FIG Bulletin

Recent developments

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The next edition of the bulletin will be on 9 November 2020

Hogan Lovells

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General

COVID-19: FCA proposes additional guidance for insurance and premium finance firms on customers in financial difficulty

The FCA has published draft additional guidance for insurance and premium finance firms, setting out its expectations on how firms should provide support to their insurance and regulated credit premium finance customers from 1 November 2020. The aim of the guidance is to prompt firms to help customers, where possible, to reduce the impact of financial distress and ensure that customers continue to have insurance that meets their needs.

If confirmed, the additional guidance will come into force by 1 November 2020. The FCA proposes that it should remain in force during the circumstances created by COVID-19 until varied or revoked.

The FCA's existing guidance, published in August 2020, expires on 31 October 2020. However, the FCA notes, for the avoidance of doubt, that certain provisions of the August guidance remain in force beyond 31 October 2020. This is in respect of customers granted payment deferrals under that guidance which come to an end after 31 October 2020.

COVID-19: FCA updates statement on firms' complaint handling

The FCA has updated its statement on firms' handling of complaints during the COVID-19 pandemic.

The FCA reinforces the message that although firms' operations continue to be affected by COVID-19, it considers that they have had enough time to embed new ways of working. Accordingly, a failure to comply with any of the FCA complaint handling requirements should only arise in exceptional circumstances connected to the impact of COVID-19. Any firm facing difficulties complying should inform their usual supervisory contact and advise the FCA of the steps it is taking to manage and address its non-compliance.

The FCA also advises that most of the payment protection insurance complaints that were submitted by the 29 August 2019 deadline have now received final responses from firms.

The FCA intends to review the statement again by the end of April 2021 at the latest.

Financial Services Bill 2019-21

The Financial Services Bill 2019-21 was given its first reading in the Houses of Commons on 21 October 2020. An explanatory memorandum has also been published. The Bill's second reading is scheduled for 9 November 2020.

The government intends to use the Financial Services Bill to make extensive amendments to the legislative and regulatory framework for financial services following the UK's departure from the EU.

Read more in our briefing on Hogan Lovells Engage: Financial Services Bill introduced in UK Parliament.

UK financial services regulatory framework: HM Treasury consultation

HM Treasury has published a consultation paper on Phase II of its Future Regulatory Framework Review, which considers how the regulatory framework for financial services needs to adapt to be fit for the future, particularly in light of the UK's departure from the EU.

The government is conducting this phase of the Review in two stages. This first consultation sets out an overall blueprint for financial services regulation, focusing on the split of responsibilities between Parliament, the government and the financial services regulators. It highlights the importance of ensuring appropriate and effective arrangements for accountability, scrutiny and public engagement with the policy-making process, particularly in relation to the UK's financial services regulators.

The deadline for responses to the consultation is 19 January 2021. The government will use the responses to this consultation to inform a second consultation in the first half of 2021, which will set out a final package of proposals and how they will be delivered.

Whistleblowing: FCA updates

The FCA has published the following new and updated webpages relating to whistleblowing:

- Whistleblowing: speaking to the FCA - sets out information on the decision to speak to the FCA, how the FCA protects whistleblowers' identities, when an individual should speak to the FCA, and what the FCA will do with whistleblowers' information;
- Legal advice and whistleblowing - an updated webpage considering the legal protection available for whistleblowers, and suggesting where they can get advice;
- Whistleblowing: how to make a report - explains how to report concerns to the FCA's Whistleblowing team and what happens to the information that has been provided once a report has been made; and
- Whistleblowing in practice: case studies - advises that whistleblowing information gives the FCA an insight into what is happening in the markets it regulates. Any information provided allows the FCA to consider potential risks. On the webpage, the FCA sets out some typical case studies based on real incidents handled by its Whistleblowing team, including in relation to misselling, anti-money laundering (AML) checks and reporting the conduct of a senior manager. All details in the case studies have been anonymised.

Diversity objectively: FCA Insight article

The FCA has published an Insight article on improving diversity objectively. The article sets out ideas that can help organisations to identify unwanted imbalances, that enable changes in diversity to be tracked over time, and for corrective action to be taken when needed.

LIBOR transition: FMLC paper

The Financial Markets Law Committee (FMLC) has published a paper discussing issues of legal uncertainty arising from LIBOR transition. Although it is a departure from its usual approach, the FMLC states that the paper is intended to survey the uncertainties in the context of LIBOR transition and the steps being taken by authorities around the world, so as to draw attention to any residual issues.

The paper gives a brief overview of the FMLC's views as to the risks arising in respect of benchmark reform and, specifically, from the transition from LIBOR. It also sets out an analysis

of uncertainties arising from the end of the EU-UK transition period and the complexities it adds to the adoption of a successor rate. Finally, the paper offers a survey of the specific ways in which it may be possible to mitigate the legal uncertainties in this context, including by legislative, regulatory or market action.

Digital operational resilience: proposed EU Regulation

As previously reported in this bulletin, the European Commission has published a proposed Regulation on digital operational resilience within the financial services sector in the EU. This will replace and harmonise existing guidance in relation to ICT and security risk management and will bring major ICT service providers directly within the scope of supervision by the European Supervisory Authorities. In our follow up briefing, The EU proposed digital operational resilience regulation, we review the key takeaways from the proposal.

European Commission 2021 work programme

The European Commission has published a communication outlining its work programme for 2021. Alongside the communication, the Commission published the annexes to the 2021 work programme and two factsheets. Annex I sets out new policy and legislative initiatives, Annex II sets out REFIT initiatives (under which the Commission intends to simplify existing legislation), and Annex III sets out priority pending proposals which include initiatives that from part of the Commission's recent digital finance package.

Other financial services initiatives mentioned in the communication include:

- deepening the capital markets union (CMU), including revising the Solvency II Directive with a proposal expected in Q2 2021;
- completing the banking union;
- a proposed legislative package in the area of anti-money laundering expected in Q1 2021;
- Revision of the EU Emissions Trading System (ETS), with a legislative proposal expected in Q2 2021; and
- revising the Markets in Financial Instruments Directive (MiFID) and the Markets in Financial Instruments Regulation (MiFIR). A legislative proposal is expected in Q4 2021.

The Commission will now start discussions with the Parliament and Council to establish a list of joint priorities on which co-legislators agree to take swift action.

Identifying legal entities: ESRB recommendation

The European Systemic Risk Board (ESRB) has published a recommendation on identifying legal entities. The ESRB considers that the availability and wide adoption of a worldwide unique identifier to unequivocally identify entities engaged in financial transactions is very important. The current low rate of adoption of the legal entity identifier (LEI) constitutes a factor that may hamper the reliability of financial stability analysis, making it difficult to accurately assess and compare risks across national markets. Therefore, it wants existing gaps in the adoption of the LEI to be addressed.

Against this background, Recommendation A calls on the European Commission to propose that:

- EU legislation incorporates a common EU legal framework governing the identification of legal entities established in the EU that are involved in financial transactions by way of a LEI;
- EU legislation that imposes an obligation on legal entities to report financial information includes the obligation to identify by way of a LEI the legal entity subject to the reporting obligation and any other legal entity about which information must be reported; and
- EU legislation incorporates an obligation on authorities to identify by way of its LEI any legal entity about which they publicly disclose information.

Pending any action the Commission takes to comply with Recommendation A, Recommendation B calls on relevant authorities (which include national competent authorities, ESMA, EIOPA and the EBA) to require all legal entities involved in financial transactions under their supervisory remit to have an LEI. It also calls on such authorities to include in any financial reporting obligations they impose an obligation to identify, by way of an LEI, the legal entity subject to the reporting obligation and any other legal entity about which information must be reported and to identify, by way of its LEI, any legal entity about which they publicly disclose information.

The ESRB asks the Commission to deliver a report on the implementation of Recommendation A by 30 June 2023 and it asks the addressees of Recommendation B to deliver a report on the implementation of Recommendation B by 31 December 2021.

LIBOR global transition: FSB roadmap

The Financial Stability Board (FSB) has published a global transition roadmap providing a timetable of actions to be taken by financial and non-financial sector firms with exposure to LIBOR benchmarks to ensure a smooth transition away from LIBOR by the end of 2021. The steps outlined in the roadmap are intended to supplement existing timelines from industry working groups and regulators.

Firms should already have identified and assessed all existing LIBOR exposures and agreed on a project plan to transition before the end of 2021. Other key dates highlighted by the FSB include:

- by the effective date of the ISDA Fallbacks Protocol, the FSB strongly encourages firms to have adhered to the protocol;
- by the end of 2020, firms should be able to offer non-LIBOR linked loans to their customers;
- by mid-2021, firms should have established formalised plans to amend legacy contracts, where this can be done, and have implemented the necessary system and process changes to enable transition to robust alternative rates; and
- by the end of 2021, firms should be prepared for LIBOR to cease.

The FSB highlights the importance of all regulated financial institutions having an open and constructive LIBOR transition dialogue with their home state and host state regulators throughout the transition period. It also states that financial institutions, non-financial firms and others with exposure to LIBOR benchmarks should monitor developments regarding other interbank offered rates relevant to their business. This is because benchmark transitions vary across currency regions and legislation and other actions to promote transition are taking different paths in different jurisdictions.

Cyber incident response and recovery: FSB final report on effective practices

The Financial Stability Board (FSB) has published a final report on effective practices for cyber incident response and recovery (CIRR). The FSB has developed a toolkit to assist organisations and authorities in their CIRR activities.

The toolkit comprises 49 effective practices that institutions have adopted and is structured across seven components: governance, planning and preparation, analysis, mitigation, restoration and recovery, co-ordination and communication, and improvement.

Banking and Finance

Implementation of CRD V: PRA CP17/20

The UK Prudential Regulation Authority (PRA) has published a consultation paper, CP17/20, setting out proposed changes to its rules, supervisory statements (SS) and statements of policy (SoP) implementing elements of the Capital Requirements Directive V (CRD V). It also proposes to update aspects of the UK regulatory framework as a result of amendments to the Capital Requirements Regulation (CRR, as amended in CRR II), which apply during the UK-EU transition period.

CP17/20 should be read in conjunction with CP12/20, which sets out the PRA's proposed approach to implementing other elements of CRD V, and HM Treasury's approach to implementing aspects of CRD V and CRR II that require legislative changes in order to implement them in the UK.

The CRD V measures in CP17/20 include:

- a new requirement for the approval and supervision of certain holding companies;
- measures to enhance supervisory requirements to measure, monitor, and control interest rate risk in the banking book;
- measures revising the framework for applying capital buffers;
- amendments to the definition of the maximum distributable amount that constrains a firm's distributions when it uses its capital buffers; and
- clarifying the quality of capital required to meet Pillar 2 requirements.

The CRR measures comprise adjustments to:

- the process through which variable capital requirements may be applied to firms' real estate exposures (and the public authority responsible for applying them); and
- the methods that may be used for the purposes of prudential consolidation.

The Appendices to CP17/20 have been published separately. Appendix 1 contains draft rules instruments, Appendix 2 contains draft rules EU exit instruments, Appendix 3 contains draft SoP and draft SS, Appendix 4 contains draft amendments to the Voluntary Requirement (VREQ) - Capital Buffers and Pillar 2A Model Requirements, and Appendix 5 contains an indicative information template for holding companies approval.

The consultation closes on 17 November 2020. The PRA also asks for views on whether additional and material costs not identified in chapter 11 of CP17/20 may arise as a result of the proposals.

Money Laundering Regulations: FCA update on bank account portal provisions

The FCA has updated its Money Laundering Regulations webpage. The update relates to the bank account portal (BAP) provisions in Part 5A of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (Money Laundering Regulations or MLRs 2017). Part 5A imposes duties on credit institutions and the providers of safe custody services to respond to requests for information from law enforcement authorities or the Gambling Commission submitted via a central automated mechanism (the BAP). The information requested will relate to accounts and safe-deposit boxes including, but not limited to, the name of account holders or people with beneficial interests, their dates of birth and addresses.

Technically, these requirements came into force on 10 September 2020. However, the FCA explains that the BAP is still under development. As a result, firms are not yet expected to comply with the BAP requirements in the MLRs 2017.

The FCA expects an update from HM Treasury in early 2021. It advises that HM Treasury intends to give firms notice and opportunities for engagement ahead of a revised date for them to comply with the BAP requirements.

The BAP provisions were introduced into the MLRs 2017 in January 2020 as part of HM Treasury's work to implement the Fifth Money Laundering Directive.

CRR: EBA Opinion on prudential treatment of legacy instruments

The European Banking Authority (EBA) has published an Opinion to clarify the prudential treatment of so-called "legacy instruments".

The EBA explains that when the CRR entered into force, grandfathering provisions were introduced to ensure institutions had sufficient time to meet the required levels and definition of "own funds". Certain capital instruments that, at that time, did not comply with the new definition of own funds (referred to as legacy instruments) were grandfathered for a transition period, the objective being that they would be gradually phased out from own funds. The grandfathering provisions come to an end on 31 December 2021. Therefore, the EBA proposes policy options to address the so-called "infection risk" (that is, the risk that other layers of own funds or eligible liabilities instruments are disqualified) when created by such instruments.

To address infection risk and preserve the quality of regulatory capital, the EBA envisages two main options. Institutions can either call, redeem, repurchase or buy-back the relevant instrument or, alternatively, amend their terms and conditions. In a limited number of cases, where institutions could demonstrate to their competent authorities that neither of these two options can be pursued, the EBA considers a third option. This option would allow institutions to keep the legacy instrument in their balance sheet while it would be excluded from regulatory own funds and total loss-absorbing capacity or minimum requirement for own funds and eligible liabilities eligible instruments.

The EBA intends to monitor legacy instruments until the end of the grandfathering period, placing particular focus on the use of the proposed options across jurisdictions, with a view to ensuring a consistent application. It will also consider how the transposition of specific provisions of the Bank Recovery and Resolution Directive might alleviate concerns about the existence of infection risk linked to subordination aspects.

Consumer Finance

Debt Breathing Space Regulations: FCA CP20/21

The UK Financial Conduct Authority (FCA) has published a consultation paper, CP20/21, on changes to its Handbook resulting from the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 (the Regulations) which are expected to come into force in England and Wales on 4 May 2021. The aim is to clarify how the FCA's rules interact with the Regulations.

Firms should take note that, while the FCA does not have powers under the Regulations to supervise compliance or enforce against them, it points out that "systematic non-compliance" is likely to be of interest to it as this may place a question mark over whether a firm is meeting its requirements in the Consumer Credit sourcebook (CONC) rules, the suitability requirements in the FCA's Threshold Conditions, or breaching one of the FCA's Principles for Business (for example, Principle 6 – treating customers fairly).

CP20/21 closes to responses on 6 January 2021.

Read more in our separate briefing: Debt Breathing Space Regulations: FCA consults on Handbook changes.

COVID-19: FCA extends deadline for contacting mortgage prisoners

The FCA has updated its webpage on lenders delivering switching options for mortgage prisoners. The FCA is aware that COVID-19 has meant that lenders have not been able to offer switching options for mortgage prisoners as quickly as originally anticipated.

The FCA rules require administrators and inactive lenders to write to customers who may be eligible to make use of these switching options, letting them know that they may be able to switch their mortgage. The FCA knows that some firms have started to send out these communications. However, it recognises that the delay in availability of switching options has caused the time available for sending out these communications to become compressed.

To help firms manage the operational challenge this presents, the FCA has extended the window during which firms are expected to contact eligible customers about switching options to 15 January 2021. The FCA had previously extended the notification window to 1 December 2020 due to COVID-19.

By reducing operational pressures on firms, the FCA believes that this short, six-week extension, will ensure better outcomes for mortgage prisoners.

Payments

Payments landscape review: FMLC response to HM Treasury call for evidence

The Financial Markets Law Committee (FMLC) has published response to HM Treasury's call for evidence, launched in July 2020 as part of the payments landscape review. The call for evidence sets out the government's aims for payment systems and payments networks in the UK and seeks views relating to related future opportunities and risks.

In its response, the FMLC highlights uncertainties in a range of areas, including on

- financial technologies based on distributed ledger technology in the area of payments;
- limitations on the statutory and regulatory regimes applying to payments networks.

The Treasury's call for evidence closed on 20 October 2020. A number of responses have been published from interested parties, for example, UK Finance, the Financial Services Consumer Panel and the Electronic Money Association. Following the call for evidence, the government will provide a summary of responses and set out next steps for the review.

Securities and Markets

BoE and CFTC MoU for supervision of cross-border clearing organisations

The Bank of England (BoE) and the US Commodity Futures Trading Commission (CFTC) have signed an updated memorandum of understanding (MoU) regarding cooperation and the exchange of information in the supervision and oversight of clearing organisations that operate on a cross-border basis in both the UK and the US.

The MoU supersedes a 2009 agreement and follows a 2019 joint statement by the CFTC, the BoE, and other UK authorities on the continuity of derivatives trading and clearing post-Brexit.

Benchmarks Regulation: HM Treasury policy statement on amendments to support LIBOR transition

Alongside the Financial Services Bill (FS Bill – see our briefing: Financial Services Bill introduced in UK Parliament), HM Treasury has published a policy statement on making amendments to the Benchmarks Regulation (BMR) to support LIBOR transition.

In the policy statement, HM Treasury explains that the FS Bill includes amendments to the BMR, which provide the Financial Conduct Authority (FCA) with new and enhanced powers to oversee the orderly wind-down of critical benchmarks, such as LIBOR.

The Bill provides powers for the FCA where it has determined that a critical benchmark is at risk of becoming unrepresentative, or has become unrepresentative, and that its representativeness cannot reasonably be maintained or restored. In particular, to provide for the orderly wind-down of the benchmark, the FCA will be able to direct a change in the methodology of a critical benchmark and extend its publication for a limited time period for the benefit of "tough legacy" contracts.

In such a scenario, use of that benchmark by UK supervised entities will be prohibited. However, to ensure an orderly wind-down of the benchmark for "tough legacy" contracts, the FCA will have discretion to determine specific categories of contracts that will be exempt from this prohibition on use. HM Treasury and the FCA are of the view that this exemption is intended for those contracts that genuinely have no realistic ability to be renegotiated or amended to transition to an alternative benchmark.

Before exercising certain new powers, the FCA will be required to issue statements of policy to inform the market about how it intends operationalise the legal framework set out under the BMR. The FCA will be able to engage with industry stakeholders and international counterparts as appropriate through this process.

Brexit: FCA update on STS notifications for end of Brexit transition period

The FCA has updated its webpage on reporting simple, transparent and standardised (STS) securitisations by adding information to the section on STS notifications.

The FCA explains that the UK onshored Securitisation Regulation transfers the responsibility for maintaining a list of STS securitisations from the European Securities and Markets Authority (ESMA) to the FCA. From the end of the Brexit transition period, the FCA will maintain a list of securitisations that have been notified to it as meeting UK STS criteria.

The FCA informs firms that they must notify it, using the onshored UK STS notification templates, for:

- securitisations that meet the UK STS criteria under the onshored Securitisation Regulation; and
- UK securitisations previously notified to the European Securities and Markets Authority (ESMA) as EU STS and that meet the UK STS criteria.

The FCA will soon open a portal where firms can access the notification templates and submit an STS notification before 11pm on 31 December 2020, when the UK STS framework comes into effect. The FCA will notify firms ahead of the portal opening. Firms will need to be enrolled on Connect to be able access the portal. The FCA will shortly publish registration instructions for firms that are not already enrolled.

The FCA also confirms that to maintain an accessible pool of STS product for UK institutional investors, EU securitisations notified to ESMA as meeting EU STS criteria before and up to two years after the end of the transition period, and which remain on ESMA's list, will also qualify as UK STS for the life of the transaction.

European crowdfunding service providers: EU Regulation and Directive

The following EU legislation, which aims to provide a single set of rules on crowdfunding services, have been published in the Official Journal of the EU:

- Regulation (EU) 2020/1503 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937; and
- Directive (EU) 2020/1504 amending the MiFID II Directive (2014/65/EU) relating to crowdfunding.

Both the Regulation and Directive enter into force on 9 November 2020 and apply from 10 November 2021.

CSDR: ESMA interactive single rulebook

ESMA has updated its interactive single rulebook to include all level 2 and level 3 measures adopted in relation to the Central Securities Depositories Regulation (909/2014) (CSDR).

EMIR 2.2: ESMA consults on draft RTS relating to CCPs

ESMA has published a consultation paper on draft regulatory technical standards (RTS) relating to central counterparties (CCPs) required under amendments to the European Market Infrastructure Regulations (EMIR) in EMIR 2.2.

EMIR 2.2 requires ESMA to develop RTS specifying the:

- conditions under which additional services or activities to which a CCP wishes to extend its business are not covered by the initial authorisation and therefore require an extension of authorisation under Article 15 of EMIR;
- procedure for consulting the college established in accordance with Article 18 of EMIR on whether those conditions are met; and
- the conditions under which changes to a CCP's models and parameters are significant and therefore require validation by the national competent authority (NCA) and ESMA under Article 49 of EMIR.

In the draft RTS, ESMA proposes a flexible and pragmatic approach that divides the conditions into criteria for an extension of authorisation and criteria for significant changes to the models

and parameters, and indicators for an extension of authorisation and indicators for significant changes to the models and parameters.

As the criteria are objective and clear-cut, ESMA proposes that they are subject to a simplified college consultation procedure whereby when the CCP's NCA assesses that one or more of the criteria have been fulfilled by the CCP's proposed change, the college is simply consulted on whether it also considers that the criteria have been fulfilled.

As the indicators are less straightforward, ESMA proposes that they are subject to a more extensive college consultation procedure whereby when the CCP's NCA assesses that one or more of the indicators have been fulfilled by the CCP's proposed change, the NCA will carry out an initial analysis of whether an extension of authorisation or a validation should be required. The college would then be consulted on whether it agrees with the NCA's initial analysis, but the final decision would remain with the NCA.

The deadline for comments is 15 November 2020. ESMA will consider the consultation feedback in Q4 2020 and expects to publish the final report and submit the draft RTS to the European Commission for endorsement in Q1 2021.

ESMA will amend its November 2016 opinion on common indicators for new products and services and significant changes to risk models to reflect the final RTS.

Insurance

Brexit: PRA and FCA Dear CEO letter on final preparations for end of transition period

The UK Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) have published a joint Dear CEO letter that they have sent to insurance firms regarding final preparations for the end of the Brexit transition period.

In the letter, the regulators state it is imperative that firms continue to build on their preparatory work to ensure that they, and, to the extent possible, their clients, are ready for a range of scenarios at the end of the transition period. Final steps by individual firms are required to ensure their preparedness. Actions will vary between firms and may differ between UK firms and EEA firms operating in the UK.

The Dear CEO letter sets out key areas requiring final preparations, including:

- contingency planning and continuity of cross-border business in respect of EU liabilities;
- the conditional Part VII "saving provision", which provides up to two years from the end of the transition period for parties to obtain a UK court order under the Financial Services and Markets Act (FSMA) sanctioning the transfer of insurance business;
- data, particularly in the absence of a data adequacy decision;
- EEA bank account closures;
- EEA passporting firms; and
- temporary permissions regime (TPR) firms' Part 4A application for authorisation submission timeline.

This is not an exhaustive list of all the issues that may arise. The PRA and FCA acknowledge that they are aware insurance firms are also working on other matters linked to the end of the transition period. Their expectation is that firms will continue these efforts to address firm-specific risks and that they will keep FCA and PRA supervisors informed.

In a related statement, the FCA suggests that other firms may find it useful to consider this Dear CEO letter to insurers, the Dear CEO letter sent to banks, and statements issued by the Financial Policy Committee (FPC) and the European Supervisory Authorities (ESAs) (linked in the statement), to help them prepare for the end of the transition period.

COVID-19: FCA update on BI insurance test case

The FCA has updated its webpage on the business interruption (BI) insurance test case to publish, among other things, the High Court declarations made in the test case, and the applications by the FCA and others for permission to appeal to the Supreme Court.

UK Solvency II review: HM Treasury call for evidence

HM Treasury has published a call for evidence relating to its review of the Solvency II regime for insurance firms. The aim of the review is to ensure that the UK's prudential regulatory regime for the insurance sector is better tailored to support the unique features of the sector and the UK regulatory approach. While the government and the PRA continue to support the fundamental principles and framework underlying the EU Solvency II regime, they consider that there are certain areas of the regime that could better reflect the particular structures, products and business models of the UK insurance sector.

The review will consider how the current prudential regulatory framework can be improved to ensure that it provides for an appropriate amount of capital for the whole insurance sector, a high degree of policyholder protection and suitable standards of governance, risk management and transparency. The call for evidence is the first stage of the review.

The deadline for responses to the call for evidence is 19 January 2021.

Funds and Asset Management

AIFMD review: European Commission consultation

The European Commission has launched a consultation questionnaire relating to its review of the Alternative Investment Fund Managers Directive (AIFMD).

Through the consultation, the Commission will examine how to strengthen the rules and complete the internal market for alternative investment funds (AIFs), through potential changes to the AIFMD. The aim is to achieve a more efficient, effective and competitive EU AIF market as part of a stable financial system. The Commission notes that the process may also lead it to adjust the existing EU rules on UCITS.

The deadline for responses to the consultation is 29 January 2021.

The Commission intends to put forward a legislative proposal amending the AIFMD in the form of a Directive in Q3 2021.

ELTIF Regulation review: European Commission consultation

The European Commission has launched a consultation questionnaire relating to the review of the Regulation on European long-term investment funds (ELTIF Regulation).

The deadline for responses to the consultation is 19 January 2021.

Article 37 of the ELTIF Regulation requires the Commission to produce a report on the application of the Regulation accompanied, if appropriate, by a legislative proposal. The Commission is considering making targeted amendments to the Regulation intended to improve the effectiveness of the regulatory regime for ELTIFs and their managers and alleviate the administrative burden where possible, while maintaining adequate investor protection safeguards.

Retail investors and asset management are pillars of successful CMU: ESMA speech

The European Securities and Markets Authority (ESMA) has published a speech by Steven Maijoor, ESMA Chair, in which he explains why retail investors and asset management are the pillars of a successful capital markets union (CMU). Points of interest in Mr Maijoor's speech include:

- in 2021, ESMA will coordinate a common supervisory action exercise on investment funds' costs and fees. National competent authorities will simultaneously investigate whether market participants in their jurisdictions adhere to the key regulatory requirements on costs and fees in their day-to-day business. ESMA expects this will ultimately enhance investor protection across the EU by increasing supervisory scrutiny of the costs and fees charged to fund investors;
- as set out in the European Commission's second CMU action plan, ESMA supports a fundamental assessment of the role of inducements in the distribution of investment products in the EU. The experience of countries that have banned the use of inducements should be carefully considered;
- a similarly careful assessment should be carried out in relation to the Commission's proposal to reform the Markets in Financial Instruments Directive (MiFID) client

categories. Adding another category of clients may increase the complexity of the framework and would risk undermining appropriate investor protection levels;

- ESMA hopes that the Commission, together with Council of the EU and the European Parliament, can rapidly progress the draft regulatory technical standards (RTS) to improve Delegated Regulation 2017/653 on key information documents (KIDs) for packaged retail and insurance-based investment products (PRIIPs) that were adopted by the European Supervisory Authorities in July 2020. ESMA considers this would help to bring UCITS within the scope of the PRIIPs Regulation. However, if past performance information will not become part of a revised PRIIPs KID, Mr Maijoor would no longer support bringing UCITS within the scope of the PRIIPs Regulation, because this would be detrimental to retail investors; and
- in relation to the MiFID research unbundling rules, Mr Maijoor does not see how undoing these provisions can improve research availability for SMEs. He also notes their significant investor protection benefits.

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Beijing
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Boston
Brussels
Budapest*
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Denver
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Dusseldorf
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