



FIG Bulletin

Recent developments
16 January 2017 to
20 January 2017

**Hogan
Lovells**

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1. Financial Conduct Authority

1.1 FG17/1: Guarantor loans: default notices

On 19 January 2017, the Financial Conduct Authority (FCA) published finalised guidance, [FG17/1](#), on its interpretation of the requirement in section 87 of the Consumer Credit Act 1974 to serve a default notice before the creditor (or owner) enforces a guarantee or indemnity following breach of a regulated agreement.

The guidance relates to regulated credit agreements and regulated consumer hire agreements under which an individual other than the borrower or hirer provides a guarantee or indemnity (or both).

The FCA had consulted on draft guidance, in [GC16/7](#), in October 2016 taking into account comments received on previous draft guidance in [GC16/2](#). The FCA says that it has taken the opportunity to make some minor clarifications to the draft guidance, in the light of responses received and discussions with stakeholders.

Although the guidance will not be binding on firms, the FCA will take it into account in deciding whether a firm has followed the law and whether any supervisory or enforcement action is warranted. The FCA says that it intends to keep the guarantor lending market under review, and may propose changes to its rules or guidance if it considers it appropriate to do so in the future.

1.2 Consumer credit: FCA publishes new versions of information sheets for 2017

On 13 January 2017, the FCA updated its [webpage](#) on consumer credit information sheets to give the information that it has published new versions of the information sheets for 2017 which are effective from 14 April 2017. Until 13 April 2017 firms must use the current versions of the information sheets, effective from 2014 to 13 April 2017.

The information sheets effective from 14 April 2014 are as follows:

- [Arrears \(No 001\)](#);
- [Default \(No 002\)](#);
- [High-cost short-term loans \(No 003\)](#);
- [High-cost short-term loans peer-to-peer lenders \(No 004\)](#)
- [Arrears - peer-to-peer lending \(No 005\)](#)

As previously reported in the FIG Bulletin, the FCA withdrew a previous version of these new information sheets on 18 January 2017, as they contained an error. The FCA says that any firms who downloaded the withdrawn versions must take care not to use them.

1.3 FCA CP17/1 and PRA CP1/17: Financial Services Compensation Scheme - Management Expenses Levy Limit 2017/18

On 16 January 2017, the FCA and the Prudential Regulation Authority (PRA) published a joint consultation paper, [FCA CP17/1 and PRA CP1/17](#), on the management expenses levy limit for the Financial Services Compensation Scheme for 2017/18. For further details see item 2.2 below.

1.4 MiFID II: FCA guide to applications and notifications

On 13 January 2017, the FCA published a MiFID II [application and user guide](#). The guide has been published to help firms decide which applications and notifications they should make and to explain how to do so. MiFID II takes effect from 3 January 2018.

The guide deals with:

- applications: for new authorisation as investment firms or data reporting service providers, recognition of investment exchanges, variation of permission and change of legal status;
- notifications: to provide regulatory information to the FCA by firms authorised

by it, recognised investment exchanges and others, including passporting notifications.

In each chapter, and in annex 1, the guide indicates the date by which firms should submit an application or notification to the FCA and, where relevant, the forms to be used. Links to the relevant forms are also included in the guide.

The user guide covers:

- what firms need to consider;
- key changes;
- investment firms;
- fees;
- article 3 MiFID exempt firms;
- approved persons;
- structured deposits;
- data reporting services providers;
- market data processor on-boarding and market data reporting;
- market infrastructure providers;
- passport notifications and tied agents;
- commodity regime;
- transparency waivers and deferrals;
- non-discriminatory clearing access for financial instruments.

1.5 FCA takes first criminal action against an individual acting as unlicensed consumer credit lender

On 17 January 2017, the FCA [announced](#) that Dharam Prakash Gopee had appeared at Westminster Magistrates Court charged with offences under the Consumer Credit Act 1974 and the Financial Services and Markets Act 2000. These charges arise from an investigation carried out by the FCA into Mr Gopee and companies he controls including Reddy Corporation Ltd, Speedy Bridging Finance Ltd and Barons Finance Ltd.

It is alleged that Mr Gopee operated as an unlicensed consumer credit lender. This is the first time that the FCA has taken criminal action in a case related to its consumer credit powers. Mr Gopee is believed to have lent in excess of £1

million over the last four years, whilst neither in possession of a consumer credit licence from the Office of Fair Trading or equivalent authorisation by the FCA.

1.6 Two sentenced in insider dealing case

On 13 January 2017, the FCA [announced](#) that, in a prosecution brought by the FCA, Manjeet Mohal, a former employee of Logica Plc, has been sentenced to 10 months imprisonment suspended for two years in respect of two counts of insider dealing. He was also ordered to undertake 180 hours of community work. Reshim Birk, a neighbour of Mr Mohal's was sentenced to 16 months imprisonment suspended for two years in respect of one count of insider dealing. He was ordered to undertake 200 hours of community work.

A confiscation order of £162,876.69 was made against Mr Birk. Prosecution costs of £42,593.35 were awarded to the FCA in respect of each defendant.

2. Bank of England and Prudential Regulation Authority

2.1 PRA PS1/17: Deposit protection limit

On 16 January 2017, the Prudential Regulation Authority (PRA) published a policy statement, [PS1/17](#), which provides feedback to responses to its November 2016 consultation paper, [CP41/16](#), on the deposit protection limit. It also contains final rules, the PRA Rulebook: CRR Firms, Non CRR Firms, Non-Authorised Persons: Depositor Protection (Coverage Level) Instrument 2017, [PRA 2017/2](#). The rules in annex A of the instrument come into force on 30 January 2017 and the rules in annex B come into force on 1 July 2017. An [updated version](#) of Supervisory Statement (SS) 18/15 on depositor and dormant account protection has also been published.

In CP41/16 the PRA proposed to:

- reset the deposit protection limit to protect depositors up to £85,000 as of 30 January 2017;
- provide a five month transitional period for firms to amend disclosure, advertising materials and posters and stickers and to update the Single Customer View to reflect the new deposit protection limit;
- require firms to notify the PRA if they are ready to implement the rule changes prior to 30 June 2017; and
- update SS18/15 with the PRA's expectations in relation to the above rule changes, correct references and delete expired text.

The PRA has made some changes to the rules consulted on in CP41/16 in response to feedback. Details of these are set out in chapter 2 of the policy statement, which also sets out feedback to CP41/16. Material changes to the proposals include allowing firms more flexibility to make changes to customer-facing materials as soon as practicable during the transitional period and removing the requirement that firms notify the PRA.

The new deposit protection limit of £85,000 is effective from 30 January 2017. Based on the final rules and expectations set out, firms:

- must make all changes to customer-facing materials required to implement the new deposit limit as soon as practicable after 30 January 2017 and in any event on or before 30 June 2017; and
- are expected to train their customer-facing staff to answer questions from customers about the change in the deposit limit, regardless of when a firm's written materials are amended, by 30 January 2017 or as soon as practicable after 30 January 2017.

2.2 PRA CP1/17 and FCA CP17/1: Financial Services Compensation Scheme - Management Expenses Levy Limit 2017/18

On 16 January 2017, the PRA and the Financial Conduct Authority (FCA) published a joint consultation paper, [FCA CP17/1 and PRA CP1/17](#), on the management expenses levy limit (MELL) for the Financial Services Compensation Scheme (FSCS) for 2017/18.

The MELL is the maximum amount which the FSCS may levy in a year without further consultation. This covers the projected costs of operating the scheme, excluding claimants' compensation costs, and an unlevied contingency reserve. The MELL provides the FSCS with adequate resources to process compensation claims resulting from the failure of financial services firms. These functions are conferred on it by Part XV of the Financial Services and Markets Act 2000. The MELL is consulted on annually, jointly by the FCA and the PRA.

The proposed MELL for 2017/18 is £74.54 million, consisting of:

- FSCS management expenses of £69.24 million; and
- a contingency reserve of £5.3 million.

The proposed rules for the FCA and the PRA to set the MELL for 2017/18 are in appendices 1 and 2 respectively.

Comments are requested by 13 February 2017. The PRA and the FCA will consider the feedback and will finalise and publish rules in a policy statement in March 2017. The finalised rules will take effect on 1 April 2017 and invoices will be sent out from July 2017.

2.3 PRA Rulebook: Administration Instrument 2017

On 16 January 2017, the PRA published PRA Rulebook: Administration Instrument 2017, [PRA 2017/1](#), which it consulted on in its October 2016 Occasional Consultation Paper, [CP36/16](#). Annexes A and D to the instrument come into force on 1 January 2019. Annexes B, C and E to the instrument came into force on 18 January 2017.

The instrument makes minor corrections to various parts of the PRA Rulebook. The PRA says that these corrections are not substantive and are not intended to change PRA policy.

3. Banking

3.1 Retail banking market investigation: CMA publishes final undertakings given by Bacs on current account switching

On 17 January 2017, the Competition and Markets Authority (CMA) [announced](#) that it has accepted [undertakings](#) from Bacs Payment Schemes Ltd (Bacs) that commit it to delivering the improvements required by the CMA retail banking market investigation within a year. In August 2016, the CMA published the [final report](#) on its investigation and it [consulted](#) on draft undertakings in December 2016.

An important change will be the extension of the redirection service operated by the Current Account Switch Service (CASS). This is designed to give further assurance to customers that all their payments will be switched from their old account to their new one, and so overcome a key concern about moving banks.

Bacs has also been tasked by the CMA to work with banks and increase both awareness of and confidence in CASS. They will now work together to target those likely to benefit from switching the most, such as overdraft users and customers with high credit balances, and make sure they know other options are available to them. A key requirement of the banking investigation has already been delivered, that is, to introduce independence to the switching service. Previously run by the banks it represented, CASS now has an independent chair in place to ensure the service works for those who use it, not just those who run it. Consumer groups and price comparison websites will now be able to influence how the service operates and promotes itself.

4. Brexit

4.1 Brexit negotiating objectives: Theresa May speech

On 17 January 2017, the Prime Minister, Theresa May, gave a [speech](#) on the UK Government's negotiating objectives for exiting the EU, including the 12 priorities that the UK Government will use to negotiate Brexit.

Among other things, Mrs May said:

- the UK does not seek membership of the single market following its departure from the EU but instead seeks the greatest possible access to it through a new, comprehensive, bold and ambitious free trade agreement. Mrs May said that this agreement may take in elements of current single market arrangements in certain areas, for example, the freedom to provide financial services across national borders, as she said it makes no sense to start again from scratch when Britain and the remaining Member States have adhered to the same rules for so many years;
- by the time the two year Article 50 process has concluded, she wants the UK to have reached agreement about its future partnership. From that point onwards, the Government believes a phased process of implementation, in which both Britain and the EU institutions and Member States prepare for the new arrangements that will exist. This will give businesses enough time to plan and prepare for those new arrangements. The process might apply, among other things to the future legal and regulatory framework for financial services;
- the UK would no longer be bound by decisions of the European Court of Justice and it would control immigration to the UK from Europe;
- both Houses of Parliament will have a vote on the final deal.

4.2 The process for exiting the EU and the Government's negotiating objectives: House of Commons Exiting the EU Select Committee report

On 14 January 2017, the House of Commons Exiting the EU Select Committee [announced](#) the publication of its first [report](#), on what the Government needs to do before triggering Article 50 of the Treaty on European Union.

Among other things, the report says that:

- the Government should publish its Brexit plan by mid-February 2017 at the latest. This should set out its position on membership of the single market and the customs union;
- ministers should also seek an outline framework on the UK's future trading relationship with the EU as part of the Article 50 negotiations, including appropriate transitional arrangements, if it is not possible to reach a final agreement by the time the UK leaves the EU;
- the Government should commit to Parliament having a vote on the final Treaty.

4.3 Legislating for Brexit: Statutory Instruments implementing EU law: House of Commons Library briefing paper

On 16 January 2017, the House of Commons Library published a [briefing paper](#) which looks at how the majority of EU directives are implemented in the UK and lists EU-related UK Statutory Instruments (SIs).

Most EU directives and a small number of EU regulations are implemented in the UK by SI under the authority of the European Communities Act 1972 (ECA) (the majority) or another enabling Act. Some EU directives are implemented by primary legislation (that is, an

Act of Parliament). These will be examined in a separate briefing paper.

A related [briefing paper](#) "Legislating for Brexit: directly applicable EU law", looks at EU regulations, which will cease to have effect in the UK if the ECA is simply repealed without a saving provision, pending decisions on their future status. A further [briefing paper](#) "Legislating for Brexit: EU external agreements", looks at the EU's external agreements, stating whether they are exclusive EU competence or mixed competence agreements.

5. European Union

5.1 CRR: European Commission Delegated Regulation on RTS on data waiver permissions published in the Official Journal

On 14 January 2017, the [text](#) of Commission Delegated Regulation (EU) 2017/72 of 23 September 2016 supplementing the Capital Requirements Regulation (CRR) with regard to regulatory technical standards (RTS) specifying conditions for data waiver permissions was published in the Official Journal of the European Union.

The Delegated Regulation will enter into force on the twentieth day following that of its publication in the Official Journal.

5.2 MLD4: European Parliament votes to reject Delegated Regulation amending list of high-risk third countries

On 19 January 2017, the European Parliament [announced](#) that it has voted to pass a motion for a [resolution](#) objecting to the proposed European Commission Delegated Regulation amending the list of high-risk third countries under the Fourth Money Laundering Directive (MLD4).

As reported in last week's FIG Bulletin, on 9 January 2017, the European Parliament's Committees on Economic and Monetary Affairs Committee and on Civil Liberties, Justice and Home Affairs published a motion for a resolution which said that they believe that the list of criteria in Article 9(2) of MLD4 is non-exhaustive and that predicate offences to money laundering, such as tax crimes, fall under these criteria.

The motion adopted by the Parliament calls on the Commission to submit a new delegated act that takes account of the committees' concerns.

5.3 Insurance and reinsurance: EU and US agree bilateral agreement

On 13 January 2017, the European Commission and the US published a [joint statement](#) announcing that the EU and the US have agreed a bilateral agreement on prudential measures regarding insurance and reinsurance. The [text](#) of the agreement has also been published.

The agreement covers three areas of prudential insurance oversight:

- reinsurance;
- group supervision; and
- the exchange of insurance information between supervisors.

5.4 CRR: EBA publishes official translations of guidelines on the definition of default across the EU

On 18 January 2017, the European Banking Authority updated the [webpage](#) on its [guidelines](#) on the application of the definition of default under Article 178(7) of the Capital Requirements Regulation (CRR) to give the information that the guidelines have been published in the official languages of the EU.

Competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by 20 March 2017. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant.

5.5 The functioning of the CRR with the related obligations under EMIR: EBA and ESMA report

On 18 January 2017, the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) published a joint [report](#) on the functioning of the Capital Requirements Regulation (CRR) with the related obligations under the Regulation on over-the-counter derivatives, central

counterparties (CCPs) and trade repositories (known as EMIR).

The report provides an analysis, and, if necessary, recommendations on the main potential duplicative requirements identified. The report does not, however, provide a comprehensive review of CRR and EMIR provisions, and instead focuses on the following items, which, in the view of the EBA and ESMA, can be considered as potentially duplicative or inconsistent requirements among the CRR and EMIR:

- capital requirements for CCPs holding a banking licence;
- leverage ratio, net stable funding requirements and liquidity coverage ratio;
- large exposure requirements in the CRR
- the difference in margin period of risk application across the two regulations (Article 304 of the CRR and Article 41 of EMIR);
- exposures to CCPs.

The report calls for the requirements for credit, market, and counterparty credit risk in the CRR to be clarified. This clarification should ensure that only risks not already covered by specific financial resources for activities not related to clearing are to be covered by CRR requirements. This exclusion should also be extended to activities covered by interoperability arrangements.

5.6 IFR: European Commission letter to EBA on its intention to partially endorse and amend the EBA's draft RTS on the requirements to be complied with by payment card schemes

On 19 January 2017, the European Banking Authority (EBA) published the text of a [letter](#) it has received from the European Commission on the Commission's intention to partially endorse and amend the draft regulatory technical standards (RTS) submitted by the EBA in July

2016 with regard to establishing the requirements to be complied with by payment card schemes and processing entities to ensure the application of independence requirements in terms of accounting, organisation and decision-making process in accordance with article 7 of the Interchange Fee Regulation (IFR).

The Commission intends to endorse section 2 of the draft RTS which relate to accounting, but amend sections 3 and 4 of the draft RTS which relate to organisation and the decision-making process. The letter, which is dated 5 January 2017, gives details of the Commission's concerns about sections 3 and 4. The Commission has also published an [annex](#) to the letter containing a draft Commission Delegated Regulation detailing the changes it is proposing to make to the draft RTS.

The EBA has six weeks to amend the Commission's amended RTS and to resubmit them to the Commission in the form of an opinion.

5.7 MAR: ESMA publishes official translations of guidelines on commodity derivatives

On 17 January 2017, the European Securities and Markets Authority (ESMA) [announced](#) the publication of the official translations of its final [guidelines](#) on information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives under the Market Abuse Regulation (MAR).

The guidelines clarify one element of the definition of inside information and establish a non-exhaustive indicative list of information which is reasonably expected or required to be disclosed in accordance with legal or regulatory provisions in Union or national law, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets.

The guidelines apply two months after the publication of the translations. National competent authorities (NCAs) to which the guidelines apply must notify ESMA whether they comply or intend to comply with the guidelines, with reasons for non-compliance, within two months of the date of publication. In the event that a NCA does not intend to comply, it will have to inform ESMA, stating its reasons. Market participants are not required to report whether they comply with the guidelines.

5.8 MiFID II: ESMA briefing on technical data reporting requirements

On 16 January 2017, the European Securities and Markets Authority (ESMA) published a [briefing note](#) on MiFID II technical data reporting requirements, which among other things, contains dates for the start of data collection.

ESMA [published](#) the technical requirements and templates for data reporting in October 2016.

6. Financial crime

6.1 Reform of corporate criminal liability: Ministry of Justice call for evidence

On 13 January 2017, the UK Ministry of Justice published a [call for evidence](#) on corporate liability for economic crime, which seeks views on whether further reform is needed to combat corporate criminality, following fraudulent, dishonest activity by some banks and other commercial organisations.

The call for evidence is concerned with criminal offences designed to punish and prevent economic crimes such as fraud, false accounting and money laundering when committed on behalf or in the name of companies. It seeks views on:

- whether the need to prove the involvement of a “directing mind” in corporate offending is hindering the prosecution of companies for wrongdoing;
- alternatives to proving “directing mind” complicity in corporate criminal conduct, including: a US-style “vicarious” liability offence, making companies guilty through the actions of their staff, without the need to prove complicity, the failure to prevent model, whereby a company is liable unless it shows it has taken steps to prevent offending and the benefits of strengthening regulatory regimes.

Responses are requested by 24 March 2017.

7. Financial crime

7.1 FSCS plans and budget for 2017/18

On 16 January 2017, the Financial Services Compensation Scheme (FSCS) [announced](#) the publication of its [plan and budget 2017/18](#).

The FSCS expects to levy the industry £378m, down from £401m in 2016/17. The plan and budget also provides an update on the progress the FSCS is making in delivering its five year vision targets. FSCS priorities for next year are continuing to improve customer service and achieving value for money. Preparing for potential failures, achieving recoveries to offset the costs of compensation paid, and maintaining consumer awareness at 70% remain key objectives for the FSCS.

On 16 January 2017, the FSCS also [announced](#) that it will raise supplementary levies this year (2016/17). These levies are for life and pensions advisers (£36m), general insurers (£63m) and mortgage advisers (£15m) and are to meet unforeseen compensation costs. The levy on life and pensions advisers will trigger contributions from firms in other sectors. The FSCS will also return a surplus of funds to investment advisers.

7.2 Review of limited partnership law: BEIS call for evidence

On 16 January 2017, the Department for Business, Energy and Industrial Strategy (BEIS) published a [call for evidence](#) on a review of limited partnership law. BEIS says that it is aware of concerns that some limited partnerships registered in Scotland are being used for criminal activity. There has been a recent increase in the number of limited partnerships registered in Scotland in comparison to those registered in England, Wales and Northern Ireland.

BEIS is seeking views and evidence on:

- the possible reasons why registration of limited partnerships in Scotland has increased;
- the value limited partnerships bring to the UK economy as a whole;

- how the wider limited partnership framework operates and whether any changes need to be made.

Responses are requested by 17 March 2017.

7.3 SEPA: EPC guide for adherence to the SEPA Credit Transfer Scheme, the SEPA Instant Credit Transfer Scheme and the SEPA Direct Debit Schemes published

On 19 January 2017, the European Payments Council (EPC) [announced](#) that payment services providers can now apply for adherence to the Single Euro Payments Area (SEPA) Instant Credit Transfer (SCT Inst) Scheme, which will become effective in November 2017.

The EPC has also published a [guide](#) for adherence to the SEPA Credit Transfer Scheme, the SEPA SCT Inst Scheme and the SEPA Direct Debit Scheme. The guide provides detailed guidelines as well as template application forms for applicants wishing to adhere to one or more of the SEPA payment schemes managed by the EPC. It replaces the three previous adherence guides.

8. Investment funds

8.1 Asset management activities: FSB policy recommendations to address structural vulnerabilities

On 12 January 2017, the Financial Stability Board (FSB) published a [document](#) containing 14 final policy recommendations to address structural vulnerabilities from asset management activities. The policy recommendations address the following structural vulnerabilities:

- liquidity mismatch between fund investments and redemption terms and conditions for open-ended fund units;
- leverage within investment funds;
- operational risk and challenges at asset managers in stressed conditions; and
- securities lending activities of asset managers and funds.

Money market funds are excluded from the policy recommendations.

The FSB [consulted](#) on the policy recommendations in June 2016 and the final recommendations reflect a number of changes to the proposed recommendations to incorporate responses to the consultation. Among other things, the recommendations on liquidity have been revised to encourage authorities to develop consistent reporting requirements, to better distinguish the information that is useful to authorities and investors, and to emphasise the exploratory nature of system-wide stress testing at this time. The purposes and uses of leverage measures have also been clarified.

Some of the recommendations will be operationalised by the International Organisation of Securities Commissions (IOSCO). IOSCO has been asked to complete its work on the liquidity recommendations by the end of 2017 and on leverage measures by the end of 2018. The FSB will regularly review progress on the operationalisation and implementation of the recommendations.

8.2 The Legislative Reform (Private Fund Limited Partnerships) Order 2017: draft Legislative Reform Order

On 16 January 2017, the Government laid before Parliament a draft [Legislative Reform Order](#) to amend limited partnerships legislation as it applies to private funds such as venture capital and private equity funds. A related [explanatory document](#) and [impact assessment](#) have also been published. This follows on from the July 2015 [consultation](#) on partnership legislation for private equity investments. The Government [response](#) to the consultation was published as part of the Budget 2016.

The purpose of the draft Order is to amend the Limited Partnerships Act 1907 to introduce a private fund limited partnership (PFLP) structure. This structure will be available to private investment funds (in other words, funds not authorised to be promoted to retail consumers) which are structured as limited partnerships, for example private equity and venture capital funds. It is designed to reduce the administrative and financial burdens that impact these funds under the current limited partnership structure.

The draft Order enables a limited partnership which is an investment fund to be designated as a PFLP, and amends some of the provisions of the 1907 Act as they apply to PFLPs and to partners in PFLPs. A limited partnership may be designated as a PFLP only if it is constituted by an agreement in writing and is a collective investment scheme.

The draft Legislative Reform Order will be considered by the Parliamentary Regulatory Reform Committee and the Delegated Powers and Regulatory Reform Committee.

9. Securities markets

9.1 LEI system developments: LEI ROC update

On 12 January 2017, the Regulatory Oversight Committee (ROC) of the Global Legal Entity Identifier (LEI) system published an [update](#) on developments in the LEI system. These relate to:

- accreditation of LEI issuers by the Global LEI Foundation;
- implementation of relationship data in the Global LEI system;
- other LEI ROC projects: these are projects on uses of the LEI, data quality, branches, corporate actions and data history, and individuals.

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