



WHAT DOES 2020 HOLD? KEY UPCOMING DEVELOPMENTS AND ENFORCEMENT TRENDS

LONDON FINANCIAL INSTITUTIONS REGULATORY AND ENFORCEMENT





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LONDON FINANCIAL INSTITUTIONS REGULATORY
AND ENFORCEMENT SEMINAR

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What happened in 2019?

As 2018 drew to a close, we made various predictions about 2019. We forecast that the pace of EU legislative change would slow down and that the overall theme would be one of “review, refit and renewal.” We also predicted a continuing trend towards centralisation of powers at the level of the European Supervisory Authorities (e.g. ESMA and the EBA), and that further steps would be taken towards the EU’s objective of unlocking long-term financing to SMEs and the European real economy. In relation to the UK regulatory and enforcement landscape, we foresaw an increased emphasis by the FCA on culture and consumer protection (particularly in the areas of pricing and transparency). We also predicted that enforcement levels would increase, with a key focus on financial crime, cybersecurity, culture and individual accountability.

So were we right? The answer is: “yes, up to a point.” Although 2019 has not seen a wave of regulatory reform akin to that of preceding years, we have seen incremental changes to the regulatory framework arising from the review of recently implemented legislation. For example, the EMIR Refit came into effect, and the revised capital requirements package (including the IFR and IFD), along with the Cross-Border Distribution of Funds Regulation, were

both finalised. The review of the Market Abuse Regulation also commenced, with a wide-ranging consultation paper. More of a steady drip, though, than a torrent.

Other reforms became bogged down in the EU’s legislative procedures, further complicated by the conclusion of the European Commission and Parliament’s term and their replacement from November 2019. Amongst the reforms that were held up is the much-anticipated package of measures intended to implement the Commission’s Action Plan on the Reduction of Non-Performing Loans in Europe, with political agreement on out-of-court collateral enforcement proposals proving particularly elusive. On the same theme, delays have continued to arise from the need to address complex issues in Level 2 or Level 3 measures, and in some cases from overly aggressive initial implementation timelines. A clear example of this was the missed deadline for implementing Strong Customer Authentication under PSD 2, as a result of the industry being given insufficient time to achieve operational compliance. The result has left regulators playing catch-up, but lacking the legislative tools to achieve postponement, resulting in reliance on alternatives such as “no action” assurances. Moves to provide the ESAs with increased powers also lost some momentum, with the proposed centralised approach to AML supervision faltering at political level, despite signs of increased oversight by the ESAs of Member State regulators’ supervisory practices.

In the UK, regulators continued to be preoccupied by Brexit, with other policy work slowing as resources were diverted. The publication of revised legislation and rulebooks for a no-deal Brexit was no mean feat given the enormous complexity

of the exercise. In the meantime, regulators began to think about what the UK’s post-Brexit framework might look like, with suggestions of a move to a more principles-based approach. In support of this approach, the FCA appeared to partly blame regulatory shortcomings exposed by the collapse of the Woodford funds on the EU’s UCITS framework. On the same theme, the FCA trained its guns on fund managers’ approach to liquidity management tools and proposed new rules for authorised funds in this area (the EU has suggested similar initiatives). Meanwhile, the FCA continued to focus on transparency (as predicted), with new BCBS rules focusing on disclosure of charges. On the enforcement front, activity also went up, perhaps even more than anticipated, with total FCA fines up to c. £390 million at the time of writing (a 650% increase on 2018). Whilst the FCA’s enforcement focus generally reflected our predictions, retail conduct has featured more heavily than expected and the FCA has yet to add another SMCR fine to the single one levied previously. That may, however, be a reflection of how long it takes to bring such cases to completion. When looking back at 2019’s enforcement environment generally, it is striking that a significant number of larger fines of £30 million plus were levied rather than the figures being skewed by any individual fine, giving an overall total that is the highest since the large LIBOR and FX scandals.

One aspect of regulatory reform that we did not predict gaining such significant momentum throughout the course of 2019 is the rapidly increasing focus of regulators on Environmental, Social and Governance (ESG) issues and sustainable finance. We, along with many others in the market, will not make the same mistake twice!



Looking Ahead to 2020



As 2020 comes into view, what can we expect to be at the top of regulators' agendas? Key themes that are new from last year are ESG and an increased focus on operational resilience. Both EU and UK authorities are looking at how buy and sell-side firms should embed ESG considerations into their organisational and customer-facing processes. Whilst legal reforms are under discussion, we expect that institutional investors and market adaptations, such as the rise of green bonds, will continue to drive the debate, perhaps faster than the regulators and legislators can catch up. Much of the EU-level reform work being undertaken at present is dependent on the finalisation of an EU-wide ESG "taxonomy" (stemming from a proposed Taxonomy Regulation), which has proven to be particularly contentious, with the categorisation of "sustainable" activities a sticking point.

Operational resilience will form an important work-stream for UK regulators. The PRA is seeking to embed operational resilience into the UK's prudential framework by the end of 2020 so that this forms a pillar of prudential

supervision that is equally important as the financial resilience pillar, and the FCA is increasingly focused on this area from a conduct as well as a prudential perspective. The regulators' response in this area is likely to reflect the political scrutiny that they are currently under, as exemplified by the recent Treasury Select Committee report on IT failures in financial services. The Committee's report raised questions in particular over whether the current enforcement regime is ineffective in addressing operational failures, and the absence of any successful enforcement cases under the SMCR was specifically highlighted as evidence that the current approach may not be sufficiently robust. As a result, we may see increased enforcement action against firms and individuals for prolonged IT failures.

Technological innovation will continue to be a major theme in 2020, with regulators and firms alike continuing to grapple with digital disruption. Open Banking and Open Finance, and the risks of data ethics and machine learning are just some of the innovation topics on the FCA's agenda. The debate over regulation of cryptoassets is also likely to

continue. Whilst the implementation of 5MLD will bring some cryptocurrency service providers within scope of AML supervision, the wider debate on regulation of crypto looks set to rumble on, with products like Libra adding further impetus to global regulatory discussion. More broadly, the UK's approach to FinTech will continue to set trends internationally, as the FCA seeks to enhance its burgeoning reputation in the space and focus on global engagement beyond the EU post-Brexit. We expect to see the FCA driving the Global Financial Innovation Network (GFIN) - including by assisting firms in the GFIN's cross-border pilot scheme - as well as supporting the 6th cohort of UK firms in its Regulatory Sandbox.

The FCA will continue to embrace its role as a consumer and competition-focussed regulator. Following the super-complaint to the CMA regarding unfair treatment in the insurance, mortgage and cash savings sectors, fair treatment of existing customers is a key priority for 2020, with pricing intervention a possibility. The theme of 'review, refit and renewal' will also continue in 2020 as the FCA continues to review its previous work in the retail investment advice sector, and on MiFID II and SMCR implementation.

Finally, enforcement continues to trend upward with the number of cases opened by the FCA rising throughout 2019. Given the significant number of large cases settled in 2019, fines may not continue to rise in 2020 but firms should expect an ongoing focus on investigation and enforcement action including, potentially, some SMCR cases.

Whatever 2020 may bring and the accuracy of our predictions, we look forward to working with you.

Global Enforcement Themes

	Country	Top three enforcement areas
	Australia	Mis-selling, Retail conduct, Culture/governance
	Brazil	Retail lending, Retail conduct, Client money/assets
	China	Financial Promotions, Client money/assets, Mis-selling
	France	Financial crime, Retail conduct, Mis-selling
	Germany	Market conduct, Financial crime, Retail conduct
	Hong Kong	Financial crime, Market conduct, Mis-selling
	Italy	Market conduct, Financial crime, Mis-selling
	Japan	Retail lending, Culture/governance, Client money/assets
	Singapore	Market conduct, Financial crime, Client money/assets
	South Africa	Culture/governance, Wholesale conduct, Market conduct
	Spain	Market conduct, Retail conduct, Financial crime
	Switzerland	Culture/governance, Financial Promotions, Market conduct
	UK	Retail conduct, Financial crime, Market conduct
	US	Retail conduct, Culture/governance, Market conduct



Increase



Stay at broadly the same level



Decrease in 2020 (when compared to 2019)

Anticipated enforcement action against financial institutions		Anticipated enforcement action against senior staff in financial institutions	

Financial Crime and Market Conduct

Financial crime will continue to be in the regulatory spotlight in 2020. We expect increased scrutiny of firms' systems and controls, enhanced supervisory powers and a continued focus on the interplay between new technologies and financial crime.

Against the backdrop of a number of high profile scandals relating to money laundering and transparency, over the coming year we will continue to see the results of post-crisis regulation with the implementation of 5MLD and 6MLD. Among other things, this will bring more firms within scope of AML legislation (including virtual currency exchange platforms and custodian wallet providers), increased beneficial ownership

transparency, a heightened focus on high risk third countries, harmonisation of predicate offences and new corporate criminal liability.

Despite significant pushback from Member States, we also expect to see the EBA taking an enhanced role in AML supervision together with an increased role in investigating and taking direct enforcement action – and for ESMA to take a greater coordinating role in market abuse cases – as a result of the European System of Financial Supervision (ESFS) reform package and 6MLD. We expect to see a similar increase in supervisory powers in the UK through the Government's Economic Crime Plan,

including for Companies House to conduct its own due diligence.

Following two successful criminal convictions by the FCA for insider dealing and the fine against Linear Investments Limited earlier this year, we anticipate a heightened focus by the FCA on firms' market abuse controls. The FCA has emphasised to firms the importance of having effective market abuse controls in place, particularly in relation to:

- The control of inside information;
- Detecting and reporting abuse in non-equity markets; and
- Ensuring employee's compliance with PAD policies.



Finally, the interplay between new technologies and financial crime is undoubtedly on the FCA's agenda for the coming year. Not only will the FCA become the AML supervisor for cryptoasset businesses, but the FCA research agenda also includes the economics and ethics of firms' use of big data and AI. One of the key questions in this area is: if market manipulation is unintentionally committed by a computer subject to

machine learning, who is responsible? Both the FCA and PRA have indicated that they would seek to prosecute the people who provided governance over the computer – i.e. the Board. Firms looking to test the use of big data and AI in trading should therefore ensure that there are robust systems and controls in place to prevent potential market abuse and that the relevant senior managers are aware of their responsibilities.

Key Takeaways

01

Enhanced supervisory powers for regulators at UK and EU level: firms should prepare for heightened enforcement activity both at a firm and individual level, as well as an appetite for more criminal prosecutions.

02

Increased regulatory focus on financial crime systems and controls, particularly when overlapping with new technologies: firms should ensure that these controls are reviewed in 2020 and that individual responsibilities are appropriately allocated under the SMR.

03

The rise of the machine: as new technologies and the use of big data introduce new financial crime risks, we could start seeing parallel investigations by the FCA and ICO, as well as heightened scrutiny around governance and accountability at senior management level.

Financial Crime and Market Conduct

Q4 2019

UK TRANSPOSITION OF 5MLD

HM Treasury is expected to publish results of its consultation on draft legislation transposing 5MLD.

JANUARY 2020

EU TRANSPOSITION OF 5MLD

Member States are required to transpose the Fifth Money Laundering Directive into national law by 10 January 2020. There are further transposition dates, for example, around beneficial ownership registers.

FEBRUARY 2020

FATF EXPECTED TO ISSUE GUIDANCE ON DIGITAL IDENTITY

The Financial Action Task Force is developing guidance on digital identity in the context of customer due diligence. The guidance intends to help governments, financial institutions and other relevant entities apply a risk-based approach.

Q4 2019/Q1 2020

EBA SUPERVISION OF AML AND CTF

Publication of the ESFS reform package in the OJ, including increased supervisory powers for the EBA in relation to AML and CTF.

JANUARY 2020

FCA GATEWAY FOR CRYPTOASSET REGISTRATION

Cryptoasset businesses must comply with the amended MLRs 2017 from 10 January 2020. A new FCA gateway opens for registration on this date to bring businesses under FCA supervision; registration must be complete by 10 October 2020.

MARCH 2020

HM GOVERNMENT ECONOMIC CRIME PLAN 2019-22

The FCA is expected to have identified any necessary enhancements to its AML and CTF supervision in response to the FATF's 2018 UK mutual evaluation report, and HM Treasury will report on the barriers to information-sharing powers and gateways. This includes a review of the criminal market abuse regime by July 2021.

SPRING 2020

ESMA REPORT ON MAR REVIEW

ESMA intends to submit its final report on the MAR consultation to the European Commission by Spring 2020.

DECEMBER 2020

SAR REFORMS

The NCA, Home Office and HM Treasury to deliver first wave of SARs IT reforms to improve reporting.

DECEMBER 2020

SENIOR MANAGERS AND CERTIFICATION REGIME ("SMCR")

From 7 December 2020, the SMCR will be extended to benchmark firms. All solo-regulated firms subject to the SMCR must also issue the fitness and propriety certificates for all certified staff by 9 December 2020.

JUNE 2020

HM TREASURY AND HOME OFFICE TO PUBLISH THIRD AML/CTF NATIONAL RISK ASSESSMENT

Previously published in 2015 and 2017, the National Risk Assessment looks at domestic AML / CTF issues, particularly in the regulated sector, and international risk of money passing through the UK.

DECEMBER 2020

6MLD TRANSPOSITION

Member States (ex UK) must transpose 6MLD on criminal law into national law by 3 December 2020, and firms must implement relevant regulations by 3 June 2021.

2021

MLR 2017 AND POCA REVIEW

HM Treasury and the Home Office will review the MLRs 2017 and POCA respectively, focusing on effectiveness and scope.

Sustainability

The increasing focus on ESG and sustainable finance shows no sign of slowing down in 2020, with legislators and regulators from around the globe looking to make their mark on this fast-evolving area.

At EU-level, there has been a flurry of legislative proposals in the ESG space during 2019 following the publication of the European Commission's Action Plan on Sustainable Finance last year. These proposals aim to embed a consideration of ESG into governance standards applying across the financial sector, by amending key regulations including MiFID II, the AIFMD, CRD IV and the UCITS Directive.

Certain key pieces of EU-level legislation which aim to standardise how the market thinks about ESG - namely, the Disclosure Regulation and the Low Carbon Benchmarks Regulation - have recently been adopted by the European Council and are due to be published in the Official Journal before the end of this year. It is anticipated that the Disclosure Regulation will apply 15 months after publication, whilst the Low Carbon Benchmark Regulation will apply the day after publication. The Taxonomy Regulation has proven to be more contentious, with various EU Member States disagreeing over which activities should be categorised as "sustainable". While negotiations between the European Council and

Parliament are ongoing, however, the Taxonomy Regulation is due to become applicable from the end of 2022.

Industry participants are now looking to the EU to develop the more detailed "Level 2" measures during 2020, which will provide further clarity on how to comply with the new requirements on disclosure in particular. Some firms have expressed concern that finalisation of these rules may not allow firms sufficient time to prepare for implementation, and Q3-4 2020 will likely see an increasing focus on the content of the required disclosures.

It remains to be seen whether the UK will adopt the EU's proposed ESG reforms in



their current form following Brexit. In its Green Finance Strategy, however, the UK Government stated its commitment to at least matching the ambition of the objectives of the European Commission Action Plan, irrespective of the outcome of the UK's withdrawal from the EU.

Finally, it would be remiss not to acknowledge recent market adaptations that have provided crucial gunpowder to the notion of "ESG". In particular,

the rise of green bonds provides an example of how global capital markets are adapting to changing circumstances; an estimated \$200 billion worth of green bonds have been issued in 2019 alone, with more expected in 2020. That said, the lack of official common reporting standards and metrics continues to cause serious concerns around the credibility of green finance and may hamper the development of the sector as a whole.

Key Takeaways

01

The rise of ESG is set to continue into 2020, with both regulators and market participants paying ever-closer attention to this quickly evolving sector. Green bonds in particular have seen sustained popularity across the globe.

02

A lack of official common reporting standards and metrics continues to cause serious concerns about the credibility of green finance and may hamper the development of the sector as a whole.

03

Uncertainty remains regarding the implementation date (and therefore the applicability) of a number of EU level measures aimed at bringing the sector within the scope of regulation. Further clarity on this is expected during the course of 2020.

Sustainability

TAXONOMY REGULATION

The Taxonomy Regulation aims to establish an EU classification system for sustainable activities. The European Parliament and European Council have been unable to reach agreement on the text of the draft regulation, and are due to negotiate this with the aim of ensuring it is fully applicable by the end of 2022.

SUSTAINABLE INVESTMENT CATEGORISATION

At present, there are certain market-led standards governing when products will be considered "green" for example ICMA's Green Bond Principles. However, the EU's proposed regulatory reforms would create a new, regulation-driven "sustainable investment" label, which would be applied to:

- (i) investments in an economic activity that contributes to an environmental objective (as set out in the Taxonomy Regulation); and
- (ii) investments in an economic activity that contributes to a social objective (e.g. tackling inequality, fostering social cohesion, social integration and labour relations, or investments in disadvantaged communities).

In each case, the investment may not harm some other ESG objective, and the investee company in question must demonstrate good governance practices. This proposed categorisation may prove to be a helpful tool for financial institutions seeking to track which EU investments are truly "sustainable" in nature.

GREEN LOANS

At present, there are certain market-driven standards governing "green loans" (e.g. the LMA Green Loan Principles and the Sustainability Linked Loan Principles). Although the EU has not yet proposed any specific standards relating to the loan market, the new standards around "Green Projects" (described below) and the EU taxonomy may well affect how managers who engage in direct lending think about this area.

DISCLOSURE REGULATION

The Disclosure Regulation imposes disclosure requirements on market participants including AIFMs, managers of certain venture capital funds, pension product providers, UCITS ManCos and other firms providing portfolio management services. These entities will in future be required to publish sustainability policies and provide ESG-focused pre-contractual disclosures.

ORGANISATIONAL AND CONDUCT REFORMS

Pursuant to EU regulatory reforms, AIFMs, UCITS ManCos and investment firms will all be required to build “ESG considerations” into their organisational framework, risk management framework and conflict of interest policy.

EU product distributors will also need to define target markets by reference to investors’ ESG preferences, and banks and investment firms will need to assess the suitability of potential investment opportunities by reference to their clients’ ESG preferences.

EU GREEN BONDS

The EU Technical Expert Group on Sustainable Finance has produced a report proposing an “EU Green Bond Standard”, which is intended to be a voluntary code applying to any type of listed or unlisted bond or other capital market debt instrument issued by an EU or international issuer. Pursuant to the proposed Standard, any proceeds from the sale of EU green bonds (or an amount equivalent to such proceeds) would need to be used to finance or refinance “Green Projects” (i.e. projects contributing substantially to at least one of the environmental objectives set out in the EU Taxonomy Regulation) in order to be classed as an EU Green Bond. In addition, an accredited “Verifier” would need to verify the alignment of the bond issuance with the EU Green Bond Standard.

The EU Green Bond Standard seems likely to supplant the ICMA Green Bond Principles, which are currently considered to set market-standard criteria for green bonds. There is a suggestion in the proposed EU standard that issuers will be required to periodically report on the use of proceeds from the issuance, and ongoing environmental impact (supported by quantitative metrics). This proposal would provide some market discipline in an area where issuers are not at present subject to particularly rigorous constraints around use of proceeds etc.

BENCHMARKS REFORM

Amendments to the Benchmarks Regulation will result in the creation of two new categories of benchmark, which are designed to reflect portfolios of assets with lower carbon emissions than standard benchmarks:

- (i) an ‘EU Paris-aligned Benchmark’, where the benchmark portfolio’s carbon emissions are aligned with the long-term global warming target of the Paris Climate Agreement; and
- (ii) an “EU Climate Transition Benchmark”, where the underlying assets are selected, weighted or excluded in such a manner that the resulting benchmark portfolio is on a “decarbonisation trajectory” towards reducing carbon emissions.

These new benchmarks should do the job of tracking whether securities included in the benchmarks are truly “green” in nature, and will sit alongside existing sustainability linked benchmarks such as FTSE4Good.

Tech, Innovation and Data

Early adoption of technology in the financial services sector focused on the opportunities for consumers, financial institutions and regulatory bodies to expand access to financial services and products while lowering costs and addressing perennial risks which had existed in financial markets. However regulators globally are increasingly becoming aware of new risks arising from the use of these innovative technologies and products, and are rapidly re-orientating to address these perceived shortcomings.

Technology never remains stagnant with new technologies constantly replacing old ones. In many financial institutions new systems are layered onto old, legacy systems, creating a complex network of overlapping and

inconsistent infrastructures. In recent times this patchwork of technologies has created major IT issues for firms resulting in outages, cyber security weaknesses and other technological flaws. Outages from large banks, card schemes and other financial institutions (and / or their outsourced solution providers) have attracted significant publicity in recent years. The latest reports from legislative bodies and from regulators have identified such "operational resilience" matters as representing a major threat to national financial systems, and have vowed to target such weaknesses in future regulatory enforcement and supervisory efforts.

As cryptoassets mature and steps are taken to integrate them into mainstream

payments, securities and other traditional areas of the financial system regulators are increasingly focused on the risks of such products whilst remaining supportive of the potential benefits they might bring.. In particular, the increasing prevalence of cryptoassets such as "stablecoins" and the involvement of large financial institutions and technology companies in piloting these technologies points towards a future where their use is significantly more widespread and systemically important than in the past. Accordingly, efforts to legally categorise cryptoassets have progressed, while regulators are examining how existing financial regulations can be applied to the issuers or manufacturers of these products (and, in many cases, participants



in the arrangements) to reduce risks to investors, users and the financial system at large. Authorities have also identified the involvement of cryptoassets in money laundering, terrorist financing and other economic crimes and in response are expanding existing financial crime controls to include such assets.

The regulation of innovative new products and services is continuing apace. New EU regulations on crowdfunding and cross border payments will come into

effect in the coming year. In addition, regulatory requirements on payment account providers to open access to customer data have recently come into force and are expected to become prevalent in new product offerings. While strong customer authentication ("SCA") did not have the seamless launch that regulators had hoped, plans to have SCA applied to all e-commerce transactions have progressed, and are now expected to be in place by the end of 2020 or early in 2021.

These developments all point to technology becoming firmly embedded in financial institutions and systems and regulatory developments over the next year will reflect that. One of the first cases relating to the provision of financial advice using robo-advice will go to trial in 2020, while cryptoassets are expected to continue to feature in court decisions and regulatory guidance. All this suggests that technological opportunities and risks will continue to be at the forefront in financial news for 2020.

Key Takeaways

01

Regulators will increasingly target firms' operational resilience to ensure that technologies and systems are fit for purpose, and are properly taken into account in business continuity planning.

02

Cryptoassets will continue to be the focus of regulatory and legal analysis and new rules governing the offering and sale of such products are expected to come into effect.

03

The introduction of new technologies and systems will continue to offer opportunities even while the risks of technology are becoming more apparent. These technologies offer the opportunity for faster, safer, cheaper and more transparent transactions in financial markets and systems and so will always be an attractive investment for savvy operators.

Tech, Innovation and Data

OCTOBER 2019

TREASURY COMMITTEE PUBLISHES REPORT ON IT FAILURES IN FINANCIAL SERVICES

The Treasury Committee has published its report on IT Failures in financial services on 28 October 2019. The report was scathing on the level and frequency of harm to consumers caused by such IT Failures and has called on regulators to take urgent action to address risks arising from such failures. This action includes using existing enforcement tools to hold firms to account and having regulators address concentration risks relating to outsourced service providers.

NOVEMBER 2019

LEGAL STATEMENT ON CRYPTOASSETS

The UK Jurisdiction Taskforce ("UKJT") published its authoritative legal statement on cryptoassets, DLT and smart contracts on 18 November 2019. The intention of the statement is to provide the market with confidence, legal certainty and greater predictability.

Q4 2019 / Q1 2020

EU REGULATION ON CROWDFUNDING

The Council for the European Union published its compromise proposal in June 2019 in relation to the EU Crowdfunding regulation proposed by the Commission in March 2019. It is expected that the final Crowdfunding Regulation will pass in late 2019 or early 2020.

Q1 2020

FINANCIAL SECTOR CYBER SIMULATION EXERCISE

The BoE recently published their findings of its financial sector cyber simulation exercise, testing the response of 29 systemically important firms and financial market infrastructures to a cyber-attack scenario. HM Treasury, the FCA, PRA and the BoE have started implementing the recommendations made, which will continue into 2020.

Q4 2019

FCA CALL FOR INPUT ON OPEN FINANCE

The FCA plans to publish a call for input on its strategy towards open finance, looking at how the principles of open banking, such as those relating to data sharing, can be applied across financial services.

Q4 2019

CP ON OPERATIONAL RESILIENCE (PRA, FCA AND BOE)

The PRA, FCA and Bank of England previously released a joint discussion paper on building the UK financial services sector's operational resilience. The consultation paper response is expected at the end of 2019.

Q1 2020

FCA RESPONSE TO CP 19/22 ON CRYPTOASSET SALES TO RETAIL CLIENTS

FCA to publish a final policy statement and Handbook rules in early 2020 regarding the possible restriction of sales of cryptoassets to retail investors.

The FCA previously consulted on prohibiting the sale to retail clients of investment products that reference cryptoassets (in its Consultation Paper 19/22). The response deadline was 3 October and the FCA is currently considering the feedback. It will publish its final decisions in Q1 2020.

Q1 2020

REQUEST TO PAY MEASURES IN PLACE

Pay.UK is expecting to have in place "request to pay" messaging service allowing payees to send a "request to pay" rather than a paper invoice or bill.

Q2 2020

PSR FINAL REPORT ON ITS MARKET REVIEW INTO CARD ACQUIRING

The PSR is currently conducting a market review in the card acquiring market to determine whether it is achieving best consumer outcomes. Its final report is expected in Q2 2020.

Q4 2020

SCA IN PLACE FOR ALL IN-SCOPE E-COMMERCE TRANSACTIONS

As a result of the EBA's opinion of 21 June 2019, most national competent authorities have delayed the application of SCA to e-commerce transactions. In accordance with the EBA's opinion of 16 October 2019, SCA should be in place for all e-commerce transactions by 31 December 2020. The FCA has indicated a UK deadline of 14 March 2021 for e-commerce transactions (and 14 March 2020 for online banking).

FURTHER AHEAD

NEW PAYMENTS ARCHITECTURE

Major revamp of UK payment systems. Expected to be in place after 2021.

JANUARY 2020

5MLD TO BE TRANSPOSED INTO NATIONAL LAW

5MLD is expected to be transposed into national law by each EU Member State by 10 January 2020. Amongst other updates, 5MLD will require cryptowallets and cryptoexchanges to comply with customer due diligence and other anti-money laundering measures under 4MLD. The FCA will be the supervisory body for such cryptoasset businesses in the UK. Many Member States (including the UK) have yet to publish their final implementing legislation, but all indications are that the UK will look to gold-plate some of 5MLD's provisions.

MID 2020

TYNDARIS V VWM

The case of Tyndaris v VWM goes to trial. The High Court will consider where liability should rest in respect of substantial losses that were allegedly suffered in connection with an AI-powered trading or investment system.

Q4 2020

EBA REPORT ON EMERGING TECHNOLOGY RISKS

The EBA plans to publish a report on emerging technology risks and related guidance for prudential supervisors, to include big data and data analytics, distributed ledger technology and open banking.

Risk, Governance and Reporting

2020 will see an increased focus on individual accountability and non-financial conduct by regulators and regulated firms alike. For solo-regulated firms, a key challenge will be ensuring that the SMCR is not simply treated as a “Day 1” implementation project, but that senior managers are taking and recording “reasonable steps” towards compliance in their day-to-day activities. 2020 will also see the go-live date of the new FCA financial services directory, which puts the onus on solo and dual-regulated firms to track and upload data on their certified staff.

2020 will see investment firms ramp up their efforts to understand how the IFR/IFD will impact their capital requirements

calculations and, in particular, whether the various thresholds and “K-factors” built into the regime could have unforeseen consequences for their business. The FCA is set to continue its focus on resources more generally, with its policy statement on adequate resources expected to be published by the end of this year, and liquidity and stress testing forming key areas of focus for the funds sector.

As a result of CRD V, CRR-regulated banks and investment firms will need to consider new requirements on intermediate parent undertakings when considering any potential 2020 restructuring projects. All prudentially regulated firms will need to pay close

attention to the new remuneration rules built into CRR II and the IFR/IFD, particularly in light of the decreased “de minimis” threshold applying to the pay-out process rules (set to apply to employees with total annual variable remuneration over EUR 50,000).

On reporting, we are starting to see firms review whether MiFID II compliance procedures are operating successfully, and we are fast heading towards the 2020 start date of compliance with SFTR reporting. Firms will also need to continue tracking whether they could be brought within scope of the EMIR initial margin exchange requirement, and buy-side firms in particular will need to ensure that



they have made the necessary operational preparations for implementation of CSDR settlement discipline rules. Buy-side firms should begin conversations with their custodians and brokers on this point sooner rather than later in order to understand what approaches they are proposing to take and allow time for potential contractual changes to be agreed.

Throughout 2020, banks, proprietary trading firms and payment institutions will need to have regard to the revised

EBA Guidelines on Outsourcing when entering into service agreements which are in some way critical or important to their business. Mandatory provisions around regulatory audit rights can in particular prove tricky to negotiate.

Lastly (and certainly not the least amongst concerns faced by firms in 2020), pressure to transition away from LIBOR will begin to grow and regulators may well begin to scrutinise whether firms are doing enough to effect this move.

Key Takeaways

01

Dealers and buy-side firms alike will face key challenges in 2020 around implementation of SFTR reporting, CSDR settlement discipline requirements, initial margin exchange and IBOR transition.

02

The newly extended SMCR regime will see an increased focus on individual accountability, non-financial conduct and decision making within regulated firms.

03

2020 will see regulated firms under increasing scrutiny on their financial resources, and where relevant will need to ramp up for IFR/IFD and CRD V compliance, with remuneration forming a key area of sensitivity.

Risk, Governance and Reporting

DECEMBER 2019

SMCR EXTENSION

From 9 December, SMCR will be extended to all firms authorised under FSMA, except benchmark administrators and claims management companies within the temporary permissions regime. There are three categories - limited scope, core and enhanced - and it replaces the approved persons regime.

APRIL 2020

INVESTMENT FIRMS AND CREDIT INSTITUTIONS WILL BECOME SUBJECT TO SFTR REPORTING.

Investment firms and credit institutions will become subject to SFTR reporting on 11 April 2020. This is the first step of a phase-in schedule that will apply to insurers, UCITS ManCos and AIFMs as of 11 October 2020, and non-financial entities from 11 January 2021.

SEPTEMBER 2020

INITIAL MARGIN EXCHANGE

Firms with an average aggregate notional amount ("AANA") of uncleared derivatives of more than EUR 50bn will need to begin complying with initial margin exchange requirements on 1 September 2020. Firms with an AANA of uncleared derivatives between EUR 8bn and EUR 50bn, however, will have until 1 September 2021 to comply.

Q4 2019

FCA POLICY STATEMENT ON ADEQUATE RESOURCES

The FCA held a consultation on adequate resources over the summer of 2019, focusing on the purpose of adequate resources and FCA expectations of practices firms should adopt. A policy statement is expected in late 2019.

MARCH 2020

FCA FINANCIAL SERVICES DIRECTORY

Banks and insurers (along with their appointed representatives) to upload information to the FCA's new financial services directory by 9 March 2020, which will go live shortly afterwards. Solo-regulated firms will have until around the end of 2020 to upload the required data.

SEPTEMBER 2020

SETTLEMENT DISCIPLINE

Deadline for implementation of 'settlement discipline' rules under the CSDR is September 2020 (though a possible delay to November 2020 has been mooted). The regime includes cash penalties for settlement failures and mandatory buy-ins.

DECEMBER 2020**SOLO-REGULATED FIRM
REGISTRATION AND
TRAINING REQUIREMENTS**

By 9 December 2020, all solo-regulated firms must complete fitness and propriety assessments and certify relevant employees, train non-SMCR staff, and upload information to the FCA's financial services directory.

JUNE 2021**CRR II BECOMES
APPLICABLE**

Following the implementation of CRD V, the majority of CRR II becomes applicable on 28 June 2021. This includes requiring credit institutions and systemic investment firms to finance long-term activities with stable sources of funding.

DECEMBER 2021**OUTSOURCING
GUIDELINES**

Financial institutions and payment institutions required to ensure that all existing outsourcing arrangements are documented in line with the EBA Outsourcing Guidelines by 31 December 2021.

DECEMBER 2020**MEMBER STATES TO
IMPLEMENT CRD V**

The EC first proposed amendments to CRD IV in 2016, eventually approving amendments including EU intermediate parent undertakings, Pillar 2 capital requirements and remuneration. Member States must implement these by 28 December 2020.

Q1 2021**INVESTMENT FIRM
CAPITAL REQUIREMENTS**

The Investment Firms Regulation and Investment Firms Directive expected to apply. Phase-in of measures taken to implement the European Commission Action Plan on Sustainable Finance are expected to ramp up during the course of 2021.

DECEMBER 2021**BENCHMARK TRANSITION**

On 31 December 2021, the Benchmarks Regulation transitional period will conclude, and supervised entities will no longer be in a position to use non-compliant benchmarks. After this point, LIBOR production will no longer be guaranteed by FCA.

Consumer Protection

Consumer protection across the financial services industry continues to be a focus of regulatory work plans for 2020.

Retail investments will be in the spotlight next year, with the FCA refreshing its thematic work on suitability assessments, the Financial Advice Markets Review and the Retail Distribution Review. These reviews look to combat concerns over unsuitable and low-quality advice and high-charges, particularly in relation to high-risk investments. The FCA's work on MiFID 2 implementation will also have an investor protection focus in 2020 - with product governance the next area to face FCA scrutiny.

The UK is not alone in looking at retail investment. At EU-level, the debate around the future of the PRIIPS KID will continue next year and 2020 will also see ESMA facilitate common supervisory activity on suitability. In the US, the SEC 'Regulation Best Interest' standard comes into effect in 2020- this aims to improve retail advice by imposing obligations on broker-dealers around disclosure, duty of care and conflicts of interest.

Product intervention has continued to play a role in 2019 - with the majority of EU authorities introducing permanent product intervention measures on binary options and contracts for differences. Further product intervention is on the

cards in the UK in 2020, with the FCA proposing a ban on the sale, marketing and distribution of derivatives and exchange traded notes referencing cryptoassets to retail consumers. The promotion and sale of mini bonds will also face scrutiny in 2020.

Outside of investments, work continues in the UK on pricing fairness and fair treatment of existing customers in a number of markets - including insurance, mortgages and cash-savings. The FCA is expected to publish a Discussion Paper in Q1 2020 setting out its proposals on a review of the FCA Principles in this context. Firms should also be aware of the proposed introduction of a duty of



care to customers, with a Discussion Paper expected in Q4 2019. In the payment space, changes to charges for cross-border Euro payments will come into effect from 15 December, with further phased implementation through to April 2021 of disclosure obligations relating to currency conversion changes.

Looking at enforcement, 2019 has seen large fines levied against firms for customer unfairness and mis-selling practices- both in the insurance distribution and pensions sectors. With 126 FCA cases open at 31 March 2019 for retail conduct and mis-selling, further enforcement action may be seen in 2020.

Key Takeaways

01

The retail investment sector will be reviewed in 2020. Firms may see increased guidance on advice and suitability in the retail market, as well as the potential for further changes to rules on charges for advisory services.

02

Product intervention is here to stay. Firms should prepare for intervention on retail consumer access to complex products referencing cryptoassets. These rules apply to business done in or from the UK, impacting UK and non-UK clients of UK firms.

03

Changes to the FCA Principles and the introduction of a duty of care may have far-reaching impacts across a number of sectors. A review of treating customers fairly, including pricing fairness, should be on firms' agendas in 2020.

Consumer Protection

OCTOBER 2019

FINANCIAL SERVICES DUTY OF CARE BILL

The Financial Services Duty of Care Bill had its first reading in Parliament on 29 October 2019. This will not proceed further due to the December general election but the FCA intends to introduce a duty of care to consumers and a further Discussion Paper is expected in Q4 2019.

JANUARY 2020

PRIIPS REVIEW

The deadline for submission of feedback on the ESA consultation paper on amendments to the PRIIPS Regulation is 13 January 2020. Amendments to the PRIIPS Regulation resulting from this consultation, and the work of the EC on consumer testing, are expected to come into effect in 2021.

Q1 2020

CRYPTOASSET INTERVENTION

The FCA Policy Statement on proposals to ban the sale, marketing and distribution of derivatives and exchange traded notes referencing cryptoassets to retail consumers is expected in Q1 2020. This aims to address concerns around consumer understanding on these products and the scale of possible consumer loss.

DECEMBER 2019

CBPR2 BECOMES PARTIALLY APPLICABLE

The 'equality of charges' principle under CBPR2 will be extended to non-euro Member States from 15 December 2019. The remaining requirements under CBPR2 come into force in April 2020 and April 2021. Application of these requirements to the UK after Brexit has not been confirmed.

2019/2020

MIFID II REVIEW

The FCA's review of firms' progress on MiFID II implementation will continue in 2019/2020 with an assessment of product governance requirements - focussing on design of products, identification of target markets and monitoring of products and distribution activities.

Q1 2020

PRICING FAIRNESS

Following the FCA's work on fair pricing for financial services and the Feedback Statement issued in July 2019, the FCA is expected to publish a Discussion Paper on the review of the FCA Principles in the context of fairness in pricing as part of ongoing work in this area.

Q1 2020

INSURANCE PRICING PRACTICES

The FCA Final Report on insurance pricing practices and remedies is expected in Q1 2020. This follows the FCA's wider work on fair treatment of existing customers.

SEPTEMBER 2020

INTRODUCTION OF ILLIQUID ASSET RULES

New rules for Non-UCITS retail schemes ("NURS") that invest in illiquid assets come into force on 20 September 2020. The new obligations include increased disclosure of liquidity management tools and contingency plans and the introduction of standard risk warnings for investors.

2020/2021

UNAFFORDABLE LENDING

The FCA is expected to conclude work on the business model drivers of unaffordable lending by 2021. This follows the FCA's interventions in the high-cost credit, rent-to-own and overdraft markets and is focussed on concerns around business models which are designed to benefit from consumers' inability to repay debts.

Q1 2020

ASSESSING SUITABILITY

The FCA will publish its findings from the refreshed Assessing Suitability Review - examining advice and disclosures given to consumers across different product types, particularly relating to defined benefit transfer advice and advice on high-risk investments.

AUTUMN 2020

FCA MARKET REVIEWS

Findings from the FCA's review of the Financial Advice Market Review and Retail Distribution Review will be published in Autumn 2020. The reviews will focus on the impact of the FCA's work in these areas and any further work needed to address consumer harm.

2021/2022

NEW DEAL FOR CONSUMERS

Amendments to Union consumer protection measures will come into effect in 2022, with national implementing legislation expected in 2021. The amendments provide for enhanced transparency in online transactions, a right for individual remedies for consumers who are harmed by unfair practices and increased protection for consumers using free digital services.

Other Upcoming Items

UK



Q4 2019	FCA to publish feedback to the consultation on COBS permitted links rules and on the Investment Platforms Market Study.
18 December 2019	New BCOBS rules on overdrafts come into force. Further rules apply from 6 April 2020.
15 January 2020	Deadline for fund managers to notify updates to existing Temporary Permissions Regime notifications.
30 January 2020	FCA notification window for Temporary Permissions Regime closes.
January 2020	Long-term funding mechanism expected to fund the reimbursement of victims of 'no blame' authorised push payment (APP) scams.
10 January 2020	The Joint Money Laundering Steering Group will publish guidance reflecting changes in the MLR based on the Fifth Money Laundering Directive.
31 January 2020	Mark Carney's term as Governor of the Bank of England ends.
Q1 2020	FCA to publish policy statement on general insurance value measures reporting.
March 2020	FCA to hold a second Transforming Culture conference to share and discuss outputs from its work on the themes of purpose, leadership and management capabilities, remuneration and incentives, and firms' assessment of culture.
Spring 2020	FCA to publish interim report on credit information market study.
Q2 2020	The FCA to publish a consultation paper on the prudential regime for investment firms.
June 2020	Financial Stability Report draft report on the effects of too-big-to-fail reforms will be published for public consultation.
September 2020	Largest UK banks to submit assessments of their preparations for resolution to the PRA.
Q3 2020	FCA to publish a consultation paper on building the UK financial sector's operational resilience.
By 2 November 2020	Appeal of High Court decision in Re Prudential Assurance Company Ltd, to decline to sanction the transfer of a £12 billion portfolio of individual and bulk annuity policies, expected to be heard.
End 2020	PRA to establish operational resilience within its prudential framework by end of 2020.
End 2020	Investment Association to implement the proposals on innovation, optimisation and promotion contained in its June 2019 final report to the HM Treasury Asset Management Taskforce.
During 2022	UK Government to review progress made in respect of its Green Finance Strategy.
26 June 2022	HM Treasury to have reviewed the operation of the 2017 Money Laundering Regulations and the legislation establishing the Office for Professional Body Anti-Money Laundering Supervision (OPBAS).

EU



End 2019	Commission to complete its evaluation of the Consumer Credit Directive.
2020	IOSCO to review practical implementation of liquidity recommendations for open ended funds.
Q1 2020	Money Market Fund managers to send first quarterly reporting template to national competent authorities.
1 January 2020	EONIA usage in new contracts prohibited from this date.
1 January	Issuers of securities traded on EU regulated markets to prepare annual financial reports using the European Single Electronic Format.
January 2020	ESMA to deliver MiFID II / MiFIR reports on C6 Energy derivatives contracts to the European Commission.
March 2020	ESMA to deliver final report to European Commission on position limits and position management in commodity derivatives.
1 April 2020	Delegated Regulations on clarifying depositaries' safe keeping obligations under both the AIFMD and UCITS Directives enter into force.
Early 2020	Fallbacks for derivative contracts referencing key interest rate benchmarks take effect in early 2020.
June 2020	EIOPA to issue an Opinion on the Solvency II review.
30 June 2020	EBA's guidelines on loan origination and monitoring to apply.
10 September	Requirements on intermediaries under the Shareholder Rights Directive come into effect.
30 September 2020	ESMA guidelines on liquidity stress testing in UCITS and AIFs become applicable.
Q3 2020	ESMA to publish technical advice on the general equivalence criteria for prospectuses drawn up under third country laws under the Prospectus Regulation.
3 December 2020	EU Member States (ex UK) to transpose a new Directive to criminalise money laundering.
18 December 2020	European Commission report on aligning the MiFIR derivatives trading obligation with EMIR REFIT to be submitted to the European Parliament.
December 2020	ESMA expected to report on OTFs, SME growth markets and algorithmic trading as part of the MiFID II / MiFIR reporting schedule.
21 December 2020	Intragroup derogation for clearing under EMIR expires.
Early 2021	Review of the implementation of the EU-US agreement on the processing and transfer of financial messaging data for Terrorist Finance Tracking Programme.
18 June 2021	The FRANDT principle, new TR requirements and clearing obligation for pension scheme arrangements under the EMIR REFIT to apply.
2 August 2021	Directive (EU) 2019/1160 and Regulation (EU) 2019/1156 on the cross-border distribution of collective investment funds come into effect.

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