolio landlords, defined as someone that holds four or more properties, will be subject to a specialist underwriting process that accounts for the sophistication of the borrower.

Firms must also have robust risk management, systems and controls that include a statement of how risk will be identified, managed and mitigated. Firms will also be expected to have appropriate oversight of the activities of their intermediaries.

The consultation clarifies how the PRA expects firms to apply the SME supporting factor which reduces the capital requirements on loans to SMEs. In the PRA's view, BTLM borrowing falls outside of the objective of the SME supporting factor and should only applied after careful consideration.

The consultation closes on **29 June 2016**.

Supervision

Performance report on supervisory colleges

The EBA *reported on the functioning of supervisory colleges in 2015* on 1 March 2016. It highlighted improvements as well as some drawbacks, and contained the 2016 EBA colleges action plan.

Supervisory colleges bring together the EU and non-EU authorities responsible for the supervision of cross-border institutions. The EBA expects the supervisory colleges to function as per the action plan.

In 2015, the supervisory colleges improved the quality and frequency of meetings organised. But the EBA has concerns related to joint decision making on capital and liquidity. This is because of incomplete information on capital and lack of appropriate links between different liquidity assessment reports.

The EBA outlined the key tasks and focus areas in its 2016 action plan. Risks faced by EU banks and stress testing are among the key topics requiring supervisory attention in the updated action plan.

A year in ECB supervision

The ECB published *ECB Annual Report on supervisory activities 2015* on 22 March 2016. The ECB said it focuses on further harmonising the regulatory framework. The report covers the organisational set-up of the ECB, its supervisory contribution to financial stability and the SSM's

contribution to the global supervisory architecture. The publication also reports on ECB's budget and the legal instruments it has adopted in relation to banking supervision. And it gives an overview of authorisations and reporting of breaches, enforcement and sanctioning proceedings.

Harmonising EU options and discretions

The ECB's *Regulation on the exercise of options and discretions available in Union law* was published in the Official Journal on 24 March 2016. The ECB also published a Guide to accompany the regulation. The documents set out how the exercise of options and discretions in banking legislation will be harmonised in the euro area. The regulation details the legal obligations of the significant credit institutions within the scope of the SSM regarding the prudential treatment of options and discretions under EU banking law. These include the CRD IV and the CRR. The regulation will enter into force on 1 October 2016. The ECB's accompanying guide sets out its approach to the exercise of options and discretions. It aims to provide coherence, effectiveness and transparency on the supervisory policies that the SSM will apply in supervisory processes in relation to significant credit institutions.

Asset management

In this section:

Regulation	43
Alternative investment	43
Capital and liquidity	43
Conduct	44
Retail products	44



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Regulation

Alternative investment

FCA discusses asset management systemic risk

Regulators should be cautious before crafting systemic risk regulation to address asset management liquidity, according to David Lawton, Director of Market Policy at the FCA. In a *speech* on 21 March 2016, Lawton noted the work done by the FSB, IOSCO and the UK's FPC in identifying possible risk channels (such as excessive leverage and liquidity-redemption mismatches). But he observed these institutions have yet to arrive at definitive recommendations beyond stress testing. Likewise, he noted that existing EU rules, such as UCITS and AIFMD, impose strong liquidity management requirements on asset managers.

Building on this, Lawton argued that retail and institutional investors' tendency to hold investments for longer implies that liquidity may be less of a critical issue than some of the data would suggest. A recent report put out by two FCA economists supports his point, by discovering that liquidity has remained robust despite severe contractions

in dealer holdings. But Lawton argued the report's findings need to be further explored and validated before more regulation is proposed.

In the interim, he said the FCA will remain focused on enforcing existing rules around disclosure, identifying best practices and working to raise investor awareness. Lastly, he noted that firms may run into regulatory problems if they are unable to meet return expectations because they are holding too many assets.

Capital and liquidity

Pinpointing asset managers' systemic risk

The FSB released a summary of its *Meeting of the Financial Stability Board in Tokyo on 30-31 March* on 31 March 2016. At the meeting the FSB agreed the elements of a public consultation to take place in the middle of 2016 on policy recommendations to address structural vulnerabilities from asset managers' activities. These include:

- funds' liquidity mismatch
- leverage within funds
- operational risk and challenges in transferring investment mandates in a stressed situation

- securities lending activities of asset managers and funds.

The FSB encouraged authorities to consider the use of stress testing to assess the individual and collective ability of funds to meet their redemption under stressed market conditions. It described information on liquidity and leverage risk across asset managers as an ‘essential tool’ for understanding systemic risk. The FSB intends to finalise its recommendations by the end of the year.

The FSB welcomed the phase one report issued by the industry-led Task Force on Climate-related Financial Disclosures and looks forward to the final report which will include recommendations for voluntary corporate disclosures by the end of 2016. By this time the FSB expects to consult on standards or guidance on resolution issues relating to CCPs. The FSB also proposed a framework for categorising the major areas of financial technology innovation, including distributed ledger technology, and assessing the financial stability implications.

Conduct

Finalising UCITS pay rules

ESMA published its final UCITS V and AIFMD *remuneration guidelines* on 31 March 2016. The guidelines balance the policy goal of providing proportionate, AIFMD-aligned rules with accommodations

to stricter CRD IV pay rules for banking groups' asset management activities. CRD IV imposes a bonus cap and a typical 1:1 ratio between fixed and variable pay, while UCITS and AIFMD do not. The guidelines say remuneration should be either calculated on a pro-rata basis between UCITS, CRD IV and AIFMD activities, or allow firms to substitute CRD IV pay principles. But ESMA clarified that when CRD IV conflicts with more specific UCITS requirements, such as around which instruments can be used for variable remuneration, UCITS rules take precedence. To further ensure consistency with CRD IV, the final UCITS guidelines remove any opportunity for disapplication of remuneration rules.

ESMA also confirmed the UCITS remuneration rules will apply to delegates of UCITS managers, even when such delegates are non-EU entities. Consequently, UCITS vehicles will need to ensure their delegates are either subject to comparable regulatory requirements or promise via contract to assume such restrictions.

Retail products

Finalising UCITS V rules

The EC finalised its UCITS Level 2 rules by publishing a *delegated regulation* in the Official Journal on 24 March 2016. There

was a very brief window between UCITS V's 18 March 2016 effective date and publication of the final rules. But because the Council and the EP accepted the proposed regulation as presented, the final rules should be consistent with firms' expectations. These rules technically only come into force on 13 October 2016. But they provide valuable clarity for UCITS funds and their depositaries on the following issues:

- minimum terms to be included in the contract between the management company and the depositary
- requirements on how the depositary should perform its oversight, cash monitoring and safekeeping duties
- types of financial instruments the depositary must hold in custody and how these should be segregated from the depositary's own assets
- terms and conditions of the depositary's liability for losses of financial instruments
- terms of the depositary's delegation of the safekeeping function to third-party custodians
- requirements for independence between the management company and the depositary.

Insurance

In this section:

Regulation	45
Consumer issues	45
Conduct	46
Retail products	46
Solvency II	47
Supervision	47
Tax	48
Accounting	48
Accounting IFRS	48
PwC Publications	48
Reporting	48



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Regulation

Consumer issues

FCA closed book concerns

The FCA published the findings of its *thematic review on fair treatment of long-standing customers in the life insurance sector* on 3 March 2016. The FCA aimed to assess how firms operate their closed books of investment-based insurance products and whether firms are treating closed-book customers fairly. The report findings are based on the analysis of information from 11 firms which varied in size, type and business model to capture a representative picture of the sector. The FCA assessed the firms against four high-level outcomes:

- does the firm's strategy and governance framework result in the fair treatment of closed-book customers?
- do the firm's closed-book customers receive clear and timely communications about policy features at regular intervals and key points in the product lifecycle that enable them to make informed decisions?
- does the firm give adequate consideration to, and take proper

account of, fund performance and policy values in a way that ensures it treats its closed-book customers fairly and proportionately?

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

Overall, the FCA found a mixed picture of the sector with most firms demonstrating good practice in one or more areas and poor practice in other areas. It found the impact of the level of exit and paid-up charges on the returns customers receive can be significant and may present barriers to shopping around. It also found a number of firms may have failed to inform customers of these charges at the time they were incurred.

The FCA noted concerns with the standard of communications provided by firms to long-standing customers both on an ongoing basis and at key policy events. To address its findings, the FCA is consulting on non-Handbook guidance to provide firms with extra detail on actions they should take to treat closed-book customers fairly in future - responses are requested by **3 June 2016**. It also plans to work with the

11 firms to address the specific findings identified through its supervisory work, and discuss with the industry plans for a voluntary cap or ban on exit charges.

Conduct

Scorecard solution for GI add-ons

The FCA published a Feedback Statement (FS16/1) on 1 March 2016 summarising responses it received to the options set out in its Discussion Paper (DP15/4) on general insurance add-ons. DP15/4 explored various options for introducing and publishing value measures in general insurance markets, in response to concerns about competition. The FCA noted the feedback was mixed with no clear consensus on which option was best.

The regulator will take forward the option of a scorecard which will contain information on how often consumers claim on a product, how likely claims are to be accepted and the average payout. It proposed to publish the scorecard on its website rather than disclose it to consumers at the point of sale.

The FCA intends to launch a pilot of the scorecard in summer 2016, on a limited number of products. This will allow it to collect further evidence of the effectiveness of the remedy and costs ahead of consulting on introducing a scorecard for a broad range of general insurance products. The

FCA plans to engage with stakeholders on the pilot design ahead of its launch.

Retiring the block exemption?

It looks like the sun will set over the Insurance Block Exemption Regulation 267/2010 (IBER) on 31 March 2017, exposing EU insurance firms' cooperation agreements to scrutiny under EU competition rules. On 17 March 2016, the EC set out in a report its preliminary view that the sector-specific block exemption for insurers' agreements relating to joint compilations, tables and studies as well as co-insurance or co-reinsurance pools is no longer necessary.

For joint compilations, tables and studies, the EC felt its Guidelines on horizontal cooperation from January 2011 covered how these kind of arrangements could be set up without breaching competition rules. But the EC is open to providing further, sector-specific advice if required.

For co-insurance and co-reinsurance, the EC noted a study showed fewer than 50 institutionalised pools were potentially covered by the IBER exemption, with only a limited number of companies actually benefiting from it. Taken together with a growing market trend of moving away from institutionalised pools (covered by IBER) to more flexible ways of co- and re-insuring

risks, the IBER doesn't seem necessary to the EC.

The EC plans to meet with stakeholders on 26 April 2016 to discuss its findings. But it has already committed to consulting on supply-side substitutability (which it defined as asset switching between different insurance products of relevance for pools) and on the different forms of co- and re-insurance available in the market and their impact on competition. Final proposals on IBER's future are expected in early 2017.

Putting insurance selling rules into practice

Continuing its work on opt-out selling and the information provided to add-on buyers, the FCA published PS15/22: our expectations and case studies on 31 March 2016. It gave practical examples for the general insurance sector of what it expects firms to do. This includes highlighting where information requirements apply (to additional separate policies) and where it doesn't (to optional extras).

SIMR modification for dormant insolvent insurers

The PRA published a modification by consent of non-Solvency II firms – SIMFs part of the PRA Rulebook, with reference to "dormant insolvent" insurers on 9 March 2016. Under the new SIMR, authorised Non-Solvency II insurers are required to

appoint one or more persons, with PRA and FCA approval, to undertake the SIMF. This modification by consent allows insolvency practitioners for dormant insolvent insurers to fall out of SIMR's scope and not need PRA approval as SIMF holders. The direction will end on 30 April 2017, unless revoked.

Retail products

EC requests IDD technical advice

The EC requested technical advice from EIOPA on possible delegated acts relating to the IDD on 24 February 2016. The EC's letter to EIOPA, enclosing a detailed call for advice, refers to the publication of the IDD text in the Official Journal and states the following aspects need further specification in delegated acts:

- product oversight and governance
- conflicts of interest
- inducements
- assessment of suitability, appropriateness and reporting.

The EC asked EIOPA to provide its final technical advice, including a cost-benefit analysis, by 1 February 2017 so it can consider the adoption of possible delegated acts. Due to the links with MiFID II in the topics covered under its request, the EC

invited EIOPA to consult with ESMA when preparing its technical advice.

Solvency II

Solvency II XBRL update

The PRA published a *Solvency II XBRL briefing* on 7 March 2016. This presentation includes information for individuals in firms and solution vendors responsible for technical implementation of firms' reporting.

EIOPA updates Q&As

In March 2016, EIOPA updated Solvency II questions and answers on:

- [Guidelines on group solvency](#)
- [Guidelines on reporting and public disclosure](#)
- [Final report on the ITS on the templates for the submission of information to the supervisory authorities \(CP-14-052\)](#)
- [Final report on the ITS on procedures, formats and templates of the solvency and financial condition report \(CP-14-055\)](#)

Where to go for more information

Read more about Solvency II UK on our webpages at <http://www.pwc.co.uk/solvencyII>.

Macroprudential approach to low interest rates

EIOPA published a *potential macroprudential approach to the low interest rate environment in the Solvency II context* on 23 March 2016. It aims to stimulate debate on the need to develop a macroprudential framework in the insurance sector to promote financial stability in a Solvency II environment. It considered:

- increasing the resilience of the insurance sector
- limiting risky behaviour of insurers collectively 'searching for yield'
- avoiding procyclicality (i.e. fluctuation in line with the trend in the economic cycle).

It also looked at short and medium-term actions that EIOPA and national supervisors can undertake to address the low interest rate environment.

EIOPA updates Q&As

In March 2016, EIOPA updated questions and answers on:

- [Guidelines on group solvency](#)
- [Guidelines on reporting and public disclosure](#)

- [Final report on the ITS on the templates for the submission of information to the supervisory authorities \(CP14-052\)](#)
- [Final report on the ITS on procedures, formats and templates of the solvency and financial condition report \(CP14-055\)](#)
- [Risk-free interest rate – Matching adjustment](#)
- [Risk-free interest rate – Extrapolation](#)

Equivalence decisions come into force

The EC made its final Solvency II equivalence decisions. Decisions for *Bermuda* and *Japan* were published in the Official Journal on 4 March 2016. They apply from 1 January 2016.

This formally gave Bermuda full Solvency II equivalence for reinsurance (Article 172), the solvency calculation (Article 227) and group supervision (Article 260). While Japan has been granted temporary equivalence for five years for reinsurance (Article 172) and provisional equivalence for ten year for the solvency calculation (Article 227). For more details on the three types of equivalence determination see [EIOPA's equivalence webpage](#).

Supervision

Changes for insurance linked securities

HMT asked for views on a new regulatory and tax framework for insurance linked securities (ILS) business in the UK. It published a *consultation on insurance linked securities* on 29 February 2016, looking at authorisation and supervision, corporate structure and taxation of ISPVs.

ILS are an alternative form of risk mitigation, allowing insurers and reinsurers to transfer risk to the capital markets. The arrangement typically transfers the risk to an insurance special purpose vehicle (ISPV). The ISPV issues securities to investors to raise sufficient capital to cover the insurance risk it has taken on, and investors receive a return for putting their capital at risk. The comment period ends on **29 April 2016**.

Revised approach to insurance supervision

The PRA updated its *approach to insurance supervision* on 11 March 2016, largely to reflect changes brought by SIMR and Solvency II implementation. The main changes from the previous version, published in June 2014, are listed in an appendix. The approach explained how the PRA carries out its role as the UK prudential regulator of insurers in practice.

SIMR came into force on 7 March 2016. The new regime will hold individuals working at all levels within relevant firms to appropriate standards of conduct and ensure that senior managers are held to account for misconduct that falls within their area of responsibility.

Tax

Insurance Premium Tax increases

An increase in the rate of Insurance Premium Tax, from 9.5% to 10%, was announced in the Budget on 16 March 2016. The change was confirmed in policy paper [*Changes to Insurance Premium Tax: increase to standard rate*](#) published alongside the Budget. It will affect all insurers which provide non-exempt insurance cover for UK risks and the brokers and agents which act for them. The increase will also affect all households and businesses that buy insurance which isn't exempt from the tax, where the insurer chooses to pass on the tax rate rise to its customers. The new standard rate will be due on insurance premiums received on or after 1 October 2016, except where insurers operate a special accounting scheme. From 1 February 2017, the new rate will apply to all premiums, regardless of when the insurance contract was entered into.

Accounting

Accounting IFRS

Insurance contracts project update

In March 2016, the IASB discussed the proposed amendments to IFRS 4 in respect of transitional reliefs on the application of IFRS 9. The board confirmed that: the eligibility assessment for the temporary exemption is performed at 'the reporting entity level' only; there should be a temporary exemption and an overlay approach and that both approaches should be optional; and that the temporary exemption has a fixed expiry date. The board plans to be in a position to issue the amendments to IFRS 4 in September 2016. See our [*Insurance Alert - IASB meeting on 15 March 2016*](#) for a summary of the meeting.

PwC Publications

UK GAAP Proforma for life insurers

Our publication [*Proforma-Life Limited Annual Report 31 December 2015*](#) provides illustrative consolidated financial statements for a fictitious UK life insurance group, Proforma-Life Limited, reporting under UK GAAP for the year ended 31 December 2015. These illustrative accounts reflect new UK GAAP for insurers, including the requirements of:

- FRS 102 'The Financial Reporting Standard, applicable in the UK and Republic of Ireland'
- FRS 103 'Insurance Contracts' (including its implementation guidance)
- The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008.

These illustrative accounts also include examples of the disclosures on transition to new UK GAAP.

IFRS News - March 2016

The [*March 2016 issue*](#) of our IFRS newsletter looks at:

- Alternative Performance Measures - An analysis of the current status
- More guidance for banks - IFRS 9 impairment
- IAS 7 amendment - How to implement the new guidance
- Cannon Street Press: Insurance contracts, Goodwill and Impairment, Interests in associates and joint ventures, and FICE
- IC rejections: IAS 16
- The PwC leases library.

Reporting

Reporting hot topics for 2016 AGM season

The FRC published a [*Letter to Investors: Shareholder meeting season*](#) on 17 March 2016. It highlighted some recent changes in reporting and encourages investors to engage with companies to provide a steer on what information they believe is relevant and to challenge where reporting falls short of expectations.

Guidance on volatility and uncertainty

The FRC published a [*letter to FTSE 350 audit committee chairs in response to request for guidance on volatility*](#) on 8 March 2016. It suggested matters that should be considered, against a backdrop of increased uncertainty and/or volatility, in preparing annual reports and accounts. The letter made the following key points:

- The strategic report includes discussion of prospects and risk. Boards should ensure their analysis is current at the date of signing.
- If sensitivity is disclosed, the range of potential outcomes might be larger than was assumed when the annual report was first drafted.
- The accounts reflect conditions at the balance sheet date. Much of what has happened in the past few weeks will

likely represent non-adjusting events.
But material non-adjusting events do
need to be disclosed.

- The going concern assessment needs to
be undertaken in the light of any
material uncertainties due to post
balance sheet events.

It also requested user feedback on whether
this guidance is helpful.

Monthly calendar

Open consultations

Closing date for responses	Paper	Institution
13/04/16	<u><i>CP2/16 - Buy-outs of variable remuneration</i></u>	PRA
15/04/16	<u><i>Consultation on the UK implementation of the EU Directive on disclosure of non-financial and diversity information</i></u>	DFBIS
15/04/16	<u><i>Consultation on the approach for the recognition of institutional protection schemes for prudential purposes</i></u>	ECB
18/04/16 (chapter 2) and 18/05/16 (other chapters)	<u><i>CP16/8: Quarterly Consultation Paper No. 12</i></u>	FCA
19/04/16	<u><i>Consultation on the proposal to reform the procedure whereby Member States notify new regulatory requirements applicable to services providers</i></u>	EC
20/04/16	<u><i>Reforms to the investment bank special administration regime</i></u>	HMT
20/04/16	<u><i>Consultation Paper - draft guidelines on implicit support under Article 248(2) of Regulation (EU) No 575/2013</i></u>	EBA
21/04/16	<u><i>Interim report – market review into the ownership and competitiveness of infrastructure provision</i></u>	PSR
22/04/16	<u><i>Consultation on the FPC's framework for the systemic risk buffer</i></u>	BoE
22/04/16	<u><i>Consultation on possible measures of non-cash collateral re-use</i></u>	FSB

Closing date for responses	Paper	Institution
25/04/16	<i><u>Call for evidence – Terms and conditions, and consumer protection fining powers</u></i>	DFBIS
26/04/16	<i><u>Consultation on EIOPA’s advice on the development of an EU single market for personal pension products</u></i>	EIOPA
29/04/16	<i><u>Consultation on establishing Shari’ah compliant central bank liquidity facilities</u></i>	BoE
29/04/16	<i><u>Consultation: Insurance linked securities</u></i>	HMT
03/05/16	<i><u>Consultation: Compliance and enforcement policy for occupational defined contribution pension schemes</u></i>	TPR
03/05/16	<i><u>CP16/7: Payment Accounts Regulations 2015 - draft Handbook changes and draft guidance</u></i>	FCA
04/05/16	<i><u>Consultation: The FRC’s audit enforcement procedure</u></i>	FRC
05/05/16	<i><u>Interim report: Market review into the supply of indirect access to payment systems</u></i>	PSR
10/05/16	<i><u>GC16/3: Primary Market Bulletin No. 13</u></i>	FCA
16/05/16	<i><u>CP8/16: The contractual recognition of bail-in: amendments to PRA rules</u></i>	PRA
18/05/16	<i><u>Call for input: Review of retained provisions of the CCA</u></i>	FCA
20/05/16	<i><u>Consultation: Guidelines on information to be disclosed on commodity derivatives markets or related spot markets under MAR</u></i>	ESMA
24/05/16	<i><u>CP10/16 Regulated fees and levies: rates proposals 2016/17</u></i>	PRA
27/05/16	<i><u>Consultation on the revision of the Financial Regulation applicable to the general budget of the Union</u></i>	EC
27/05/16	<i><u>CP9/16 Implementation of MiFID II: Part 1</u></i>	PRA

Closing date for responses	Paper	Institution
01/06/16	<u><i>Consultation on a proposal for a mandatory transparency register</i></u>	EC
03/06/16	<u><i>Consultation on a standardised measurement approach for operational risk</i></u>	Basel Committee
03/06/16	<u><i>CP7/16: Implementing risk-based levies for the FSCS deposits class</i></u>	PRA
08/06/16	<u><i>Consultation: Public financial guidance review</i></u>	HMT
10/06/16	<u><i>Consultation on Pillar 3 disclosure requirements – consolidated and enhanced framework</i></u>	Basel Committee
14/06/16	<u><i>Consultation on an effective insolvency framework within the EU</i></u>	EC
21/06/16	<u><i>Technical note on stress testing for institutions offering Islamic financial services</i></u>	Islamic Financial Services Board
22/06/16	<u><i>Consultation: Guidelines on corrections to modified duration for debt instruments under Article 340(3) of Regulation (EU) 575/2013</i></u>	EBA
24/06/16	<u><i>Consultation on reducing variation in credit risk-weighted assets – constraints on the use of internal model approaches</i></u>	Basel Committee
29/06/16	<u><i>CP11/16: Underwriting standards for buy-to-let mortgage contracts</i></u>	PRA
30/06/16	<u><i>Draft legislation: The Corporation Tax (Treatment of Unrelieved Surplus Advance Corporation Tax) (Amendment) Regulations 2016</i></u>	HMRC
31/10/16	<u><i>Feedback on FRS 102</i></u>	FRC

Forthcoming publications in 2016

Date	Topic	Type	Institution
Accounting			
TBD 2016	RTS on consolidation methods	Technical standards	EBA
TBD 2016	Communication between supervisors and auditors	Guidelines	EBA
TBD 2016	Developments in the market with regard to providing statutory audit services to public interest entities	Advice	EBA
TBD 2016	Accounting for expected credit losses	Guidelines	EBA
TBD 2016	UCITS final guidelines on the application of the remuneration principles set out under Article 14b of the UCITS Directive	Guidelines	ESMA
Authorisations			
TBD 2016	ITS and RTS on authorisation of credit institutions under CRD IV	Technical standards	EBA
TBD 2016	ITS on common procedures, forms and templates on authorisation under CRD IV	Technical standards	EBA
CASS			
Q4 2016	Asset segregation under AIFMD	Guidelines	ESMA
TBD 2016	Client money rules for insurance intermediaries – PS to CP 12/20	Policy statement	FCA
Conduct			
Q1 2016	RTS under Article 8 of PRIIPs Regulation	Technical standards	ESMA

Date	Topic	Type	Institution
Q4 2016	MAR	Guidelines	ESMA
TBD 2016	Internal governance under Article 74 CRD IV	Guidelines	EBA
TBD 2016	Suitability of members of the management body and key function holders under Article 91(12) CRD IV	Guidelines	EBA
TBD 2016	The collection exercise of approved higher maximum ratios for variable remuneration under Article 94(1)(g)(ii) CRD IV	Guidelines	EBA
TBD 2016	Remuneration provisions under Article 161(2) CRD IV	Report	EBA
TBD 2016	Diversity practices benchmarking under Article 91(11) CRD IV	Report	EBA
TBD 2016	Remuneration benchmarking and high earners data under Articles 75(1) and (3) CRD IV	Report	EBA
TBD 2016	Strengthening accountability in banking: a new regulatory framework for individuals – PS to CP 14/13	Policy statement	FCA
TDB 2016	Smarter consumer communications: removing certain ineffective requirements in our Handbook – PS to CP15/32	Policy statement	FCA
TDB 2016	Fair, reasonable and non-discriminatory access to regulated benchmarks – PS to CP 15/18	Policy statement	FCA
Consumer protection			
April 2016	FSCS: changes to the Compensation sourcebook – PS to CP 15/40	Policy statement	FCA
Q2 2016	Consumer credit: proposals in response to the CMA's recommendations on high-cost short-term credit – PS to CP15/33	Consultation	FCA

Date	Topic	Type	Institution
<i>Financial crime, security and market abuse</i>			
Spring 2016	Policy proposals and Handbook changes related to the implementation of MAR – PS to CP CP15/35	Policy statement	FCA
TBD 2016	Enhanced due diligence under AMLD4	Guidelines	EBA
TBD 2016	Risk based supervision under AMLD4	Guidelines	EBA
TBD 2016	Simplified due diligence under AMLD4	Guidelines	EBA
TBD 2016	RTS on central contract points under AMLD4	Technical standards	EBA
TBD 2016	RTS on mitigating the risk of third countries prohibiting the application of equivalence for anti-money laundering or financing of terrorism standards under the AMLD4.	Technical standards	EBA
<i>Insurance</i>			
Summer 2016	Increasing transparency and engagement at renewal in general insurance markets – PS to CP 15/41	Policy statement	FCA
<i>Payments</i>			
TBD 2016	ITS regarding a standard presentation format of a fee information document, statement of fees and common symbols	Technical standards	EBA
TBD 2016	RTS on standardised terminology for payment account services	Technical standards	EBA
TBD 2016	RTS on central contact points under PSD2	Technical standards	EBA
TBD 2016	RTS on strong authentication and communication under PSD2	Technical standards	EBA

Date	Topic	Type	Institution
TBD 2016	RTS on the separation of payment card schemes and processing entities under the IFR	Technical standards	EBA
TBD 2016	The minimum monetary amount of professional indemnity insurance under PSD2	Guidelines	EBA
TBD 2016	RTS on standardised terminology for banking services under PAD	Technical standards	EBA
TBD 2016	ITS on the standardised format of documents and symbols (including consumer testing) under PAD.	Technical standards	EBA
<i>Pensions</i>			
April 2016	Secondary Annuity Market	Consultation	FCA
April 2016	Pension reforms – proposed changes to FCA rules and guidance – PS to CP 15/30	Policy statement	FCA
<i>Prudential</i>			
TBD 2016	Money Market Funds Regulation – advice and technical standards	Advice	ESMA
TBD 2016	Impact of LCR	Report	EBA
TBD 2016	Disclosure of LCR	Guidelines	EBA
TBD 2016	Intraday liquidity risk	Guidelines	EBA
TBD 2016	Report and advice on NSFR	Report	EBA
TBD 2016	downturn loss given default (LGD) calculation	Guidelines	EBA
TBD 2016	LGD in default ELBE and IRB shortfall calculations	Guidelines	EBA

Date	Topic	Type	Institution
TBD 2016	PD computation	Guidelines	EBA
TBD 2016	RTS on eligible collateral within the CRM framework	Technical Standards	EBA
TBD 2016	RTS on conditional guarantees	Technical Standards	EBA
TBD 2016	RTS on the definition of default thresholds for past due items	Technical Standards	EBA
TBD 2016	Default of an obligor, including QIS	Guidelines	EBA
TBD 2016	Corrections to the modified duration of debt instruments	Guidelines	EBA
TBD 2016	RTS on assessment methodology	Technical Standards	EBA
TBD 2016	Incremental default and migration risk.	Guidelines	EBA
TBD 2016	Stress in correlation trading portfolios	Guidelines	EBA
TBD 2016	RTS on exclusion of CVA for third-country NFCs	Technical Standards	EBA
TBD 2016	Stressed VaR	Guidelines	EBA
TBD 2016	Implicit support with regard to securitisation	Guidelines	EBA
TBD 2016	The Supervisory Formula Method on securitisation under Article 262(3) of CRR	Guidelines	EBA
TBD 2016	Securitisation retention rules	Guidelines	EBA
TBD 2016	Proposals for simple, standard and transparent synthetic securitisation	Guidelines	EBA
TBD 2016	RTS on disclosures of unencumbered assets.	Technical Standards	EBA

Date	Topic	Type	Institution
TBD 2016	Investment firms' prudential regime under CRD IV	Advice	EBA
TBD 2016	Stress testing	Guidelines	EBA
<i>Recovery and resolution</i>			
TBD 2016	DGSD cross-border cooperation agreements	Guidelines	EBA
TBD 2016	DGSD stress testing	Guidelines	EBA
TBD 2016	The reference point used for setting the target level for resolution financing arrangements	Report	FCA
TBD 2016	Administrative penalties under the BRRD	Report	EBA
<i>Securities and markets</i>			
Q2 2016	Product governance and other MiFID II / MiFIR topics	Q&As	ESMA
Summer 2016	Implementation of the MIFID II directive – retail	Consultation	FCA
Q3 2016	MiFID II / MiFIR topics	Guidelines	ESMA
Q4 2016	SFTR RTS and ITS	Technical standards	ESMA
Q4 2016	RTS on the clearing obligation	Technical standards	ESMA
Q4 2016	RTS on CCP requirements	Technical standards	ESMA
Q4 2016	CCPs stress test recommendations	Report	ESMA
TBD 2016	Policy statement to CP 15/43 on MiFID II implementation	Policy statement	FCA

Date	Topic	Type	Institution
<i>Structural reform</i>			
TBD 2016	RTS, ITS and Guidelines on core credit institutions and trading entities	Technical standards	ESMA
TDB 2016	Ring-fencing: disclosures to consumer by non-ring-fenced bodies – PS to CP 15/23	Policy statement	FCA
<i>Supervision, governance and reporting</i>			
Q3 2016	Report on Trends, Risks and Vulnerabilities	Report	ESMA
March 2016	Regulatory fees and levies: policy proposals for 2016/17 – PS to CP 15/34	Policy statement	FCA
April 2016	Report on the results of the enforcement of the common enforcement priorities for 2014 year-end financial statements	Report	ESMA
October 2016	Statement on the common enforcement priorities for 2016 year-end financial statements	Statement	ESMA
Q4 2016	RTS on European Single Electronic Format	Technical standards	ESMA
Q4 2016	Advice to the EC on depository frameworks of non-EU jurisdictions under Article 21(6) of AIFMD	Advice	ESMA
Quarterly	Risk dashboard	Report	ESMA
TBD 2016	IT risk supervision	Guidelines	EBA
TBD 2016	Remuneration requirements for sales staff	Guidelines	EBA

Main sources: ESMA 2016 work programme; EBA 2016 work programme; EC 2016 work programme; FCA policy development updates.

Glossary

ABC	Anti-Bribery and Corruption	BBA	British Bankers' Association
ABI	Association of British Insurers	BCR	Basic capital requirement (for insurers)
ABS	Asset Backed Security	BIBA	British Insurance Brokers Association
ACER	Agency for the Cooperation of Energy Regulators	BIS	Bank for International Settlements
AIF	Alternative Investment Fund	BoE	Bank of England
AIFM	Alternative Investment Fund Manager	BRRD	Bank Recovery and Resolution Directive
AIFMD	Alternative Investment Fund Managers Directive 2011/61/EU	CASS	Client Assets sourcebook
AIMA	Alternative Investment Management Association	CCA	Consumer Credit Act 1974 (as amended)
AML	Anti-Money Laundering	CCB	Countercyclical capital buffer
AMDL3	3rd Money Laundering Directive 2005/60/EC	CCD	Consumer Credit Directive 2008/48/EC
AMLD4	4 th Money Laundering Directive 2015/849/EU	CCPs	Central Counterparties
AQR	Asset Quality Review	CDS	Credit Default Swaps
ASB	UK Accounting Standards Board	CEBS	Committee of European Banking Supervisors (predecessor of EBA)
Banking Reform Act (2013)	Financial Services (Banking Reform) Act 2013	CET1	Common Equity Tier 1
Basel Committee	Basel Committee of Banking Supervision (of the BIS)	CESR	Committee of European Securities Regulators (predecessor of ESMA)
Basel II	Basel II: International Convergence of Capital Measurement and Capital Standards: a Revised Framework	Co-legislators	Ordinary procedure for adopting EU law requires agreement between the Council and the European Parliament (who are the 'co-legislators')
Basel III	Basel III: International Regulatory Framework for Banks	CTF	Counter Terrorist Financing

CFTC	Commodities Futures Trading Commission (US)	CTF	Counter Terrorist Financing
CGFS	Committee on the Global Financial System (of the BIS)	DFBIS	Department for Business, Innovation and Skills
CIS	Collective Investment Schemes	DG FISMA	Directorate-General for Financial Stability, Financial Services and Capital Markets Union
CMA	Competition and Markets Authority	DG MARKT	Internal Market and Services Directorate General of the European Commission
CMU	Capital markets union	DGS	Deposit Guarantee Scheme
CoCos	Contingent convertible securities	DGSD	Deposit Guarantee Schemes Directive 2014/49/EU
Council	Generic term representing all ten configurations of the Council of the European Union	Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act (US)
CRA1	Regulation on Credit Rating Agencies (EC) No 1060/2009	D-SIBs	Domestic Systemically Important Banks
CRA2	Regulation amending the Credit Rating Agencies Regulation (EU) No 513/2011	EBA	European Banking Authority
CRA3	proposal to amend the Credit Rating Agencies Regulation and directives related to credit rating agencies COM(2011) 746 final	EC	European Commission
CRAs	Credit Rating Agencies	ECB	European Central Bank
CRD	'Capital Requirements Directive': collectively refers to Directive 2006/48/EC and Directive 2006/49/EC	ECJ	European Court of Justice
CRD II	Amending Directive 2009/111/EC	ECOFIN	Economic and Financial Affairs Council (configuration of the Council of the European Union dealing with financial and fiscal and competition issues)
CRD III	Amending Directive 2010/76/EU	ECON	Economic and Monetary Affairs Committee of the European Parliament
CRD IV	Capital Requirements Directive 2013/36/EU	EDIS	European Deposit Insurance Scheme
CRR	Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms	EEA	European Economic Area
CSDR	Central Securities Depositories Regulation	EEC	European Economic Community

EIOPA	European Insurance and Occupations Pension Authority	FCA	Financial Conduct Authority
ELTIF	European long-term investment fund	FDIC	Federal Deposit Insurance Corporation (US)
EMIR	Regulation on OTC Derivatives, Central Counterparties and Trade Repositories (EC) No 648/2012	FiCOD	Financial Conglomerates Directive 2002/87/EC
EP	European Parliament	FiCOD1	Amending Directive 2011/89/EU of 16 November 2011
EPC	European Payments Council	FMI	Financial Market Infrastructure
ESA	European Supervisory Authority (i.e. generic term for EBA, EIOPA and ESMA)	FMLC	Financial Markets Law Committee
ESCB	European System of Central Banks	FOS	Financial Ombudsman Service
ESEF	European Single Electronic Format	FPC	Financial Policy Committee
ESMA	European Securities and Markets Authority	FRC	Financial Reporting Council
ESRB	European Systemic Risk Board	FSA	Financial Services Authority
EU	European Union	FSB	Financial Stability Board
EURIBOR	Euro Interbank Offered Rate	FS Act 2012	Financial Services Act 2012
Eurosystem	System of central banks in the euro area, including the ECB	FSCP	Financial Services Consumer Panel
EuVECA	European Venture Capital Funds Regulation	FSCS	Financial Services Compensation Scheme
FAMR	Financial Advice Market Review	FSI	Financial Stability Institute (of the BIS)
FASB	Financial Accounting Standards Board (US)	FSMA	Financial Services and Markets Act 2000
FATCA	Foreign Account Tax Compliance Act (US)	FSOC	Financial Stability Oversight Council
FATF	Financial Action Task Force	FTT	Financial Transaction Tax
FC	Financial counterparty under EMIR	G30	Group of 30
		GAAP	Generally Accepted Accounting Principles

G-SIBs	Global Systemically Important Banks	IMD	Insurance Mediation Directive 2002/92/EC
G-SIFIs	Global Systemically Important Financial Institutions	IMF	International Monetary Fund
G-SIIs	Global Systemically Important Institutions	IORP	Institutions for Occupational Retirement Provision Directive 2003/43/EC
HCSTC	High Cost Short Term Credit	IOSCO	International Organisations of Securities Commissions
HMRC	Her Majesty's Revenue & Customs	IRB	Internal Ratings Based
HMT	Her Majesty's Treasury	ISDA	International Swaps and Derivatives Association
IA	Investment Association	ITS	Implementing Technical Standards
IAIS	International Association of Insurance Supervisors	JCESA	Joint Committee of the European Supervisory Authorities
IASB	International Accounting Standards Board	JMLSG	Joint Money Laundering Steering Committee
IBA	ICE Benchmark Administration	JURI	Legal Affairs Committee of the European Parliament
ICAAP	Internal Capital Adequacy Assessment Process	LCR	Liquidity coverage ratio
ICAS	Individual Capital Adequacy Standards	LEI	Legal Entity Identifier
ICOBS	Insurance: Conduct of Business Sourcebook	LIBOR	London Interbank Offered Rate
IDD	The Insurance Distribution Directive (EU) 2016/97 – also known as IMD2	MA	Matching Adjustment
IFRS	International Financial Reporting Standards	MAD	Market Abuse Directive 2003/6/EC
ILAA	Internal Liquidity Adequacy Assessment	MAD II	Criminal Sanctions Market Abuse Directive 2014/57/EU
ILAAP	Internal Liquidity Adequacy Assessment	MAR	Market Abuse Regulation (EU) 596/2014
ILS	Insurance-Linked Securities	Material Risk Takers Regulation	Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the EP and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile
IMAP	Internal Model Approval Process	MCD	Mortgage Credit Directive 2014/17/EU

Member States	countries which are members of the European Union	OFT	Office of Fair Trading
MiFID	Markets in Financial Instruments Directive 2004/39/EC	Omnibus II	Second Directive amending existing legislation to reflect Lisbon Treaty and new supervisory infrastructure (COM(2011) 0008 final) – amends the Prospectus Directive (Directive 2003/71/EC) and Solvency II (Directive 2009/138/EC)
MiFID II	Markets in Financial Instruments Directive (recast) 2014/65/EU – also used to refer to the regime under both this directive and MiFIR	ORSA	Own Risk Solvency Assessment
MiFIR	Markets in Financial Instruments Regulation (EU) No 600/2014	OTC	Over-The-Counter
MLRO	Money Laundering Reporting Officer	PAD	Payment Accounts Directive 2014/92/EU
MMF	Money Market Fund	PIFs	Personal investment firms
MMR	Mortgage Market Review	PPI	Payment Protection Insurance
MREL	Minimum requirements for own funds and eligible liabilities	P2P	Peer to Peer
MTF	Multilateral Trading Facility	PERG	Perimeter Guidance Manual
MoJ	Ministry of Justice	PRA	Prudential Regulation Authority
MoU	Memorandum of Understanding	Presidency	Member State which takes the leadership for negotiations in the Council: rotates on 6 monthly basis
MPC	Monetary Policy Committee	PRIIPs Regulation	Regulation on key information documents for investment and insurance-based products (Regulation 1286/2014)
NBNI G-SIFI	Non-bank non-insurer global systemically important financial institution	PSD2	Directive of payment services in the internal market (proposed)
NDF	Non-Directive Firms – firms that do not fall within Solvency II	PSR	Payment Systems Regulator
NFC	Non-financial counterparty under EMIR	QIS	Quantitative Impact Study
NSFR	Net Stable Funding Ratio	RAO	Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544)
OECD	Organisation for Economic Cooperation and Development	RDR	Retail Distribution Review
Official Journal	Official Journal of the European Union		
OFSI	Office of Financial Sanctions Implementation		

REMIT	Regulation on wholesale energy markets integrity and transparency (EU) 1227/2011	SOCA	Serious Organised Crime Agency
RFB	Ring-fenced body	Solvency II	Directive 2009/138/EC
RONIA	Repurchase Overnight Index Average	SONIA	Sterling Overnight Index Average
RRPs	Recovery and Resolution Plans	SREP	Supervisory Review and Evaluation Process
RTS	Regulatory Technical Standards	SRB	Single Resolution Board
RWA	Risk-weighted assets	SRF	Single Resolution Fund
SCR	Solvency Capital Requirement (under Solvency II)	SRM	Single Resolution Mechanism
SEC	Securities and Exchange Commission (US)	SSM	Single Supervisory Mechanism
Securitisation Regulation	Proposal for a Regulation of the EP and Council laying down common rules on securitisation and creating a European framework for simple, transparent and standardised securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (COM(2015)472/F1)	SSR	Short Selling Regulation EU 236/2012
SEPA	Single Euro Payments Area	SUP	FCA supervision manual
SFT	Securities financing transaction	T2S	TARGET2-Securities
SFTR	Securities Financing Transactions Regulation	TLAC	Total Loss Absorbing Capacity
SFO	Serious Fraud Office	TR	Trade Repository
SIMF	Senior Insurer Manager Function	TC	Treasury Committee
SIMR	Senior Insurer Managers Regime	TPR	The Pensions Regulator
SM&CR	Senior Managers and Certification Regime	UCITS	Undertakings for Collective Investments in Transferable Securities
SME	Small and Medium sized Enterprises	UCITS V	UCITS V Directive 2014/91/EU
SMF	Senior Manager Function	UKLA	UK Listing Authority
		UTI	Unique Trade Identifier
		XBRL	eXtensible Business Reporting Language

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