

# The Uplink: Financial services regulatory news, 28 October 2022

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## Wolfsberg Group publishes update to Financial Crime Principles for Correspondent Banking: AML

On 28 October 2022, the Wolfsberg Group published an updated version of its financial crime principles.

The new principles update the group's 2014 AML principles for correspondent banking and 2014 correspondent banking principles FAQs, both of which are now retired. It provides global guidance on the establishment and maintenance of cross-border correspondent banking relationships. The group believes that compliance with the principles promotes effective risk management and enables firms to exercise sound business judgement with respect to their correspondent banking customers.

The updated version of the principles:

- Provides guidance and best practices for banks;
- Draws a distinction between correspondent relationships and correspondent banking activity; and
- Addresses entities other than banks who have correspondent relationships.

Firms are advised to assess the applicability of the principles to domestic correspondent relationships, which may present a lower level of risk.

## FATF begins consultation on Recommendation 25 and on Recommendation 24: AML

On 26 October 2022, the Financial Action Task Force (FATF) published a [consultation paper on reviewing recommendation 25](#) on the transparency and beneficial ownership of legal arrangements (R.25) and its interpretative note (INR.25). The objective of the review is to improve R.25 and INR.25 to “better meet its stated objective of preventing the misuse of legal arrangements for money laundering or

terrorist financing". The FATF is also considering amending the "beneficial ownership" definition in the glossary to its recommendations to provide more clarity on legal arrangements.

The FATF has published a separate consultation paper on updating its guidance on beneficial ownership in the light of the amendments to recommendation 24 on the transparency and beneficial ownership of legal persons (R.24), which were adopted in March 2022, aiming to help support implementation of the new requirements.

The FATF calls for input on both consultations from financial institutions, among other stakeholders, by 6 December 2022. In particular, it seeks views on whether its proposals are adequate and clear, and whether implementation challenges may arise. The submissions received on both of the consultations will be considered by the FATF at meetings in February 2023.

## **Notice of cancellation of listing - Umuthi Healthcare Solutions plc: Investigations and enforcement**

On 28 October 2022, the FCA published a first supervisory notice issued to Umuthi Healthcare Solutions plc. The listing of its standard shares is cancelled with immediate effect.

The FCA finds that there are "special circumstances which precluded normal regular dealings" in the shares:

- The supply of the shares is fundamentally uncertain. The company was unable to provide an adequate account of when and how shares were issued and allocated to shareholders at the time of admission, and is in an ongoing public dispute with individuals as to the existence of certain shares;
- The company's financial position is fundamentally uncertain. It has had to correct published financial information on two occasions. It failed to post yearly and half-yearly results in compliance with its continuing obligations for listing under the DTRs;
- The FCA sees no realistic prospect of the company resolving those issues in the foreseeable future, having been provided with a reasonable time period to address them. The FCA had already taken action to suspend the listing in June 2021. The companies responses to the FCA's queries since that time had been "late, incomplete and/or inadequate";
- The FCA is not confident that the company will conform with its continuing obligations for listing, including those under LR14.3 (continuing obligations) and the DTRs, or that any future enquiries made would be responded to in a timely or candid manner, in accordance with listing obligations, including being open and co-operative with the FCA;
- The FCA concludes that the detriment to existing shareholders as a result of discontinuing the listing is outweighed by the reasons in favour of discontinuance, in particular the need to maintain market confidence and to ensure fair and orderly markets.
- The company has referred the decision to the Upper Tribunal.

## **FCA begins criminal proceedings against five individuals involved with Worthington Group plc: Enforcement**

The FCA has launched a criminal investigation into market abuse and market manipulation in April 2016, following the suspension of Worthington Group plc's shares from the Official List and Main Market of the London Stock Exchange on 10 October 2014.

The CEO, director, and media advisor have each been charged with two counts of fraudulent trading. The CEO is also alleged to have been concerned in the management of WRN despite him being disqualified from acting as a company director. The alleged offending took place between 1 June 2012 and 21 November 2016.

It is alleged that the individuals:

- knowingly concealed WRN's insolvent financial position from the market, its shareholders and its pension fund to make gains for themselves or others, or to cause loss to others, including new investors in WRN; and
- co-ordinated what is commonly referred to as a 'pump and dump scheme', making a series of misleading announcements to the market about deals with energy, media and mining companies.

The FCA alleges that the accused wanted to artificially inflate the share price, so they could make significant profits from selling off parts of their company shareholdings, and cause a loss to those who purchased WRN shares due to the misleading statements.

A fourth individual has been charged with money laundering (contrary to section 327 of the Proceeds of Crime Act 2002) in relation to the proceeds of the sale of shares in Worthington Group plc.

The parties make their first appearance at Southwark Crown Court is on 17 November 2022.

## **PSR final terms of reference for market reviews into scheme and processing fees and cross-border interchange fees: Payment services**

On 21 June 2022, the PSR published draft terms of reference for proposed market reviews into card scheme and processing fees (MR22/1.1) and UK-EEA consumer cross-border interchange fees (MR22/2.1).

The MR22/1.1 document sets out the PSR's final terms of reference (ToR) for a market review of the scheme and processing fees associated with Mastercard and Visa, the two largest card payment system operators in the UK. It follows its consultation on the draft ToR published on 21 June 2022. The aim of the market review is to understand if the supply of scheme and processing services is working well having regard to our competition, innovation and protection of service-users objectives.

The MR22/2.1 document sets out the PSR's final terms of reference (ToR) for a market review of consumer cross-border interchange fees between the UK and the European Economic Area (EEA). It follows its consultation on the draft ToR published on 21 June 2022. The aim of the market review is to understand the rationale behind the increases in interchange fee (IF) rates for Mastercard and Visa's consumer debit and credit card-not present (CNP) transactions between the UK and the EEA, since the UK's withdrawal from the European Union (EU). The PSR also wants to understand the impact of these increases.

## **European Commission adopts regulation on instant credit transfers in euro: Payment services**

On 26 October 2022, the European Commission adopted a proposed Regulation amending the Single Euro Payments Area Regulation (Regulation 260/2012) (SEPA Migration Regulation) and the Cross-Border Payments Regulation ((EU) 2021/1230) in relation to instant credit payments in euro.

The Commission proposes a set of measures aimed at increasing the availability and use of instant payments in euro:

- All payment services providers (with very targeted exceptions) that offer credit transfers in euro must offer instant payments in euro to all their customers.
- The charges for instant payments in euro must be equal to or lower than the charges for non-instant euro credit transfers.
- All providers of instant payments in euro must offer the service checking the match between the account number (so called 'IBAN') and the name of the payment beneficiary and, before the payer authorises the transaction, warning the payer about any detected discrepancy as it could suggest fraud.
- All providers of instant payments in euro must follow a harmonised procedure for sanctions screening, based on daily checks of their own clients against EU sanctions lists while on normal transfers checks are carried out on a transaction-by-transaction basis.

## **Regulatory strategy for international markets: Regulation as means towards growth and competitiveness**

On 27 October 2022, Sam Woods, CEO of the Prudential Regulation Authority (PRA), gave a speech entitled: 'Growth and competitiveness'. He said his "argument can be boiled down to three points:

... financial stability is the single most important ingredient of competitiveness in financial services. Delivering that stability must remain the core purpose of prudential regulation here in the UK.

... there is a good case for Parliament to require the regulators to place more weight on growth and competitiveness as part of post-Brexit reforms in which our role as a rulemaker is expanded ...

... there are good ways of making that change and bad ways of making it. [The PRA] fully support the Financial Services and Markets Bill as introduced to Parliament, because it strikes a sensible balance between the competing considerations at play."

Further points in the speech include:

“Too much debate ...is premised on a simplistic trade-off between regulation and growth ... [deregulating] either by releasing capital that would otherwise be tied up in prudential requirements, or by cutting through red tape to reduce compliance costs ...

There's an extremely well-documented link between the independence of regulators and financial stability, but independent regulation also enhances ... competitiveness ... by ensuring that regulation is consistent and predictable: by removing regulation from day-to-day politics ...”

## Data and regulation: Regulatory data collection

The Bank of England (the BoE) and the Financial Conduct Authority (FCA) are working together with industry to [transform data collection](#) from the UK financial sector - through a 'joint transformation programme'.

“During phase one of the programme, the [BoE and FCA joint] Data Standards Committee commissioned a review of data standards. Ernst and Young (EY) will perform the review, and will submit a report to the Data Standards Committee by the end of 2022. The review will look at key questions around the development and adoption of data standards in the financial sector. Answering these questions will inform the programme's future strategy in relation to common data standards.

The review will mainly involve two sets of activities. Firstly, the review team will conduct a series of interviews with various selected stakeholders in the financial sector to gather their views on relevant data standards questions.

In addition to this, industry are invited to submit their views on a dedicated online portal, which will host written exchanges of views on some of the specific data standards challenges that the programme seeks to address.

The review team will then collate findings from these activities for their report, which will be shared publicly in due course.”

## Big tech and retail financial services: Competition in retail FS markets

The [FCA has published a discussion paper](#) “to stimulate a discussion on the potential competition impacts identified using existing research to inform our approach to Big Tech firms [in relation to payments, deposit taking, consumer credit and insurance]. We want to hear views about areas where Big Tech entry is likely to create the biggest competition benefits for consumers and those areas where there is the greatest risk of significant harm if competition develops in a particular way. We are seeking to understand what our approach to Big Tech should be in the future as part of our commitment to shape digital markets.”

“Big Tech firms' presence internationally and in UK financial services markets has been increasing with the potential to grow and change market outcomes quickly. Big Tech firms – usually including Facebook (Meta), Google (Alphabet), Apple and Amazon - can bring benefits to consumers of retail financial services by effectively and fairly competing with incumbent providers, and other new entrants including fintech firms. They can provide innovative, efficient products and services ...

However, based on evidence from Big Tech firms' core markets and their expanding ecosystems, competition risks could arise in the future from them rapidly gaining market share, markets 'tipping' in their favour, and potential exploitation of market power that would be harmful to competition and consumer outcomes.”

## European Banking Authority supervisory examination programme 2023: Prudential supervision

The [EBA](#) launches annually the [European Supervisory Examination Programme \(ESEP\) for prudential supervisors](#). The executive summary for the 2023 states:

“The economic rebound that followed the easing of the sanitary restrictions by various countries have been followed by a new episode of economic uncertainty caused by the Russian invasion of Ukraine and the respective geopolitical situation ...

... the 2023 ESEP is primarily driven by these considerations. The long-term effects of the pandemic on the banking sector amplified by implications of the ... Ukraine [invasion] together with other emerging elements of risks have considerable impact on institutions' asset quality and challenge their business plans and strategies ...

Based on these considerations, the four key topics identified for 2023 are 1) Macroeconomic and geopolitical risks, 2) Operational and financial resilience, 3) Transition risks and 4) Money laundering and terrorist financing (ML/TF) risks in SREP and internal controls/governance ...

The 2023 ESEP ensures a balanced approach between newly emerging risks as well as “ongoing” topics that had already been included in preceding ESEP(s), but which require continued supervisory attention (e.g. operational resilience, digital transformation, ML/TF risks).”

## **Liability-driven investment (LDI) funds: Economic policy, regulatory framework, funds and pensions**

On 20 October the FCA wrote to the House of Lords Industry and Regulators, and Economic Affairs Committees.

The FCA's letter stated: “At the start of this year, 30-year gilts had a yield of around 1.2%. In less than a week after 23 September, the yield rose by 160 basis points. ...”

“LDI strategies have been important in mitigating the impact of low, long-term interest rates over the last 20 years ... [improving] funding levels in DB [(defined benefit)] pension schemes ... LDI strategies have enabled DB schemes to manage this risk, and ... Allow[ed] DB pension schemes to borrow to increase their long-term gilt holdings, assets which most closely match the value of pension liabilities. DB pension schemes in the UK have typically been underfunded, so leverage allows DB schemes to mitigate exposure to changing interest rates while investing in productive assets that might seek to close any funding gap ...

The scale of [the September] repricing and the speed at which it happened caused LDI funds ... to sell gilts into an increasingly illiquid market, further depressing the price, and/or asking DB pension schemes for more capital in order to meet increased margin calls ...

It was in response to this historic pressure that the Bank of England intervened on the recommendation of the Financial Policy Committee. During this intervention, the FCA worked closely with fund managers to ensure that they took advantage of the time provided by the Bank of England's intervention to de-leverage and to recapitalise LDI funds, which they have done.”

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