Issue No.17

Regulatory Insights

Our quarterly overview of key legislative and regulatory developments in the European Union
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Welcome to the latest edition of State Street’s Regulatory Insights, our quarterly overview of notable legislative and regulatory developments in financial services in the European Union (EU).

With the EU bracing itself for the raft of institutional changes scheduled throughout 2019, including the European Parliamentary elections and the “top jobs” at both the European Commission and the European Central Bank (ECB), the legislative machinery is working hard to finalise the outstanding regulatory agenda. Despite the summer break, the last quarter has seen significant developments in a number of areas, such as the review of the prudential framework for investment firms and the Pan-European Personal Pension Product (PEPP) proposal. The Risk Reduction Measures (RRM) package, which has been identified as a priority topic by both the Austrian Presidency and the European Parliament, is undergoing trialogue negotiations, with final agreement expected by year-end. The co-legislators face further external pressure to finalise progress on the RRM package, given the compliance timelines for certain elements have been agreed at the international level; the first deadline will come into force on 1 January 2019.

Elsewhere, the European Parliament has forged ahead on the various proposals issued under the Action Plan on Sustainable Finance, with draft reports published on the proposal for Environmental Social and Governance (ESG) disclosure requirements and the proposal for sustainability benchmarks. In each case, the respective rapporteurs have taken tough stances, ensuring that ESG will be a defining theme for EU financial services legislation going forward. In addition, discussions are continuing with regard to the review of the European Supervisory Authorities (ESAs), with both the European Parliament and Council of the EU outlining their intention to reconcile their negotiating positions by year-end. However, this will be not be easily achieved, with the recent draft report in the European Parliament receiving more than 1,200 amendments from Members of the European Parliament (MEPs).
July also saw the EU’s Money Market Funds (MMF) Regulation come into application. The Regulation, which has been five years in the making and has often been characterised by a highly politicised negotiation process, establishes a new framework for MMFs in the EU. The Regulation allows an additional implementation period for existing MMFs, which will need to comply with the new rules from 21 January 2019.

In regard to secondary legislation, the European Commission continues to publish various measures, both in the form of delegated regulations, as well as regulatory and implementing standards, to provide further clarity for market participants. These measures relate to the Shareholder Rights Directive, the Fourth Anti-Money Laundering Directive (AMLD IV) and the Benchmarks Regulation (BMR), among others. On a broader scale, benchmarks are expected to garner increasing attention as firms across the globe begin to address the significant challenge of transitioning away from referencing inter-bank offered rates (IBORs).

Shifting our attention to the broader landscape, Brexit has continued to dominate centre stage. Initially, there were signs that both the United Kingdom (UK) and the EU were adopting a more conciliatory approach. However, following the September Leaders’ Summit in Salzburg, where EU leaders publicly rejected Prime Minister Theresa May’s Chequers proposal, the possibility of the UK leaving the EU without an agreement [i.e. a “no-deal” scenario] continues to be a possible outcome. Subsequently, both the UK Government and the European Commission have released a number of papers outlining preparations for such an outcome. There was intense focus on whether the Withdrawal Agreement could be achieved at the October Council. However, the requisite progress had not been made and, as a result, the mooted extraordinary November summit is currently off the table. Given both sides remain publicly committed to finding an agreement, the next formal European Council, in December, appears to be a “make or break” moment in the Brexit process.
In the area of financial services, the recent positive rhetoric around cooperation agreements between UK and European regulators will be welcomed by the industry. These agreements are critical for the third-country regimes in various pieces of EU legislation, including the Markets in Financial Instruments Directive (MiFID) II, the Alternative Investment Fund Managers Directive (AIFMD) and the Undertakings for the Collective Investment of Transferable Securities (UCITS) Directive, in general and thereby for firms’ existing delegation arrangements of portfolio management activities. Further clarity from regulators across the EU will help address one of the asset management industry’s key concerns regarding Brexit preparations.

As expected, the second half of 2018 has seen renewed effort and vigour from the EU institutions to deliver on the remaining legislative agenda items. While intentions are set, we will have to wait and see whether these outstanding items can be delivered in practice, especially with broader issues on the political landscape. We hope you continue to find this publication helpful in navigating the EU’s regulatory environment and keeping abreast of the most recent developments.

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On 10 July, the European Banking Authority (EBA) published its Final Report on the peer review of compliance with regulatory technical standards (RTS) on passport notification.

The objective of the peer review was to assess how national competent authorities (NCAs) approached passporting and to determine the granularity and overall completeness of the information provided by EU banks, i.e., credit institutions. The report found that NCAs have effective and consistent processes in place for ensuring that passport notifications are dealt with as required by the RTS and in a timely fashion.

However, there were inconsistencies in the granularity of information exchanged between home and host NCAs under certain scenarios. To address these inconsistencies, the EBA Report also outlines best practices to be used by NCAs.
On 12 July, the European Commission proposed two Delegated Regulations on the role of depositaries under the AIFMD and the UCITS Directive.

The proposals focus on enhancing and aligning the safekeeping duties of depositaries, as outlined under the AIFMD and UCITS V Directives. They build on and generally follow the views expressed in the 2017 ESMA Opinion on asset segregation.

Among other things, the Delegated Regulations seek to provide further clarity on the identification and safekeeping of client assets, particularly in the case of insolvency of a depositary or its custody delegates. The proposals state that a third-party delegate is permitted to comingle the assets of UCITS, alternative investment funds (AIFs) and other clients in the same omnibus account, provided that this account excludes the proprietary assets of the third-party delegate and those of the delegating depositary/custodian.

While the segregation proposals noted above have been broadly welcomed by the industry, other parts of the delegated acts have caused concern and prompted requests for further clarity on the requirements.

In particular, industry participants have flagged the specific proposals around record keeping at the depositary and delegate levels as duplicative and overly burdensome, thus presenting a significant challenge to the well-established and widely used “reliance model”, as well as the use of tri-party collateral arrangements.

The Delegated Regulations are still subject to review and approval by the European Parliament and the European Council. They will enter into force 20 days after their publication in the Official Journal. There will be an 18-month transition period before the provisions apply.
On 13 July, the European Commission published a Delegated Regulation under the Money Markets Fund Regulation (MMFR) in the Official Journal. The draft Delegated Regulation was first published in January 2018 and was subsequently adopted by the European Commission on 10 April.

As directed under the Level 1 Regulation, the delegated act focuses on three areas:

- The interaction of the MMFR with simple, transparent and standardised (STS) securitisations and asset-backed commercial papers (ABCPs), as set out in the recently agreed Securitisations Regulation, which had not been agreed when the MMFR was finalised
- The requirements for assets received as part of reverse repo agreements
- The credit quality assessment methodologies

All the provisions of the Delegated Regulation, except for Article 1, apply since 21 July. This came into force on 2 August and will apply from 1 January 2019.
On 13 July, ESMA launched a consultation paper on the tick size regime under Article 49 of MiFID II and RTS 11. In addition, ESMA made a number of updates to its MiFID II question and answer (Q&A) document.

The consultation specifically proposes amendments to the MiFID Delegated Regulation (EU) 2017/588, commonly referred to as RTS 11. These would introduce a number of provisions for third-country instruments. Under the MiFID tick size regime, orders in shares and depositary receipts are subject to minimum tick sizes. These will be determined using a combination of the average daily number of transactions (ADNT) on the most relevant market and the price of the order.

However, there are no specific provisions for third-country instruments (e.g., when the most liquid trading venue is in a third-country). This means that the minimum tick size for these instruments is determined by the level of trading within the EU, which may be “underestimated”.

As a result, third-country trading venues could benefit from relatively lower minimum tick sizes and greater liquidity, and gain a competitive edge over EU trading venues. This situation could be exacerbated by the UK’s impending departure from the EU, which would significantly increase third-country instruments traded or made available to trade on an EU trading venue.

To address these concerns, ESMA is proposing changes to RTS 11, to ensure that the tick sizes for third-country instruments are better calibrated. Subject to certain conditions, these changes would permit NCAs to make adjustments to the ADNT. The deadline for responses was 7 September.
Separately, ESMA updated its various Q&A documents and included a number of additional questions.

The first Q&A addressed temporary product intervention measures on the marketing, distribution or sale of contracts for differences (CFD) and binary options (BO) to retail clients, based on Article 40 of Markets in Financial Instrument Regulation (MiFIR). The update deals with turbo certificates and structured finance products, and confirms that both products are within the scope of ESMA’s CFD and BO Decisions.

ESMA also updated its Q&A on transparency topics and set out its action plan for the systematic internaliser (SI) regime calculations, ahead of publication on 1 August. The key focus of the action plan is on equity, equity-like instruments and bonds. The publication on derivatives and other instruments has been deferred until February 2019.
On 13 July, ESMA launched two separate consultation papers under the Prospectus Regulation (PR).

In the first consultation, ESMA sought feedback on proposed technical advice on the information documents required for mergers, divisions or takeovers. ESMA is proposing that securities connected to a merger, division or takeover may be offered or admitted without the need to publish a prospectus, provided that an alternative document outlining the key elements of the transaction and the expected impact on the issuer is made available to investors. ESMA is consulting on the minimum information to be contained in this document.

The second consultation requests feedback on draft guidelines for risk factors that should be included in a prospectus. The guidelines are intended to facilitate the review by NCAs of the specificity and materiality of risk factors, and their presentation, in a prospectus.

The deadline for comments on both consultations was 5 October. ESMA expects to issue the final reports by 31 March 2019.

In addition, ESMA published its final report on draft RTS for the implementation of specific provisions under the PR.

The report outlines:

- The key financial information to be disclosed by issuers in the prospectus summary
- Requirements to publish supplements
- Arrangements for the notification portal for passporting prospectuses
On 23 July, the European Commission published a communication on its intention to endorse the revised RTS under the Securities Financing Transactions Regulation (SFTR), subject to certain amendments. However, ESMA has since rejected the European Commission’s suggested amendments.

The communication — issued by the European Commission’s Department for Financial Stability, Services, and Capital Markets Union (CMU) — invites the European Commission to approve a letter advising ESMA that it has amended provisions in the draft technical standards. As soon as these standards are endorsed by ESMA, they will involve the mandatory use of potentially forthcoming industry standards on Legal Entity Identifiers (LEIs) and Unique Trade Identifiers (UTIs) for reporting to trade repositories (TRs).

However, the letter notes that the European Commission’s view of how such standards would be endorsed differs from that of ESMA. The proposed amendments clarify that, after the adoption of the technical standards, the right to introduce changes to the reporting requirements remains with the European Commission. The purpose is to avoid the implication within the standards submitted by ESMA that could be understood as delegating regulatory powers to ESMA on any future reporting requirements.

The amendments therefore remove references to “endorsements by ESMA” and restrict reporting obligations to requirements that market participants must comply with using current rather than future industry standards. The amendments also include additional recitals in the ITS explaining that work is currently ongoing for the development of LEIs for branches and UTIs for transactions, and explain that such industry standards, once approved, could be required through an amendment of the relevant ITS on the basis of a proposal by ESMA.

While ESMA was asked to ratify the European Commission’s amendments, ESMA instead rejected them. However, responsibility ultimately lies with the European Commission and so it is likely that the amended RTS will be adopted in their current form.
In July and August, the EBA and ESMA proposed various implementing standards under the EU Securitisation Regulation, ahead of the 1 January 2019 application date.

The Level 2 measures primarily take the form of RTS and implementing technical standards (ITS). On 16 July, ESMA issued its final draft RTS specifying the information that should be provided to NCAs when applying for a third-party to be authorised, so that the compliance of securitisations with the STS criteria, and draft ITS can be assessed. They also specify the information that should be provided to ESMA.

On 22 August, ESMA also published the final draft technical standards on the disclosure requirements for the originator, the sponsor or a securitisation special purpose entity (SSPE), and the format in which this should be submitted. Both sets of technical standards have been submitted to the European Commission for endorsement.

Separately, on 31 July, the EBA published its final draft technical standards on risk retention. The risk retention provisions were some of the most high profile ones during Level 1 negotiations. They were designed to ensure an alignment of interests between investors and the creators of securitisations, so that they have sufficient “skin in the game”. Additional draft technical standards were issued, specifying the conditions for a securitisation product to be considered “homogeneous”. Homogeneity is a key requirement for a securitisation to qualify as an STS and be eligible for preferential capital treatment.
On 30 July, ESMA published its final report setting out findings from its peer review on the application of the ESMA Guidelines on Exchange Traded Funds (ETFs) and other UCITS issues under the UCITS Directive.

The peer review focused on issues related to the use of efficient portfolio management (EPM) techniques, including transparency and disclosure requirements. Under the UCITS framework, funds are allowed to employ EPM techniques, both to reduce risk and to generate additional income or capital. EPM techniques can cover a range of activities, including securities lending and the use of derivatives. However, where EPM techniques are used, they should take the ESMA Guidelines into account, as well as the funds’ own risk profiles. As part of its peer review, ESMA assessed six NCAs (Estonia, France, Germany, Ireland, Luxembourg and the UK).

ESMA found deficiencies in the supervision of funds using EPM techniques, particularly in relation to operational elements and collateral management. The report makes a number of suggestions for the relevant NCAs.

These include formal reviews of the required EPM disclosures and measures to ensure that all net revenues generated from the use of EPM are returned to investors. The report also highlighted some good practices on data and reporting tools.

ESMA intends to follow up on the findings of this report. It will review the progress made by NCAs in two years’ time.
The European Parliament published a draft report on the Sustainable Finance package, while separately, the European Commission called on ESMA and the European Insurance and Occupational Pensions Authority (EIOPA) to advise on how to incorporate ESG risks into investment processes.

The EU sustainable finance agenda, unveiled in March, outlines several legislative and non-legislative initiatives aimed at reorienting capital towards sustainable investments. The first of these were released shortly afterwards on 24 May. They cover sustainability taxonomy, disclosures and benchmarks.

The European Commission’s initial intention was to clarify the duties of institutional investors and asset managers, rather than seeking additional disclosure. The industry pushed back against this, following consultation earlier this year, and heated rhetoric focused the attention of policymakers and industry on the disclosures proposal. As a result, it has been prioritised ahead of the other elements of the package, although all the key players consider taxonomy to be the “first and essential step”.

The European Commission has shifted its policy direction and released a proposal focusing on enhanced transparency on how and where ESG risks are incorporated into investment processes, while also disclosing this publicly. This places the onus on investor — as opposed to fiduciary — duties.

As part of the European Parliament’s initial review of the package, Paul Tang, a Member of the European Parliament (MEP) from the S&D (Socialists) and Parliamentary Rapporteur on the disclosures proposal, published a draft report with suggested amendments in late July. Some non-EU firms believe the draft report over extends the scope of the proposal by introducing transparency for all financial products (regardless of whether they have an ESG-themed objective) and financial market participants. However, many EU-based firms believe the report simply clarifies the European Commission’s original intention.
Tang has made it clear that he disagrees with the European Commission’s policy shift and emphasised that clarifying fiduciary duty on ESG risks should be at the “core” of the disclosures piece. At the first meeting of the European Parliament’s Committee on Economic and Monetary Affairs (ECON) in September, other Members remained silent on this issue. They now have an opportunity to suggest amendments before the report is approved by the ECON committee. A vote on this is scheduled for 5 November.

Separately, on 24 July the European Commission formally requested that ESMA and EIOPA provide technical advice on how asset managers, insurance companies and investment or insurance advisors integrate sustainability risks in organisational requirements, operating conditions, risk management and target market assessments. These authorities have until 30 April 2019 to respond. Their feedback will be taken on board as part of amendments to existing secondary EU legislation governing fiduciary duties.
On 3 August, two Implementing Regulations under the BMR were published in the Official Journal.

The first implementing regulation (Commission Implementing Regulation 2018/1105) lays down technical standards on the forms and procedures competent authorities should use when providing information to ESMA in the context of the Benchmarks Regulation. Specifically, it outlines the process for competent authorities to notify ESMA of information in relation to the authorisation of administrators and their benchmarks in order to update the public EU Benchmarks Register, which is maintained on ESMA’s website.

The second implementing regulation (Commission Implementing Regulation 2018/1106) outlines requirements for the compliance statement that administrators of significant benchmarks and non-significant benchmarks must publish. This also includes a template statement for administrators who choose not to comply with certain requirements under the Regulation. Both of these Implementing Regulations entered into force on 29 August and are applicable from 29 October.

Transitional arrangements for benchmark administrators in existence before 1 January 2018 expire in January 2020, and supervised entities will be prohibited from using any unauthorised benchmark in the EU.

In addition, on 17 July, ESMA published an updated Q&A document to support implementation of the Benchmarks Regulation. It includes two new answers on whether:

- Calculation agents should be considered users of benchmarks
- A benchmark can be considered as a “regulated-data benchmark” if a third-party is involved in the process of obtaining the data

Finally, the ECB working group on euro risk-free rates published an overview of responses to its consultation on possible euro risk-free rates to replace the Euro Overnight Index Average (EONIA). This is part of a broader global initiative to transition away from IBORs towards risk-free alternatives.
On 7 August, ESMA submitted a letter to EIOPA, in response to questions on the leverage calculation and the definition of AIFs under the AIFMD.

As part of its advice to the European Commission on certain provisions of the Solvency II Delegated Regulation, EIOPA directed several questions to ESMA on the AIFMD.

The questions related to:

- The definition of leveraged AIFs
- Whether AIFs managed by "registered" or "sub-threshold" AIFMs are captured under the definition of AIFs under Article 4 (1) (a) of the AIFMD

ESMA notes in its response to the first question that there is no definition of either "leveraged" or "unleveraged" AIFs under the primary legislation.

However, ESMA states that AIFs using borrowing arrangements that comply with the calculation of leverage as set out in the AIFMD Delegated Regulation should be considered "unleveraged". On the second question, ESMA notes that notwithstanding the potential for "gold-plating" by NCAs, all collective investment schemes managed by AIFMs which meet the relevant definition set out in the Level 1 text should be considered as AIFs.
On 8 August, ESMA issued an updated statement on the clearing and trading obligation for pension schemes under EMIR.

ESMA issued its original statement on 4 July and set out its expectation that NCAs should not prioritise their supervisory activities with regard to pension scheme arrangements (PSAs) and the EMIR clearing obligation. The updated statement broadens this to cover the trading obligation under MiFIR.

Under EMIR, PSAs were provided with a time-limited exemption from the clearing obligation. This was to facilitate the development of an appropriate solution for the posting of non-cash collateral as variation margin. Given their investment profile, particularly the relatively longer time horizon for these investments, PSAs typically hold very little cash. Therefore, the clearing obligation presents significant challenges for them. The exemption provided for in EMIR was extended twice, although a further extension is not possible. The current exemption expired on 17 August.

A further extension is currently being discussed as part of the ongoing negotiations on the EMIR “Refit” proposal. Given that the new exemption is expected to apply shortly, ESMA stressed that NCAs should enforce their supervisory and enforcement powers in a more proportionate manner.

Separately, on 11 July, ESMA issued a consultation on the clearing obligation, focusing particularly on the treatment of intra-group transactions with third-country entities. The consultation proposes an amending draft RTS, which would alter the current EMIR Delegation Regulations and extend the existing deferred dates of the application of the clearing obligation to intra-group transactions with third-country entities, given the lack of relevant equivalence decisions.

The consultation closed on 30 August. ESMA may use the responses to finalise the draft RTS.
On 10 August, a Delegated Regulation containing the RTS under AMLD IV was published in the Official Journal.

The RTS deals with the appointment of a central contact point for electronic money issuers and payment service providers (PSPs) under AMLD IV. Under the legislation, electronic money issuers and PSPs are permitted to appoint a central contact point to ensure compliance with the relevant regulatory requirements on Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF).

While the decision to appoint a central contact point generally lies with the electronic money issuer or PSP, it can be mandated by Member States, under certain conditions. The RTS entered into force on 30 August.
On 17 August, the European Parliament’s ECON Committee published a draft report on the European Commission’s proposal for a regulation on covered bonds.


The European Commission’s proposal seeks to amend the existing capital rules on exposures in the form of covered bonds in the Capital Requirements Regulation (CRR). In the European Parliament’s draft report, the ECON Committee’s lead negotiator, Bernd Lucke (ECR, Germany), notes that the European Commission’s proposals make progress towards some of the objectives set out in the European Parliament’s 2017 paper: “Towards a Pan-European Covered Bonds Framework”.

However, he warns that they fail to address certain aspects of the European Parliament’s policy suggestions.

MEPs had until 25 September to suggest amendments, which were discussed by the ECON Committee on 18 October, ahead of a final vote scheduled for 5 November.
On 3 September, the European Commission published an implementing regulation under the revised Shareholder Rights Directive.

The implementing regulation (Commission Implementing Regulation (EU) 2018/1212) sets out minimum requirements on shareholder identification, the transmission of that information and the facilitation of the exercise of shareholders’ rights for Member States transposing the revised Shareholder Rights Directive.

It covers the different holding models for shares across the Member States without favouring a particular one, and only includes minimum requirements. Intermediaries and other market participants are encouraged to further self-regulate these formats, according to the needs of different markets and holding models for shares.

The Implementing Regulation specifies:

- Information to be included in the notice of participation to the general meeting and the confirmation of entitlement to exercise shareholders’ rights
- Information to be included in the confirmation or receipt of votes, including the recording of those votes
- Deadlines on the transmission of information within the chain of intermediaries for corporate events and shareholder actions (particularly when it consists of custodians or other operators in multiple layers and when omnibus client accounts are used)
- Key elements and principles for compliance with processes involving corporate events of a financial nature, such as distributions and corporate reorganisations affecting the underlying share (where applicable)
- Requirements for appropriate processes to safeguard the integrity and security of personal data in the transmission process

The Implementing Regulation came into force on 24 September, and will apply from 3 September 2020. Other provisions within the Directive on enhanced transparency requirements for institutional investors and asset managers will come into force on 10 June 2019.
On 3 September, the ECON Committee reached a compromise on the proposed regulation for a Pan-European Personal Pension Product (PEPP), opening the path for triilogue negotiations with the European Commission and European Council.

ECON approved the compromise report presented by the Rapporteur, Sophie In’t Veld. The report was voted through by a small majority, largely helped by the fact that 17 out of a possible 56 MEPs abstained. The latest compromise introduced a number of key changes from previous iterations in the European Parliament and in the European Commission’s original proposal. These include:

- A cap on costs and fees for the so-called “basic-PEPP”, set at 1 percent of the accumulated capital per annum
- A choice of options between a “life-cycling” based product and a capital-guarantee based product
- Greater specificity and choice on pay-out options

The European Parliament has also sought to redress the balance between the role of NCAs and EIOPA. While the role of NCAs has been enhanced, EIOPA retains a prominent role, particularly on important Level 2 measures, including the establishment of criteria for effective risk mitigation techniques.

The report appears to have addressed some of the concerns raised by the industry, particularly in relation to the European Parliament’s previously proposed 0.5 percent fee-cap. The option for a life-cycling product has also been largely welcomed by the asset management industry, amid concerns that the capital-guarantee product was too centred on insurance firms and would undermine the ability of asset managers to provide the product.

ECON also voted in favour of giving a mandate for the European Parliament negotiating team to begin triilogue discussions with the European Council and European Commission. The first round of triilogue negotiations took place on 11 October.
On 11 September, the European Parliament adopted its own-initiative report on third-country equivalence.

The European Parliament voted strongly in favour of its own-initiative report on equivalence. This addresses the future relationship between the EU and third-countries in relation to financial services legislation and supervision.

The compromise agreement is a significantly watered-down version of the original report presented by Rapporteur, Brian Hayes — an Irish MEP from the European Peoples’ Party Group — who was recently voted in as a Vice Chair of the ECON Committee. His initial report put forward a proposal for future mutual recognition and mutual access for third countries. However, this was roundly rejected by MEPs across the political spectrum, largely because of its obvious links to the ongoing Brexit negotiations. MEPs expressed their support instead for a strengthened equivalence framework in their initial exchanges.

The final report, which is non-binding, is intended to provide recommendations to the European Commission on how the current system could be improved. This would include increased transparency and a greater role for the European Parliament in the oversight of the process. When addressing the European Parliament, the Rapporteur expressed regret for the explicit link made between the own-initiative report and Brexit. Nevertheless, the report may have some bearing on discussions on the future UK-EU relationship in the area of financial services.
In July, trialogue negotiations between the three EU institutions on the Risk Reduction Measures (RRM) package commenced. These negotiations will be given priority over the coming months.

The package of measures was originally proposed by the European Commission in November 2016 and has since been negotiated separately by the EU institutions. The package covers amendments to CRD IV (consisting of the CRR and the amended CRD); the Bank Recovery and Resolution Directive (BRRD) and the Single Resolution Mechanism Regulation. The revisions aim to implement outstanding international reforms established by the Basel Committee on Banking Standards (BCBS) and the Financial Stability Board (FSB).

The European Council (representing Member States) established its negotiating position on the RRM package in May while the European Parliament established its position in June.

Shortly thereafter, trialogue negotiations on a final text began with the European Commission. There were delays in reaching a general agreement, due to the political sensitivity of some of the issues.

Topics covered by the package include:

- The requirement for foreign entities to establish an Intermediate Parent Undertaking in the EU
- The Fundamental Review of the Trading Book (FRTB), which revises existing market risk rules in the EU, although the FRTB has not undergone full calibration at international level
- A binding leverage ratio set at three percent to restrict the build-up of leverage in the banking sector, as well as additional requirements for the largest banks (a surcharge calibrated at 50 percent)
- The net stable funding ratio (NSFR) which will compel banks to put in place more long-term funding and limit their reliance on short-term financing
• Total loss absorbing capacity (TLAC)/minimum requirements for own funds and eligible liabilities (MREL), to ensure banks have sufficient capacity on their balance sheet to absorb losses

• Moratorium powers for competent authorities to suspend the payment and delivery obligations of a troubled bank for up to five business days, which could be imposed on top of the existing two-day suspension that was calibrated at international level by the FSB

Trialogues recommenced at the start of September, with discussions bifurcated across the capital and resolution elements of the package. Although the EU institutions are aiming for agreement on a final package by the end of the year, so that the rules can be published in the Official Journal by March 2019, divergences in the positions of the three institutions may delay this.

On 13 September, the RTS on settlement discipline under the Central Securities Depository Regulation (CSDR) were published in the Official Journal.

The long-awaited RTS on settlement discipline were published by the European Commission in May. This follows a delay of more than two years from the date ESMA submitted their draft RTS to the European Commission in February 2016.

After the European Commission adopted them, the RTS were subject to a scrutiny period by the European Council and the European Parliament, although neither of the co-legislators chose to raise objections. The provisions of the RTS are subject to a 24-month implementation period and will enter into force on 13 September 2020.
On 25 May, ESMA released a Q&A on the UCITS disclosure requirements on remuneration to delegates.

The following options are available to be considered for all UCITS annual financial statements:

- Disclosures should be limited to what is in the existing UCITS Directive rather than the recent ESMA Q&A, given that this is not an official amendment to the directive.

- Disclosures should be limited to the literal wording in the Q&A that is “paid by the management company, the investment company and, where relevant the UCITS itself to the identified staff of the delegate.”

- Disclosures should be increased to meet the character of the provisions in the Q&A.
For the financial year ending 31 December 2018, International Financial Reporting Standard 15, Revenue from Contracts with Customers and the “Clarifications to IFRS 15 Revenue from Contracts with Customers” (together IFRS 15) will be in effect for financial statements prepared in accordance with IFRS.

IFRS 15 outlines a five-step framework for establishing how to recognise revenue that reflects the consideration to which that entity expects to be entitled in exchange for services provided. The application of the framework will depend on the contents of the contract with the customer and will require the exercise of judgement.

IFRS 15 can be applied retrospectively, using the transition rules set out in the Standard. The cumulative effect of initial application (if any) should be recognised as an adjustment to the opening balance of retained earnings at 1 January 2018 and it should only be applied to contracts that were incomplete on that date.

IFRS 15 will have a limited impact on fund financial statement reporting, but it will have a direct impact on management companies and any corporate entity structures managing investment funds. This could give rise to delays in the recognition of revenue, which cannot be recognised until there is virtually no risk of a clawback.

IFRS 15 will also apply to similar entities applying FRS 101 “Reduced Disclosure Framework”, as issued by the Accounting Standards Board.
On 7 June, the Federal Financial Supervisory Authority, “Bundesanstalt für Finanzdienstleistungsaufsicht” (BaFin), published Circular 08/2018 (BA) on the reporting of major payment security incidents.

The Circular implements the requirements of the EBA “Guidelines on Major Incident Reporting in accordance with Directive (EU) 2015/2366 (PSD2) [EBA/GL/2017/10]”. It specifies the requirements of Section 54 [1] of the Payment Services Supervision Act, “Zahlungsdiensteaufsichtsgesetz” [ZAG]. Reports on payment security incidents must be transmitted to BaFin via the reporting and publication platform, “Melde- und Veröffentlichungsplattform” [MVP]. BaFin has also provided a sample reporting form for information purposes.
On 12 June, the BaFin published Circular 09/2018 (BA) on interest rate risk in the banking book.

The circular implements the requirements of the EBA “Guidelines on the Management of Interest Rate Risk Arising from Non-Trading Activities” (EBA/GL/2015/08) and includes:

- The calculation of the sudden and unexpected interest rate change, taking into account a lower interest rate limit of 0 percent
- The calculation of the effects of interest rate change scenarios
- The respective supervisory reporting

The alternative approach set out by the previous circular for banks without cash-value interest rate risk measurements no longer applies under the EBA Guidelines and is being deleted. For institutions under the direct supervision of the ECB the requirements on the calculation of the interest rate shock, if different from the Circular, are definitive. Accordingly, such institutions may take the data reported to ECB as a basis for reporting to German supervisory authorities.
## EUROPEAN REGULATORY TIMELINE

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### Benchmarks
- **2016 Q2** Publication in Official Journal
- **2017 Q2** Level 2 rules on settlement internalisation and CSD requirements
- **2017 Q3** Level 2 rules on prudential requirements for CSDs

### CSDR
- **2016 Q3** Text published in Official Journal
- **2017 Q2** Political agreement on Level 1 text
- **2017 Q3** Delegated Acts and RTS published
- **2017 Q4** Member State transposition date

### General Data Protection Regulation (GDPR)
- **2016 Q1** Political agreement on Level 1 text
- **2017 Q1** Final Level 2 rules on the Key Information Document
- **2017 Q2** Discussion paper on draft Level 2 rules
- **2017 Q3** Application date for rules on reuse
- **2017 Q4** Application date for transparency requirements

### IORP II
- **2017 Q1** Political agreement on Level 1 text
- **2017 Q2** Delegated Acts and RTS published
- **2017 Q3** Publication in Official Journal
- **2017 Q4** ESMA Final Report Level 2 measures published

### MiFID II/MiFIR
- **2017 Q2** Final Level 2 rules on the Key Information Document
- **2017 Q3** Political agreement on Level 1 text reached
- **2017 Q4** Publication in Official Journal

### MMFs
- **2017 Q2** Final Level 2 rules on the Key Information Document
- **2017 Q3** Political agreement on Level 1 text reached
- **2017 Q4** Publication in Official Journal

### PRIIPs
- **2017 Q2** Final Level 2 rules on the Key Information Document
- **2017 Q3** Political agreement on Level 1 text reached
- **2017 Q4** Publication in Official Journal

### Risk Reduction Package ("Fast-Track Elements")
- **2017 Q2** Final Level 2 rules on the Key Information Document
- **2017 Q3** Political agreement on Level 1 text reached
- **2017 Q4** Application date for new funds

### SFTR
- **2017 Q2** Final Level 2 rules on the Key Information Document
- **2017 Q3** Political agreement on Level 1 text reached
- **2017 Q4** Application date for transparency requirements

### Shareholders Rights Directive
- **2017 Q1** Application date for transparency requirements
- **2017 Q2** Application date for transparency requirements
- **2017 Q3** Application date for transparency requirements
- **2017 Q4** Application date for transparency requirements

**STATE STREET**
### Completed milestones

1. Application date
2. Level 2 rules on settlement discipline
3. Application date for settlement internalisation reporting
4. Application date
5. Application date (extended)
6. Application date (TLAC)
7. Estimated application date for phase-in of reporting requirements
8. Level 2 rules on facilitating voting rights
9. First application date

### Future milestones

1. Date by which fund prospectuses will need to be updated
2. Application date for new funds
3. Application date for existing funds

### Application dates

#### 2018
- Q1: Application date
- Q2: Level 2 rules on settlement discipline
- Q3: Application date
- Q4: Application date (extended)

#### 2019
- Q1: Date by which fund prospectuses will need to be updated
- Q2: Application date for settlement internalisation reporting
- Q3: Application date for new funds
- Q4: Application date (TLAC)

### Benchmarks

1. General Data Protection Regulation (GDPR)
2. IORP II
3. MiFID II/MiFIR
4. MMFs
5. PRIIPs
6. Risk Reduction Package ("Fast-Track Elements")
7. Shareholders Rights Directive
8. SFTR
9. CSDR
10. Benchmarks

#### 2018
- Q1: Application date
- Q2: Level 2 rules on settlement discipline
- Q3: Application date
- Q4: Application date

#### 2019
- Q1: Date by which fund prospectuses will need to be updated
- Q2: Application date for settlement internalisation reporting
- Q3: Application date for new funds
- Q4: Application date (TLAC)
In line with the current trend of greater transparency in markets, the “Commissione Nazionale per le Società e la Borsa” (CONSOB) introduced a new reporting obligation for Italian management companies (Delibera Consob 20197 of 22 November 2017, Annex II.19).

The CONSOB is the public authority responsible for regulating Italian financial markets. With this new obligation, quarterly reporting of information related to distribution and to subscription in the absence of distribution is required.

For each fund distributed by a management company, the following information must be reported:

- Subscribed amount
- Redeemed amount
- Currency
- ISIN Code
- Investor type (retail/professional)
- Advisory service
- Distribution channel (in-house, off-site, remote)
- Number of clients

Purchased or redeemed funds through a direct relationship with management companies and counterparties, where the counterparty acts upon their own account, are subject to reporting obligations. Amounts placed or redeemed through the intermediation of a third-party distributor (i.e., by placement) are excluded from the reporting scope.

The number of clients of each fund must be reported for each option and/or category of the required fields, and separately for the subscribed and redeemed amounts.

The first reporting of this obligation was due before 30 July.
On 31 July, the Bank of Italy issued for public consultation a specific provision on the retention and use of data and information for AML/CTF purposes.

The purpose of the draft provision is to implement Article 34, Paragraph 3 of Legislative Decree No. 231, of 21 November 2007 — as amended by Legislative Decree No. 90, of 25 May 2017, which implemented Directive 2015/849 (AMLD IV) on the electronic use and retention of data. The Decree sets retention obligations partially similar to the ones previously in force for data and information.

These include:

- Identification data for the client and the beneficial owner for business relationships
- Date of transaction
- Payment means and amount of the transaction for occasional transactions

The main change is that financial intermediaries were required to register the AML data in a specific AML Database, the commonly known “Archivio Unico Informatico” (AUI).

Now, financial intermediaries are permitted to either retain data through any retention system meeting specific criteria established by the Bank of Italy or to continue to use the established AUI.

Some of the main topics set out under the provision relate to:

- Specific criteria for providing data and information to the Regulators which must be made available to the Bank of Italy and to the Financial Intelligence Unit (FIU) both from:
  - An extraction from the retention system chosen, on the basis of the standards and technical requirements specified
  - Dedicated standardized archives (including AUI)

- Specific exemptions from the obligation to make information available to the Bank of Italy and to the FIU, (in a standardized format, defined by the Regulator)

The public consultation on the provision ended on 1 October.
The CBI considers that fund management companies managing UCITS that charge performance fees should carry out a review of their existing methodologies so that the performance fees comply with the UCITS Performance Fees Guidance and incorporate the findings of the CBI’s review detailed below.

The chairman of the board of the fund management company should provide written confirmation to the CBI by 30 November that a review has taken place and indicate if:

- Any required changes to existing methodologies have been identified
- Any required changes to prospectus disclosure have been identified
- Any instances of improper payment of performance fees have been identified
- Actions are being taken to remedy the above

The CBI states that the fund management company should review the calculation procedures adopted by fund administrators to ensure that the calculation of performance fees is applied in a consistent and independent manner.

The CBI further states that the fund management company should review the verification procedures adopted by their depositaries to ensure that they meet with the CBI’s expectations.

Where the fund management company identifies any of these issues or any other instances of non-compliance with the UCITS Performance Fees Guidance, the CBI must be notified of the steps being taken by the relevant UCITS to rectify the situation, including any adverse impact on the UCITS and its investors.

The CBI states in the letter that it intends to commence supervisory engagement with the individual UCITS that were the subject of the review, where specific supervisory issues were identified, as well as with the depositaries and fund administrators of those UCITS.
In July, the CBI published a notice regarding their requirements on the organisation of fund management companies, which came into full effect on 1 July.

The requirements are supported by the CBI’s Fund Management Companies Guidance, dated December 2016. The Fund Management Companies Guidance stipulates that the board of the fund management company should design its governance practices so that they are appropriate and commensurate to the business of the relevant company and, where applicable, the investment funds it manages.

Part II of the Fund Management Companies Guidance relates to the organisational effectiveness role which each fund management company is required to have in place. According to the Guidance, the purpose of this role is to ensure that there is an independent director within the fund management company, who has the specific task of keeping the effectiveness of the organisational arrangements of the company under ongoing review. His or her reports should be submitted to the board for discussion and decision.

The notice states that from 1 July 2018, CBI supervisors will be assessing how fund management companies have implemented and embedded the new requirements and related guidance into their organisations. There will be a specific emphasis on assessing the appropriateness of the fund management company’s resources and organisational structure.

The CBI indicates that it will focus on the assessment work performed by the organisational effectiveness role holder through supervisory engagements with relevant firms. The assessment will focus particularly on how the board of the fund management company has implemented any proposals to improve organisational effectiveness.
On 5 July, the CBI published a new markets update, which includes the 23rd Edition of the UCITS Q&As.

The revised Q&A provides an updated Question ID 1002 on UCITS investing in non-UCITS investment funds and states as follows:

The Q&A deals with whether non-UCITS investment funds must include conforming provisions in their constitutional document to be eligible for investment by a UCITS, or whether it is sufficient for the non-UCITS investment funds to operate in practice in a manner which complies with the requirements of Regulation 68(1)(e).

The Q&A indicates that UCITS Regulations require that the constitutional document of the non-UCITS fund in which it is intended to invest includes a prohibition on investing more than ten percent of its assets in other investment funds.

Furthermore, the Q&A states that a non-UCITS investment fund must also be subject to requirements in its jurisdiction of domicile equivalent to UCITS investor protections, to comply with Regulation 68(1)(e). Alternatively, the non-UCITS fund must have requirements of the same effect in its constitutional or offering document. According to the Q&A, a statement of the intended investment approach does not constitute a rule for this purpose.

Lastly the Q&A indicates that UCITS holding non-UCITS, which do not meet these requirements, had until 5 October to rectify their positions.
On 14 September, the CBI issued their ETF Feedback Statement, which is further to the Discussion Paper (DP6) they published in May 2017.

The Feedback Statement summarises the responses received and seeks to continue the dialogue started with the Discussion Paper.

The CBI provided feedback under 15 headings, which include “Areas of Discussion” and “Findings to Date” under each topic. In this Feedback Statement, the CBI’s views have been outlined. In an Irish context, the Feedback Statement has set out policy changes which are results from ongoing dialogue.

Areas in which the CBI has set out policy changes include share class dealing arrangements, and listed and unlisted shares.

**Share Class Dealing Arrangements**

The CBI considers that, for the same reasons that a cash class within an ETF may be subject to an earlier cut-off time than an in-kind class, a similar rationale should apply to unhedged and hedge share classes. The CBI therefore proposes to extend the current approach with respect to cash/in-kind share classes to include unhedged and hedge share classes within an ETF.

**Listed and Unlisted Share Classes**

Using the principles established by ESMA’s Share Class Opinion to guide its approach, the CBI expressed the view that there are no grounds to prohibit listed and unlisted share classes. The CBI concluded that the benefits from such optionality outweigh any potential detriment in times of market stress, when exit mechanisms may differ. It also notes that any potential detriment is mitigated by the existing safeguards for unit holders in the event of stressed market conditions.
In relation to portfolio transparency, the CBI states that full daily transparency has considerable merit. It also argues that investor choice, in terms of access to active ETFs, is not sufficient justification to move away from the current requirement, which will remain in place. However, the CBI states that it will consider the matter and continue to engage at European and international regulatory forums, noting that the United States Securities and Exchange Commission (SEC) is currently consulting on the same matter.

The CBI notes that the Feedback Statement is not intended to conclude on matters of importance in relation to ETFs, but instead seeks to provide a clear view of the current landscape with a view to continued engagement on the topic.
On 31 May, the Law of 30 May 2018, transposing MiFID II into Luxembourg law and the Grand-Ducal Regulation of 30 May 2018 on the protection of financial instruments and client funds, product governance obligations and rules applicable to the provision and reception of fees, commissions or any other monetary or non-monetary benefits, were published in the Mémorial (the Luxembourg Official Journal).

The new law transposes the provisions on markets in financial instruments into a specific sector law, repealing the former Law of 13 July 2007, with the exception of Article 37 (non-discriminatory access to and obligation to licence benchmarks, which will apply from 3 January 2020). In addition, the new law implements the provisions on investment services or activities by amending the Law of 5 April 1993, namely the Luxembourg Law on the Financial Sector. This means that Luxembourg is now one of the Member States which have fully implemented MiFID II.

The Luxembourg Grand-Ducal Regulation of 30 May 2018 repeals the Luxembourg Grand-Ducal Regulation of 13 July 2007 on organisational and conduct of business rules in the financial sector and replaces the Grand-Ducal Regulation of 13 July 2007 on organisational requirements and rules of conduct in the financial sector.
The Law of 6 June appoints the Luxembourg Financial Sector Regulator, the “Commission de Surveillance du Secteur Financier” (CSSF), as the competent authority to ensure compliance in Luxembourg with CSDR.

This Law specifies a set of sanctions and penalties that may be imposed by the CSSF for certain breaches of the CSDR. These include the withdrawal of a license, pursuant to Articles 16 or 54 of the CSDR; temporary or permanent bans from performing regulated functions; pecuniary fines of up to €700,000 on natural persons and up to €20,000,000 or 10 percent of the annual turnover on legal persons; and the publication of imposed sanctions.

Whistleblowing notification procedures for (suspected) violations of the CSDR, both within centralised securities depositaries and appointed credit institutions, as well as for notifications to the CSSF will also be covered by the Law.
The Law of 6 June 2018 on SFTR empowers the supervisory authorities of Luxembourg to impose adequate administrative sanctions and other administrative measures in cases of infringement of the trade repository reporting and the reuse of collateral requirements under Articles 4 and 15 of SFTR. These must be efficient, proportionate and dissuasive.*

The Law amends the following:

- The Luxembourg Law of 17 December 2010 on undertakings for collective investment
- The Luxembourg Law of 12 July 2013 on alternative investment fund managers

*For financial counterparties and non-financial counterparties, these powers are granted to the CCSF. For relevant insurance and reinsurance undertakings, these powers are granted to Luxembourg’s Assurance Authority, “Commissariat aux Assurances” (CAA).
On 15 June, the Grand-Ducal Regulation of 6 June 2018 on the establishment of a standard list of the most representative services linked to a payment account, based on the Law of 13 June 2017 on payment accounts, entered into force. The Regulation specifies 10 of the most representative services linked to a payment account, and contains terms and definitions for each of the services identified, as required under Article 5 of the Law (based on Article 3 of Directive 2014/92/EU on access to payment accounts).

The Law of 22 June 2018 introduced renewable energy covered bonds and amended the Law of 5 April 1993. The Luxembourg legal provisions on covered bond banks, “banques d’émission de lettres de gage”, and covered bonds, “lettres de gage”, were amended by the law of 22 June 2018. This modifies the Law of 5 April 1993, also referred to as the Luxembourg Law on the Financial Sector and introduces renewable energy covered bonds. This law introduces renewable energy covered bonds as a new covered bond class and adds a cover pool liquidity buffer requirement.
ENTRY INTO FORCE OF MMFR

On 20 July, two CSSF communications mentioned the entry into force of MMFR.

The CSSF published a press release regarding the entry into force of MMFR, while CSSF Circular 18/696 implemented ESMA’s Guidelines on stress tests scenarios under article 28 of the same regulation.

CSSF’S BREXIT PREPARATION

On 25 July, following communications by the European Commission, the EBA and ESMA, the CSSF issued a publication calling for fund industry management companies and AIFMs to prepare for Brexit.

In the publication, the CSSF recalls that in a worst-case scenario, no transition period will be agreed upon and the UK will consequently need to be considered as a third country from 30 March 2019.

The CSSF indicates that it will pay particular attention to the issues raised in ESMA’s Opinion of 13 July 2017 as well as to the statement ESMA issued on 12 July 2018 on the necessity to take into consideration the supervisory implications of Brexit and the general changes to the business model.

The objective of this Law and the underlying Directive (EU 2017/2399) is to clarify and establish the eligibility criteria for subordinated liabilities which may be used to comply with the minimum requirements for own funds and eligible liabilities (MREL) and the minimum total loss — absorbing capacity requirements (TLAC).

Accordingly, the law sets out provisions on the ranking of unsecured debt instruments in insolvency for the purpose of the recovery and resolution framework, and aims to improve the efficiency of the bail-in tool.

This Law amends the law of 18 December 2015 on the failure of credit institutions and certain investment firms and various provisions of the financial sector law of 5 April 1993 known also as the Luxembourg Law on the Financial Sector. Amongst other things, these amendments reflect the changes brought about by the updated CRD IV provisions on 25 January 2017.
On 20 August, the Law of 1 August 2018 enforcing GDPR in Luxembourg, entered into force.

This Law establishes the National Commission for Data Protection — “Commission Nationale pour la Protection des Données” (CNPD) — as the Luxembourg data protection supervisory authority and changed its control system mechanisms.

The majority of the law is dedicated to empowering the CNPD to carry out its mandate under GDPR as a “supervisory authority”. The CNPD has the authority to investigate and adjudicate any potential breach of data protection law under the 1 August 2018 Law or GDPR. The CNPD may also take any of the punitive measures authorized by GDPR, including sanctions.

The new law relaxes the requirements for surveillance and monitoring in the workplace and amends the labour code to reflect the GDPR requirements for such processing.
THE NETHERLANDS
On 25 July, the revised Prevention of Money Laundering and Counter Terrorism Act, “Wet ter voorkoming van witwassen en financieren van terrorism”, (PMLCTA) came into effect.

The Act implemented AMLD IV, which incorporates the recommendations of the Financial Action Task Force (FATF) and amends the original PMLCTA.

More specifically, the Act introduced several new requirements for investment institutions including:

- A requirement to assess, record and maintain money laundering and terrorism finance risks; this assessment must be presented to the Dutch Financial Markets Authority (FMA), on request
- An amendment to the definition of the ultimate beneficial owner (UBO), whereby the distinction between domestic and foreign politically exposed persons (PEPs) was abolished
- A requirement for a compliance and audit function in line with the nature and scale of the institution

The FMA published updated guidance, including sector-specific guidance on the application of the new Act. This is now available on their website.
On 5 July, the UK authorities — the Bank of England (BoE), the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) — published a joint consultation on the operational resilience of firms.

Operational resilience has been an important area of focus for policymakers since the financial crisis. It refers to the ability of financial institutions, Financial Market Infrastructures (FMIs) and the wider financial sector to prevent, respond to, recover from and learn from operational disruptions. They view any operational disruption to the products and services provided by institutions and FMIs as a potentially significant threat to consumers, market participants, and financial stability, in general.

The consultation paper focuses on how the stability and reliability of these products and services can be maintained. It suggests that managing operational resilience can be addressed by focusing on business services, rather than on systems and processes, and that the responsibility for financial stability rests with all market players in the financial sector.

Boards and senior management should establish "impact tolerances" to ensure sustainability and mitigate against operational disruption.

The paper also proposes methods by which supervisors are comfortable that firms and FMIs can ensure the continuity of important business services, as well as sufficient senior engagement on these issues.

The PRA and FCA will consider feedback and jointly produce legislative proposals. They will continue to develop their supervisory approaches and work with the UK Financial Policy Committee in the development of impact tolerances. The consultation was open until 5 October.
On 17 July, the FCA published its approach document on consumers and a Discussion Paper (DP18/5) on a new duty of care for firms in financial services.

The approach document sets out how the FCA intends to meet its operational objective to protect consumers, and the regulatory, legal and decision-making frameworks that will apply. A feedback statement providing a summary of responses to its 2017 consultation is annexed to the document.

The Discussion Paper explores whether a new duty of care (defined loosely to cover both a duty of care and/or fiduciary duty), or any other change should be introduced to avoid conflicts of interest, to enhance the culture and governance of firms, and to improve consumer protection.

Views are also sought on whether a new duty is needed, and if so, what form it should take, including whether it should be put on a regulatory or a statutory footing, and whether a breach should give rise to a private right for damages in court.
The UK Government continues to publish further material on the ongoing Brexit negotiations, including the future framework for financial services, as well as guidance on preparations for a “no-deal” scenario.

On 25 July, the UK Government published a presentation on the possible future framework for financial services. The presentation adds further detail to what was previously set out in the Government White Paper. It calls for a solution that is acceptable to both the UK and the EU and centred on cooperation, the protection of financial stability and autonomous decision-making for both parties. Furthermore, the presentation highlights the foundations, referred to as “pillars”, for the future EU-UK relationship.

These include:

- Common principles in relation to governance
- Extensive supervisory and regulatory cooperation
- Predictable and transparent processes

The presentation concludes that the proposal being put forward by the UK would address key potential concerns for the EU27 and also benefit both the EU and the UK.

In addition, on 24 August, the Government Department for Exiting the European Union [DExEU] published a comprehensive list of guidance setting out the UK’s approach and contingency preparations for a “no-deal” scenario. Overall, there are 25 technical notices, including farming, state aid and studying in the UK. The UK Government published further guidance in mid-September.

At the end of August, the UK Government published several draft Statutory Instruments (SIs) under the EU (Withdrawal) Act 2018. These seek to ensure that current legislation enshrined at the EU level will still apply in the UK once it has formally left the EU. Among other things, the latest draft includes aspects of the Capital Requirements Regulation (CRR). HM Treasury intends to lay the final SIs before Parliament this autumn.
On 6 August, the FCA published a note assessing the market impact of certain obligations under EMIR.

The FCA’s research note focused specifically on the impact of the clearing and margin obligations, which are two of the key provisions imposed by EMIR. The FCA’s research was based on data from both trade repositories and the information submitted to the FCA as part of the EMIR regulatory reporting requirements.

There were two main findings from the research paper. Firstly, the FCA concluded that granting small firms an exemption from the clearing obligation could significantly alleviate the burden on them. The FCA notes that the data available to policymakers and regulators could be used to develop a more formal exemption without undermining the key objectives of the Regulation.

Secondly, the phasing-in of the initial margin requirements has not gradually increased the counterparties within scope, as intended. Instead, a sharp increase was observed during the final part of the phase-in period.

The FCA also notes the opportunity presented by the increasingly comprehensive market data available to policymakers, for assessing the impact of existing provisions, developing new provisions, and meeting the overall intended objectives of the Regulation.
On 31 August, the BoE published an updated “Supervisory Statement on Resolution Planning” (SS19/13) for financial institutions.

Under the BRRD, financial institutions are required to compile and submit resolution plans to NCAs. The BoE update reflects draft EBA ITS published in October 2017 on what information should be contained in firms’ resolution plans.

As part of those revisions, the EBA presented new reporting templates to further harmonise data collection, as well as data exchange between resolution and competent authorities. The EBA submitted the draft ITS to the European Commission for endorsement earlier this year, with a recommendation that the reporting templates be used by firms for resolution planning purposes from May 2019.

However, national resolution authorities — for which the BoE acts on behalf of the UK — can produce alternative requirements for firms, subject to simplified obligations on the compilation of resolution plans.

The criteria for determining what firms are eligible to submit simplified resolution plans have been prescribed by the EBA and are due to become applicable later this year.

These include a firm’s:

- Size risk profile
- Interconnectedness in the wider banking system
- Membership of an institutional protection scheme and investment services or activities

The BoE has provided guidance in the Supervisory Statement as to which firms will be required to submit the updated templates, primarily based on whether a firm’s resolution strategy involves the use of stabilisation tools. Nonetheless, to avoid duplicative efforts, the PRA has delayed resolution plan submissions (known as Phase 1) until 2020.
On 19 September, UK authorities — BoE, the PRA and the FCA — sent a “Dear CEO” letter to large banks and insurance companies operating in the UK. The letter asks these firms to assess the risks related to the transition from the London Interbank Offered Rate (LIBOR) to alternative rates, and contingency plans to manage the implementation of such a transition.

The UK authorities issued a letter to chief executives of large banks and insurance companies regarding the ongoing global benchmark reform effort mandated by the Financial Stability Board (FSB), specifically the transition from referencing LIBOR to alternative rates. In the UK, this effort is largely driven by the Bank’s Financial Policy Committee — which is responsible for identifying, monitoring and minimising systemic risks to ensure resilience of the UK financial system — as well as by the FCA, given its supervisory oversight of LIBOR.

The purpose of the letter is to obtain “assurance that firms’ senior managers and boards understand the risks associated with this transition and are taking appropriate action now...” after the FCA separately announced in July last year that it would stop compelling panel banks to contribute data to the benchmark beyond January 2022.

According to FCA Chief Andrew Bailey in 2017, this was because “the underlying market that LIBOR seeks to measure — the market for unsecured wholesale term lending to banks — is no longer sufficiently active”.

In response to the letter, firms are asked to submit to the BoE an assessment of risks relating to LIBOR discontinuation, approved by its Board, as well as details of actions expected to be taken to mitigate those risks. The letter states that assessments and plans should consider an appropriately “wide range of scenarios and impacts” and include a quantification of LIBOR exposures.

In addition, the submission must identify the senior manager(s) who will oversee implementation of its transition plans.

Firms are asked to submit this information by 14 December.
ABBREVIATIONS

ADNT  Average Daily Number of Transactions
AIFMD  Alternative Investment Fund Managers Directive
AIFs  Alternative Investment Funds
AUI  Italian Anti-Money Laundering Database
BaFin  German Financial Supervisory Authority
BCBS  Basel Committee on Banking Standards
BoE  Bank of England
BOs  Binary Options
BRRD  Bank Recovery and Resolution Directive
BRRF  Bank Recovery and Resolution Framework
CBI  Central Bank of Ireland
CFDs  Contracts for Differences
CNPD  Luxembourg National Commission for Data Protection
CONSOB  Italian Financial Markets Regulator
CRD  Capital Requirements Directive
CRR  Capital Requirements Regulation
CSSF  Luxembourg Regulatory Authority
DExEU  Department for Exiting the European Union
EBA  European Banking Authority
ECB  European Central Bank
ECON  European Parliament’s Committee on Economic and Monetary Affairs
EIOPA  European Insurance and Occupational Pensions Authority
EMIR  European Market Infrastructure Regulation
EONIA  Euro Over-Night Index Average
EPM  Efficient Portfolio Management
ESAs  European Supervisory Authorities
ESMA  European Securities and Markets Authority
ETFs  Exchange Traded Funds
FIU  Financial Intelligence Unit
FMA  Financial Markets Authority
FRTB  Fundamental Review of the Trading Book
FSB  Financial Stability Board
GAV  Gross Asset Value
IBORs  Interbank Borrowed Offering Rates
IFRS 9  Ninth International Financial Reporting Standard
IRRBB  Interest Rate Risk in the Banking Book
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