



## December 2020

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This publication is a service to our clients and friends. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice, or render a legal opinion.

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Welcome to the Regulation Round Up, a regular bulletin highlighting the latest developments in UK and EU financial services regulation.

Key developments in December 2020:

### 31 December

The Brexit [Transitional Period](#) (pursuant to which the UK stayed in the Single Market and European Customs Union) came to an end. The FCA updated its [Brexit webpages](#) to remind firms of the potential impact this will have.

### 30 December

In relation to Brexit, [the UK-EU Trade and Cooperation Agreement](#) was signed, which would apply from 1 January 2021.

### 28 December

The Prudential Regulation Authority ("PRA") published a [policy statement](#) (PS29/20) on the implementation of the CRD V Directive (EU/2019/878) ("**CRD V**").

### 24 December

In relation to Brexit, the United Kingdom and European Union [agreed in principle](#) a Trade and Cooperation Agreement, an Agreement on Nuclear Cooperation and an Agreement on Security Procedures for Exchanging and Protecting Classified Information.

### 23 December

The European Banking Authority ("**EBA**") published:

a [final report](#) (EBA/RTS/2020/13/ EBA/ITS/2020/09) on draft regulatory technical standards (RTS) and draft implementing technical standards ("ITS") on the impracticability of contractual recognition of bail-in under the Bank Recovery and Resolution Directive (EU/2014/59) ("**BRRD**");

- a [final report](#) (EBA/ITS/2020/08) on draft ITS specifying uniform reporting templates, instructions and methodology for reporting on the minimum requirement for own funds and eligible liabilities ("**MREL**"); and
- a [final report](#) (EBA/RTS/2020/14) on regulatory technical standards ("**RTS**") specifying the methodology to be used by resolution authorities to estimate the Pillar 2 requirements and combined buffer requirements at resolution group level for the purposes of setting the MREL.

European Securities and Markets Authority (“ESMA”) published an [updated version](#) of its opinion on the assessment of pre-trade transparency waivers for equity and non-equity instruments under the Markets in Financial Instruments Regulation (EU/600/2014) (“**MiFIR**”) (ESMA70-155-6641).

### 22 December

The Financial Conduct Authority (“**FCA**”) [published](#) its final Brexit instruments and Temporary Transitional Power directions.

The FCA published [guidance](#) on the approach to interpreting reporting and disclosure requirements under CRD and Capital Requirements Regulation (EU/575/2013) (“**CRR**”) in binding technical standards after the Brexit transition period ends.

The International Organization of Securities Commissions (“**IOSCO**”) published a [questionnaire](#) for industry participants on exchange traded funds (“**ETFs**”).

ESMA published its third [annual report](#) (dated 16 December 2020) (ESMA70-156-3782) on the application of accepted market practices under the Market Abuse Regulation (596/2014) (MAR).

ESMA published an updated version of its [Q&As](#) on investor protection and intermediaries (ESMA35-43-349) under MiFID II Directive (EU/2014/65) (“**MiFID II**”) and MiFIR.

[Delegated Regulation \(EU\) 2020/2176](#), which amends Delegated Regulation (EU) 241/2014 as regards the deduction of software assets from Common Equity Tier 1 items, was published in the Official Journal of the EU.

### 21 December

The EBA published an [updated version](#) of its report (EBA/REP/2020/39) on the implementation of selected COVID-19 policies.

The European Commission published the [text](#) of an Implementing Regulation that it has adopted containing ITS on supervisory reporting requirements for institutions under the CRR.

The PRA published a [policy statement](#) on transposing the BRRD II Directive (EU) 2019/879) (PS28/20).

The Competition and Markets Authority (“**CMA**”) provided [an update](#) on the progress of its ongoing investigation into alleged anti-competitive arrangements in the financial services sector.

ESMA published an [updated version](#) of its guidelines on reporting under Articles 4 and 12 of the Securities Financing Transactions Regulation (EU/2015/2365) (“**SFTR**”) (ESMA70-151-2838).

The FCA published a [policy statement](#) (PS20/17) on its proposals intended to enhance climate-related disclosures by listed issuers and clarify existing ESG disclosure obligations, along with final amendments to the Handbook, and the final text of its technical note.

ESMA published its third [annual report](#) (ESMA70-156-3537) on the administrative and criminal sanctions and other administrative measures issued under the Market Abuse Regulation (596/2014) (MAR).

### 18 December

European Systemic Risk Board (“**ESRB**”) [revised](#) its recommendation on restrictions of distributions during the Covid-19 pandemic.

The House of Commons EU Scrutiny Committee report considered EU cryptoasset and DLT legislative proposals its [33rd report](#) of the 2019-21 session.

The PRA and the Bank of England (“**BoE**”) [published](#) a joint policy statement (PS27/20) on amendments to their rules and to onshored binding technical standards, as well as the use of temporary transitional powers relating to the end of the Brexit transition period.

The FCA updated its [expectations](#) for the approved persons regime and published an updated [statement](#) on the impact of COVID-19 on the Senior Managers and Certification Regime (“**SM&CR**”), setting out its expectations of solo-regulated firms.

The PRA and FCA jointly published an updated [statement](#) on the impact of COVID-19 on the SM&CR, setting out their expectations of dual-regulated firms.

ESMA published a [final report](#) (ESMA50-157-2403) containing guidelines on outsourcing to cloud service providers.

### 17 December

The Law Commission [published](#) a call for evidence on smart contracts.

EBA [requested](#) from the European Commission to revise the deadlines for technical standards under CRR II Regulation (EU/2019/876) (“**CRR II**”), CRD V and Investment Firms Regulation (EU/2019/2033) (“**IFR**”).

The Financial Ombudsman Service (“**FOS**”) published [issue 156](#) of ombudsman news and published a [consultation paper](#) on its proposed plans and budget for 2021/22.

EBA [launched](#) a consultation on its new Guidelines on internal governance for investment firms under the Investment Firms Directive (EU/2019/2034) (“**IFD**”), specifying the governance provisions that Class 2 investment firms should comply with, taking into account the proportionality principle.

ESMA published its [final report](#) containing guidelines under Article 25 of the Alternative Investment Fund Managers Directive (EU/2011/61) (“**AIFMD**”) (ESMA34-32-552).

Lloyd’s published its first [environmental, social and governance \(ESG\) report](#), which details its ambitions to fully integrate sustainability into all of Lloyd’s business activities.

The EBA published a [consultation paper](#) (EBA/CP/2020/26) on draft guidelines on sound remuneration policies under the IFD.

[Commission Implementing Decision \(EU\) 2020/2127](#) amending Commission Implementing Decision (EU) 2019/541 on the equivalence of the legal and supervisory framework applicable to approved exchanges and recognised market operators in Singapore under MiFIR was published in the Official Journal of the EU.

### 16 December

The Financial Stability Board (“**FSB**”) published its [global monitoring report](#) on non-bank financial intermediation 2020.

The EBA published a [final report](#) (EBA/RTS/2020/11) setting out seven draft regulatory technical standards relating to prudential requirements for investment firms under the IFR and the IFD.

Financial Action Task Force (“**FATF**”) published an updated [report](#) on Money Laundering and Terrorist Financing Risks and Policy Responses.

FCA [established](#) a Temporary Registration Regime for cryptoasset businesses.

ESMA updated the [guidelines](#) (ESMA34-49-289) on stress tests under the Regulation on money market funds (EU/2017/1131) (“**MMF Regulation**”).

The FCA updated its [webpage](#) on its supervisory statement on the operation of the transparency regime under the retained EU law version of the Markets in Financial Instruments Regulation (600/2014) (“**UK MiFIR**”) at the end of the transition period.

The [Counter-Terrorism \(Sanctions\) \(Overseas Territories\) Order 2020 \(SI 2020/1564\)](#) was made. The Order extends the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 (SI 2019/577) (the Regulations) to all British overseas territories except Bermuda and Gibraltar.

### 15 December

The FCA published a new [webpage](#) on complaints data relating to the first half of 2020.

The Network for Greening the Financial System (“**NGFS**”) published a:

- [Progress report](#) on the implementation of sustainable and responsible investment (SRI) practices in central banks’ portfolio management.
- A [report](#) following a survey on monetary policy operations and climate change with central banks.

HM Treasury published a [call for evidence](#) on the overseas framework.

The PRA published a [Dear CEO letter](#) sent to PRA-regulated international banks setting out its 2021 supervisory priorities.

HM Treasury launched a second [consultation](#) on the tax treatment of asset-holding companies (“**AHCs**”) in alternative fund structures.

### 14 December

The EBA published an [opinion](#) (EBA-Op-2020-19) (dated 11 December 2020) on the interplay between MLD4 and the Deposit Guarantee Schemes Directive (EU/2014/49) (“**DGSD**”).

ESMA published a [speech](#) by Steven Maijor, ESMA Chair, in which he highlights ESMA’s outlook on interest rate reform in the euro area.

The FCA [published](#) its first consultation paper on the implementation of the Investment Firms Prudential Regime (“**IFPR**”) (CP20/24). We have provided a specific update on this consultation [here](#).

### 11 December

The FCA [published](#) Handbook Notice 83.

The FCA published a [press release](#) announcing the appointment of Sheldon Mills as Executive Director, Consumers and Competition, with immediate effect.

The BoE [published](#) the Financial Stability Report for December 2020.

ESMA to [recognised](#) Euroclear UK & Ireland Limited as a third-country CSD from 1 January 2021.

### 10 December

The Islamic Finance Standards Board (“**IFSB**”) published a [press release](#) in which it announced that its council has resolved to approve the adoption of two new standards.

The Global LEI Foundation (“**GLEIF**”) published a [press release](#) announcing plans to launch a cryptographically verifiable Legal Entity Identifier (“**LEI**”) development programme, in response to demand from the financial services, pharmaceutical, healthcare, telecom and automotive sectors.

The FCA published a [policy statement](#) (PS20/15) announcing that it plans to make permanent its temporary ban on the mass-marketing of speculative illiquid securities (SISs) (including speculative mini-bonds) to retail investors and extend the scope of the ban.

### 9 December

The FSB published a [note](#) following a meeting that was held in September 2020 to discuss its questionnaire on the continuity of access to financial market infrastructures for firms in resolution.

The FCA published a new [webpage](#) containing a set of FAQs addressing key questions about Brexit and the temporary permissions regime (“TPR”) to help firms prepare for the end of the Brexit transition period. The transition period is due to end on 31 December 2020.

The European Parliament published a [press release](#) announcing that its Economic and Monetary Affairs Committee and the Council of the EU have reached political agreement on the proposed Directive amending the MiFID II.

The BoE published a [speech](#) by Andrew Hauser, BoE Executive Director for Markets, on firms’ preparations for LIBOR cessation at the end of 2021.

### 8 December

The FCA updated its [webpage](#) on the consultation it had launched jointly with the BoE and the PRA on a revised scheme for complaints against the UK financial services regulators (FCA CP20/11 / PRA CP8/20).

The PRA published a [summary](#) of the fifth meeting of the Climate Financial Risk Forum (“CFRF”), which it co-hosts with the FCA.

### 7 December

The FCA published a [guidance consultation](#) on proposed guidance for insolvency practitioners on how to approach regulated firms (GC20/5).

The Single Resolution Board published a [press release](#) announcing the publication of a [paper](#) outlining its expectations for how banks engaging in mergers, acquisitions and other corporate transactions can ensure resolvability.

European Commission [adopted](#) a new Delegated Regulation removing Mongolia from the list of high-risk third countries under the Fourth Money Laundering Directive (EU/2015/849) (“MLD4”).

The European Supervisory Authorities published a [communication](#) highlighting the change in status of simple, transparent and standardised securitisations after the end of the Brexit transition period.

### 4 December

The FCA [published](#) its 30th quarterly consultation paper (CP20/23).

The FCA published a [press release](#) announcing details of the cutover plan for firms migrating to the FCA Financial Instruments Transparency System (“FCA FITRS”) and FCA Financial Instruments Reference Data System (“FCA FIRDS”).

The FCA published a [guidance consultation](#) on the Bounce Bank Loan Scheme (BBLs) and pay as you grow (“PAYG”) options.

ESMA published a [press release](#) announcing that it has published updated [reporting instructions](#) under the MMF Regulation.

### 3 December

The UK Parliament has published a [revised version](#) of the Financial Services Bill 2019-2021, as amended in the committee stage.

The FCA published a [report](#) of its evaluation of the impact of the Retail Distribution Review and the Financial Advice Market Review.

The FCA published a new [webpage](#) on adding a new sub-fund to an umbrella scheme that will be in the temporary marketing permissions regime (“**TMPR**”).

The PRA published a [speech](#), given by Charlotte Gerken, PRA Executive Director, Insurance Supervision, on the importance of being prepared for a world of high risk and uncertainty on multiple and interacting fronts.

The FCA [published](#) its Primary Market Bulletin 32.

The BoE published the [2020 Annual Report](#) on its supervision of financial market infrastructures, covering the period from 15 February 2019 to 3 December 2020.

The following Delegated Regulations supplementing the Benchmarks Regulation (EU/2016/1011) (“**BMR**”) on sustainable finance issues were published in the Official Journal of the EU:

- [Delegated Regulation \(EU\) 2020/1816 supplementing the BMR as regards the explanation in the benchmark statement of how environmental, social and governance \(ESG\) factors are reflected in each benchmark provided and published.](#)
- [Delegated Regulation \(EU\) 2020/1817 supplementing the BMR as regards the minimum content of the explanation on how ESG factors are reflected in the benchmark methodology.](#)
- [Delegated Regulation \(EU\) 2020/1818 supplementing the BMR as regards minimum standards for EU climate transition benchmarks and EU Paris-aligned benchmarks.](#)

The International Organization of Securities Commissions (“**IOSCO**”) published a [consultation report](#) (CR03/2020) on market data in the secondary equity markets.

The [Financial Holding Companies \(Approval etc.\) and Capital Requirements \(Capital Buffers and Macro-prudential Measures\) \(Amendment\) \(EU Exit\) Regulations 2020 \(SI 2020/1406\)](#) were published on legislation.gov.uk, with an [explanatory memorandum](#).

HM Treasury [issued](#) a consultation proposing a new special administration regime for payment institutions and electronic money institutions.

### 2 December

The Council of the EU published a [note](#) (12898/1/20, REV 1) from the General Secretariat to the Permanent Representatives Committee (“**COREPER**”) attaching conclusions on the European Commission’s Capital Markets Union Action Plan.

The FCA [responded](#) to Treasury Committee’s questions on revised complaints scheme consultation.

The United Nations Environment Programme Finance Initiative (“**UNEP FI**”) published a [consultation paper](#) on a draft guidance document designed to support signatories of the Principles for Responsible Banking with reporting on their implementation of the principles.

The EC published a [notice](#) on the interpretation (2020/C 417/02) of Bank Recovery and Resolution Directive (EU/2019/879) (“**BRRD II**”).

The EBA published a [press release](#) announcing that the reactivation of its guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 pandemic. It has also published a document containing amendments to the guidelines (EBA/GL/2020/15) and a consolidated version of the guidelines themselves (EBA/GL/2020/02).

The BoE [announced](#) the launch of the new Shari'ah compliant non-interest based deposit facility in Q1 2021.

FATF published a [survey](#) on enhancing cross-border payments.

The European Insurance and Occupational Pensions Authority (“**EIOPA**”) published a [discussion paper](#) (EIOPA-BoS-20/666) on a methodology for the potential inclusion of climate change in the standard formula under the Solvency II Directive (2009/138/EC) (“**Solvency II**”).

The PRA published a [policy statement](#) on its approach to publishing Solvency II technical information after the end of the Brexit transition period (PS24/20).

The FCA updated its [webpage](#) on securitisation repositories (“**SRs**”) under the Securitisation Regulation (EU/2017/2402) to add a link to the application form for registration as a UK SR.

The following corrigenda were published in the Official Journal of the EU:

- [Corrigendum](#) to the IFD. The corrigendum amends Article 2(2), Article 54, Article 63(2) and Article 67(1) (second sub-paragraph).
- [Corrigendum](#) to the IFR. The corrigendum amends Article 57(2), Article 62(10)(a), (11)(a), (12)(a), (25) and (33), Article 63(6) and (7), and Article 66(3)(b).

The FCA published a draft [transitional direction](#), together with an [explanatory note](#), for the share trading obligation under MiFIR.

The FCA published a [Dear CEO letter](#) setting out its key concerns and expectations for firms in its self-invested pension plan (“**SIPP**”) operators’ supervisory portfolio.

The FCA published a [Dear Board of Directors letter](#) sent to mainstream consumer credit lenders (“**MCCLs**”).

### 1 December

The CMA [published](#) its fourth update on its loyalty penalty investigation in five key markets (mobile, broadband, household insurance, cash savings and mortgage markets).

The Council of the EU published a summary of the European Economic and Financial Affairs Council’s (“**ECOFIN**”) meeting on the Banking Union and the Capital Markets Union Action Plan.

UK Finance published a [blog post](#), written by the government, on key actions to take to prepare for the end of the Brexit transition period.

The Centre for Data Ethics and Innovation [published](#) measures to tackle algorithmic bias in decision-making in the financial services, local government, policing and recruitment sectors.

The FCA published a [press release](#) reminding firms to be ready for the end of the Brexit transition period.

The Office of Financial Sanctions Implementation published its [blog](#) entitled “Get ready for the end of the transition period”.

The FCA published a new [webpage](#) on the UK benchmarks register.

The BoE published an [updated version](#) of its webpage on the effect of Brexit on financial market infrastructure supervision. The updated information relates to applying to receive UK settlement finality protection.

## Regulation Round Up

The [Securities Financing Transactions, Securitisation and Miscellaneous Amendments \(EU Exit\) Regulations 2020 \(SI 2020/1385\)](#) were published on legislation.gov.uk, together with an [explanatory memorandum](#).