



FIG Bulletin

Recent developments
13 February 2017 to
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**Hogan
Lovells**

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1. Financial Conduct Authority and Payment Systems Regulator

1.1 CP17/4: Review of the effectiveness of primary markets: enhancements to the listing regime

On 14 February 2017, the Financial Conduct Authority (FCA) published a consultation paper, [CP17/4](#), and a discussion paper (see item 1.2 below) as part of its 2016/2017 Business Plan commitment to review the structure of the UK's primary markets to ensure they continue to serve the needs of issuers and investors. The FCA says that while the two documents are separate and different in nature, they complement each other and many stakeholders in the primary markets will want to read both.

The consultation paper contains proposals on certain technical amendments to the Listing Rules. The proposals cover:

- the requirements in chapter 6 of the Listing Rules which apply to commercial companies applying for a premium listing of their shares;
- the treatment of transactions that are outside the ordinary course of business and which are, or are proposed to be, undertaken by listed issuers. These changes involve the so-called "class tests", used to assess the size of the transaction relative to the listed issuer, and specifically the "profits test";
- the FCA's approach to suspending the listing of an issuer that has announced a reverse takeover, or where details of such a transaction have leaked.

Comments are requested by 14 May 2017. The FCA says that it will publish its rules in a policy statement in the second half of 2017.

The FCA will also consult shortly on how to improve the information available in the UK initial public offering process, following its April 2016 [discussion paper](#) on this issue.

1.2 DP17/2: Review of the effectiveness of primary markets: the UK primary markets landscape

On 14 February 2017, the FCA published a discussion paper, [DP17/2](#), seeking feedback on how the UK primary capital markets can most effectively meet the needs of issuers and investors.

The FCA is interested in views on:

- whether the current boundary between the standard and premium listing categories is appropriate, particularly in relation to overseas issuers and exchange traded funds, and looking more broadly at the role that standard listing plays in practice;
- the effectiveness of UK primary equity markets in providing capital for growth, particularly for early stage science and technology companies;
- whether there is a role for a UK primary debt multilateral trading facility, and its potential structure;
- measures that could be introduced to support greater retail participation in debt markets.

Comments are requested by 14 May 2017. Once the discussion period has closed the FCA will consider all responses and provide feedback. Should it choose to advance any specific policy proposals as a result of the feedback to the discussion paper, it will publish a further consultation paper.

1.3 What makes good conduct regulation? - speech by John Griffith-Jones

On 14 February 2017, the FCA published a [speech](#) by its Chairman, John Griffith-Jones, delivered at the Cambridge Judge Business School on 13 February 2017.

In his speech, Mr Griffith-Jones discussed what good conduct regulation looks like, setting out five building blocks, all of which he said provide

challenges to the FCA and probably the regulatory community at large. These are:

- Government policy;
- a clear set of objectives for the regulator, and a clear perimeter of coverage;
- a well developed and shared understanding of risk tolerance;
- operational excellence;
- a basis of measurement of inputs, outputs and outcomes, including intended and unintended consequences, with transparency of results.

1.4 PSR receives first application under section 57 of the Financial Services (Banking Reform) Act 2013

On 16 February 2017, the Payment Systems Regulator (PSR) [announced](#) that it has received its first application under section 57 of the Financial Services (Banking Reform) Act, 2013, which gives it the power to vary the terms of agreements relating to access to payment systems.

In its application, a payment services provider (PSP) has asked the PSR to use its powers to vary the agreement it has with an indirect access provider (IAP). The IAP has decided to terminate its access agreement with the PSP. The PSP has subsequently asked the PSR to extend the deadline for termination of its indirect access to payment systems while it transitions to alternative access arrangements. The PSP has also requested that the PSR takes urgent, interim action to ensure the maintenance of its indirect access service in the short-term.

The PSR has taken a decision to proceed to a detailed assessment of the application, during which it will collect and analyse more evidence and information to enable it to reach a reasoned decision. The PSR says that, based on the current information it has, it anticipates that it would take it up to six months (until the end of June 2017) to complete its inquiries and determine the application.

The PSR intends to publish a summary of the case and the key conclusions once the case is completed. It will also consider whether it is appropriate to publish any other information at any other stage of assessing the case.

2. Bank of England and Prudential Regulation Authority

2.1 The reform of SONIA: Bank of England supplementary consultation and update on timing

In October 2016, the Bank of England published a [consultation paper](#) setting out its detailed proposals for the reform of the Sterling Overnight Index Average (SONIA) interest rate benchmark, and how they would be implemented.

On 16 February 2017, the Bank published a [supplementary consultation paper](#) which revises its proposed approach on one specific issue relating to the averaging methodology to be used for SONIA. The document also provides an update on the anticipated transition timetable.

In the October 2016 consultation paper, the Bank proposed that SONIA be calculated as the volume-weighted median rate of eligible transactions. The Bank says that this proposal received generally supportive feedback, but a combination of factors has prompted it to reconsider its preferred averaging methodology. It now considers that the trimmed mean, which was not considered as part of the earlier consultation, strikes a better balance between the Bank's objectives and is preferred to the median. The consultation paper details the Bank's reasons for this reconsideration.

Comments are requested by 16 March 2017. The Bank will provide a summary of feedback to this and the 2016 consultation, together with its response, by the end of March 2017. This will set out the Bank's final view on the design of SONIA and the transition and publication arrangements.

The Bank now anticipates that the transition to reformed SONIA will occur in March or April 2018, rather than the end of 2017 as previously stated. It says that the change in timing reflects in part the additional time required for the February 2017 consultation, and in part responds to feedback received on the proposed timeline set out in the October 2016 consultation.

2.2 PRA CP2/17: Occasional Consultation Paper

On 16 February 2017, the Prudential Regulation Authority (PRA) published an Occasional Consultation Paper, [CP2/17](#), which sets out proposed changes to PRA rules and existing supervisory statements.

The proposed amendments relate to:

- an administration instrument which makes minor amendments to several Rulebook Parts (see chapter 1 and appendix 9);
- credit risk mitigation: secured guarantees, changes to SS17/13 (see chapter 2 and appendix 1);
- regulatory references: minor amendments (see chapter 3 and appendix 2);
- non-Solvency II firms: external audit reporting and supplementary notes (see chapter 4 and appendix 3);
- remuneration: committees and deferral periods (see chapter 5 and appendix 4);
- ring-fencing: residual reporting requirements for ring-fenced bodies (see chapter 6 and appendices 5, 6 and 7);
- securitisations: implicit support and External Credit Assessment Institutions mapping, changes to SS9/13 (see chapter 7 and appendix 8).

Comments are requested by 2 March 2017 for the administration instrument and by 16 May 2017 for all other chapters.

2.3 Solvency II: PRA updates SS25/15 and SS26/15 and makes amendments to LOG files

On 16 February 2017, the PRA published updates to two supervisory statements (SS), and amendments to templates and LOG files for Solvency II insurers. The PRA had consulted on the two SS in its September 2016 consultation paper, [CP31/16](#).

The updated SS are:

- [SS25/15](#): Solvency II: regulatory reporting, internal model outputs;
- [SS26/15](#): Solvency II: the own risk and solvency assessment and the ultimate time horizon for non life firms.

The templates and LOG files the PRA expects firms to use when submitting regulatory reports on its model outputs are available on the Regulatory reporting [webpage](#) for Solvency II insurers (see bottom of page).

3. European Union

3.1 Banking union: European Parliament adopts resolution on 2016 annual report

On 16 February 2017, the European Parliament published the [provisional version](#) of a resolution it has adopted on its 2016 annual report on banking union.

The resolution covers supervision, resolution and deposit insurance. Among other things, the resolution highlights that the outcome of the referendum on the UK's membership of the EU requires an assessment of the whole European System of Financial Supervision, including the voting modalities inside the European Supervisory Authorities, and emphasises that possible negotiations following the referendum should not lead to an unlevel playing field between EU and non-EU financial institutions, and should not be used to promote deregulation in the financial sector.

3.2 MLD4: Joint Committee of the ESAs consults on RTS on the establishment of central contact points

On 10 February 2017, the Joint Committee of the three European Supervisory Authorities (ESAs) (that is, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority) published a [consultation paper](#) on draft regulatory technical standards (RTS) on the criteria for determining the circumstances in which the appointment of a central contact point (CCP) pursuant to Article 45(9) of the Fourth Money Laundering Directive (MLD4) is appropriate and the functions of the central contact point.

Payment service providers and electronic money issuers with a head office in an EU Member State can operate establishments like agents or distributors in other host Member States. Such establishments have to comply with the anti-money laundering and countering terrorist

financing (AML/CFT) regime of the Member State in which they are based, even if they are not obliged entities themselves. Effective AML/CFT oversight of such establishments can, therefore, be difficult.

The draft RTS set out the criteria Member States will consider when deciding whether foreign payment service providers and electronic money issuers should appoint a CCP, and list the functions this CCP should perform.

A public hearing on the draft RTS will be held on 21 April 2017. Comments on the consultation paper are requested by 5 May 2017. The Joint Committee will finalise the draft RTS and submit them to the European Commission for approval.

3.3 PRIIPs with environmental or social objectives: Joint Committee of the ESAs consultation

On 10 February 2017, the Joint Committee of the three European Supervisory Authorities (ESAs) (that is, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority) published a [consultation paper](#) on a proposal to set minimum requirements, which manufacturers of packaged retail and insurance-based investment products (PRIIPs) with environmental or social objectives (EOS PRIIPs) should comply with to ensure that credible products are offered to retail investors.

The consultation is in response to a May 2016 call for advice from the European Commission, under Article 8(4) of the Regulation on key information documents for PRIIPs.

The manufacturer of an EOS PRIIP is required to have specific governance measures in place to ensure that environmental or social objectives are met on an ongoing basis and must be able to demonstrate the relevance of these objectives to retail investors throughout the investment process.

The consultation paper provides an analysis of the current legal framework for product oversight and governance rules and considers whether there are possible gaps regarding EOS PRIIPs. Existing product oversight and governance provisions, laid down in the relevant legislation for PRIIPs, including in the MiFID II Directive and the Insurance Distribution Directive, are in general found to be sufficient for PRIIPs. However, for EOS PRIIPs, the ESAs consider that it is important for the Commission to provide additional guidance to the respective manufacturers when interpreting the existing rules.

Comments are requested by 23 March 2017. The Joint Committee will submit the technical advice to the Commission by 30 April 2017. The ESAs also intend to publish final feedback on the consultation at the same time.

3.4 PSD2: EBA consults on complaints procedures

On 16 February 2017, the European Banking Authority (EBA) published a [consultation paper](#) containing draft guidelines on procedures for complaints of alleged infringements of the revised Payment Services Directive (PSD2). The guidelines have been drafted in accordance with Article 100(6) of PSD2, which requires the EBA to issue the guidelines by 13 January 2018.

The draft guidelines govern the process relating to complaints that payment service users and other interested parties, including consumer associations, can submit to competent authorities (CAs) with regard to payment services providers (PSPs) alleged infringements of PSD2. In particular, the draft guidelines specify:

- the requirements for the channels to be used by complainants to file their complaints;
- the information that CAs should request from complainants when complaints are submitted to them; and
- the information CAs should include in their responses to complaints.

The proposed guidelines also require CAs to:

- make an aggregate analysis of the complaints received;
- document their internal complaints procedures; and
- make publicly available information related to their procedures for complaints of alleged infringements of PSD2.

The draft guidelines apply only to complaints addressed to CAs about alleged infringements of PSD2 and do not cover other issues that payment service users or other interested parties may complain about. They also do not cover the role of CAs in alternative dispute resolution procedures for the settlement of disputes between payment service users and PSPs.

Comments are requested by 16 May 2017.

3.5 Solvency II: EIOPA reinforces supervisory co-operation in cross-border activities

On 16 February 2017, the European Insurance and Occupational Pensions Authority (EIOPA) published a [decision](#) on the collaboration of insurance supervisory authorities from all the EU Member States in line with the requirements laid down in the Solvency II Directive.

The decision, which is dated 30 January 2017, further strengthens and enhances the co-operation between the national competent authorities especially in relation to cross-border activities through information and data exchange in areas such as authorisations, recovery plans and complaints-handling systems using efficiently the centralised database managed by EIOPA.

A related EIOPA [press release](#) states that the decision will enter into force on 1 May 2017.

3.6 MiFID II: ESMA writes to European Commission on systematic internalisers operating broker crossing networks

On 14 February 2017, the European Securities and Markets Authority (ESMA) published the text of a [letter](#) it has written to the European Commission to raise its concern over the potential establishment of networks of systematic internalisers (SIs) by investment firms to circumvent certain MiFID II obligations, in particular, the requirements for investment firms operating internal matching systems and executing client orders on a multilateral basis to be authorised as trading venues, and the trading obligation for shares.

In the letter, which is dated 1 February 2017, ESMA asks the Commission to consider whether there is a need for the Commission to take action to address this issue, such as clarifying certain MiFID II definitions. ESMA also states that it will closely monitor developments in this area and may, in the future, clarify the scope of SIs' permitted activities and the characteristics of multilateral systems via its questions and answers documents.

3.7 ESMA launches new Q&As tool

On 10 February 2017, the European Securities and Markets Authority (ESMA) published a [webpage](#) on a new questions and answers (Q&As) tool, which provides a means for ESMA to collect and address questions publicly from stakeholders. The webpage contains an overview of all Q&As developed by ESMA per legislative act, instructions on submitting new questions to ESMA and details of what will happen after a question has been submitted.

Questions can be asked relating to the application of a legislative act within ESMA's remit or on any of ESMA's guidelines or opinions. The webpage contains a list of current sets of Q&As.

4. Financial Regulation

4.1 SEPA: EPC publishes responses to consultation on the SEPA SCT Inst scheme

In April 2016, the European Payments Council (EPC) [published](#) two consultation papers in relation to the Single Euro Payments Area (SEPA) instant credit transfer (SCT Inst) scheme.

On 16 February 2017, the EPC published a [document](#) which consolidates more than 350 comments received to the consultation papers and the EPC's response to these comments.

4.2 New integrated financial services trade association to be launched in summer 2017

On 14 February 2017, the Consumer Credit Trade Association [announced](#) that a new financial services trade association, as yet unnamed, will be launched in the summer of 2017.

The new trade body will integrate the remits, skills and capabilities of six trade associations: the Asset Based Finance Association, the British Bankers' Association, the Council of Mortgage Lenders, Financial Fraud Action UK, Payments UK and the UK Cards Association.

The new organisation will be chaired by Bob Wigley. Commencing 1 March 2017, Mr Wigley will oversee the appointment of the Chief Executive of the new body and the integration of the existing trade associations later in 2017.

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