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INSURANCE REGULATORY EBULLETIN

MARCH 2019

WELCOME TO OUR INSURANCE REGULATORY EBULLETIN

Welcome to this edition of our Insurance Regulatory eBulletin, which aims to keep you updated with significant regulatory developments and their implications across the insurance sector.

Brexit continues to make the political headlines and the uncertainty of the outcome is reflected in the regulators' preparations for a no-deal Brexit which have resulted in more guidance and statements during the past month. The FCA announced two large enforcement fines totalling more than £56m for The Carphone Warehouse and UBS and also continued their preparations for the Senior Managers & Certification Regime by publishing new guidance for solo regulated firms and the final policy for the new Financial Services Directory.

I hope you enjoy reading this latest update. Please do not hesitate to contact myself or your normal BDO contact if you have any concerns over any matter highlighted in this update.

Read our latest Insurance Regulatory eBulletin here.

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CONTENTS

EIOPA

- EIOPA REQUESTS INFORMATION FOR ITS LONG-TERM GUARANTEES REPORT AND ITS 2020 SOLVENCY II REVIEW
- Q&A ON REGULATION

BREXIT

- THE PRA'S APPROACH AFTER THE UK'S WITHDRAWAL FROM THE EU – SS1/19
- PRA APPROACH TO EU-BASED REPORTING AND DISCLOSURE REQUIREMENTS POST BREXIT – SS2/19
- FINANCIAL SERVICES CONTRACTS REGIME – PS5/19
- EIOPA AGREES A NO-DEAL BREXIT MEMORANDA OF UNDERSTANDING WITH UK REGULATORS
- PRA AND FCA TEMPORARY PERMISSIONS REGIME DEADLINE EXTENSION
- FCA IDENTIFIES RESIDUAL RISKS REMAINING IN THE EVENT OF NO-DEAL BREXIT

PRUDENTIAL REGULATION

- LIQUIDITY RISK MANAGEMENT FOR INSURERS – CP4/19
- RESPONSES TO CHAPTERS 3-7 OF CP24/18 'OCCASIONAL CONSULTATION PAPER' – PS6/19
- SOLVENCY II: GROUP OWN FUND AVAILABILITY – PS9/19 AND GROUP SUPERVISION - SS9/15
- FIRST MEETING OF THE PRA AND FCA'S JOINT CLIMATE FINANCIAL RISK FORUM

CONDUCT REGULATION

- REGULATION ROUND UP
- CYBER SECURITY – INDUSTRY INSIGHTS
- SMCR STATEMENTS OF RESPONSIBILITIES AND RESPONSIBILITY MAPS – FG19/2
- SMCR - FINALISING THE FINANCIAL SERVICES DIRECTORY - PS19/7
- INCREASING THE AWARD LIMIT FOR THE FINANCIAL OMBUDSMAN SERVICE – PS19/8
- DIGITAL REGULATORY REPORTING
- FCA BOARD MINUTES: 23 AND 24 JANUARY 2019
- OFFICE FOR PROFESSIONAL BODY ANTI-MONEY-LAUNDERING SUPERVISION (OPBAS) COSTS – CP19/13
- GENERAL INSURANCE COMPLAINTS

ENFORCEMENT ACTION

- FCA REGULATORY FINES ROUND-UP

EIOPA

EIOPA REQUESTS INFORMATION FOR ITS LONG-TERM GUARANTEES REPORT AND ITS 2020 SOLVENCY II REVIEW

On 18 March, EIOPA requested EEA insurance undertakings subject to Solvency II to provide information on the Long-Term Guarantees (LTG) measures, the dynamic volatility adjustment and on long-term illiquid liabilities.

The data is required for the preparation of EIOPA's Annual LTG Report as well for its Opinion on the LTG measures and for its 2020 Solvency II review.

Insurance undertakings will need to submit results to their national supervisory authorities by 17 May 2019.

Q&A ON REGULATION

On 18 March, EIOPA published an answer under its Q&A on regulation, to (EU) 2015-35 supplementing Directive 2009-138.

On 20 March, EIOPA published new questions and answers on (EU) No 2015-2450 templates for the submission of information to the supervisory authorities.

BREXIT

THE PRA'S APPROACH AFTER THE UK'S WITHDRAWAL FROM THE EU – SS1/19

On 28 February, the PRA published its Supervisory Statement (SS1/19) on the PRA's approach after the UK's withdrawal from the EU. The SS elaborates on how firms should interpret existing non-binding PRA regulatory and supervisory materials such as the PRA's existing approach documents, statements of policy (SoPs), and SSs – collectively referred to as the PRA's 'non-binding materials'.

It notes the key changes being made to legislation that firms should consider when interpreting existing PRA non-binding materials, including that:

- Passporting under EU financial services legislation will not be available after the exit date.
- References to preferential treatment to EU assets are no longer relevant and should have reference to the third country treatment of those assets.
- Functions carried on by EU authorities that exist solely to support the EU single market will be redundant and will therefore be deleted. Other roles and responsibilities that are currently being carried out by EU authorities are being reallocated to the most appropriate UK authority, to the extent that they remain relevant when the UK has left the EU.
- Where capital or liquidity consolidation was only required at the EEA level previously, this will be required at the UK level after exit.

The PRA notes that this Supervisory Statement is near-final and the final version will be published close to exit day, and will be effective from the date of the UK's withdrawal from the EU. The PRA expect that the final version will be materially similar to this version.

PRA APPROACH TO EU-BASED REPORTING AND DISCLOSURE REQUIREMENTS POST BREXIT – SS2/19

On 28 February, the PRA issued a near-finalised Supervisory Statement (SS2/19) outlining its approach to EU-based references established in reporting and disclosure requirements following the UK's withdrawal from the EU. The PRA has not made line-by-line changes to reporting or disclosure requirements, or regulatory transactions forms, as a result of the UK's withdrawal from the EU, as it would not have been proportionate to do so. Instead, the PRA expects firms to interpret EU references in those templates and instructions in accordance with this SS.

Chapter 2 outlines the general approach, which is in line with the approach taken more widely when nationalising European requirements. Chapters 3, 4 and 5 detail an expected approach on certain more specific issues. Chapter 4 details the approach to be taken for reporting and disclosure requirements based on Solvency II.

The SS notes that in any instance where the approach set out in Chapters 3, 4 and 5 conflicts with the approach set out in Chapter 2, the approach set out in Chapters 3, 4 and 5 should take priority.

The PRA will publish a final version close to exit day but expect that the final version will be materially similar to this version.

FINANCIAL SERVICES CONTRACTS REGIME – PS5/19

On 28 February, Bank of England and the PRA published a Policy Statement (PS5/19) setting out the general approach being taken to ensure there is a functioning legal framework when the UK leaves the EU.

The materials included the Financial Services Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 statutory instrument which establishes a Financial Services Contracts Regime (FSCR). This ensures that those EEA firms that do not enter the Temporary Permissions Regime (TPR), and those that exit the TPR without UK authorisation, are able to wind down their UK regulated activities in an orderly manner.

The purpose of the FSCR is to be a back-stop to the TPR and to allow for the orderly wind down of the UK regulated activities of firms that:

- Were passporting prior to exit day and require authorisation in the UK to continue servicing their contracts
- Did not enter TPR or exited TPR without UK authorisation in relation to some or all of the regulated activities which they carry on
- Have home state authorisation.

The FSCR is premised on a 'no deal' scenario and comprises two regimes:

- **Contractual Run-Off (CRO)** – applying to firms without a UK branch (which operate under a freedom of services (FOS) passport immediately before exit day) which do not hold a top-up permission and do not enter TPR. These firms enter CRO automatically which and will have a limited exemption to the general prohibition for the purposes of winding down the firms' UK regulated activities in an orderly manner. A necessary condition of entry into the CRO is that a firm be authorised by its home state regulator.

- **Supervised Run-Off (SRO)** – applying to multiple categories of firms such as:
  - a UK branch (operating under a freedom of establishment (FOE) passport immediately before exit day) that did not enter the TPR;
  - firms entering the TPR but exiting it without a UK authorisation in respect of all the regulated activities which they carry on (operating under an FOE or FOS passport immediately before exit day).

These categories of firm enter the SRO automatically and are principally permitted to carry out regulated activities which are necessary to perform pre-existing contracts.

EIOPA AGREES A NO-DEAL BREXIT MEMORANDA OF UNDERSTANDING WITH UK REGULATORS

On 5 March, EIOPA announced Memoranda of Understanding (MoU) between EIOPA, the Bank of England and the FCA. The MoUs becomes effective if the UK leaves the EU without a withdrawal agreement in a no-deal Brexit scenario. The agreed MoUs are:

- a multilateral MoU on supervisory cooperation, enforcement and information exchange between the European Economic Area (EEA) National Competent Authorities and the UK Authorities; and
- a Bilateral MoU between EIOPA and the UK Authorities on information exchange and mutual assistance in the field of insurance regulation and supervision.

The MoUs allow risk-based and effective supervision of: cross-border (re)insurance establishments incorporated in the UK or an EEA member state; cross-border groups; or special purpose vehicles established in the UK or an EEA member state through a reciprocal flow of appropriate and reliable information.

PRA AND FCA TEMPORARY PERMISSIONS REGIME DEADLINE EXTENSION

On 26 March 2019, the PRA extended the notification window for the Temporary Permissions Regime (TPR) until the end of 11 April 2019. This followed the European Council and the UK Government decision for a short delay in the process of the UK's withdrawal from the EU.

The previous deadline for notification for firms and funds wishing to enter into the TPR was 28 March 2019.

FCA IDENTIFIES RESIDUAL RISKS REMAINING IN THE EVENT OF NO-DEAL BREXIT

On 21 March, the FCA published a speech on Brexit, given by Nausicaa Delfas, FCA Executive Director of International. In her speech, Ms Delfas explained that all of the FCA's activity has been aimed at reducing the impact of Brexit on firms. While most of the risks to UK financial stability that could arise from a no-deal Brexit have been mitigated, some residual risks remain, including:

- Whilst UK and global banks are transferring activities to EU-incorporated entities, they are to some extent dependent on their clients agreeing to move contracts to these new entities.
- The operational risk underlying the process of migrating businesses, assets and contracts in a short period.
- On the issue of contract certainty, the EU does not have a pan-EU equivalent to the UK's Temporary Permissions Regime and Financial Services Contracts Regime and therefore there are some areas where legal risks relating to the ongoing servicing of existing clients have not been fully mitigated.
- There are implications of a lack of equivalence in certain areas such as EU trading obligations for shares and derivatives.

If risks materialise, the FCA will continue to take a pragmatic and practical approach to resolving issues. Firms are encouraged to raise any concerns or issues as early as possible.

PRUDENTIAL REGULATION

LIQUIDITY RISK MANAGEMENT FOR INSURERS – CP4/19

On 5 March, the PRA published a Consultation Paper (CP4/19) on a draft Supervisory Statement (SS) concerning liquidity risk management for insurers.

The CP explains the background to the proposals and defines 'liquidity risk'. The draft SS in the Appendix to the CP sets out the PRA’s expectations for liquidity risk management by insurers. These include the key elements of an insurer’s liquidity risk management framework, the consideration of material sources of liquidity risk an insurer may be exposed to, expectations of the design and conduct of a stress testing programme, considerations for assessing asset liquidity, quantitative metrics and tools for measuring and monitoring liquidity risk, and effective liquidity contingency planning.

Comments and feedback should be made by 5 June 2019.

RESPONSES TO CHAPTERS 3-7 OF CP24/18 ‘OCCASIONAL CONSULTATION PAPER’ – PS6/19

This PRA Policy Statement (PS6/19), published on 5 March, provides feedback to responses to Chapters 3 to 7 of Consultation Paper (CP) 24/18 ‘Occasional Consultation Paper’. It also includes the final rules, and updated Supervisory Statement (SS) 1/16 ‘Written reports by external auditors to the PRA’, Statement of Policy (SoP) ‘The PRA’s approach to enforcement: Statutory statements of policy and procedure’, and SoP ‘Calculating risk-based levies for the Financial Services Compensation Scheme deposits class’.

The implementation date for all policy changes set out in the PS was 7 March 2019.

SOLVENCY II: GROUP OWN FUND AVAILABILITY – PS9/19 AND GROUP SUPERVISION - SS9/15

On 14 March, the PRA published a Policy Statement (PS9/19) providing feedback on the responses to its Consultation Paper - CP15/18 ‘Solvency II: Group own fund availability’. The PS is relevant to all UK insurance firms within the scope of the Solvency II Directive (‘the Directive’) and to the Society of Lloyd’s.

CP15/18 proposed further details on certain aspects of how group own funds should be assessed as available and proposed to amend SS9/15 in Chapter 5A, to clarify that in assessing group own funds availability, the solo SCR should no longer be presumed to be a barrier to availability. Thus, the PRA would not expect groups to routinely provide evidence of how own funds may be made available solely as a consequence of being subject to a Solvency II solo SCR. The proposed amendment did not address other potential barriers to group own funds availability, and so groups will have to continue to consider the potential barriers to availability listed in Article 330 of the Commission Delegated Regulation (EU) 2015/35.

The revised Supervisory Statement (SS9/15) ‘Solvency II: Group supervision’ sets out the PRA’s updated expectations for group supervision, and incorporates the PRA’s expectations for assessments of the availability of own funds to cover the group Solvency Capital Requirement (SCR) as set out in CP15/18.

FIRST MEETING OF THE PRA AND FCA'S JOINT CLIMATE FINANCIAL RISK FORUM

On 8 March, the PRA and FCA hosted the first meeting of the joint Climate Financial Risk Forum (CFRF). The objective of the CFRF is to build capacity and share best practice across financial regulators and industry to advance financial sector responses to the financial risks from climate change. It brings together senior representatives from across the financial sector, including banks, insurers, and asset managers.

At the meeting, the forum decided to set up four working groups focussing on risk management, scenario analysis, disclosure, and innovation. The aim is to produce practical guidance on each of the four focus areas. The final outputs will be shared with industry more widely.

CONDUCT REGULATION

REGULATION ROUND UP

On 26 March, the FCA published its monthly Regulation round-up. The Hot Topics included Brexit, the FCA's action on addressing excessive motor finance costs, Senior Managers & Certification Regime (SMCR) Statements of Responsibilities and Responsibility Maps* and General Insurance complaints*.

This edition includes the following articles that are relevant to insurers or insurance intermediaries:

- Digital regulatory reporting*
- Wholesale Insurance Broker Market Study final report
- Live & Local 2018/19 events for regulated firms

*covered below

CYBER SECURITY - INDUSTRY INSIGHTS

On 8 March, the FCA published a document bringing together industry insights on cyber resilience. Cyber resilience is continued focus of FCA activity because of the threat of disruption it poses for consumers and markets. The FCA have collated examples shared by firms participating in their Cyber Coordination Groups during 2018 which have been discussing and sharing practices in the areas of: Governance, Identification, Protection, Detection, Situational Awareness, Response and Recovery, and Testing.

The document sets examples considered to be beneficial for a wider audience under each of these themes to assist all firms considering where to prioritise their efforts in increasing cyber resilience.

SMCR STATEMENTS OF RESPONSIBILITIES AND RESPONSIBILITY MAPS - FG19/2

On 8 March, the FCA published Finalised Guidance (FG19/2) to help firms prepare for the Senior Managers and Certification Regime (SMCR). The purpose of the guidance is to give FCA solo-regulated firms practical assistance and information on preparing Statements of Responsibilities (SoRs) and Responsibilities Maps. The guidance sets out the purpose of SoRs and Maps and outlines examples of good and poor practice. It also contains examples of Responsibilities Maps for two fictitious firms.

Under the SMCR, all Senior Managers must have a Statement of Responsibilities and all enhanced firms must have a Responsibilities Map. A SoR should be clear for regulators, the Senior Manager and others in the firm to understand - and contain enough information to describe clearly what activities the Senior Manager is responsible and accountable for in the business. The guidance is designed to be read alongside the Guide for FCA solo-regulated firms.

FCA solo-regulated firms should be preparing for SMCR which comes into effect on 9 December 2019.

SMCR - FINALISING THE FINANCIAL SERVICES DIRECTORY - PS19/7

On 8 March, FCA issued a Policy Statement (PS19/7) on the proposed new public register for checking the details of key individuals working in financial services contained in the FCA's Consultation Paper (CP18/19) issued in July 2018.

The Policy Statement provides a summary of feedback received as well as the FCA's response to the feedback, and sets out the final rules to establish the Directory. The Directory will include information available through the Financial Services Register (The FS Register), as well as information about other individuals, including those performing roles no longer made public on The FS Register following the introduction of the Senior Managers & Certification Regime (SMCR).

This information will be made public through a newly designed user interface developed to be clear and easy to use. The final rules affect 3 broad categories of individuals, referred to collectively in the PS as Directory Persons:

- All Certified staff (those holding a certification function under the SMCR
- Directors who are not performing Senior Manager Functions (SMFs) – both executive and non-executive
- Other individuals who are sole traders or appointed representatives (ARs) - including those within ARs - where they are undertaking business with clients and require a qualification to do so.

The key changes contained in the PS from the original CP proposals include:

Change	Explanation
Extended the reporting deadline for banking firms and insurers	The FCA have moved the reporting deadline for banking firms and insurers to March 2020 to give firms more time to prepare their first submissions. This does not affect the deadline for other firms.
Included information on membership of relevant Accredited Bodies	The FCA have included information on Accredited Bodies' membership for customer-facing roles requiring qualification to enable users to find more information on those individuals.
Extended reporting deadlines	Firms have 7 business days to update information on joiners, leavers and changes in circumstances. This gives firms more time to submit their ongoing notifications.
Included customer engagement methods (for customer-facing roles requiring qualification)	The FCA have included information about the different ways individuals interact with customers so those operating online, or over the phone, will get equal prominence depending on how users search for them. Those who do not offer face-to-face meetings, or where disclosure may put the individual at risk, do not have to give the FCA their location.
Limited the circumstances in which firms need to provide us with passport numbers	Firms will only need to give the FCA passport numbers if: ▸ Directory Persons do not hold a National Insurance (NI) number ▸ they have previously only provided the FCA with a passport number for Directory Persons so the FCA need it to correctly match the records The FCA encourage firms to provide both passport and NI numbers where possible.
Additional guidance on the Firm declaration	There is additional guidance to explain who is responsible for the accuracy of the information submitted in notifications to the FCA.

Publishing this information on an ongoing basis is intended to help protect consumers and firms by making it easier to check whether individuals work for an authorised firm. It will also support the FCA, law enforcement, professional bodies and other regulators to monitor the market, build intelligence and target interventions appropriately.

INCREASING THE AWARD LIMIT FOR THE FINANCIAL OMBUDSMAN SERVICE - PS19/8

On 8 March 2019, the FCA published Policy Statement (PS19/8) which summarises and responds to the feedback received to Consultation Paper 18/31 (CP18/31). The FCA have considered the responses, of which over 130 were received, and will be implementing the proposals that were consulted on.

The new rule in the Dispute Resolution sourcebook (DISP) increases the Financial Ombudsman Service's award limit from £150,000 to:

- £350,000 for complaints about acts or omissions by firms which take place on or after 1 April 2019.
- £160,000 for complaints about acts or omissions by firms which took place before 1 April 2019 and which are referred to the ombudsman service on or after 1 April 2019.

From 1 April 2020 onwards, both award limits are automatically adjusted each year in line with inflation, as measured by the Consumer Prices Index (CPI).

DIGITAL REGULATORY REPORTING

On 14 March the FCA published the findings of the first phase of the Digital Regulatory Reporting (DRR) pilot which explores how firms and regulators could use technology to improve the current process of regulatory reporting.

The FCA, the Bank of England and a group of regulated firms will be participating in a second phase of the pilot that aims to identify which regulatory reports are appropriate for a DRR solution and how best to create machine executable regulation.

Firms interested in participating in the pilot or who would like more detail on aspects of the report should contact regtech@fca.org.uk.

FCA BOARD MINUTES: 23 AND 24 JANUARY 2019

On 14 March, the FCA published the minutes of the FCA Board meeting held on 23 and 24 January 2019. Among other matters, the Board discussed the "BritainThinks" annual stakeholder research; the status of cross-agency work on implementation of the Shareholder Rights Directive; a report from the FCA CEO, Andrew Bailey; and a monthly update on developments relating to the UK's withdrawal from the EU.

The Board also discussed feedback on consultation paper (CP18/33) and the final rules regarding payment protection insurance (PPI) complaints, as a result of which the Board decided to make the PPI mailing requirement rules proposed in the consultation paper and to publish an accompanying policy statement.

OFFICE FOR PROFESSIONAL BODY ANTI-MONEY-LAUNDERING SUPERVISION (OPBAS) COSTS - CP19/13

On 14 March the FCA issued a further Consultation Paper (CP19/13) on the proposed fees structure for recovering the costs of the Office for Professional Body Anti-Money-laundering Supervision (OPBAS). The document includes the FCA's feedback on the outcome of the previous consultation CP18/32 on the variable fee the FCA proposes to charge professional body supervisors (PBSs) in 2018/19 to recover the costs of establishing and running the OPBAS as well as introducing a new question for consultation.

In particular, the FCA proposes to remove the minimum fee threshold and instead charge a fee of £20.59 on all the individuals supervised, subject to paying no less than £5,000.

Comments on the CP must be submitted by 26 April 2019.

GENERAL INSURANCE COMPLAINTS

On 26 March, in its Regulation round-up the FCA highlighted that General insurance firms need to ensure the way they deal with complaints is in line with FCA rules and principles - and that they are complying with the DISP requirements in the FCA Handbook. The FCA's supervisory work has revealed that some firms are failing to consistently deliver fair outcomes for their customers when handling complaints.

The identified areas of improvement include:

- Applying the FCA definition of a complaint correctly and not breaching the DISP requirements, by not issuing a summary resolution or a final response letter. This may prevent customers from accessing the formal complaint process and Ombudsman referral rights.
- Capturing and address all elements of each complaint.
- Ensuring all complaints are investigated competently, diligently and impartially.
- Improving the quality of final response letters issued to customers.
- Ensuring the root causes of complaints are always captured and clarifying the actions required to correct the root cause, such as action owners and completion dates.
- Taking steps to ensure that complaints processes are embedded by a firm's outsourcers and ensuring effective oversight of the quality of an outsourcers' complaint handling, including receiving relevant supporting management information.

The FCA emphasises that ongoing supervisory work will continue to monitor firms' compliance and will take action with individual firms where necessary.

ENFORCEMENT ACTION

FCA REGULATORY FINES ROUND-UP

FCA regulatory fines for 2019 now total £135.9m. The following fines and related enforcement actions have been announced in the past month:

UBS AG	The FCA imposed a fine of £27.6m for breaches of SUP 17, SUP 15 and PRIN 3 related to transaction reporting failures in the investment bank sector. UBS failed to ensure it provided complete and accurate information in relation to approximately 86.67m reportable transactions. It also erroneously reported 49.1m transactions to the FCA, which were not, in fact, reportable. Altogether, over a period of 9 and a half years, UBS made 135.8m errors in its transaction reporting, breaching FCA rules. The FCA also found that UBS failed to take reasonable care to organise and control its affairs responsibly and effectively in respect of its transaction reporting. These failings related to aspects of UBS's change management processes, its maintenance of the reference data used in its reporting and how it tested whether all the transactions it reported to the FCA were accurate and complete.
The Carphone Warehouse	The FCA fined The Carphone Warehouse Limited £29.1m for breaches of PRIN 3, 6 and 9 related to mis-selling in the general insurance and protection sector. The failings identified by the FCA, in an investigation which stemmed from whistleblowing reports, led to the mis-selling of 'Geek Squad', a mobile phone insurance and technical support product. The FCA found The Carphone Warehouse failed to give its sales consultants the right training to give suitable advice to customers purchasing Geek Squad. In particular, sales consultants were not trained adequately to assess a customer's needs to determine whether Geek Squad was suitable. They were trained to recommend Geek Squad to customers who already had cover, for example through their home insurance or bank accounts. During the period under investigation, The Carphone Warehouse made regulated sales of Geek Squad policies worth over £444.7 million. A high proportion of these policies were subsequently cancelled early. For example, in January 2014, 35% of policies were cancelled within the first 3 months from inception. High cancellation rates are an indicator of a risk of mis-selling which The Carphone Warehouse failed to properly consider.

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