



# Financial Services SpeedRead: 18 September 2024 edition

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Welcome to the latest edition of the Financial Services SpeedRead, a collection of bite-sized updates designed to help you keep on top of key regulatory developments in financial services. This edition covers the key updates since the end of July 2024. Please get in touch if you want to explore any of the topics covered in this edition of Financial Services SpeedRead in more detail.

## Financial Markets

No new entries.

## Banking and Prudential

### 1. HMT: Policy Paper: Applying the FSMA 2000 model to the Capital Requirements Regulation

On 12 September 2024, HMT [published](#) a policy paper detailing its proposed approach to bringing the prudential regime in line with the FSMA model of regulation.

This will involve revocation of the remainder of the UK Capital Requirements Regulation (**CRR**) and replacing them with the Basel 3.1 standards, as well as revocations and restatements with modifications of the Capital Buffers Regulations in accordance with FSMA 2023.

HMT has also published three pieces of draft legislation alongside the policy paper and welcomes technical comments on the proposed legislation by 24 October 2024.

### 2. BoE (PRA): Policy statement: Implementation of the Basel 3.1 standards near-final part 2

On 12 September 2024, the PRA [published](#) a policy statement providing near-final policy material for implementing the Basel 3.1 standards. The policy statement also addressed responses received to the [consultation paper on the same topic \(CP 16/22\)](#).

The policy statement provides feedback on several areas, including credit risk, output floor, disclosure, and reporting.

Overall, the feedback gathered was generally supportive of the PRA's approach to the implementation of the Basel 3.1 standards. However, some concerns were raised including requests for adjustments to specific proposals in favour of treatments that may be more flexible or proportionate, less operationally

burdensome, or which would reduce the capital impact on firms in order to reflect what respondents considered to be the prudential risk. Accordingly, the PRA made a number of amendments to its draft policy.

The PRA intends to publish the final rule instruments, technical standards instrument and policy in a single, final policy statement covering the Basel 3.1 package, once HMT has made commencement regulations to revoke the relevant parts of the CRR that the final PRA rules will replace.

### **3. PRA: Consultation paper package: Capital framework**

On 12 September 2024, the PRA published a series of consultation papers regarding the UK's capital framework.

The [first consultation paper](#), "Definition of Capital: restatement of CRR requirements in PRA Rulebook" (CP8/24), sets out the PRA's proposed rules to restate, and in some cases modify, the CRR requirements relating to the definition of own funds in the PRA Rulebook.

The [second consultation paper](#), "Streamlining the Pillar 2A capital framework and the capital communications process" (CP9/24), sets out the PRA's proposal to streamline the Pillar 2A capital framework and capital communications process.

The [third consultation paper](#), "Updates to the UK policy framework for capital buffers" (CP10/24), sets out the PRA's proposals to streamline some of its policy materials on capital buffers as part of this process, to enhance usability and clarity.

Feedback to the above consultations is open until 12 December 2024.

## **Fund Management**

### **4. FCA: Corporate documents: The FCA's approach to recognition of funds under the Overseas Funds Regime**

On 11 September 2024, the FCA updated its Overseas Funds Regime (**OFR**) webpage to provide new information on "completing [an] application" and adding connect user guides.

In particular, the webpage provides a [link](#) to a document which outlines the FCA's expectations of OFR applicants, including information on the application process and the FCA's decision-making process.

## **Senior Managers**

No new entries.

## **Financial Crime**

No new entries.

## **Retail Services**

## 5. FCA: Report: UK Payment Accounts Access and Closures Update

On 4 September 2024, the FCA published its findings from its follow-up work on payment access and closures, as well as its expectations of firms and proposed next steps (**2024 Report**).

The 2024 Report follows from the FCA's [previous report](#), which provided findings from its initial review into payment account access for individuals and organisations in the wake of concerns that account providers may have terminated payment accounts due to the political beliefs of the accountholders. The 2024 Report aims to delve deeper into the findings of the 2023 report.

The 2024 report found that:

- there was no evidence of political beliefs being a rationale for account denial, suspension or termination;
- Although "reputational risk" was cited as a reason for account closure or denial of account access, reputational risk sometimes did not correlate with significant risks to the firm's standing; and
- among other reasons, the decline in the rate of basic bank accounts was due to the existence of basic bank accounts not being made clear to customers and also with how firms recorded data.

The FCA's proposed next steps include addressing the harms identified in relation to account access.

## 6. FCA: Speech: Taking the leap on Consumer Duty

On 31 July 2024, Sheldon Mills, executive director of consumers and competition, [delivered](#) a speech at the FCA's "Consumer Duty: 1 Year On" event. The speech highlights included:

- welcoming the improvements firms have made to deliver better consumer outcomes in the first year of Consumer Duty;
- flagging that the outcomes-based nature of the Consumer Duty will allow the FCA to streamline its rulebook to support competitiveness and growth, while ensuring good consumer outcomes; and
- a continuing focusing on how firms are embedding the Consumer Duty acting to address harm.

The speech also flagged that the FCA will be looking to publish a grid of its forward programme of Consumer Duty work, prioritising initiatives:

- where there is a need to address harm or potential harm, to retail customers;
- to allow for a greater understanding of how firms are embedding the Consumer Duty, the outcomes customers are getting, and where potential issues are emerging;
- where the FCA believes sharing more information on good practice and our expectations will benefit industry and help drive better outcomes.

## 7. FCA: Call for input: Review of FCA requirements following the introduction of the Consumer Duty

On 29 July 2024, the FCA [published](#) a call for input following the introduction of the Consumer Duty.

The FCA is requesting views on whether, where and how it can refine its retail conduct rules, while ensuring it continues to support and protect consumers.

The FCA invites comments by 31 October 2024. For more information, please see our briefing [here](#).

## Digital Finance and Fintech

### 8. House of Lords: Property (Digital Assets etc) Bill

On 11 September 2024, the House of Lords [introduced](#) the Property (Digital Assets etc) Bill. The Bill gives effect to recommendations of the [report](#) by Law Commission for England and Wales, which recognised that "a thing will not be deprived of legal status as an object of personal property rights" because it is neither a thing in possession nor a thing in action. The Commission consulted on a draft of the Bill in February 2024 and a report with a draft Bill in [July 2024](#) (see Ashurst Global Digital Assets Digest [August 2024 edition](#))

The Government has also published a [response](#) to the Law Commission's report on digital assets. This refers to the second recommendation made in the 2023 report on setting up an expert group on control of digital assets. The response also refers to work being undertaken by HM Treasury in relation to statutory amendments to the Financial Collateral Arrangements Regulations, as well as the multi-disciplinary project on a "statutory framework for the entering into, operation and enforcement of certain crypto-token and crypto asset collateral arrangements".

For more information, please see our briefing [here](#).

### 9. ECB: Report: Update on the work of the digital euro scheme's Rulebook Development Group

On 5 September 2024, the ECB [published](#) a report on the digital euro scheme's Rulebook, together with a [letter](#) from Piero Cipollone, Member of the Executive Board.

The report provides an update on the work of the digital euro scheme's Rulebook Development Group (**RDG**) since the last update in January 2024. Legislative proposals in respect of the key features of the digital euro were [published](#) in June 2023. The digital euro scheme rulebook is one of the deliverables in respect of the preparation phase of the digital euro. The RDG was set up in 2023 and consists of stakeholders from payments ecosystem.

The rulebook will contain a single set of rules, standards and procedures to standardise digital euro payments and aims for users' experience and perception of a digital euro to be the same.

The work of the RDG in 2024 consisted of two main streams of activity: the review of the first draft of the intermediate version of the rulebook as it stood at the beginning of the year; and continuing the process of drafting additional sections of the rulebook and developing existing ones further.

### 10. ESMA: Opinion: Addressing risks provided by global crypto firms seeking part authorisation under MiCA

On 31 July 2024, ESMA [published](#) an opinion (ESMA75-453128700-1048) to address the risks presented by global crypto firms seeking authorisation under MiCA for part of their activities (crypto brokerage) while keeping a substantial part of their group activities (intra-group execution venues) outside the EU regulatory scope.

To address associated risks, including diminished consumer protection, ESMA provides numerous recommendations. These include advising NCAs to exercise vigilance during the authorisation process and conduct a case-by-case assessment. Key areas of focus should include best execution, conflicts of interest, the obligation to act honestly, fairly and professionally in the best interests of clients and custody and administration of crypto assets on behalf of clients.

## Payments

### 11. FCA: Guidance consultation: Authorised Push Payment Fraud: enabling a risk-based approach to payment processing

On 9 September 2024, the FCA [published](#) a guidance consultation paper (GC24/5) setting out proposed amendments to its [Payment Services and Electronic Money Approach Document \(Approach Document\)](#).

The guidance consultation paper supports HMT's new legislation on addressing authorised push payment fraud and sets out the FCA's expectations on payment services providers to address suspicious inbound payments.

The FCA welcomes views on the draft guidance by 4 October 2024. Following this, the FCA will update the draft guidance to reflect feedback and then plans to publish a revised Approach Document by the end of 2024.

## ESG

### 12. FCA: Statement: Temporary measures for firms on "naming and marketing" sustainability rules

On 9 September 2024, the FCA [published](#) a new webpage announcing its temporary measures on the "naming and marketing" sustainability rules under the Sustainability Disclosure Requirements regime.

This regime has been updated to provide temporary flexibility in relation to "naming and marketing" sustainability rules (ESG 4.3.2R to ESG 4.3.8R of the [ESG sourcebook](#)) for a sustainability product which is a UK authorised investment fund in exceptional circumstances where the firm:

- has submitted a completed application for approval of amended disclosures in line with ESG 5.3.2R for that fund by 5pm on 1 October 2024; and
- is currently using one or more of the terms "sustainable", "sustainability" or "impact" (or a variation of those terms) in the name of that fund and is intending either to use a label, or to change the name of that fund.

The temporary flexibility will be offered until 5pm on 2 April 2025. Firms must continue to comply with all other relevant rules, including the anti-greenwashing rule.

## Other

### **13. FCA: Report: Principal firms embedding the new rules for effective appointed representative oversight: Good practice and areas for improvement**

On 6 September 2024, the FCA [published](#) a report on how principal firms are embedding new rules for overseeing appointed representatives (**ARs**) and examples of good practice and areas for improvement.

Overall, the FCA found that principals had made some effort to comply with the FCA's new rules. However, not all principals could show they had conducted an adequate annual review or self assessment addressing the points in [SUP 12.6A](#).

The FCA also provided examples of good and bad practice. An example of good practice included having a clear single document outlining any material deficiencies or concerns in the principal's AR oversight, with an action plan to address any gaps in compliance. An area for improvement included avoiding a high-level tick-box approach to carrying out and recording the self assessment.

The FCA expects firms with ARs to consider the FCA's findings when assessing their own obligations or principals under its rules.

### **14. BoE: Report: Evaluation by the Independent Evaluation Office of the PRA's approach to competitiveness and growth objective**

On 30 July 2024, the BoE [published](#) a report by the Independent Evaluation Office which evaluated the PRA's approach to its secondary competitiveness and growth objective (**SCGO**).

The SCGO obligates the PRA to facilitate the international competitiveness of the UK economy (including in particular the financial services sector) and its growth in the medium to long term, subject to aligning with international standards. The SCGO has been in force since August 2023.

In making its evaluation, the Independent Evaluation Office considered, broadly:

- whether the PRA had a clear understanding of how to advance the SCGO;
- whether the PRA had integrated the SCGO consistently and effectively into the PRA; and
- the ability of the senior leadership of the PRA to monitor the advancement of the SCGO and to be held to account.

The Independent Evaluation Office's report was broadly positive, finding that the PRA had invested in its approach to the SCGO, for instance by developing and delivering training for policy staff. It was also found that the key aspects of the SCGO were understood by policy staff and that the SCGO was receiving attention at all levels of the PRA. However, the report also made nine detailed recommendations for further advance of the SCGO, including refining transparency and oversight mechanisms to build trust in the PRA's approach.