



**Baker
McKenzie.**

What does 2021 hold?

Key upcoming developments
and enforcement trends

LONDON FINANCIAL INSTITUTIONS REGULATORY AND ENFORCEMENT



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What happened in 2020?

Around this time of year, we normally undertake the traditional assessment of our annual predictions for the year in financial services regulation, checking the accuracy of our crystal ball and recalibrating for the year ahead.

However, engaging in this exercise in 2020 is inevitably more challenging than usual, as the COVID-19 pandemic has swept away regulatory plans and programmes for 2020 while regulators rushed to stabilise the markets and protect consumers in distress. Regulators across the globe, just like financial institutions and other businesses, scrambled to implement remote working arrangements and keep their employees safe while adjusting their supervisory processes and plans. Regulatory programmes were postponed or reoriented, and supervisors quickly developed regulatory measures to help provide pandemic relief to both firms and their customers.

In the UK, the FCA has implemented a package of temporary measures to provide relief to consumer credit and mortgage customers experiencing financial difficulties as a result of the pandemic, including payment deferrals, tailored support measures and guidance on regulatory expectations regarding repossessions and credit reference agency reporting. The FCA has also issued guidance to payment services and e-money firms to strengthen their prudential risk management and safeguarding arrangements. For firms, the FCA introduced temporary measures regarding regulatory reporting deadlines, clarified that firms are not expected to allocate a single senior manager with responsibility for their COVID-19 response, and confirmed that it would take a reasonable approach to enforcement of the implementation of some new rules and obligations - for example in the Cross-Border Payments Regulation. However, the FCA has also made clear that it expects firms during the exceptional circumstances posed by the pandemic to continue to treat customers fairly, maintain a healthy firm culture through dispersed working arrangements, and continue taking all steps to prevent market abuse and financial crime. On the prudential side, the PRA has modified some of its requirements and proposes to postpone by one year the reporting and disclosure dates for resolution assessments.

Other workstreams have been delayed or postponed by the pandemic. In light of changing circumstances, the FCA has stopped policy work on platform exit fees and a single easy access rate for cash savings. Other regulatory change developments have been delayed including work on a duty of care, market integrity, access to wholesale data and assessing suitability, as well as multi firm reviews on operational change management and wholesale broker remuneration. The FCA and Bank of England have also recently restarted their review of liquidity mismatch in open-ended funds after a pandemic-related pause.

EU regulators have also been busy mitigating the effects of the pandemic and amending their work programmes. The Commission has proposed "Quick Fix" amendments to the Markets in Financial Instruments Directive (MiFID II) regime, which would make changes to information requirements, product governance and position limits to help the recovery from the COVID-19 pandemic. A "Quick Fix" Regulation amending the Capital Requirements Regulation (CRR) prudential framework to allow for further flexibility and reflect policy decisions taken by the Basel Committee on Banking Supervision (BCBS) took effect in large part from 27 June 2020. The European Banking Authority (EBA), European Securities and Markets Authority (ESMA), European Insurance and Occupational Pensions Authority (EIOPA) and European Central Bank (ECB) have all issued statements clarifying their expectations, postponed and modified their work programmes, and issued temporary relief or mitigation measures. These include, for example, lowering the reporting threshold for holders of net short positions, postponing the settlement discipline regime under the Central Securities Depositories Regulation (CSDR), issuing guidelines on modified prudential expectations, and temporarily delaying Solvency II reporting deadlines.

Although responding to the demands of the pandemic took up a significant amount of time and attention in 2020, regulators did continue to attend to their work programmes and supervisory priorities beyond COVID-19.

In our predictions for 2020, we forecast that ESG and operational resilience would be among the most prominent regulatory themes. We predicted that the global regulatory discussion on a standardised approach to cryptoassets would continue, and that the FCA would seek to further enhance its influence in the FinTech space as the UK drives forward its intention to become a tech and innovation destination. We thought that the FCA would continue to drive forward its consumer and competition priorities, with fair treatment of existing customers marked as a key focus for 2020. On enforcement, we foresaw increased action by the FCA against both firms and individuals on IT failures and potentially some Senior Managers and Certification Regime (SMCR) cases, although we expected the level of fines to remain roughly at 2019 levels.

So, were we right? Understandably, we would like to answer that question with a “yes” - or, perhaps “yes, partly.” Of course, the intervening pandemic has meant that some of the predictions for 2020 have been superseded by these seismic events. However, looking at what regulators have managed to achieve this year, there has still been a lot of activity that has been very much in line with some of the key themes we identified back in late 2019. For example, we were correct to predict that ESG would be at the top of the regulatory agenda; indeed, one key side-effect of COVID-19 has been the accelerated adoption of sustainable finance strategies across the industry, following a raft of new measures and initiatives from both UK and EU regulators. An exemplary illustration of 2020’s regulatory focus on consumer protection, innovation and risk mitigation is the EU’s Digital Finance Strategy, launched in September 2020, which proposes the introduction of strict and harmonised rules on digital operational resilience and a new regulatory framework for cryptoassets. Unsurprisingly, COVID-19 brought the fair treatment of customers into sharp relief, and the FCA is expected to carry forward the lessons learned in its consumer protection work in 2021.

The focus on this topic has, therefore, been higher than we could have anticipated, and will likely remain a key issue in 2021 and beyond, as firms grapple with the ongoing effects of the pandemic and look back at conduct that has taken place during these recent, tumultuous months.

As 2020 draws to a close, Brexit continues to be a focus area as regulators work to mitigate the potential effects of a no-deal Brexit and, at the time of writing, there continues to be a lack of clarity about the UK’s future relationship with the EU for financial services. Inevitably, regulators have diverted resources from other areas to discharge what is surely a daunting volume of Brexit-related work.

Finally, enforcement action by the FCA remains a priority, but the volume of cases in 2020 is noticeably reduced compared to 2019, perhaps for obvious reasons – at the time of publication, the FCA had imposed roughly half the level of fines in 2020 compared to that in 2019. In the current situation in which we all find ourselves, with the pandemic and ongoing Brexit uncertainty, there has been some inevitable disruption to regulators’ agendas.

Looking Ahead to 2021

As dawn begins to break on 2021, what can we expect to be at the top of regulators' agendas?

No doubt mitigation and relief efforts relating to the pandemic will continue to demand significant attention from regulators worldwide, with priorities shifting as, with any luck, global communities are able to begin their efforts to recover and return to a position of normality. However, we think that position of normality will be far from the pre-pandemic "business as usual" position – regulators will be keen not only to take forward the lessons learned in potentially reshaping and reforming regulations that have proven to be less than fit for purpose, but also to ensure that firms are using their experiences from the pandemic's real-time "stress test" scenario to review and adjust their own business models, policies and procedures to address key gaps identified.

Beyond the COVID-19 recovery efforts, one of the new key themes for 2021 is prudential reform. It is widely held that the EU's prudential framework is outdated and due a refresh, and we expect to see more activity regarding prudential reform in 2021. The Investment Firms Regulation (IFR) and the Investment Firms Directive (IFD) will take effect in June 2021, delivering a tailored prudential regime for investment firms. While the UK will not adopt the IFR and IFD, the Investment Firms Prudential Regime (IFPR) will largely replicate the EU regime, with some differences; the UK government is targeting implementation for the start of 2022, and we expect to see a significant body of preparatory work in 2021. Separately, both UK and EU regulators are expected to take steps to begin implementing the final outstanding Basel III standards, and reviews of Solvency II will continue in both the UK and EU.

Also new for 2021 is an increased attention to cryptoassets specifically, as part of a broader global focus on FinTech. The cryptoasset market continues to grow, accompanied by ever greater levels of regulatory scrutiny, and we expect this trend to continue in 2021. Both the UK and the EU are set to expand their regulatory perimeters to include cryptoassets. In the UK, the ban on retail sales of crypto derivatives takes effect in early 2021, and policy work is due on both an expansion of the financial promotions regime to cryptoassets as well as a much broader framework for the regulation of cryptoassets themselves. Negotiations are set to continue in the EU on the Commission's proposed package of regulatory measures relating to cryptoasset providers, which would establish the

first EU regulatory regime for cryptoasset providers and hold them to a similar regulatory standard as that imposed on investment firms. More broadly in the FinTech and innovation space, digital operational resilience remains a major theme in both the UK and EU for 2021. We also expect to see further work on open finance and interoperable digital identities, where it remains to be seen whether the UK's proposals, which are still at an early stage, will mirror the EU's proposed measures in its Digital Finance Strategy. Finally, as thrown into sharp relief by COVID-19, we expect regulators to focus on addressing the risks of digital financial exclusion or vulnerability, particularly relating to those who may lose out as firms move to digital only or digital focused models.

In the UK, 2021 will see significant work being put into developing the architecture and perimeter of the UK's financial services regulatory framework after the Brexit transition period ends at the end of 2020. The UK government has been setting out its ambitions for the future of UK financial services regulation, setting its priorities for a realigned approach to regulation as sustainability, innovation and openness. Following consultations in 2020, a more detailed package of proposals is due in 2021 on a realigned regulatory architecture and objectives, setting the stage for a divergence of approach from the EU. We also expect proposals on the overseas persons regime as well as the FCA's finalised approach to authorising international firms, as the UK further develops access to its markets for overseas firms. The government is also expected to publish its plans for the payments sector as the UK seeks to enhance its reputation as the market leader in financial services and payments innovation.

Environmental, Social and Governance (ESG) issues remain a primary focus of regulators, with the rapid increasing volume of related measures seen in 2020 set to increase in 2021. One of the side effects of the pandemic has been an acceleration in the adoption of sustainable finance strategies, and as recovery efforts take hold this acceleration is expected to continue. The EU's core regulations, the Sustainable Finance Disclosure Regulation and Taxonomy Regulation, will continue to take effect in 2021 on a rolling basis, and we expect to see a significant volume of Level 2 work on the Taxonomy Regulation's technical screening criteria. In the UK, the government's sustainability priority and

commitment to meet its net zero target by 2050 will see a number of developments occur in 2021, including measures from the FCA to implement climate-related financial disclosures for market participants and combat greenwashing, and the launch of the Bank of England's Climate Biennial Exploratory Scenario.

It is no surprise that the shift to widespread dispersed working patterns in response to COVID-19 has tested firms' financial, operational and commercial resilience, and increased pressure on their governance and accountability obligations. In 2021, we expect to see regulators continue to focus on conduct and culture, incorporating the lessons learned from firms' response to the pandemic. Operational resilience remains a cross-cutting focus in the UK, with the delayed policy statement and final rules on operational resilience requirements anticipated by early 2021. The financial resilience of payments and e-money firms, particularly in light of COVID-19 pressures and a number of recent insolvencies and similar events (including the Wirecard wind-down) will also be a theme in 2021, with continuing regulatory interest in the protection of customer funds, prudential risk and orderly resolution of such firms. Regulators will also focus on liquidity risk in investment funds, with reforms proposed in both the UK and EU.

Consumer protection will continue to be a key regulatory focus area, particularly in light of the impact of COVID-19. Adapting regulation to the changing needs of customers is a priority for both UK and EU regulators.






























In the UK, key policy work is due from the FCA in early 2021 on the fair treatment of vulnerable customers and on a possible new duty of care, while the PRA is expected to issue proposals to increase the competitiveness of challenger banks. In the EU, further work is expected on the reviews of both the Insurance Distribution Directive (IDD) and the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation. In the mortgage and credit markets, the FCA introduced a range of COVID-19 measures in 2020, such as forbearance and payment deferrals, which are expected to continue into 2021. The European Commission is also proposing a review of the Consumer Credit Directive, which may have the effect of extending the scope of certain obligations.

Finally, financial crime and market abuse remain at the top of the FCA's enforcement agenda, and in 2021 we predict that the regulator will focus on the market integrity risks posed by the response to COVID-19. We expect to see the FCA both catching up on investigation work that inevitably slowed down slightly during the pandemic as well as investigating new misconduct which occurred during this period. Outside of the pandemic, there has been political pressure on the FCA and EU regulators to manage financial crime more effectively through supervision and enforcement following both the FinCEN leak and the Wirecard wind-down; this may result in increased enquiries and investigations as well as renewed policy work, including the Commission's proposals for an EU-wide AML supervisor. Other key developments to watch include a review of the UK criminal market abuse regime and possible divergence from the EU, and potential reform to laws around corporate crime liability in the UK.

A last prediction - in 2021, the word "lockdown" will - with any luck - start to fade from common usage. We very much hope and expect to see you in person for our "Looking Ahead to 2022" event next year.

Global Enforcement Themes

 Increase
  Stay at broadly the same level
  Decrease in 2021 (when compared to 2020)

	Country	Top three enforcement areas	Anticipated enforcement action against financial institutions	Anticipated enforcement action against senior staff in financial institutions
	Argentina	Financial crime, Retail conduct, Culture / governance		
	Australia	Culture / governance, Financial crime, Retail conduct		
	China	Retail conduct, Market conduct, Client money / assets		
	France	Financial crime, Market conduct, Mis-selling		
	Germany	Retail conduct, Market conduct, Financial crime (review of financial statements for signs of fraud)		
	Hong Kong	Market conduct, Culture / governance, Retail conduct		
	Italy	Financial crime, Mis-selling, Retail conduct		
	Mexico	Financial crime, Market conduct, Client money / assets		
	Netherlands	Financial crime, Market conduct, Culture / governance		
	Singapore	Financial crime, Market conduct, Mis-selling		
	South Africa	Culture / governance, Financial crime, Retail conduct		
	Spain	Financial crime, Culture / governance, Financial promotions & Retail conduct		
	Switzerland	Financial crime, Culture / governance, Retail conduct		
	UK	Retail conduct, Culture / governance, Financial crime & Market conduct		
	US	Retail conduct, Mis-selling, Culture / governance		

Financial Crime and Market Conduct

Financial crime and market abuse have been at the top of the FCA's enforcement agenda for several years now and next year will certainly be no different. There are a number of reasons for this. The first is, of course, the new risks posed by COVID-19, including:

- The risk that criminals are taking advantage of the pandemic to misuse the financial system for new types of fraud, financial crime and market abuse.
- The clear operational challenges posed by the remote working environment. These may include, for example, difficulties in carrying out customer due diligence face-to-face, delays in reviewing transaction monitoring alerts and difficulties in monitoring employees' activities.
- There has also been a large volume of forced capital raising and market volatility, creating a ripe environment for potential market abuse. Transparency around the adequacy of financial resources will be key, particularly in a post-Wirecard world.

As a result, in 2021 we not only expect to see the FCA catching up on investigation work that inevitably slowed down slightly during the pandemic, but also to be investigating new misconduct which occurred during this period.

With the FCA increasingly focusing on market manipulation and misleading statement cases, this is likely to be a particular area of interest for them.

Outside of the pandemic, there has been political pressure on the FCA and EU regulators to manage financial crime more effectively through supervision and enforcement. For example, following the leak of the FinCEN SARs in which a number of UK companies were named and a leaked US Treasury paper argued the UK was a “higher risk jurisdiction” for money laundering, the chair of the Treasury Committee wrote to the FCA (and others) to question what action the FCA is taking as a result of the FinCEN leak, including potential enforcement action. Although the FCA was confident that the majority of issues raised had already been addressed, they will certainly be under pressure to make enquiries into any other cases. So we may see some enquiries and investigations opened as a result. We could also see this latest money laundering scandal push forward the EU proposals for an EU-wide AML supervisor and financial intelligence unit (FIU).

Other key policy developments to watch out for next year include:

- The onshoring of the Market Abuse Regulation following the end of the transition period. In particular, the fact that UK branches of EEA firms will be required to report Suspicious Transaction and Order Reports (STORs) to the FCA going forward, regardless of any existing obligations to report STORs to their Home State Regulator.
- A review of the criminal market abuse regime as part of the Economic Crime Plan 2019-2022. It is yet to be revealed what this may encompass and whether we could see a divergence from the EU regime.
- Amendments to the Financial Services Bill 2019/21 will increase sentences for criminal market abuse from 7 to 10 years.
- The European Commission is expected to publish legislative proposals on a new EU AML/CTF single rulebook, a new EU-level AML/CTF supervisor, and a new co-ordination and support mechanism for FIUs.
- The FCA is expected to publish its policy statement and final rules on extending its annual financial crime reporting obligation (REP-CRIM) to more firms.
- The Law Commission and the Home Office will also respectively be considering potential reform to laws around corporate criminal liability and the confiscation regime under the Proceeds of Crime Act 2002.

Key Takeaways



01 With the spotlight on potential misconduct being carried out behind closed (apartment) doors, firms should review their financial crime and market abuse control framework to ensure it is robust and adapting to new threats. If this is not the case, firms should carry out any conformance reviews as necessary and maintain open channels of communication with the FCA.



02 Firms should also be alive to potential changes in “BAU” reporting and changes to UK rules as a result of Brexit. This will be key for ensuring compliance after the end of the transition period.



03 One of the themes coming out of the 2008 financial crisis was a focus by regulators on conduct relating to transparency around the adequacy of financial resources and financial performance. Given the current economic downturn, we can surely expect to see history repeat itself.

Timeline

Q4 2020



CHANGES TO UK MARKET ABUSE AND MONEY LAUNDERING REGIMES

The Financial Services Bill 2019/21, which is currently progressing through Parliament, will clarify certain aspects of the UK market abuse and money laundering regimes. The Bill clarifies who is required to maintain an insider list; establishes that issuers and any person acting on their behalf or on their account are all required to maintain such a list; increases the maximum sentence for criminal market abuse from seven to ten years; and extends the application of money laundering regulations to overseas trustees.

Q1 2021



NEW EU-WIDE AML/CTF REGULATORY FRAMEWORK TO BE PROPOSED

As part of its AML/CTF Action Plan to address implementation divergences and enforcement weaknesses, the European Commission is expected to publish legislative proposals on a new EU AML/CTF single rulebook, a new EU-level AML/CTF supervisor, and a new co-ordination and support mechanism for FIUs.

10 JAN 2021



UNREGISTERED UK CRYPTOASSET BUSINESSES MUST CEASE TRADING

From 10 January 2021, existing businesses (operating before 10 January 2020) carrying on cryptoasset activity in the UK have needed to be compliant with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, and need to register with the FCA as their AML/CTF supervisory. Cryptoasset businesses not registered with the FCA by 10 January 2021 must cease trading.

EARLY 2021



REVIEW OF THE IMPLEMENTATION OF THE EU-US TFTP AGREEMENT

The Terrorist Finance Tracking Program (TFTP) was set up by the US Treasury Department shortly after the 9/11 terrorist attacks when it began issuing legally binding production orders to a provider of financial payment messaging services for financial payment messaging data stored in the US that would be used exclusively in the fight against terrorism and its financing. The EU-US agreement relates to the processing and transfer of this messaging data between the US and EU. The next joint review of the agreement will be carried out at the beginning of 2021.

Q1 2021



UK RULES EXTENDING FINANCIAL CRIME REPORTING OBLIGATION EXPECTED

The FCA is expected to publish its policy statement and final rules following its August 2020 consultation paper (CP20/17) on extending its annual financial crime reporting obligation (REP-CRIM). The consultation proposed to extend the obligation to include firms that carry on regulated activities that potentially pose a higher money laundering risk, irrespective of a firm's revenue threshold.

BY MAR 2021



UK AML/CTF DEFICIENCIES TO BE ADDRESSED

The FATF's 2018 UK Mutual Evaluation Report identified weaknesses in the UK's AML/CTF regime relating to the strength of its supervisory arrangements and its reporting regime. The FCA is due to implement enhancements to its AML/CTF supervision and engagement, in response to the Report.

BY JUL 2021



CRIMINAL MARKET ABUSE REGIME REVIEW

As set out in the Economic Crime Plan 2019-2022, the FCA and HM Treasury (HMT) will review the UK's criminal market abuse regime, which sets out the UK's criminal sanctions for insider dealing and market manipulation and has not been materially updated since it was introduced.

LATE 2021



LAW COMMISSION REVIEW OF CORPORATE CRIMINAL LIABILITY

The UK Government has asked the Law Commission to investigate the laws around corporate criminal liability and provide options to reform them. The Commission is aiming to publish the Options Paper, in which the Commission will analyse how effective the law is and set out options for improvement, in late 2021.

10 MAR 2022



DEADLINE FOR TRS REGISTRATION UNDER EXPANDED MLD5 REQUIREMENTS

The UK government is expanding the scope of the Trust Registration Service (TRS) as required by the Fifth Money Laundering Directive (MLD5) to include UK express trusts and some non-EU resident express trusts irrespective of whether the trust has incurred a tax liability. The deadline to register under this expanded scope will be 10 March 2022.

Q3 2021



GUIDELINES ON DIGITAL IDENTIFICATION AND VERIFICATION

As part of its Digital Finance Strategy, the European Commission intends to implement a legal framework enabling the use of interoperable digital identity solutions to facilitate customer onboarding. To that end, the Commission has invited the EBA, in coordination with the other ESAs, to develop guidelines on identification and verification for customer onboarding.

BY DEC 2021



HOME OFFICE TO CONSIDER LEGISLATIVE CHANGES TO IMPROVE POCA

The Law Commission is currently undertaking a review of the confiscation regime under the Proceeds of Crime Act 2002 (POCA). Based on the Commission's forthcoming recommendations, the Home Office will outline proposals to amend POCA by December 2021.

BY 26 JUN 2022



MLRS AND OPBAS REGULATIONS REVIEW

HMT will lead a comprehensive review of the effectiveness and scope of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs) and The Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 (OPBAS Regulations) and publish a report before 26 June 2022. The review will measure the impact of the existing regulations, assess the proportionality of the duties and powers, the effectiveness of enforcement actions taken under the MLRs, the interaction of the MLRs with other pieces of legislation (including POCA) and consider options for reform.

Sustainability

Few would have predicted that one key side-effect of COVID-19 would be an acceleration in the adoption of sustainable finance strategies across the spectrum of financial services providers.

Buoyed by a proliferation of new rules from the EU and various other centres, sustainable finance is enjoying a surge in popularity which only promises to grow into 2021.

It is not hard to see why ESG investing has been placed front and centre over the past year. The raw data suggests that sustainable investing is simply more profitable than the alternative - BlackRock calculated that "in the first quarter of 2020, we have observed... 94 per cent of a globally-representative selection of widely-analysed sustainable indices outperforming their parent benchmarks".

The pace of legislative and regulatory change both inside and outside the EU will continue into 2021, with the UK looking to position itself at the forefront of green finance. The UK government's commitment to meet its net zero target by 2050 has spawned a number of initiatives, in particular the issuance of its first Sovereign Green Bond in 2021 (subject to market conditions), the introduction of new environmental disclosure standards, climate-related financial disclosures applicable to nearly all financial services market participants becoming mandatory by 2025 and the implementation of a green taxonomy.

The extent to which the UK's regulatory and legislative developments - in particular the green taxonomy - will diverge from the EU's regime remains to be seen. However, the Government has been clear that it intends to adapt the EU standards if deemed necessary for the UK market.

The EU's core regulations will continue to come into force on a rolling basis - the Taxonomy Regulation entered into force on 12 July 2020, with the majority of the provisions applying from 1 January 2022 onwards, whilst the Sustainable Finance Disclosure Regulation (SFDR) entered into force on 29 December 2019, with the majority of the provisions applying from 10 March 2021 onwards.

Key Takeaways



01 The substantive provisions of the SFDR take effect from 10 March 2021. The RTS on pre-contractual and periodic disclosures under the SFDR have been delayed and will take effect after the SFDR starts to apply; financial market participants and financial advisers subject to the SFDR will need to comply with its high level and principle based requirements while the RTS are finalised.



02 Given the expected pace of development, it is prudent for firms to start drafting "living and breathing" ESG policies and procedures tailored to their business practices.



03 The EU is undoubtedly setting the pace in this area, although given the outcome of the US election it is expected that the US will also play a key role in setting the global sustainable finance agenda going forward.

Timeline

Q4 2020



NEXT STEPS ON EU GREEN BOND STANDARD

As part of its renewed sustainable finance strategy, which will explore new actions to increase private investment in sustainable projects, the Commission is considering a legislative initiative for an EU Green Bond Standard. A related consultation closed in October 2020, and the Commission will take a decision on next steps in Q4 2020.

2021



FCA FUNDS DISCLOSURE MEASURES TO COMBAT GREENWASHING

The FCA intends to finalise measures to combat potential 'greenwashing' in the funds space, including a set of principles to help firms interpret existing rules requiring that disclosures are 'fair, clear and not misleading', which would also apply when firms submit new products to the FCA for authorisation.

1 JAN 2021



TCFD DISCLOSURES APPLY TO PREMIUM LISTED COMPANIES

The FCA's rules for commercial companies with a UK premium listing, requiring them to state whether they comply with the TCFD recommendations and to explain any non-compliance, take effect.

18 DEC 2020



TAXONOMY REGULATION TSC FOR CLIMATE MITIGATION AND ADAPTATION – CONSULTATION DEADLINE

The Commission has launched a consultation on a draft delegated Regulation to establish technical screening criteria (TSC) for determining under which conditions a specific economic activity is considered to contribute substantially to climate mitigation and adaptation. The deadline for responses is 18 December 2020. The delegated Regulation, once finalised, will apply from 1 January 2022.

H1 2021



CONSULTATION ON EXTENDING TCFD DISCLOSURES

The FCA is expected to consult on proposed TCFD implementation measures for asset managers, life insurers and FCA-regulated pension providers. The FCA will also consult on whether to extend the 'comply or explain' rule to a wider scope of listed issuers, and whether to further tighten the rule, moving from 'comply or explain' to mandatory disclosure.

28 FEB 2021



ESMA ADVICE ON TAXONOMY REGULATION KPIS

ESMA is due to submit advice to the Commission specifying the content, methodology and presentation of the key performance indicators (KPIs) that non-financial undertakings and asset managers are required to disclose under the Taxonomy Regulation.

JUN 2021



EBA REPORT ON INCORPORATING ESG RISKS INTO GOVERNANCE AND RISK MANAGEMENT

The EBA is expected to issue its final report on incorporating ESG risks into the governance, risk management and supervision of credit institutions and investment firms, as required under CRD V and the IFD.

JAN 2021



SFDR RTS ON PRE- CONTRACTUAL AND PERIODIC DISCLOSURES

The Joint Committee of the ESAs is due to submit to the Commission draft RTS on pre-contractual and periodic disclosures under the SFDR. The RTS have been delayed and will take effect after the SFDR starts to apply; financial market participants and financial advisers subject to the SFDR will need to comply with its high level and principle based requirements from 10 March 2021.

10 MAR 2021



SUBSTANTIVE PROVISIONS OF THE SFDR START TO APPLY

The substantive provisions of the SFDR take effect from 10 March 2021. Financial market participants and financial advisers subject to the SFDR will need to comply with its high level and principle based requirements while the RTS are finalised.

JUN 2021



SFDR RTS ON CLIMATE MITIGATION AND ADAPTATION PRODUCT DISCLOSURES

The Joint Committee of the ESAs is due to submit to the Commission draft RTS on taxonomy-related product disclosures for the climate mitigation and adaptation objectives under the SFDR.

Timeline

JUN 2021



CBES LAUNCH

The Bank of England will launch its Climate Biennial Exploratory Scenario (CBES) in June 2021. The exercise will test the resilience of the current business models of the largest banks, insurers and the financial system to climate related risks and the scale of adjustment that will need to be undertaken in coming decades for the system to remain resilient.

BY 2022



EXPANDED TCFD DISCLOSURES EXPECTED TO APPLY

New FCA rules on TCFD implementation measures for the largest asset managers, life insurers and FCA-regulated pension providers are expected to take effect (subject to consultation and outcome).

31 DEC 2021



TAXONOMY REGULATION TSC FOR REMAINING OBJECTIVES

Under the Taxonomy Regulation, the Commission is due to adopt a delegated act to establish technical screening criteria (TSC) for determining under which conditions a specific economic activity is considered to contribute substantially to remaining environmental objectives, with a view to ensuring application from 1 January 2023.

1 JAN 2022



REPORTING AND DISCLOSURE REQUIREMENTS IN THE SFDR AND TAXONOMY REGULATION START TO APPLY

From 1 January 2022 the periodic reporting requirements in the SFDR start to apply. The disclosure requirements in the Taxonomy Regulation relating to the climate mitigation and adaptation objectives also start to apply from this date.

Q1 2022



CBES RESULTS

The results of the Bank of England's CBES are expected to be published. In the event of a second round, the Bank of England will publish results at the end of Q1 2022.

JUN 2022



SFDR RTS ON PRODUCT DISCLOSURES FOR OTHER ENVIRONMENTAL OBJECTIVES

The Joint Committee of the ESAs is due to submit to the Commission draft RTS on taxonomy-related product disclosures for the remaining environmental objectives under the SFDR.

1 JAN 2023



TAXONOMY REGULATION DISCLOSURES FOR REMAINING OBJECTIVES START TO APPLY

The disclosure requirements in the Taxonomy Regulation relating to the remaining environmental objectives start to apply from this date.

DURING 2022



GREEN FINANCE STRATEGY PROGRESS REVIEW

The UK Government will formally review progress made against the aims and objectives of the Green Finance Strategy in 2022.

2023



FURTHER EXPANDED TCFD DISCLOSURES EXPECTED TO APPLY

New FCA rules on TCFD implementation measures for the remaining asset managers, life insurers and FCA-regulated pension providers are expected to take effect (subject to consultation and outcome).

Tech, Innovation and Data

Regulators continue to grapple with finding balance between fostering innovation and competition, and seeking to ensure customer and market protection against the risks of increased use of technology.

The twin-focus of innovation and risk mitigation can be seen in the EU's Digital Finance Strategy, launched in September, which proposes the introduction of strict and harmonised rules on digital operational resilience and a new regulatory framework for cryptoassets, whilst also promoting open finance data sharing and enabling EU-wide interoperable digital identities in finance.

The EU proposals promise to ensure “same activity, same risks, same rules” by applying the same supervision to traditional market actors, such as banks, insurance and investment firms, as well as FinTechs and BigTechs who are increasingly entering the financial services sector through their product offerings.

Whilst the proposals on digital operational resilience mirror, in many respects, the work already undertaken on outsourcing (introducing due diligence, monitoring and contractual requirements), it is the move to subject critical ICT third-party providers to supervision that will be the biggest change if introduced. Cloud computing service providers and other critical ICT providers to financial services firms will find themselves subject to EU oversight and at risk of fines for non-compliance.

Despite Brexit, similar themes can be seen in the UK. In 2021 we expect to see further development of the FCA and PRA operational resilience measures, feedback on the open finance call for input and a re-boot of the push to enable the use of digital identities in the UK. These proposals are still at an early stage and it is yet to be seen to what extent they mirror or diverge from the EU-level discussions.

On the innovation side, the proposed regulatory approach to New Payments Architecture (NPA) in the UK is also expected in Q4 this year. The NPA, once delivered, will replace BACS and Faster Payments with a more innovative and competitive interbank payments environment, with opportunity

for greater utilisation and increased choice of services such as confirmation of payee and request to pay. The EU retail payments strategy is also promoting similar aims at an EU-level, with a push toward a more competitive and innovative payments market, better payment infrastructure and the promotion of cross-border and international solutions.

Looking at big data, AI and machine learning, the PRA and FCA continue to engage with the industry and are focused on enabling the safe, financially sound and ethical use of these new technologies in the financial sector. In this regard, the FCA will also focus in 2021 on delivering fair value in a digital age. This includes looking at the unethical use of data creating unfair pricing or algorithmic bias and ensuring protection for vulnerable customers from poor value products and services in the digital environment.

Against the backdrop of innovation and technology, the FCA also stresses the risk of financial exclusion for the ‘digitally disenfranchised’, who may lose out as firms move to digital only or digital focused models. As well as the operational and security risks of technology and innovation, this vulnerable customer impact and how to address these risks, will also be a theme in 2021.

Key Takeaways



01 Third-party ICT providers to financial services firms may come under EU supervision as a result of a new regulation on digital operational resilience. It is yet to be seen whether similar supervisory oversight may be applied by UK regulators.



02 Blueprints for new and innovative payment infrastructures are expected in both the UK and the EU.



03 The ethical and safe use of big data, AI and machine learning will be a PRA and FCA focus, looking at both financial soundness and customer outcomes as a result of the use of these technologies.

Timeline



1 JAN 2021**EIOPA GUIDELINES
ON CLOUD
OUTSOURCING APPLY**

EIOPA's guidelines on outsourcing to cloud service providers apply from 1 January 2021 to all cloud outsourcing arrangements entered into or amended on or after this date.

5 FEB 2021**DIGITAL SANDBOX
PILOT CLOSES**

The FCA and The City of London Corporation are piloting a digital sandbox to test and develop innovative products and services in response to challenges presented by the COVID-19 pandemic. The pilot will run until 5 February 2021.

2021**ESAS FINTECH AND
DIGITALIZATION
ASSESSMENT**

During 2021 the ESAs will issue an assessment specifying cross-sectoral relevant FinTech/digitalization issues to address, potentially including consumer protection concerns and benefits associated with AI and ML. The assessment may also identify any regulatory and/or supervisory measures which may need to be taken.

7 JAN 2021**DEADLINE FOR RESPONSES
TO FCA WHOLESAL
DATA CFI**

The FCA has issued a call for input (CFI) on the changing use and value of data in wholesale financial markets. The CFI focuses on the use and supply of market data (with a particular focus on trading data, benchmarks and market data vendors) as well as access to and changing use of data and analytical techniques.

EARLY 2021**UK FINTECH STRATEGIC
REVIEW**

The UK Fintech Strategic Review has been established to identify measures to maintain growth and competitiveness for the FinTech sector in the UK. The Review is expected to report back to HMT in early 2021.

Timeline

Q1 2021



ESMA CLOUD OUTSOURCING GUIDELINES

ESMA is expected to publish its final guidelines on outsourcing to cloud service providers. The guidelines are intended to help firms identify, address and monitor the risks that may arise from their cloud outsourcing arrangements.

Q1 2021



FCA OPEN FINANCE CFI FEEDBACK

The FCA issued a call for input (CFI) to explore the opportunities and risks arising from open finance, which would extend open banking principles to other financial products and services, such as savings, insurance, mortgages, investments, pensions and consumer credit. The FCA's feedback statement to its CFI is tentatively expected during Q1 2021.

Q1 2021



UK OPEN BANKING IMPLEMENTATION

The final stages of Open Banking implementation in the UK are expected to be completed. These include a series of measures intended to enhance competition in retail banking by allowing customers to share their transaction data securely with trusted third-parties; the final stages of implementation involve systems and process change.

30 JUN 2021



UK OPEN BANKING IDENTIFICATION BREXIT TRANSITION ENDS

In order to limit the risk of disruption, the FCA announced changes to open banking identification requirements permitting UK-based third-party providers (TPPs) to use an alternative to eIDAS certificates to access customer account information from account providers, or initiate payments, after Brexit. This transition period ends on 30 June 2021.

14 SEP 2021

EXPIRY OF FCA'S POSTPONEMENT OF ENFORCEMENT ACTION RELATING TO SCA FOR E-COMMERCE

Given the COVID-19 crisis, the FCA postponed for six months enforcement action relating to SCA for e-commerce card transactions under PSD2 requirements. This postponement expires on 14 September 2021.

BY END-2021

PSD2 REVIEW

The Commission will launch a review of PSD2 by end-2021. As part of this review, the Commission will consider bringing ancillary technical services under scope as well as aligning PSD2 with the E-Money Directive.

31 DEC 2022

DEADLINE FOR FIRMS TO ENSURE COMPLIANCE WITH EIOPA'S GUIDELINES ON CLOUD OUTSOURCING

Firms must review their existing cloud outsourcing arrangements related to critical or important operational functions or activities with a view to ensuring compliance with EIOPA's guidelines on cloud outsourcing by 31 December 2022. The documentation requirements for cloud outsourcing arrangements related to critical or important operational functions or activities must also be implemented by this date.

BY END-2021

FULL UPTAKE OF INSTANT PAYMENTS

As part of its Retail Payments Strategy, the Commission is aiming for the full uptake of instant payments in the EU by end-2021, across both online and physical purchases in addition to credit transfers.

BY MID-2022

OPEN FINANCE FRAMEWORK PROPOSAL

As part of its Digital Finance Strategy, the Commission will propose legislation on a broader open finance framework, building on its data access and digital identity initiatives.

Crypto

The cryptoasset market continues to grow, accompanied by ever greater levels of regulatory scrutiny. While early regulatory intervention has focused more on reducing the risks of cryptoassets being used to further financial crime, as retail investors increasingly seek exposure to cryptoassets as a separate asset class, regulatory scrutiny has turned more to measures to ensure investor protection.

On the AML front, the deadline for registration for cryptoasset businesses who were operating prior to 10 January 2020 will pass, meaning that all cryptoasset businesses will need to be registered with the FCA for money laundering purposes.

The second FATF report on virtual asset service providers is expected from June 2021, following on from FATF's June 2019 guidance on virtual asset service providers, which itself fed into new guidance which was published by the JMLSG in August 2020. We expect further developments in this area, especially within the EU to address perceived shortcomings in 5MLD (for example, relating to gaps in the entities required to comply with money laundering rules). In addition, as market practice relating to cryptoasset businesses continues to evolve we expect additional, practical guidance on the emerging cryptoasset financial crime risks will likely be developed and published.

Meanwhile, UK regulatory authorities have gradually expanded their regulatory ambit to cover digital assets. After an extensive consultation period, the FCA ban on the sale of crypto derivatives to retail investors will come into effect in early 2021, while HMT is expected to announce its final policy in 2021 on the expansion of the financial promotions regime to cryptoassets.

A much more extensive UK regulatory package is expected to be consulted on later in 2021 or early in 2022 when HMT announces its consultation on the broader regulatory framework for cryptoassets (including stablecoins). This builds on the EU's recently announced wholesale package of regulatory measures relating to cryptoasset providers under the Markets in Cryptoassets regulation (MiCA). If adopted, these measures will establish the first EU regulatory regime for cryptoasset providers, holding them to a similar regulatory standard as that imposed on investment firms at present.

Alongside the FSB's consultations on stablecoins, these new regulatory initiatives look ready to herald in a new era for the worldwide regulation of virtual assets and virtual asset service providers. As ever with global initiatives, whilst one would hope that these will lead to substantive harmonisation of rules across different financial centres and jurisdictions globally, past experience would indicate that there will be plenty of space left for divergence.

Key Takeaways



01 The final details of the money laundering regime for cryptoasset providers will come into force, with new guidance highlighting recent practical experience of financial crime risks relating to cryptoassets expected to be announced.



02 New rules which begin to expand the scope of regulatory oversight of the conduct of cryptoasset businesses will come into force as regulators seek to clamp down on the highest risk cryptoasset products and behaviours.



03 A new overarching regulatory framework for cryptoasset businesses is expected to be consulted on and announced in line with developments in the EU under the MiCA. Expect stablecoins to gain increasing attention from central banks and for future regulatory regimes to specifically deal with such products.

Timeline

2021



FINANCIAL PROMOTIONS REGIME EXTENSION TO CRYPTO

Following its consultation, HMT is expected to confirm its final policy on proposals to expand the perimeter of the financial promotion regime to bring the promotion of certain types of unregulated cryptoassets within its scope.

10 JAN 2021



UNREGISTERED UK CRYPTOASSET BUSINESSES MUST CEASE TRADING

From 10 January 2021, existing businesses (operating before 10 January 2020) carrying on cryptoasset activity in the UK have needed to be compliant with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, and need to register with the FCA as their AML/CTF supervisory. Cryptoasset businesses not registered with FCA by 10 January 2021 must cease trading.

6 JAN 2021



BAN ON RETAIL SALE OF INVESTMENT PRODUCTS REFERENCING CRYPTOASSETS

The FCA has decided to ban the sale of derivatives (contracts for difference, futures and options) and exchange traded notes (ETNs) that reference certain cryptoassets to retail clients. The ban takes effect on 6 January 2021.

11 JAN 2021



DEADLINE FOR RESPONSES TO COMMISSION PROPOSALS FOR REGULATORY FRAMEWORK FOR CRYPTOASSETS

Introduced by its Digital Finance Strategy, the Commission has issued a consultation on proposals for a new regulatory framework for cryptoassets. The proposals include a Regulation on markets in cryptoassets (MICA) and a Regulation on a pilot regime for market infrastructures based on DLT, along with amendments to existing measures. The consultations close on 11 January 2021.

Q4 2020/Q1 2021



UK REGULATORY APPROACH TO CRYPTOASSETS

Following the work of the Cryptoassets Taskforce, HMT is expected to issue a consultation on the broader regulatory approach to cryptoassets, including new challenges from stablecoins.

JUL 2022



FSB STABLECOIN RECOMMENDATIONS DEADLINE

By July 2022, national authorities must establish or adjust their regulatory, supervisory and oversight frameworks consistent with the FSB recommendations on global stablecoin arrangements and related international standards and guidance.

BY JUN 2021



SECOND FATF VIRTUAL ASSETS AND VASPS REVIEW

FATF is to undertake a second review of the implementation of its revised Standards on virtual assets and virtual asset service providers (VASPs). The review will cover progress by the public and private sectors, consider issues such as travel rule implementation and anonymous peer-to-peer virtual asset transactions via unhosted wallets and seek to collect better market metrics on virtual assets, especially on the volume and proportion of peer-to-peer virtual asset transactions.

BY JUL 2023



IMPLEMENTATION REVIEW OF FSB STABLECOIN RECOMMENDATIONS

The FSB intends to review the implementation of its recommendations on global stablecoin arrangements by July 2023. The review will also recommend updates for any identified gaps.

Risk, Governance and Oversight

The shift to widespread remote-working in response to COVID-19 tested firms' financial, operational and commercial resilience, whilst increasing pressure on governance and accountability as management and compliance functions have sought to ensure good conduct in the remote environment.

Against this backdrop, conduct and culture will remain a focus of FCA engagement activity through 2021. In its 2020/21 Business Plan, the FCA made clear that it will continue to focus on the key culture drivers for firms and their effectiveness in reducing potential harm from firms' business models and strategies. For solo-regulated firms, the delayed fitness and propriety assessments for certification staff and conduct rule training will need to be carried out by March 2021. More generally, as we reach the one year anniversary of the extension of the Senior Managers and Certification Regime (SMCR), solo-regulated firms will need to continue to take on-board lessons from their dual-regulated counterparts and ensure the right 'tone from within' in embedding SMCR compliance.

At the EU-level, implementation of the fifth Capital Requirements Directive (CRD V) and the Investment Firms Directive (IFD) and Regulation (IFR), bring governance changes in addition to core prudential amendments.

The EBA consultation on amendments to its Guidelines on Internal Governance, including the introduction of gender neutral remuneration policies, closed on 31 October 2020, with the new Guidelines expected to enter into force on 26 June 2021. Although the Guidelines won't directly apply in the UK, given the intention to implement CRD V and to use the IFD/IFR framework as the basis for the new Investment Firms Prudential Regime (IFPR), it is likely that elements of the revised Guidelines will be relevant to UK firms.

As was the case in 2020, 'resilience' remains a focus of the FCA, PRA and the Bank of England for all firms and financial market infrastructure providers. The move to remote working during the pandemic, as well as the strain placed on - for example - some trading platforms by high trading volumes in volatile market conditions during 2020, has only served to highlight the importance of this topic. Operational resilience therefore remains an important cross-cutting focus, with the delayed policy statement and final rules on operational resilience requirements anticipated in Q4 2020 or Q1 2021. Developments in the similar, but narrower, EU focus on digital operational resilience are also expected in 2021.

Financial resilience, particularly in light of COVID-19 pressures, will also be a theme in 2021. Whilst investment firms and credit institutions have long been a target of FCA and PRA financial resilience

supervision, payment and e-money firms came into the spotlight in 2020 - with a renewed regulatory interest in protection of customer funds, prudential risk and orderly wind-down, particularly in light of the Wirecard wind-down. In early December 2020 regulations took effect empowering HMT to create new insolvency regulations and rules for the payments and e-money sector, including setting up a special administration regime for payments and e-money firms (pSAR); HMT is expected to consult on those rules and regulations in the new year. This regulatory focus on financial resilience is expected to continue in 2021, as the financial impacts of 2020 continue to materialise.

From a risk perspective, liquidity risk in investment funds is another 2021 theme for UK and EU regulators. ESMA's Guidelines on liquidity stress testing for AIFs and UCITS have applied since 30 September 2020 and will need to be applied by managers. As part of the AIFMD review, ESMA has also recommended the incorporation of enhanced liquidity management tools in both AIFMD and the UCITS Directive. In the UK, the FCA is suggesting more drastic changes in the retail authorised fund sector, with the introduction of minimum redemption notice periods and a move away from daily redemption for illiquid asset funds.

Finally, the final phase-in of SFTR reporting for non-financial counterparties (NFCs) comes in from January 2021. NFCs are running out of time to put in place delegated reporting solutions and many continue to grapple with the need to self-report reuse and reinvestment of collateral, which dealers have proven unwilling to report under delegated arrangements.

Key Takeaways



01 Conduct and culture will remain a focus. Solo-regulated firms will need to comply with delayed SMCR requirements, whilst also embedding good conduct in the challenging remote-working environment.

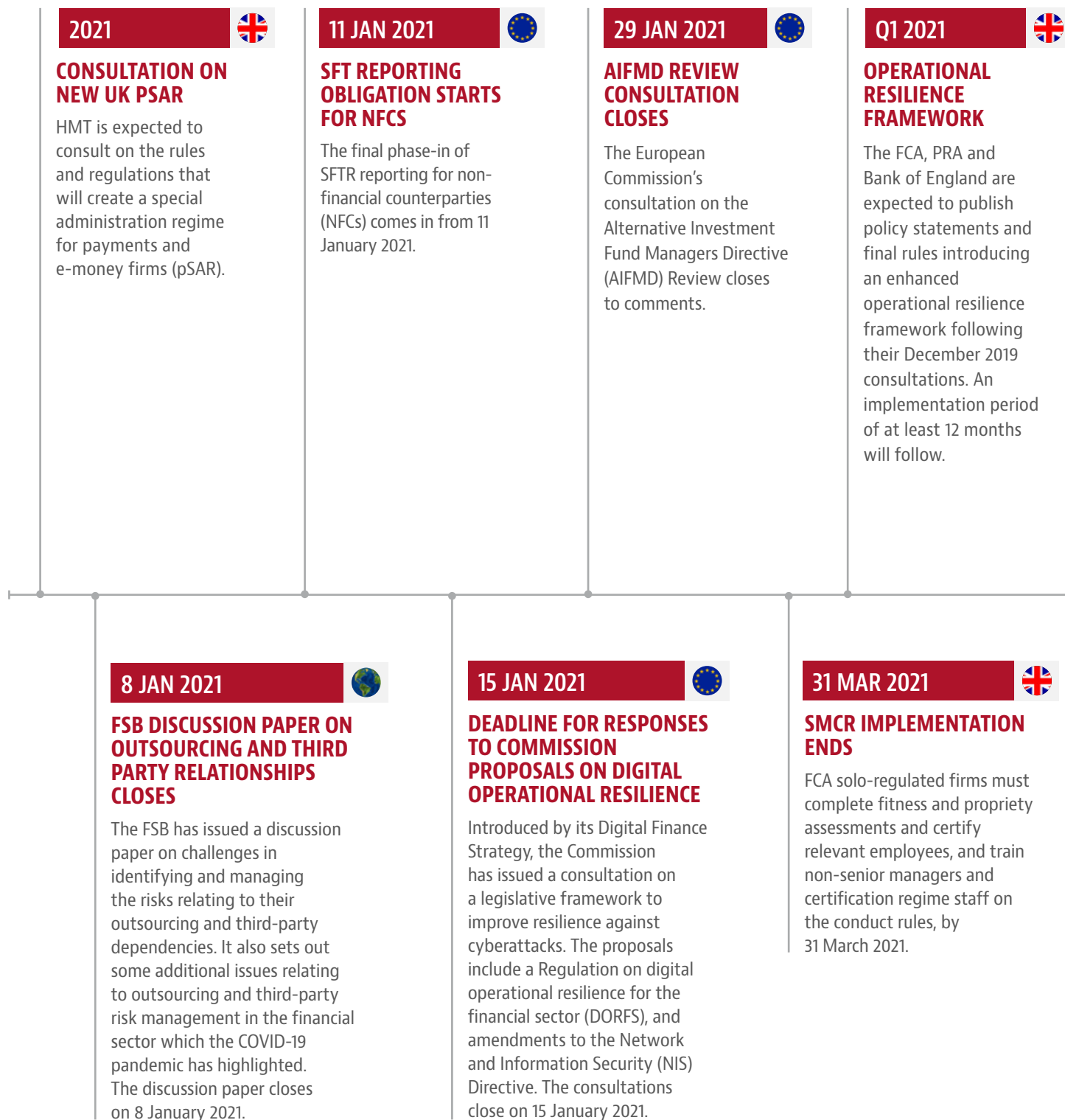


02 Whilst operational resilience policies have been delayed by COVID-19, progress is expected and firms will need to assess the impact of future rules on their business operations in 2021.



03 The FCA is anticipated to continue to focus on financial resilience of payment and e-money firms and these firms can expect further regulatory engagement on their policies and business plans.

Timeline



H1 2021



GENDER NEUTRAL REMUNERATION POLICY GUIDELINES

The EBA is expected to publish final revised guidelines on sound remuneration policies during the first half of 2021. The EBA's review of the guidelines takes into account the amendments introduced by CRD V in relation to institutions' sound remuneration policies and in particular the requirement that those remuneration policies should be gender neutral.

Q3 2021



PROPOSAL FOR A DIRECTIVE AMENDING THE AIFMD

Following the outcome of its Review, the European Commission plans to adopt a proposal for a Directive amending the AIFMD.

Q4 2021



SUPERVISORY FOCUS ON ICT AND CYBER RESILIENCE IN THE INSURANCE SECTOR

EIOPA aims to undertake work in the areas of threatened cyber resilience testing in the insurance sector, and develop supervisory convergence tools on ICT and cyber security governance by Q4 2021.

Q1 2021



FUND LIQUIDITY MISMATCH

The FCA is expected to publish a policy statement in early 2021 following its consultation paper on liquidity mismatch in authorised open-ended property funds. It has proposed the introduction of minimum redemption notice periods and a move away from daily redemption.

26 JUN 2021



REVISED INTERNAL GOVERNANCE GUIDELINES

The EBA is due to publish final revised guidelines on internal governance by 26 June 2021. The EBA's review takes into account the amendments introduced by the CRD V and the IFD in relation to credit institutions' sound and effective governance arrangements.

1 JUL 2021



ICT SECURITY AND GOVERNANCE GUIDELINES FOR INSURERS

EIOPA's guidelines on information and communication technology (ICT) security and governance start to apply from 1 July 2021. The guidelines aim to provide a cyber security baseline and promote the digital operational resilience of insurers.

Consumer Protection

The FCA made clear in its 2020/21 Business Plan that consumer protection will continue to be a key focus area for UK regulators going forward. We expect this will be particularly relevant in light of the impact of COVID-19, which is likely to last into 2021 and beyond.

One of the headline items for Q1 2021 will be the FCA's anticipated consultation on the Duty of Care, which was delayed due to the need to prioritise the FCA's response to COVID-19.

Looking further ahead, in October, the FCA outlined seven "Future Market Dynamics" that would shape the future of regulation to come. Of particular interest were comments made by the FCA about the need to continue to develop its thinking on the concept of fairness to adapt to financial markets where retail consumers have an ever increasing range of choices on platforms and app-based products.

Adapting regulation to changing needs of customers is also a priority at EU-level, as one of the effects of the MiFID "Quick Fix" package (itself a response in part to COVID-19) is the proposed removal of the paper based default method for communicating with customers in a durable medium, which will be welcome news for many retail investment firms.

As has been the case in 2020, product intervention by regulators will continue to be a theme moving forward. The FCA had been expected to publish a consultation paper on plans to ban exit fees charged by investment platforms in 2021, although work on this has been abandoned as the FCA said it had identified a shift away from exit fees; still, a new consultation remains a possibility should harm to consumers re-emerge. However, the FCA has followed through on its proposed rules banning the sale, marketing and distribution to all retail consumers of any derivatives and exchange traded notes that reference unregulated transferable

cryptoassets by firms acting in, or from, the UK; the ban is due to come into effect on 6 January 2021.

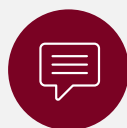
Building on existing thematic work into pricing practices, in September the FCA released a report into general insurance pricing practices, raising concerns that they are not working well for consumers. At the same time the FCA launched a consultation on other new measures to deliver fair value to all insurance customers including product governance, reporting requirements and stopping automatic renewal of general insurance products; a policy statement is expected in Q2 2021. Looking further forward, EIOPA has set out its plans for the period 2021-23 and intends to develop the regulatory framework for the protection of consumers, including reviews of the IDD and PRIIPs Regulation.

In the mortgage and credit markets the FCA continues to focus on ensuring that consumers can receive their pay or benefits, settle bills and access cash; do not get into unaffordable debt; are not exposed to risky or poor value products; and are not at risk of being treated unfairly in the pricing and other terms they receive. The FCA has introduced a range of COVID-19 measures which are expected to continue into 2021, such as forbearance and payment deferrals. The European Commission is also proposing a review into the Consumer Credit Directive, which may have the effect of extending the scope of certain obligations.

Key Takeaways



01 The general insurance market will be reviewed to improve outcomes for consumers and to change the nature of competition.



02 The FCA's consultation on the Duty of Care in Q1 2021 will be important for all firms.



03 The FCA's focus on preventing customer harm will be as important as ever in light of COVID-19, with broad thematic work across the investments, insurance, mortgages and credit markets to ensure fair pricing and fair treatment of customers.

Timeline

15 DEC 2020



FCA CONSUMER INVESTMENTS MARKET CFI DEADLINE

Reducing harm in the consumer investments market was identified as a business priority in the FCA's 2020/21 Business Plan. The FCA's call for input (CFI) on the consumer investments market seeks feedback on whether there are systemic issues across the market which should be addressed. The CFI closes on 15 December 2020.

2021



CIMS INTERIM REPORT

The FCA is due to publish its Credit Information Market Study (CIMS) interim report during 2021. Publication of the report has been delayed due to COVID-19.

Q1 2021



DUTY OF CARE CONSULTATION

The FCA aims to issue a consultation on a Duty of Care in Q1 2021. The consultation is expected to focus on how new or revised Principles for Businesses could strengthen and clarify firms' duties to consumers.

2021



BEHAVIOURAL FINANCE REPORT

During 2021, the Joint Committee of the ESAs will assess the use of insights from behavioural finance when dealing with existing and potential clients, especially when providing or collecting information. The ESAs will further consider how behavioural finance findings can be used by NCAs and incorporated in their supervisory practices in order to strengthen financial consumer protection. A joint report is expected to be published.

BY END JAN 2021



VULNERABILITY GUIDANCE

Following a series of consultations, the FCA is expected to publish its final guidance for firms on the fair treatment of vulnerable customers by the end of January 2021. The guidance will set out the FCA's view of what the Principles for Businesses require of firms to treat vulnerable consumers fairly.

EARLY 2021



WOOLARD REVIEW

The Woolard Review, the review of unsecured credit market regulation chaired by Christopher Woolard, is expected to report to the FCA Board in early 2021. The review will concentrate on how regulation can better support a healthy unsecured lending market, taking into account the impact of COVID-19 on employment security and credit scores, changes in business models and new developments in unsecured lending, including the growth of unregulated products in retail and the workplace.

1 FEB 2021



RETIREMENT OUTCOMES REVIEW IMPLEMENTATION

Firms must comply with the final rules arising from the FCA's Retirement Outcomes Review from 1 February 2021. These new requirements relate to investment pathways and cash warnings to support non-advised consumers making drawdown investment decisions.

Q2 2021



CCD REVIEW

Following its review of the Consumer Credit Directive (CCD), the Commission is expected to publish a proposal for a REFIT Directive amending the CCD in Q2 2021.

2021-2023



CONSUMER INVESTMENTS REGULATORY FRAMEWORK

Following responses received to its CFI, the FCA will undertake work on putting forward a regulatory framework for consumer investments.

1 FEB 2021



PLATFORM TRANSFER RULES

New rules arising from the FCA's Investment Platforms Market Study (IPMS) to make it easier for consumers to move from one platform to another without liquidating their assets take effect on 1 February 2021.

Q2 2021



GI PRICING PRACTICES

The FCA is expected to publish rules and guidance to implement a package of remedies to address the harms identified in the general insurance (GI) pricing practices market study, which include price walking.

Q2 2022



IDD AND PRIIPS REVIEWS

EIOPA expects to input into the Commission's reviews of IDD and PRIIPs during Q2 2022.

Prudential Reform

It is no small feat that the EU's current prudential framework - a morass of successive legislative and regulatory initiatives implemented over the period since the financial crisis - has largely held up in the face of COVID-19.

However, the view from the EU, the UK and market participants is that the current framework is nevertheless outdated and due a substantial refresh. It is therefore no surprise that the volume of fundamental prudential reform at the EU level over the past year has been significant, with little sign that the pace of change will ease in 2021.

Market participants are being required now more than ever to keep on top of a rapidly changing regulatory landscape, and, given the integration of prudential requirements at the EU-level, it is of course one of the areas that is most open to disruption as a result of Brexit.

On the EU side there are a number of initiatives underway within the prudential sphere, the most high-profile being the implementation of the Investment Firms Directive (IFD) and Regulation (IFR). Together the IFD and IFR establish a tailored prudential regime for investment firms, which were previously required to fit into the regulatory framework established by the Capital Requirements Regulation (CRR) and Capital Requirements Directive (CRD). All but the largest and smallest EU investment firms will, from 26 June 2021, operate under this new regime which makes significant changes to remuneration, disclosures, capital requirements, liquidity and governance.

Prudential reform of investment firms is one particular area where the divergence between the UK's post-Brexit regulatory regime and the EU's regulatory regime is increasingly clear. Whilst the UK will not adopt the IFD and IFR, it intends to use their framework to "kickstart" its own prudential regime for investment firms - the Investment Firms Prudential Regime (IFPR), with a target implementation date set at 1 January 2022.

The proposed IFPR regime is largely the same as the IFD/IFR regime, although one significant difference is that under the IFPR systemically important investment firms will not need to obtain authorisation to operate as credit institutions. The FCA is expected to consult on the IFPR before the end of 2020.

Separately, within the banking sphere, the Financial Services Bill 2019-2021 permits HMT to repeal the EU's CRR as it applies on "Exit Day", so that it can implement the outstanding changes from Basel III which were due to filter into the CRD V and the CRR II post-Brexit, helping the UK to maintain step with the EU in this area. Furthermore, the PRA intends to publish its supervisory approach regarding a separate regulatory regime for "new and growing" (i.e. non-systemic) banks.

Key Takeaways



01 Track legislative and regulatory developments in your business and industry area - of particular interest is the new UK regime for investment firms and the PRA's forthcoming proposals for challenger banks.



02 Implement a compliance timeline in order to ensure that your firm is compliant with the applicable regulatory regime by the relevant deadline.



03 HMT has suggested that it intends to shift responsibility for setting regulatory rules from Parliament onto the FCA and PRA - look out for further announcements on this.

Timeline

LATER IN 2020



IFPR CONSULTATION

Following its discussion paper, the FCA is expected to consult on the IFPR. Note that this timing may change due to the delayed implementation of the IFPR.

19 FEB 2021



SOLVENCY II REVIEW CFE DEADLINE

HMT's call for evidence (CFE) is the first stage of the review of Solvency II after Brexit. The review will consider how the current prudential regulatory framework can be improved to ensure that it provides for an appropriate amount of capital for the insurance sector as a whole, a high degree of policyholder protection and suitable standards of governance, risk management and transparency. The overall aim is to ensure that the UK's prudential regulatory regime for the insurance sector is better tailored following Brexit. Responses are due by 19 January 2020.

SPRING 2021



PRUDENTIAL REGIME FOR SMALLER DEPOSIT TAKERS

The PRA may issue a discussion paper in the Spring of 2021 on a simpler prudential regime for smaller deposit takers, if there is a "debate" about introducing such a regime.

27 DEC 2020



DEADLINE FOR SYSTEMICALLY IMPORTANT EU INVESTMENT FIRMS TO APPLY FOR AUTHORISATION AS CREDIT INSTITUTIONS

Under the IFD/IFR framework, firms currently authorised under the MiFID II regime that are of systemic importance will be treated as credit institutions.

Q1 2021



NEW AND GROWING BANKS REGIME

The PRA is expected to issue a policy statement on its supervisory approach and policies applicable to non-systemic new and growing banks, with an expected effective date of H1 2021.

28 JUN 2021**CRR II APPLIES**

The majority of provisions in CRR II apply from 28 June 2021.

1 JAN 2022**UK PRUDENTIAL REFORMS
TARGET DATE**

HMT, the FCA and the PRA have decided to target an implementation date of 1 January 2022 for the IFPR and Basel III reforms which make up the UK equivalent to the outstanding elements in CRR II.

26 JUN 2021**IFD/IFR REGIME APPLIES**

The IFD and IFR apply from 26 June 2021.

Q3 2021**SOLVENCY II REVIEW**

The Commission is expected to adopt a legislative proposal relating to the 2020 review of Solvency II.

1 JAN 2023**BASEL 3.1
IMPLEMENTATION DATE**

Following a COVID-19 related delay, the BCBS expects member states to implement outstanding Basel III reforms (Basel 3.1) by 1 January 2023. HMT, the FCA and the PRA have confirmed that this also remains the target date in the UK.

Future UK Financial Services Framework

With the end of the Brexit transition period fast approaching, the UK Government has been setting out its ambitions for the future of UK financial services regulation. Focussing on sustainability, innovation and openness as priorities for a realigned approach to regulation, the Chancellor has set out the UK's intentions to "[renew] the UK's position as the world's pre-eminent financial centre".

In October 2020, HMT published the first Phase II consultation of its Financial Services Future Regulatory Framework Review. The report supported keeping the current FSMA architecture, but stressed the need for clear allocation of responsibilities between Parliament, HMT and the regulators. Whilst Parliament will be responsible for setting the policy framework for financial services regulation, much of the retained body of EU law will be transferred to the regulators rulebooks. The new regime will set a high level legal framework, which may include new "activity-based" principles that the regulators are required by law to take into account in regulating specific regulated activities, but with the detail of those regulations left to the discretion of the regulators.

These proposals would implement wide ranging changes to the UK's financial services regulatory regime which anticipate future increasing divergence from parallel regulations in the EU.

HMT's view in setting out its proposals is that onshoring EU legislation is not the optimal, long-term approach for UK regulation of financial services, and argues that there would be "significant disadvantages" to retaining the onshored regime over the long term. The proposed regime lays the foundations for a potential shift away from a codified body of granular rules intended to minimise jurisdictional divergence, to less prescriptive "outcomes-focused" regulation aimed at ensuring the UK regulatory regime is competitive, nimble, responsive, and innovative. To that end, there are also proposals to require regulators to consider the importance of accessible rulebooks that take advantage of innovation to reduce compliance burdens on firms, such as machine-readable rules. In addition, the PRA recently announced it will look to amend the regulatory framework for challenger banks post-Brexit to cut regulatory costs and improve their competitiveness against traditional high street lenders. A final package of proposals will be presented in the second Phase II consultation during 2021.

As part of the UK's reorientation of financial services regulation, the Chancellor has announced that there will be a call for evidence on the approach to the overseas persons regime aiming to ensure that overseas firms can access the UK's markets in a way

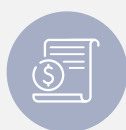
that is predictable, safe and transparent. HMT will then publish its proposed approach in 2021.

We can also expect to see the Government publish plans in early 2021 regarding the payments sector following the conclusion of the first stage of the Payments Landscape Review. The Government has declared that it wants to ensure that the UK maintains its status as a country at the cutting edge of payments technology. There are also potential changes to the regulatory perimeter to address cryptoassets, which we discuss further in the *Crypto* section of this briefing.

We can also expect to see new restrictions introduced in 2021 on approving financial promotions following HMT's recent consultation. The most likely option is that unauthorised persons will be only able to communicate their own financial promotions if these have been approved by a firm which had obtained consent from the FCA to provide such approval.

Chris Woolard, former interim FCA CEO, will conduct a review of the future regulation of the unsecured credit market, focused on the drivers and use of credit, change and innovation in the supply of credit, the role of regulation, and the COVID-19 context. It cannot currently be ruled out that the review will recommend that HMT remove or modify the exemption for interest free credit which is repayable in no more than a year through 12 or fewer instalments. The Woolard Review will report its findings in early 2021.

Key Takeaways



01 HMT's proposals for the UK's post-Brexit financial services regulatory framework would implement wide ranging changes to the UK's financial services regulatory regime which anticipate future increasing divergence from parallel regulations in the EU and a potential shift to "outcomes-focused" regulation. A further consultation in 2021 will set out a final package of proposals and how they will be delivered.



02 Unregulated firms that provide interest free 'buy now pay later' could find themselves within the regulatory perimeter as a result of the FCA's review into the unsecured credit market.



03 We may see changes to the overseas persons regime proposed, possibly introducing the concept of equivalence determinations. This is in addition to the introduction to a new overseas fund regime - a more streamlined recognition regime to allow overseas funds to market to retail in the UK based on equivalence determinations.

Timeline

30 DEC 2020



TPR CLOSES

The notification window for firms and funds wishing to enter the FCA's temporary permissions regime (TPR) closes on 30 December 2020.

JAN 2021



PRA APPROACH TO INTERNATIONAL BANKS

The PRA plans to consult in January 2021 on its supervisory expectations of international banks to ensure that UK operations can be effectively supervised, including the information the PRA expects to receive.

8 JAN 2021



TREASURY COMMITTEE INQUIRY ON THE FUTURE OF FINANCIAL SERVICES - CALL FOR EVIDENCE CLOSES

The House of Commons Treasury Committee has opened an inquiry into the future of financial services after the Brexit transition period ends. It will examine how financial services regulations should be set and scrutinised by Parliament, as EU directives will cease to govern new rules and regulations. It will also consider how regulators are funded and the extent to which financial services regulation should be consumer-focused.

31 DEC 2020



BREXIT TRANSITION END

The Brexit transition period is due to end at 11pm on 31 December 2020, after which onshored EU legislation will form part of UK law and apply.

5 JAN 2021



UK LISTINGS REVIEW CFE DEADLINE

HMT has issued a UK Listings Review call for evidence (CFE). The Listings Review will propose post-Brexit reforms to the UK listings regime that will attract firms and help companies access finance. The deadline for responses is 5 January 2021.

19 FEB 2021



FRF REVIEW DEADLINE

HMT has issued the first consultation on the Future Regulatory Framework (FRF) Review, following Brexit. The first consultation sets out an overall blueprint for financial services regulation, focusing on the split of responsibilities between Parliament, the government and the financial services regulators. The consultation focuses on arrangements for accountability, scrutiny and public engagement with the policy-making process, particularly in relation to the UK's financial services regulators. Responses are due by 19 January 2021.

EARLY 2021



UK LISTINGS REVIEW REPORT

The UK Listings Review is due to report to HMT in early 2021 with its proposals to reform the UK listings regime.

Q1 2021



OVERSEAS PERSONS EXCLUSION REVIEW

HMT is expected to launch a review of the overseas persons exclusion by early 2021.

31 MAR 2022



TTP ENDS

The FCA will apply its Temporary Transitional Power (TTP) from the end of the Brexit transition period until 31 March 2022. Firms are expected to use the duration of the TTP period to prepare for full compliance with the onshored UK regime by 31 March 2022.

Q1 2021



FCA APPROACH TO INTERNATIONAL FIRMS

The FCA's consultation on its approach to international firms sets out its proposed approach to international firms providing or seeking to provide financial services that require authorisation, including the factors the FCA will consider when assessing them against minimum standards, and the circumstances where these international firms could present higher risks of harm. The FCA is expected to implement its approach in Q1 2021 (subject to consultation outcome).

H1 2021



FRF REVIEW SECOND CONSULTATION

HMT is expected to publish the second consultation on the Future Regulatory Framework (FRF) Review, following Brexit. The second consultation will set out a final package of proposals and how they will be delivered.













31 DEC 2023














TPR ENDS

The FCA's temporary permissions regime (TPR) is expected to end three years after the Brexit implementation period ends, unless extended by HMT.

Other Upcoming Developments

	EARLY DEC	ICE Benchmark Administration Limited (IBA) will consult on its intention to cease the publication of all GBP, EUR, CHF and JPY LIBOR settings after 31 December 2021; and to cease the publication of the one week and two month USD LIBOR settings immediately following the LIBOR publication on 31 December 2021, and the remaining USD LIBOR settings immediately following the LIBOR publication on 30 June 2023.
	28 DEC 2020	Majority of BRRD II measures to be implemented in EU member states.
	18 JAN 2021	Deadline for responses to FCA consultations on the considerations the FCA will take into account when exercising its powers, as proposed under the Financial Services (FS) Bill, to 'designate' a critical benchmark and to impose changes to that benchmark.
	19 JAN 2021	Deadline for responses to Commission consultation on ELTIF Regulation review.
	25 JAN 2021	Effective date of the ISDA IBOR Fallbacks Supplement and IBOR Fallbacks Protocol. The FSB strongly encourages all affected financial and non-financial firms to adhere to the Protocol.
	Q1 2021	Several ESMA MiFID II Review reports due.
	H1 2021	PRA final policy relating to OCIR expected.
	Q2 2021	Further FCA CP on new powers under proposed amendments to the Benchmarks Regulation in the FS Bill.
	18 JUN 2021	The FRANDT principle, new TR requirements and clearing obligation for pension scheme arrangements under the EMIR REFIT to apply.
	26 JUN 2021	Amendments to MiFID II third country regime apply (IFD/IFR amendments).
	4 JUL 2020	MiFIR open access regime for trading and clearing exchange traded derivatives applies.
	Q3 2021	Commission expected to adopt legislative proposal for ELTIF Regulation review.

	2 AUG 2021	Directive (EU) 2019/1160 and Regulation (EU) 2019/1156 on the cross-border distribution of collective investment funds come into effect. ESMA guidelines for funds' marketing communications expected.
	1 SEP 2021	Implementation of bilateral margin obligation phase 5 (new requirements for non-cleared over the counter derivative contracts).
	10 NOV 2021	ECSP Regulation and Directive amending MiFID II relating to crowdfunding apply.
	31 DEC 2021	End of (extended) transitional period for UCITS under PRIIPs Regulation.
	31 DEC 2021	End of Benchmarks Regulation transitional regime for providers of "critical benchmarks" and third-country benchmarks.
	31 DEC 2021	LIBOR cessation date. The FCA and PRA expect all boards and senior managers to put in place the appropriate arrangements to identify their firms' LIBOR exposures and ensure an orderly transition away from LIBOR, before this date. Even if a firm does not themselves provide, distribute or transact in products linked to LIBOR, it may have links to LIBOR in its systems or contractual relationships with other firms.
	1 JAN 2022	Changes arising from PRA consultation on proposals to revise its operational continuity in resolution (OCIR) policy expected to take effect.
	1 FEB 2022	Postponed CSDR settlement discipline RTS enters into force.
	30 JUN 2022	Expiry of temporary equivalence framework for UK central counterparties set out in Commission Implementing Decision (EU) 2020/1308.
	30 JUN 2022	Expiry of deferred application date of EMIR clearing obligation for intragroup transactions satisfying certain conditions and where one of the counterparties is established in a third country.
	1 SEP 2022	Implementation of bilateral margin obligation phase 6 (new requirements for non-cleared over the counter derivative contracts).

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