

A smiling woman with dark hair pulled back, wearing a vibrant red dress, stands in a modern meeting room. She is looking towards the camera with a warm expression. The background shows a conference table with papers and chairs, and a large screen displaying a blurred image. Two thick red vertical bars are positioned on the right side of the page, one near the top and one near the bottom.

# INSURANCE REGULATORY EBULLETIN

FEBRUARY 2019

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# 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.

This month there has been a flurry of activity from both EIOPA and the FCA around the continuing uncertainty of a possible no-deal Brexit. EIOPA has released its recommendations and the FCA have been reinforcing their on-going messages in terms of preparation. The PRA has issued a number of technical changes to regulatory expectations on Solvency II and has also emphasised its messaging around cyber underwriting risk. The FCA also issued its long awaited report on the Wholesale Insurance Broker Market study which concluded, to mixed opinion, there was no evidence of significant levels of harm meriting the introduction of any intrusive remedies.

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.



**ALEX BARNES**  
**PARTNER**  
alex.barnes@bdo.co.uk

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# 1. EIOPA

## CALL FOR INPUT ON THE SOLVENCY II REPORTING AND DISCLOSURE REVIEW 2020 RESULTS OF THE PEER REVIEW ON PROPRIETY OF AMSB MEMBERS AND QUALIFYING SHAREHOLDERS

On 25 January, EIOPA published [the results](#) of its peer review relating to assessments of the propriety of administrative, management or supervisory body (AMSB) members and qualifying shareholders of insurance and reinsurance undertakings. Solvency II requires that insurance and reinsurance undertakings ('insurers') are owned and run by persons of integrity and of good repute to ensure sound and proper management of insurers.

EIOPA's review included an assessment of current national regulatory frameworks, national competent authorities' (NCAs) supervisory practices, and the effectiveness of cross-border cooperation. It outlines areas of recommended action to harmonise practices in the main areas where disparities in propriety assessments were revealed, which included:

- ▶ alignment of regulatory frameworks with the European framework, including in respect of prosecution for criminal and administrative offences
- ▶ incorporation by NCAs of specific questions in their propriety assessment questionnaires;
- ▶ ongoing assessment of qualifying shareholders and AMSB members
- ▶ maintenance of supervisory records regarding cases withdrawn due to supervisory authorities' concerns
- ▶ conducting joint assessments in relation to complex cross-border cases.

Areas of recommended action are outlined and the NCAs who need to take the actions. Areas of best practice are also highlighted.

EIOPA concluded that implementation of the recommended actions will promote supervisory convergence and enable NCAs to defend their decision making where challenged. As a follow-up to the review, EIOPA will assess compliance with the recommended actions and monitor the impact of the best practices identified.

## EIOPA'S RISK DASHBOARD FOR THE THIRD QUARTER 2018

On 31 January, EIOPA published its updated [Risk Dashboard](#) based on the third quarter 2018 data. The results show that the risk exposure of the EU insurance sector remains stable overall. An increase was seen for insurance risk resulting from the impact of (re)insurers loss ratios for the natural catastrophes that were observed in quarter 3 of 2018, however these still remain at a low level.

## Q&A ON REGULATION

On 1 February EIOPA published new [questions and answers](#) for the following topics:

- ▶ (EU) No 2009-138 Solvency II Directive (Insurance and Reinsurance)
- ▶ (EU) No 2015-2450 templates for the submission of information to the supervisory authorities
- ▶ Guidelines on reporting for financial stability purposes.

On 11 February EIOPA published new questions and answers on (EU) No 2015-2450 templates for the submission of information to the supervisory authorities.

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### EIOPA'S FRAMEWORK FOR ASSESSING CONDUCT RISK THROUGHOUT THE PRODUCT LIFECYCLE

On 20 February, EIOPA published its [framework for assessing conduct risk](#) throughout the product lifecycle. The framework identifies conduct risk drivers and their relationship to the emergence of consumer detriment focusing on risk through each stage of the product lifecycle from the perspective of retail customers, based on an EU-wide analysis which excludes country-specific conduct issues.

The framework provides detailed guidance on each type of conduct risk identified, which includes:

- ▶ business model and management risks which derive from how undertakings manage their business and their relationships with other entities
- ▶ manufacturing risks, including how products are targeted to customers
- ▶ delivery risks, covering how products are brought to market and point of sale interactions
- ▶ product management risks which arise through post-sale management of products and interaction with customers.

EIOPA concluded that the framework, is not intended to set out national supervisory processes, but to support NCAs in identifying risk sufficiently early and help to accelerate supervisory convergence.

In the future, EIOPA expects the framework to support implementation of its Conduct Supervision Strategy and anticipates the development of more systematic ongoing conduct risk monitoring, including the use of periodic risk dashboards.

## 2. BREXIT

### FCA BREXIT BRIEFINGS

The FCA are hosting two [Brexit briefings](#) for regulated firms, taking place on:

- ▶ 11 March: live webcast
- ▶ 14 March: Edinburgh or live webcast

Registrations to attend in London, in person, on 11 March are full but questions can be submitted by those watching on line and in person.

The events are intended to provide a clear understanding of the FCA's approach to managing the impact of Brexit and how it may affect firms.

### BREXIT - WHAT THE FCA EXPECT FIRMS AND OTHER REGULATED PERSONS TO DO NOW

On 1 February, the FCA published [a statement](#) discussing the Treasury's draft legislation granting temporary power to the FCA and the Bank of England/PRA to make transitional provisions in the event that the UK leaves the EU with no deal.

The temporary power is intended to make sure that firms and regulated entities do not need to begin preparing now to adjust to any changes to their UK regulatory obligations linked to Brexit.

Additionally, areas where no transitional provision would apply are set out in the statement's Annex and firms and regulated persons are expected to begin preparing for compliance with these post-exit regulatory obligations.

More information will be published by the FCA before exit day.

### GREEN CARDS AND TRAVEL INSURANCE POST BREXIT

The ABI has issued [guidance](#) on travelling to the EU in the event of no deal. It includes information about green cards, which UK motorists will need if the UK ceases to be part of the European free circulation zone, and the European Health Insurance Card (EHIC) which will no longer apply.

The FCA is urging Motor and travel insurers to take appropriate action, including informing customers of the need for green cards, and being clear about the process necessary to get one. The FCA also notes that customers need to be informed in enough time for them to be able to request and receive one before 29 March (Brexit day).

The loss of the EHIC makes it more important to have appropriate travel insurance in place to cover medical costs whilst travelling in an EU country, in the same way when travelling to a non-EU country.

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### SWITZERLAND AND UK TO SIGN POST-BREXIT INSURANCE DEAL

On 25 January, HM Treasury issued a [press release](#) in respect of the signing of the UK-Swiss Direct Insurance Agreement. The agreement will come into force when the current EU-Swiss Direct Insurance Agreement ceases to apply to the UK.

The new agreement will allow the insurance sectors of the UK and Switzerland to continue trading freely with one another once the UK has left the EU. Consistent with the terms of the original EU-Swiss Direct Insurance Agreement, it will ensure continuity for UK and Swiss insurers to access each other's markets both now and in the future.

### EIOPA RECOMMENDATIONS ON NO-DEAL BREXIT

On 19 February, EIOPA published its [recommendations](#) for the insurance sector in case of a no-deal Brexit. EIOPA's recommendations aim to provide guidance on the supervisory treatment of residual insurance business, the application of relevant legal provisions with regard to cross-border insurance of UK insurance undertakings and the application of the legal framework for insurance intermediation regarding UK distributors after the withdrawal of the UK from the EU.

In an accompanying press release EIOPA highlighted the following recommendations:

- ▶ **Orderly run-off:** Without prejudice to policyholder rights to exercise an option or right in an existing insurance contract to realise their pension benefits, the NCAs should prevent that UK undertakings conclude new insurance contracts or establish, renew, extend, increase or resume insurance cover under the existing insurance contracts in their jurisdiction as long as they are not authorised for such insurance activities under Union law.
- ▶ **Portfolio transfer:** Provided that it was initiated before the withdrawal date, the NCAs should allow the finalisation of portfolio transfer from UK insurance undertakings to EU27 insurance undertakings.
- ▶ **Change in the habitual residence or establishment of the policyholder:** If a policyholder with habitual residence or, in the case of a legal person, place of establishment in the United Kingdom concluded a life insurance contract with a UK insurance undertaking and afterwards the policyholder changed its habitual residence or place of establishment to a EU27 Member State, the NCAs should take into account in the supervisory review that the insurance contract was concluded in the United Kingdom and the UK insurance undertaking did not provide cross-border services for the EU27 for this contract.

Guidance on the application of the legal framework for insurance intermediation relating UK distributors after the withdrawal of the UK is also part of the Recommendations.

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## 3. PRUDENTIAL REGULATION

### CYBER UNDERWRITING RISK: FOLLOW-UP SURVEY RESULTS

On 30 January, the PRA published [a letter](#) to the Chief Executives of PRA-regulated specialist general insurance firms outlining the results of a survey conducted in May 2018 as a follow-up to its supervisory statement - 'Cyber insurance underwriting risk' (SS4/17).

Among the key themes emerging from the survey responses, the PRA found that:

- ▶ nearly all firms agreed that some traditional business lines have significant exposure to non-affirmative cyber risk, particularly the Casualty, Financial, Motor and A&H lines
- ▶ there appear to be differences in firms' perception of risk in their views of the potential exposure within the Property, Marine, Aviation and Transport (MAT), and Miscellaneous lines
- ▶ the majority of firms expressed confidence regarding responses of reinsurance programmes to a large non-affirmative cyber catastrophe, but this confidence level was not always supported by sufficient evidence particularly for excess of loss and other non-proportional reinsurances
- ▶ firms noted limitations in the ability of claims functions to distinguish and escalate non-affirmative cyber claims due to a combination of lack of claims expertise and inflexibility in the claims process
- ▶ for affirmative cyber risks (policies that explicitly include coverage for cyber risk) the survey results, as well as market intelligence, indicate a widening of the coverage provided by cyber insurance products - including covering business interruption and reputational damage
- ▶ cyber limits are significant considering the relatively low premium volume and lack of comprehensive claims experience, creating the potential for high volatility and reputational damage losses in the event of a significant cyber loss
- ▶ firms, while acknowledging the need for formalised risk appetites and strategies for both affirmative and non-affirmative cyber risk, have been chiefly focused on the former.

The PRA concluded that the expectations in SS4/17 are relevant and valid. Firms are advised to develop an action plan on reducing unintended exposure to non-affirmative risk during the first half of 2019. Supervisors may ask to review this plan and subsequent progress.

The PRA aims to arrange feedback meetings with individual respondent firms by the end of Q1 2019 and to conduct sample deep-dive reviews on implementing SS4/17 with other firms in the second half of 2019. The PRA will coordinate with Lloyd's to agree any follow-up actions in relation to Lloyd's managing agents.

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### FINANCIAL SERVICES COMPENSATION SCHEME - MANAGEMENT EXPENSES LEVY LIMIT 2019/20

On 31 January 2019 the FCA and PRA published a joint [Consultation Paper \(CP19/9 and CP2/19\)](#) setting out proposals for the management expenses levy limit (MELL) for the Financial Services Compensation Scheme for 2019/20.

The proposed MELL for 2019/20 is £79.6 million and consists of:

- ▶ FSCS management expenses of £74.6 million
- ▶ an unlevied contingency reserve of £5.0 million.

The MELL for 2019/20 is an increase of 2.4% from the 2018/19 MELL of £77.7 million, which is roughly in line with inflation.

Comments are required by 28 February 2019.

### SOLVENCY II: LONGEVITY RISK TRANSFERS - CP3/19

On 5 February, the PRA published a [Consultation Paper \(CP3/19\)](#) setting out its proposals to update Supervisory Statement (SS) 18/16 'Solvency II: longevity risk transfers'. It proposes to change its expectations for pre-notification of longevity risk transfers and hedge arrangements, and update the key risks the PRA considers arise from longevity risk transfers.

The proposed changes differentiate between the level of pre-notification expected for large or complex transactions, and other transactions. For large or complex transactions (which are defined in the updated SS) the PRA does not propose to change how firms engage with the PRA in advance of their execution. However, for other transactions, the PRA proposes to streamline the notification process by enabling firms to report these via a template. In addition to simplifying and standardising the information firms are required to provide to the PRA, this will also remove the need for the information to be reviewed by the PRA in advance.

Responses are requested by Monday, 6 May 2019.

### SOLVENCY II XBRL FILING MANUAL

On 7 February the Bank of England updated the [Solvency II XBRL filing manual](#) to help firms and software vendors create XBRL instance documents for Solvency II Pillar 3 reporting in light of the EIOPA Solvency II Taxonomy 2.3.0 hotfix update.

A further update to the filing manual is planned for Spring 2019, to include updates to the NST sections following publication of Policy Statement 21/18 'Solvency II: Changes to reporting format'. For reporting against the Bank of England insurance taxonomy, the Bank will adopt the same filing rules articulated for Solvency II reporting (in the Solvency II filing manual), where appropriate.

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**PRA FEES AND LEVIES: CHANGES TO PERIODIC AND TRANSACTION FEES - PS3/19**

On 13 February, the PRA published a [Policy Statement \(PS4/19\)](#) providing feedback to the four responses it received to its Consultation Paper (CP) 28/18 'PRA fees and levies: Changes to periodic and transaction fees'.

The PS sets out the PRA's final policy on:

- ▶ a revised approach to periodic fees for designated investment firms (DIFs)
- ▶ amending the approach to periodic fees for life insurers
- ▶ updating the Part VII regulatory transaction fees for insurers
- ▶ updating the internal model application fees for insurers
- ▶ updating the internal model application and model maintenance fees for DIFs
- ▶ updating the rules relating to the provision of relief from PRA fees in exceptional circumstances (all firms)
- ▶ other minor corrections to PRA fees rules (all firms)
- ▶ updates to Supervisory Statement (SS) 3/16 'Fees: PRA approach and application' (all firms).

The implementation date is 1 March 2019.

**SOLVENCY II: ADJUSTING FOR THE REDUCTION OF LOSS ABSORBENCY - PS4/19**

On 20 February, the PRA published a [Policy Statement \(PS4/19\)](#) setting out feedback on the responses received to its Consultation Paper (CP) 27/18 'Solvency II: Adjusting for the reduction of loss absorbency where own fund instruments are taxed on write down', and the PRA final policy on a revised [Supervisory Statement \(SS3/15\)](#) 'Solvency II: The quality of capital instruments'.

The rationale for the CP was to address the prudential implications of tax changes introduced by HMRC in the Budget in October 2018 pertaining to hybrid instruments. Having considered the responses, the PRA has added a new chapter to SS3/15 setting out further clarification on the impact of the PRA policy on internal models, and the treatment of instruments that would normally convert to equity.

The new policy will come into effect for all instruments issued on or after Thursday, 21 February 2019.

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## 4. CONDUCT REGULATION

### REGULATION ROUND UP

On 21 February, the FCA published its monthly [Regulation round-up](#). The Hot Topics included publicising a new [video](#) in which banking leaders share their insights on adopting the Senior Managers and Certification Regime (SMCR) and the cryptoassets guidance [consultation](#) published in January.

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

- ▶ General Insurance value measures pilot and consultation
- ▶ FCA: Live and Local regional programme events in 2019

### HANDBOOK NOTICE 62 AND ADMINISTRATION (FEES TRANSITIONAL PROVISION) INSTRUMENT 2019

On 25 January, the FCA published [Handbook Notice 62](#), which outlines amendments to the Handbook and other material made by the FCA Board under its legislative and other statutory powers on 13 December 2018, and 2 and 24 January 2019.

On 25 January, the FCA published the Handbook Administration (Fees Transitional Provision) Instrument 2019, which makes amendments to the FCA's FEES manual. The amendments are effective 1 April 2019, immediately after the amendments made by the Financial Services Compensation Scheme (Funding Review) Instrument 2018 (FCA 2018/22) take effect.

### FCA LAUNCHES CONSULTATION ON GENERAL INSURANCE VALUE MEASURES DATA - CP19/8

On 30 January the FCA published a consultation paper titled [General Insurance Value Measures reporting \(CP19/8\)](#). It outlines proposals to require firms to report General Insurance (GI) value measures data for publication by the FCA and to enable the use of the value measures data to monitor firms' insurance products.

The proposals aim to address poor product quality and value, as well as to reduce the risk of buying and selling unsuitable GI products. The CP includes an outline of the wider context for the proposals, as well as guidance on the product scope and reporting responsibility, elements of data reporting, and value measures and definitions for the metrics to be used. It also outlines how the FCA will publish data and introduce further product governance requirements for value measures. Specific questions for feedback are included in Annex 1 to the CP.

The FCA will publish a Policy Statement in 2019, following a review of the feedback received. Comments should be submitted on or before 30 April 2019.

### FCA SKILLED PERSON REPORTS Q3 2018/19

On 1 February, the FCA published details of [skilled person reports](#) commissioned in Q3 2018/2019. The report shows that nine reports were commissioned across five of the nine different FCA Sectors primarily in the retail banking and investment management sectors. Conduct of Business and Financial Crime were the main areas for the reviews.

### WHOLESALE INSURANCE BROKER MARKET STUDY - MS17/2.2

On 20 February, the FCA published the long awaited [final report](#) of its Wholesale Insurance Brokers market study, that was launched in November 2017, and aimed at assessing the role of insurance brokers, how well competition is working and how the market is developing. In general, the FCA has not found evidence of significant levels of harm that merit the introduction of any intrusive remedies. Thus, the report is final and includes multiple pieces of analysis including 73 brokers' and 49 underwriters' responses to the FCA questionnaire.

However, the report identifies the following areas of concern which may be addressed by the FCA in the future, including:

- ▶ firms' management of conflicts of interest
- ▶ the information firms disclose to clients
- ▶ certain specific contractual agreements between brokers and insurers which may limit competition.

The FCA will continue to monitor the market and assess developments arising from Brexit, possible further consolidation in the sector, and any changes to business models.



## 5. ENFORCEMENT ACTION

### FCA REGULATORY FINES ROUND-UP

FCA regulatory fines for 2019 now total [£79.3m](#). The following fines and related enforcement actions have been announced in the past month:



#### Paul Stephany

The FCA has fined Paul Stephany, a former fund manager at Newton Investment Management Limited, £32,200 for his conduct in relation to an Initial Public Offering (IPO) and a placing.

On two separate occasions, Mr Stephany submitted orders as part of a book build for shares that were to be quoted on public exchanges. Prior to the order books for the new shares closing, Mr Stephany contacted other fund managers at competitor firms and attempted to influence them to cap their orders at the same price limit as his own orders. The FCA found that Mr Stephany risked undermining the integrity of the market and the book build by trying to use their collective power. As a consequence, Mr Stephany failed to observe proper standards of market conduct. He was also found to have acted without due skill, care and diligence by failing to give proper consideration to the risks of engaging in these communications.

### FCA ISSUES ITS FIRST DECISION UNDER COMPETITION LAW

On 21 February, the FCA issued a decision which finds that 3 asset management firms breached competition law. This is the FCA's first formal decision under its competition enforcement powers.

The firms involved are:

- ▶ Hargreave Hale Ltd
- ▶ Newton Investment Management Limited
- ▶ River and Mercantile Asset Management LLP (RAMAM)

The FCA has fined Hargreave Hale £306,300 and RAMAM £108,600. The FCA has not imposed a fine on Newton because it was given immunity under the competition leniency programme. The infringements consisted of the sharing of strategic information, on a bilateral basis, between competing asset management firms during one initial public offering and one placing, shortly before the share prices were set. The firms disclosed and / or accepted otherwise confidential bidding intentions, in the form of the price they were willing to pay and sometimes the volume they wished to acquire. This allowed one firm to know another's plans during the IPO or placing process when they should have been competing for shares.

**INFORMATION COMMISSIONER'S OFFICE (ICO) FINES ROUND-UP**

Eldon Insurance Services Limited (trading as GoSkippy Insurance) has been fined for instigating the sending of unsolicited direct marketing emails without the required consent.

An ICO investigation found that Leave.EU and Eldon Insurance were closely linked entities. Systems for segregating the personal data of insurance customers' from that of political subscribers' were ineffective. This resulted in Leave.EU using Eldon Insurance customers' details unlawfully to send almost 300,000 political marketing messages. Leave.EU has been fined £15,000 for this breach.

Eldon Insurance carried out two unlawful direct marketing campaigns. The campaigns involved the sending of over one million emails to Leave.EU subscribers without sufficient consent. Leave.EU has been fined a total of £45,000 and Eldon Insurance has been fined £60,000 for the breach.

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FOR MORE INFORMATION:

**ALEX BARNES**

+44 (0)20 7651 1213  
alex.barnes@bdo.co.uk

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