



Financial Services SpeedRead: 27 November 2024 edition

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 over the preceding fortnight. Please get in touch if you want to explore any of the topics covered in this fortnight's edition of Financial Services SpeedRead in more detail.

Financial Markets

1. BoE: Consultation Paper: Fundamental Rules for Financial Market Infrastructures

On 19 November 2024, the BoE [published](#) a consultation paper regarding its proposals for the introduction of a set of Fundamental Rules for Financial Market Infrastructures (**FMI**s) in the UK. The BoE simultaneously [published](#) a document concerning its approach to supervision of the same.

The proposed rules are complementary to the existing regulatory framework for FMI

s and aim to increase the transparency and effectiveness of the BoE's role in supervising FMIs.

The consultation is open until 19 February 2025. The BoE proposes that the final policy will be published and take effect following the BoE's consideration of feedback from the consultation. The BoE intends for there to be a six-month implementation period between the publication of the final rules and the application of the Fundamental Rules to FMI

s.

2. ESMA: Report: ESMA assessment of the shortening of the settlement cycle in the European Union (ESMA74-2119945925-1969)

On 18 November 2024, ESMA [published](#) its final report (ESMA74-2119945925-1969) which assesses shortening the standard securities settlement cycle from T+2 to T+1.

In its report, ESMA recommends that the migration to T+1 occurs simultaneously across all relevant instruments and that it is achieved in Q4 2027. In particular, ESMA suggests that the optimal date for the transition is 11 October 2027.

The elements assessed by ESMA suggest that the impact of T+1 represent important benefits for the EU capital markets in terms of risk reduction, margin savings and the reduction of costs linked to the misalignment with other major jurisdictions globally.

ESMA, alongside the European Commission and the European Central Bank, will continue to progress revising the rules on settlement efficiency and achieving T+1.

3. FCA: Newsletter: Primary Market Bulletin 52

On 15 November 2024, the FCA [published](#) edition 52 of the Primary Market Bulletin, which focuses on certain issuer obligations under the UK Market Abuse Regulation and includes some useful reminders on the application of MAR in key areas.

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

4. FCA: Discussion Paper: Improving the UK reporting regime (DP24/2)

On 15 November 2024, the FCA [published](#) a discussion paper (DP24/2) on improving the UK reporting regime.

The discussion paper sets out potential options for progressing the transaction reporting and instrument reference data requirements. The aim of the changes is to improve the usefulness of transaction reporting data through better data and to support the competitiveness of UK markets by ensuring requirements remain proportionate for firms. The FCA is also considering aligning the transaction reporting framework with the broader wholesale market reporting requirements that help to uphold market integrity.

Feedback is open until 14 February 2025. The FCA will consider this feedback when deciding its next steps and then consult on its proposals for final rules.

5. HMT: Policy Paper: Next steps for reforming the UK Markets in Financial Instruments Directive

On 14 November 2024, HMT [published](#) a policy paper announcing its intention to make further changes to the MiFID framework. This forms part of HMT's broader commitment to reinvigorate capital markets.

Key takeaways from the announcement include:

- HMT plans to give the FCA fuller powers of direction in relation to the reporting of OTC positions, allowing the FCA to intervene where it considers that a position presents a risk to market stability;
- using the powers established by FSMA 2023, HMT has committed to commence the revocation of firm-facing requirements in MiFIR regarding transaction reporting and to delegate the setting of a new regime to the FCA; and
- HMT will revoke the firm-facing regulations within the MiFID Organisational Regulation so that they can be replaced in the FCA's handbook.

HMT states that it will liaise with the FCA and PRA to ensure that any revocations correspond with the FCA and PRA's replacement rules and provide a smooth transition for firms.

6. UK Government: Legislation: Draft regulations regarding designated activities regime

On 11 November 2024, the UK Government [published](#) a draft of the Financial Services and Markets Act 2000 (Designated Activities) (Supervision and Enforcement) Regulations 2024, along with a [draft explanatory memorandum](#).

In brief, the draft legislation expands certain existing enforcement powers of the FCA under FSMA to encompass designated activities under the newly established Designated Activities Regime. It also sets out procedures which apply to the giving of directions by the FCA relating to designated activities.

The draft legislation applies to the supervision and enforcement framework from the Consumer Composite Investments (Designated Activities) Regulations 2024 and the Short Selling Regulations 2024. Should HMT designate further activities in the future, it is intended that this framework will also apply to them.

The draft regulations will come into force the day after they are made.

7. UK Government: Legislation: Draft Statutory Instrument: Short Selling Regulations

On 11 November 2024, HMT [published](#) a draft of the Short Selling Regulations 2024 (**SSRs**), along with a [draft explanatory memorandum](#).

This instrument establishes a new legislative framework for the regulation of short selling, creating designated activities for short selling, giving the FCA rulemaking powers related to these activities and powers to intervene in exceptional circumstances.

The SSRs are replacing EU Short Selling Regulations that were assimilated post-Brexit which are to be repealed under FSMA 2023.

HMT has stated that the SSRs differ from the EU Short Selling Regulations by implementing the changes to the short selling regime announced in July 2023 in the government response to the Short Selling Regulation Review, and in the November 2023 government response to the consultation on aspects of the SSR related to sovereign debt and credit default swaps. Key changes include the requirement for the FCA to publish anonymised aggregate net short positions based on all individual position notifications it receives and the removal of restrictions on uncovered short selling of sovereign debt and sovereign credit default swaps.

Banking and Prudential

8. HMT: Consultation Outcome: A smarter ring-fencing regime - consultation on near-term reforms

On 11 November 2024, HMT [published](#) its response to its consultation on a smarter ring-fencing regime, alongside [updated draft legislation](#) and a [draft explanatory memorandum](#).

The consultation response summarises the feedback to the consultation and explains how the government has sought to address the issues that respondents raised. The proposed changes to the regime include raising the threshold for inclusion in the ring-fencing regime from £25bn to £35bn and introducing new optionality for ring-fenced banks in how they structure their businesses and the products and services they can offer to customers.

The final Statutory Instrument reflecting the changes was laid in Parliament on 11 November and is subject to parliamentary approval.

Fund Management

No new entries.

Senior Managers and Governance

9. ESAs: Final Report on Joint Guidelines: The system for the exchange of information relevant to fit and proper assessments

On 20 November 2024, the ESAs published a [final report](#) and accompanying [press release](#) regarding the system established by the ESAs for the exchange of information relevant to the assessment of the fitness and propriety of holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants by competent authorities.

The Guidelines aim to ensure consistent, efficient and effective supervisory practices within the European System of Financial Supervision and facilitate the request and exchange of information. In particular, the Guidelines focus on two areas:

- use of the fitness and propriety information system previously established by the ESA; and
- the exchange of information and cooperation between competent authorities when conducting fitness and propriety assessments.

The Guidelines are expected to come into force on the day of the publication of translations in all official EU languages.

10. FCA: Final Notice: FCA bans director following grievous bodily harm conviction

On 18 November 2024, the FCA published its [final notice](#) to Mr Ari Harris, its [final notice](#) to Reeds Motors Ltd and a [press release](#) detailing its ban of Mr Harris from performing any function in relation to any regulated activity, and its cancellation of Reeds Motors Ltd's permissions.

These updates each relate to Mr Harris being convicted of inflicting grievous bodily harm without intent after stabbing a man twice in the neck and subsequently being sentenced to 3 years imprisonment in July 2022. The FCA found that Mr Harris and Reeds Motors Ltd, of which he was sole director, deliberately failed to notify the FCA of his offending, conviction and custodial sentence notwithstanding obligations to do so.

The FCA stated that the repeated efforts to conceal Mr Harris' violent criminal conviction and incarceration showed a significant lack of honesty and integrity.

Financial Crime

11. FCA: Final Notice: FCA fines Metro Bank £16.7m regarding transaction monitoring

On 12 November 2024, the FCA published a [final notice](#) and [press release](#) detailing the £16,675,200 fine imposed on Metro Bank plc (**Metro**) for financial crime failings.

The FCA found that, between June 2016 and December 2020, Metro failed to have the right systems and controls to monitor over 60 million transactions (with a value of over £51 billion) for money laundering risks. This was caused by an error in the automated system implemented by Metro, which impacted how data was fed into the system and meant that transactions taking place on the same day an account was opened, and any further transactions until the account record was updated, were not monitored. Relevantly, the FCA also noted that, although junior staff raised concerns about some transaction data not being monitored in 2017 and 2018, this did not result in the issue being identified and fixed.

The FCA also found that Metro breached Principle 3 of the FCA's Principles for Business to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems.

Metro has since put in place processes to remediate the issues identified.

Retail Services

12. FCA: Consultation Paper: Further temporary changes to handling rules for motor finance complaints (CP24/22)

On 21 November 2024, the FCA [published](#) a consultation paper relating to further proposed temporary changes to the handling of motor finance complaints (CP24/22) and an accompanying [press release](#).

The purpose of the FCA's consultation is to gather feedback on its proposal to extend the time firms have to respond to motor finance complaints where a non-discretionary commission arrangement was involved. This follows the joint judgement handed down by the Court of Appeal in *Hopcraft v Close Brothers Ltd*, *Johnson v FirstRand Bank Ltd* and *Wrench v FirstRand Bank Ltd*, which concluded that it was unlawful for car dealers to receive a commission from lenders providing motor finance without first telling the customer about the commission and getting their informed consent to the payment. The two lenders involved in the cases intend to appeal.

The FCA is specifically consulting on the following two options for extending the time firms have to provide final responses to motor finance complaints relating to a non-discretionary commission arrangement:

- until 31 May 2025, reflecting an estimate of the time it may take to hear whether the Supreme Court has granted permission to appeal; and
- a longer extension until 4 December 2025, aligning with current rules for motor finance firms dealing with discretionary commission complaints.

The FCA invites comments on the consultation paper before 5 December 2024.

13. FCA: Statement: Enforcement regulatory disclosure review: outcome

On 11 November 2024, the FCA [published](#) a statement regarding the outcome of its review into the disclosure process and evidence requirements in regulatory enforcement cases.

The review followed a recommendation received from the Upper Tribunal in *Seiler and others v FCA* [2023] UKUT 00133. Among other changes, the FCA are:

- adopting a broader approach to disclosure which will mean its review of documents is not focused only on identifying potentially undermining material;
- improving training by providing specialist training for those managing and overseeing disclosure exercises and by providing additional training for staff and more detailed guidance on quality assurance; and
- emphasising the importance of disclosure in measuring and rewarding staff performance.

The FCA will complete a further review in around 12 months time to assess whether further changes are required.

Digital Finance and Fintech

14. EBA: Final Report: Two sets of Guidelines on internal policies, procedures and controls to ensure the implementation of Union and national restrictive measures

On 14 November 2024, the EBA [published](#) two sets of final Guidelines outlining common EU standards on the governance arrangements and the policies, procedures and controls for complying with EU and national restrictive measures.

The first set out Guidelines are addressed to all institutions within the EBA's supervisory remit and detail the provisions that are necessary to ensure that financial institutions' governance and risk management systems are sound and sufficient to address the risk that they might breach or evade restrictive measures. These have been prepared as a result of the divergent expectations of competent authorities of the internal policies, procedures and controls financial institutions need for restrictive measures.

The second set of Guidelines is otherwise specific to PSPs and CASPs, and details what these firms should do to be able to comply with restrictive measures when performing transfers of funds or cryptoassets and clarifies how this interacts with wider governance and risk management frameworks.

The Guidelines will be translated into the official EU languages and published on the EBA website.

15. Official Journal of the EU: Legislation: MiCAR ITS on appropriate public disclosure of inside information

On 13 November 2024, Commission Implementing Regulation (EU) 2024/2861 was [published](#) in the Official Journal of the EU.

The Regulation provides implementing technical standards for the application of Regulation on MiCAR (Regulation (EU) 2023/1114) with regard to the technical means for the appropriate public disclosure of inside information and for delaying the public disclosure of that information.

The Regulation will enter into force 20 days after its publication in the Official Journal of the EU, on 3 December 2024, and will be binding across all Member States.

Payments

16. FCA: Finalised Guidance: Guidance for firms that enables a risk-based approach to payments (FG24/6)

On 22 November 2024, the FCA [published](#) finalised guidance on authorised push payment (**APP**) fraud and enabling a risk based approach to payments (FG24/6).

The Guidance incorporates feedback from stakeholders ([published](#) in consultation GC24/5) and outlines:

- requirements for delaying outbound payments and determining whether the threshold for "reasonable grounds to suspect" has been met;
- how PSPs should use the payment delay window;
- obligations on PSPs if they delay an outbound transaction; and
- how PSPs should treat suspicious inbound payments.

The FCA has also amended its [Payment Services and Electronic Money Approach Document](#) to include the new guidance in Chapter 8.

ESG

No new entries.

Other

17. HMT: Speech: Mansion House 2024

On 15 November 2024, HMT [published](#) the first Mansion House speech given by the Chancellor of the Exchequer, Rachel Reeves.

This speech outlined a series of financial services reforms aimed at boosting investment, growth and competitiveness in the UK economy. In some ways, the speech is a continuation of policy, with certain measures alluded to already part of ongoing reforms. In other ways, the speech represents a completely new path.

The key takeaways of the speech are:

- the outcome of the review into the SMCR (see our briefing [here](#)) is soon to be published, with proposals to reform the certification regime expected;
- further changes concerning position management and transaction reporting are in the pipeline in relation to the UK MiFID regime;
- the consumer redress system will be reformed;
- there will be a regulatory regime for ESG ratings providers;
- legislation on the Private Intermittent Securities and Capital Exchange System (a trading venue for private company shares) is expected in the near future; and
- the Government is keen to move the dial in relation to UK payments, particularly in relation to Open Banking.

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

18. FCA/BoE/PRA: Final Rules: Operational resilience - Critical third parties to the UK financial sector (PS16/24)

On 12 November 2024, the BoE, the PRA and the FCA [published](#) final rules in relation to the UK critical third parties (**CTP**) regime.

The CTP regime aims to reduce the risk of systemic disruption by introducing new outcomes-focused requirements on CTPs. The regime is set out in a joint [policy statement](#) (PRA PS16/24, FCA PS24/16), regulators' expectations on how CTPs should comply in a [supervisory statement](#) (SS6/24), as well as other relevant policy and guidance documents.

Importantly, the new regime does not change the obligations authorised financial services firms have under existing outsourcing and operational resilience rules (see our briefing [here](#)). The new regime otherwise provides the UK regulators with regulatory oversight of designated CTPs. However, these powers will only extend to the services provided by designated CTPs to the financial services sector, and not their entire operations. The regime will (among other things) require designated CTPs to provide assurance and notifications to the regulators, as well as carry out self-assessments and scenario-based testing. CTPs will also be required to report major incidents.

The finalisation of the UK CTP regime follows a December 2023 [consultation paper](#) (CP26/23) (see our briefing [here](#)) and a 2022 [discussion paper](#) (see our briefing [here](#)). The regime comes into force in January 2025, although there are various transitional provisions.

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

19. ESAs: Decision: Information competent authorities must report under DORA

On 8 November 2024, the ESAs [published](#) a decision on the information that competent authorities must report to them for the designation of critical ICT third-party service providers under DORA.

Following the entry into force of DORA on 17 January 2025, the ESAs (and competent authorities) will begin oversight of critical ICT third-party service providers (**CTPPs**) offering services to financial entities within the EU. The first act of oversight is the designation of CTPPs.

The decision sets out a general framework for the annual reporting to the ESA of the information required for CTPP designation, including timelines, frequency and reference dates, general procedures for the submission of information, quality assurance and revisions of submitted data, as well as confidentiality and access to information.

The decision shall enter into force immediately and apply from 17 January 2025. Moreover, by way of supporting the industry preparations, the ESA have shared draft templates (see [data model for DORA](#) and [draft validation rules for DORA reporting](#)).

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The information provided is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to.

Readers should take legal advice before applying it to specific issues or transactions.