



February 15, 2019

## Quote of the Week

**"FCA look at the controls firms have in place across their investment banking and advisory platforms... We believe that access controls, surveillance capabilities and general mindset in this part of the business is not yet as evolved as it should be."**



**- Julia Hoggett, Market Oversight, UK FCA**



## Articles in This Issue

<b>US Banking:</b> Fed large bank stress tests; SIFMA US global basel standard; FDIC small leverage deposit fee; Senate crapo agenda new term; Senate housing finance reform; Fed technology farming impact	<a href="#">Page 2</a>
<b>US Consumer:</b> CFPB rescind payday loan rule; Fed Brainard CRA feedback; Fed Bowman community banks; Agency private education loan; CFPB mortgage disclosure FAQ; CFPB servicemember protections	<a href="#">Page 3</a>
<b>US Investment:</b> SEC chair mandatory arbitration; SEC Clayton disclosure proxy; MSRB best execution guidance; MSRB retrospective rule review; MSRB board meeting; FINRA TRACE no fee disseminate	<a href="#">Page 4</a>
<b>Canada:</b> OSFI liquidity adequacy guide; OSFI technology operation risk; IIROC unprotected marketplace; MFDA compliance topics for 2019; OSFI mortgage stress test speech; ONT pension plan funding	<a href="#">Page 5</a>
<b>International:</b> FSB role, Fed Quarles speech; Basel analyzes G-SIB framework; FSB global shadow bank report; AST Royal Commission report COMBOE; IOSCO commodity storage; IOSCO emerging markets	<a href="#">Page 6</a>
<b>EU:</b> ESMA 2019 risk assessments; ESMA convergence priorities; EIOPA work program for 2019; ESMA role for non-EU branches; ESMA fund liquidity stress test; ESMA EU prospectus thresholds	<a href="#">Page 7</a>
<b>UK:</b> Government Brexit plan B approach; FCA Brexit transitional power; FCA no-deal Brexit repository; FCA, BoE, ESMA Brexit cooperation; PRA longevity risk transfers; FCA fund manager guidance	<a href="#">Page 8</a>
<b>AML &amp; Enforcement:</b> FinCEN Blanco AML speech; FINTRAC AML compliance tools; UK Treasury post-Brexit sanctions; CAN exchange crypto losses	<a href="#">Page 9</a>

## Regulatory Watch List

-  **Relieving** ESMA calls for rapid response power to issue no-action relief letters for problems arising after Brexit. Large banks say relocations into EU will not be reversed even if UK decides to delay Brexit scheduled for March.
-  **Built on Sand** CFPB move ahead with relief for industry testing of new technology despite opposition by States. Fintechs pushed to invest in AML compliance, as FSB and EU take on more crypto oversight from central banks.

## US Banking

### Fed Large Bank Stress Tests

On Feb. 5, Fed issued large bank stress test policy, scenarios, to raise transparency on stress testing.

- On Feb. 5, 2019, OCC also issued stress test scenarios for the 2019 annual stress tests.
- Portfolios of hypothetical loans with loss rates estimated by Fed models, model descriptions.
- Finalized policy statement and scenarios, from prior year baseline, adverse, severely adverse.
- 2019 severely adverse, severe global recession, unemployment to 10%, elevated stressed CRE.
- Narrative description on changes, large banks to include counterparty default component.
- Relief to less-complex firms from stress testing requirements, CCAR, move to extended cycle.
- Stress tests should be submitted by Apr. 5, 2019, and the Fed results by Jun. 30, 2019.
- On Feb. 6, 2019, Fed vice chairman Quarles spoke to the council for economic education.
- Discussed public role in stress testing's next chapter, participation in Fed work and efforts.

### SIFMA US Global Basel Standard

On Feb. 8, SIFMA criticized aspects of final Basel capital update, although appreciated the changes.

- Concern on equity risk weights not lowered, clearing capitalization not being addressed.
- Could have a negative impact on US economy, will need a better calibration of requirement.
- Urged US regulators not to "gold-plate" Basel rules when implement, address existing rules.
- Level the global playing field on rules broadly.
- Quantitative impact analysis is current plan for the re-calibration of a successful regulation.
- Encouraged by the Fed on its rule review, and aims to provide more transparency to public.
- Address discrepancies across border, consider unintended consequences, everyday impact.

### FDIC Small Leverage Deposit Fee

On Feb. 5, FDIC proposed rules to revise deposit insurance assessment system, for small leverage.

- Apply to new community bank leverage ratio (CBLR) framework, small banks option to use.
- Applies to all FDIC-banks under \$10bn in total assets, except for advanced approaches banks.
- Banks opting to use CBLR will have simpler capital adequacy measure, simpler reporting.
- Not need report data on Consolidated Call Report, like tier 1 capital and leverage ratio.
- FDIC would calculate assessment base, rate of CBLR bank using capital items in framework.
- Option use tier 1 capital, leverage ratio, both.
- Tool to estimate deposit assessment amounts.
- Comment period on proposal is open for 60 days after publication in the federal register.

### Senate Crapo Agenda New Term

On Jan. 29, Senate banking committee chairman Crapo outlined detailed agenda for the new term.

- Focus will include capital markets, privacy, fintech, credit access, and housing finance.
- Data collection and privacy issues span across all financial entities/need to protect consumers.
- Fintech, innovative products and services are necessary, need better regulation in this area.
- Housing finance reform is last component of unaddressed business from the financial crisis.
- Fannie and Freddie remain in conservatorship, need bi-partisan reform, fix a flawed system.
- National security is key, CAATSA oversight, further pressure on Russia, N. Korea, and Iran.
- Review of FIRRMA and the export control act, money laundering, beneficial ownership rules.
- On Feb. 6, 2019, Sen. Brown stated Democrat priorities, like the housing affordability crisis.
- Protect personal data, control what is collected, and strengthen rights when data is inaccurate.

### Senate Housing Finance Reform

On Feb. 1, Senate banking committee chairman Crapo outlined housing finance reform legislation.

- Treasury Secretary Mnuchin welcomed reform as productive first step toward system stability.
- Senate Democrat Brown said working people interests put first, no Wall Street influence.
- Need long term sustainable system, preserves 30-year mortgage, affordable housing access.
- Fannie and Freddie are still largest mortgage issuers, with 2/3 backed by US government.
- If another downturn will be a large systemic risk, need to take them out of conservatorship.
- Reform goals include reducing systemic, too-big-to-fail risk, current duopoly of guarantors.
- New layers of protection between mortgage credit risk and taxpayers, level playing field.
- Need for broad accessibility to mortgage credit, especially within the underserved markets.

### Fed Technology Farming Impact

On Feb. 4, Fed Chicago issued report on new technology and impact on farming and rural areas.

- Innovations in agricultural technology have driven rapid advancement in crop field work.
- Digital technology in agriculture solves labor shortage, increase global productivity, provide entrepreneurial opportunity, and promote trade.
- Allows farmers to realize economies of scale, consolidation, more specialization in farming.
- Private sector, agriculture provides opportunity for investments, based on long-term trends.
- Positive impact from broadband expansion on rural economic development, farm profitability.

## US Consumer

### CFPB Rescind Payday Loan Rule

On Feb. 6, CFPB proposed to rescind provisions on underwriting of Nov. 2017 payday loan rules.

- Rescission of rule governing payday, vehicle title, and certain high-cost installment loans.
- Parts rescinded provide that is unfair / abusive for lender to make covered short-term loan.
- Unless reasonably determined that consumer has ability to repay loan according to terms.
- Mandatory underwriting is to be rescinded when making ability-to-repay determination.
- Based on finding, increase consumer access to credit, insufficient evidence and legal support.
- Related to proposal to delay 2019 compliance date of 2017 rule, delayed until Nov. 19, 2020.
- Comments on rescission proposal, within 90 days of publication in the federal register.
- Dem. ranking Senator Brown criticized, House FSC chair Waters, giveaway to loan predators.
- On Feb. 11, 2019, OCC Otting gave CFPB support, new options, competition to market.

### Fed's Brainard on CRA Feedback

On Feb. 1, Fed's Gov. Brainard spoke on feedback on reform of community reinvestment act (CRA).

- CRA as tool for low, moderate income family, encouraged banks to supply their credit needs.
- Prior CRA sessions had focused on housing, small business lending and consumer credit.
- Feedback is that support for CRA is broad.
- Focus on local retail financial services, small business and community development lending.
- Asked for 3 banking agencies to consistently apply CRA policy across the agencies.
- Aim is to modernize definition of assessment area, balance place with growing digital use.
- Continue goal to get banks seek opportunity in underserved areas, supported proactive focus.
- Enhance predictability of evaluations, ratings.

### Fed Bowman Community Banks

On Feb. 11, Fed Governor Bowman spoke at banker conference, regarding community banking.

- First governor to fill the role designated for someone with community bank experience.
- Critical engine of the economy, key role in access to credit in communities of all sizes.
- All bank sizes are the focus, as three of four community banks hold assets under \$500mn.
- Health improved, no bank failures in 2018.
- Cited emerging risks on agricultural lending, and Fed will organize meeting later in 2019.
- Proposal to help leverage, Volcker application.
- Adjusted CRA asset thresholds and provided longer examination cycles for smaller banks.

### Agency Private Education Loan

On Feb. 4, FDIC, Fed issued advisory on use of voluntary private education loan rehabilitation.

- Make institutions aware of program on the rehabilitation of private education loans.
- Consumer request removal of reported default on private education loan from credit report.
- Purely voluntary, cannot be demanded by the consumer, specifically designate to qualify.
- In exchange, can qualify for safe harbor from potential claims under the FCRA on default.
- Fed supervised banks need to provide written approval for program terms and conditions.
- Take into account safety, soundness factors.
- Will consider consumer's renewed ability and willingness to repay the loan in the analysis.
- If want to establish, must contact local FDIC office, will respond within 120 days of receipt.

### CFPB Mortgage Disclosure FAQ

On Feb. 1, CFPB issued FAQs on the TILA-RESPA integrated mortgage disclosure rules.

- Follows the CFPB Nov. 2018 revised TILA-RESPA integrated disclosure, the TRID Rule.
- Response to changes to disclosed terms, after creditor provides the initial closing disclosure.
- If creditor, ensure consumer receive amended closing disclosure before, if APR decreases.
- Requirement for disclosure, three days before consummation, will depend on the change.
- Discusses if creditor must provide a corrected closing disclosure, under TRID Rule.
- Does use of model forms provide safe harbor, if not reflect 2017 TRID Rule change.

### CFPB Servicemember Protections

On Feb. 7, CFPB issued reminder on the new protections for servicemembers and veterans.

- Protections related to home loan refinancing, credit reporting, and freezes alert, to avoid scams.
- Warning signs, like "Extremely low interest rates!", "No mortgage payment for months!"
- Lenders will now be held to more stringent requirements, so loan to be guaranteed by VA.
- Show savings from refinance to exceed fees, costs associated with refinance in 36 months.
- Required for creditors to get court order before foreclosing on active-duty servicemembers.
- More credit reporting protections on medical debts that are due to private medical providers.
- Agencies prohibited from reporting veterans' medical debts incurred within year of care.
- After provisions go into effect in May 2019, will be able to dispute reports more easily.
- Free electronic credit monitoring available.

## US Investment Management

### SEC Chair Mandatory Arbitration

On Feb. 11, SEC chair Clayton spoke regarding mandatory arbitration within bylaw provisions.

- Discussed shareholder proposal to include in bylaws a provision for mandatory arbitration.
- SEC division of corporation finance may have to review such proposal in an IPO registration.
- Inappropriate for resolution by SEC staff and should address deliberately by Commission.
- Company received shareholder proposal to use mandatory arbitration, requested SEC relief.
- If may exclude proposal in its proxy statement.
- Rule 14a-8(i) (2) permits exclusion if violate US/foreign law, SEC allow as violate NJ law.
- Staff not express if would violate federal law.
- SEC Rule 14a-8 no-action response is only informal view if take enforcement action.
- Court is a better venue for the determination if shareholder proposal excluded from document.

### SEC Clayton IAC Disclosure Proxy

On Feb. 6, SEC chair Clayton, and commissioner Roisman spoke on disclosure requirements, proxy.

- SEC advisory committee held an investor call to address SEC disclosure and proxy process.
- Clayton repeated the principles for disclosure, being materiality, comparability, and flexibility.
- Also efficiency and responsibility, need for meaningful disclosure, enforceable if violate.
- Current human capital disclosure requirements, in particular, are dated, for many companies.
- Investors are better served by understanding how each company considers human capital.
- Proxy solicitation and voting process (or proxy plumbing) agreements need significant reform.
- Shareholder voting is key, yet system is cast as inefficient, opaque, and unreliable in accuracy.
- Need address proxy adviser recommendations.

### MSRB Best Execution Guidance

On Feb. 7, MSRB issued clarifying guidance on dealers posting bids on multiple ATS platforms.

- Amend Rule G-18 on best execution, when post bids simultaneously on multiple platform.
- Not banned, may be ok sometime, seek clarity.
- Market firms said such practice has harmful effects on municipal dealers and for investors.
- Dealer is not required to put bid-wanted with multiple bond ATSs or with broker's brokers.
- Or subscribe to every ATS, even if in some cases it may be warranted, made this explicit.
- Single ATS, broker's broker would be able to provide exposure to multiple dealers, markets.
- Facts and circumstances for checking only one ATS, broker's broker may satisfy obligations.
- Encourage dealer assess each case separately.

### MSRB Retrospective Rule Review

On Feb. 5, MSRB issued notice identifying the priorities for rules within retrospective review.

- Goal to ensure rules are effectively protecting investors, not burdensome, clear, harmonized.
- Rule priorities were identified through the application of set of board-developed criteria.
- If rules, guidance are clear, understandable, asked common questions, the need to maintain.
- Consistent with market practices, with other rules, and if a requirement of other regulators.
- Age of rule, time since the last holistic review, and the level of relevant enforcement activity.
- Rule G-23, requirements of dealer acting as a financial adviser, issuance of muni securities.
- Ensure rule remained appropriate under new muni regulatory regime, if clearly delineated.
- Rule G-34, when advise on competitive muni securities transactions, must apply for CUSIP.
- Asked questions on need for the requirement, burdens, seek comment on data, market harms.
- Rule G-29, dealer keep copy of rules in offices where muni securities activities are conducted.

### MSRB Board Meeting Jan. 2019

On Feb. 4, MSRB board meeting Jan. 29-31, on market oversight activities and strategic initiatives.

- Board had agreed on formal approach and the highest priority rules for retrospective review.
- Evaluated need to amend Rule G-17 guidance, regarding practices for underwriter fair dealing.
- Agreed to improve Form G-32, through which municipal underwriters can supply information.
- Working to improve the expected availability of annual financial information on EMMA site.
- Discuss addition of third-party evaluated pricing services to EMMA, to estimate value.

### FINRA TRACE No Fee Disseminate

On Jan. 29, FINRA proposed rule change for the dissemination of TRACE information at no fee.

- Real-time, historic TRACE data provided for fee, aggregated transaction information, no fee.
- Amend Rule 6750; publish certain aggregated trade information and statistics, at no charge.
- TRACE eligible securities that are not subject to dissemination, but excluding US Treasuries.
- Include aggregated CMBS, CDO transactions.
- Publish data on aggregate daily volume, daily number of trades, average price information.
- May group within customer buy, customer sell, dealer-to-dealer, year of issuance, or by rating.
- Will not identify individual market participants or trades, will not identify individual securities.
- On Feb. 07, 2019 FINRA filing published by SEC, comment 21 days from federal register.



## Canada

### OSFI Liquidity Adequacy Guide

On Feb. 8, OSFI issued revisions to four chapters of the guide on liquidity adequacy rules.

- OSFI expects bank institutions to have liquidity risk management framework.
- That allows them to maintain sufficient liquidity, to withstand a stressed environment.
- To support objective, proposed revisions to ensure liquidity metrics remain sound.
- LAR Guideline defines and assigns run-off rates, to various categories of funding.
- According to degree to which the source of funding would be at risk under stress.
- Since LCR first issued, funding models, deposit product-offerings, have evolved.
- Due to developments, OSFI reassessed the assumptions built in liquidity metrics.
- Particularly those relating to stability of funding sources, ensuring bank resiliency.
- Covers net cumulative cash flow; liquidity monitoring tools; including for intraday.

### OSFI Technology Operation Risk

On Feb. 7, OSFI Assistant Superintendent Ben Gully spoke on non-financial technology risk.

- Assistant superintendent Ben Gully spoke at the C.D. Howe Institute, in Toronto.
- Interested in how financial institutions adapt, respond to technological changes.
- How institutions manage and mitigate operational risks posed by new advances.
- Technology provides access to new business, efficiency gains, important for innovation.
- However, the focus on gain may result in risks going unidentified.
- Makes business productive, but human judgement still defines risk effectiveness.
- Open dialogue is key with risk practitioners, technology, data science experts.

### IIROC Unprotected Marketplace

On Feb. 6, IIROC issued its annual list of protected and unprotected marketplaces.

- CSA committed to annually publish list of protected, unprotected marketplaces.
- Marketplaces are unprotected for reasons that include not providing automated trading.
- Also for not meeting the market share threshold, or for not displaying orders.
- Lists in effect Apr. 1, 2019, to Mar. 31, 2020, publicly available on IIROC website.
- Protected includes NEO-L, CSE, Nasdaq CXC, Nasdaq CX2, Omega, TSX, and TSX Venture.
- Unprotected NEO-N, Alpha, Lynx, ICX, LiquidNet, MATCHNow, NasdaqCXD, NEO-D.

### MFDA 2019 Compliance Topics

On Feb. 6, MFDA issued overview of initiatives, priorities from 2018-2022 strategic plan.

- Member outreach for feedback covers CCOs of 88 members, interest in focus groups.
- Guidance on senior investors, practice on KYC, suitability and supervision.
- Encourage collaboration for the successful implementation of new technology.
- Improve and enhance collaboration, communication with investors.
- Review regulatory requirements to ensure rules sufficiently flexible, facilitate technology.
- Proposed continuing education rule, continue development of tracking system.
- Approved person sweep, by information from client research project, continue efforts.
- Supervision, suitability, complaint handling, seniors, other vulnerable groups.

### OSFI Mortgage Stress Test Speech

On Feb. 5, OSFI assistant superintendent Rogers spoke on B20, specifically the stress test.

- Few policies have received the kind of attention that mortgage stress test received.
- The stress test requires a borrower be qualified for their mortgage with buffer of affordability.
- Those conditions could be a rise in interest rates that increase their payment obligation.
- Or they could be a loss or reduction of income or an increase in non-mortgage expenses.
- The stress test is a safety buffer that ensures a borrower doesn't stretch capacity.
- Guideline B-20 has been criticized due to interest rate rises and reduced competition.
- Addresses these criticisms and will remain focused on mandate.

### ONT Pension Plan Funding

On Feb. 5, ONT issued guidance on pension plan funding rules and related issues.

- Review treatment of contributions made by employer in excess of minimum contribution.
- Excess contribution is amount paid above minimum contribution, in last valuation report.
- Excess contributions returned to employer for overpayment no longer available.
- Remaining excess contributions available, include if forming part of fund assets.
- Whether a plan is closed, impacts calculation of provision for adverse deviations.
- Plan administrator must file report when plan amendment changes contribution etc.
- Policy A400-100, which did not require section 3 filing, no longer available.

## International

### FSB Role, Fed Quarles Speech

On Feb. 10, Fed Quarles made an inaugural speech on ongoing systemic role of FSB.

- Post-crisis reform agenda largely completed, Basel III is finalized, banks have capital.
- OTC derivatives market reform, risk of too-big-to-fail is now understood.
- Outlined principles for how to evolve: need engagement for legitimacy and outreach.
- Rigor to ensure vulnerability assessment based on cutting-edge thinking and method.
- Analysis continual, critical analysis of effect of regulation, past, present and future.
- On Feb. 12, FSB issued its first annual work program for 2019, set out FSB planned work and timetable of main publications for 2019, on implementation of the post-crisis reforms.

### Basel Analyzes G-SIB Framework

On Feb. 5, Basel examined experience with global systemically important bank (G-SIB) framework.

- Paper presents a first analysis of the experience to date with the G-SIB framework.
- Investigated if G-SIBs and non-G-SIBs behaved differently since its implementation.
- If observed differences in behavior are in accordance with the framework's aims.
- G-SIBs and non-G-SIBs behave differently, outcomes influenced by a few banks.
- Nevertheless, most G-SIBs reduced their G-SIB scores during the period assessed.
- Changing their balance sheets in ways consistent with the G-SIB framework aims.
- Non-G-SIBs have increased their relative G-SIB scores during the relevant period.

### FSB Global Shadow Bank Report

On Feb. 4, FSB issued report on non-bank intermediary role, global trends and risks.

- Data to end-2017 in 29 jurisdictions, together represent over 80% of global GDP.
- Focus stays on economic functions giving rise to bank-like financial stability risk.
- Sector grew by 8.5% to \$51.6trn in 2017, slightly slower pace than from 2011-16.
- Since 2011, Cayman Islands, China, Ireland, Luxembourg accounted for over two-thirds of dollar value increase, the narrow measure represents 14% of global financial assets.
- Collective investment vehicles (CIVs) susceptible to runs grew 9.1%.
- Loan provisions based on short-term funding grew 6%, accounts for 7% of narrow measure.
- Banks and OFIs are more interconnected in 2017, remaining around 2003-6 levels.

### AST Royal Commission Report COMBOE

On Feb. 4, Australia financial Royal Commission issued final report, ASIC prepared for Brexit.

- Report into misconduct in banking, superannuation, financial services industries.
- Identified significant failings in manner in which financial system treated consumers.
- GVT will address issues identified by strengthening protections for consumers, etc.
- And enhancing accountability; ensuring strong, effective financial system regulators.
- ASIC to consider report, particularly recommendations on regulation, enforcement.
- Report identified ASIC's enforcement culture as a focus of change required at ASIC.
- ASIC carefully monitoring Brexit developments, liaising with UK FCA, BoE, etc.
- To identify, plan for potential Brexit-related impacts including no deal scenario.

### IOSCO Commodities' Storage

On Feb. 7, IOSCO issued report on robust framework for commodity storage, delivery.

- Published a report that sets out practices to assist storage infrastructures/oversight bodies.
- IOSCO identifies a number of issues and sets forth range of possible actions.
- Practices are intended to benefit activities of market regarding physical commodities.
- Overarching objective of the good or sound practices is to create a framework that incentivizes market to adopt best practices / self-correction, rather than prohibition.
- IOSCO does not intend the practices to conflict with or duplicate the existing codes.
- Encourages market participants to identify and follow best practice, where there are overlaps.

### IOSCO Emerging Regulator ESG

On Feb. 1, IOSCO issued consultation on sustainable finance in emerging markets.

- Consulted on proposed 11 recommendations, for emerging market members.
- Explores matters to influence sustainable finance in emerging capital markets.
- Summary of initiatives regulators, stock exchanges, have already undertaken.
- Identified prerequisites for creating ecosystem to facilitate sustainable finance.
- By appropriate regulatory framework and fit-for-purpose market infrastructure, reporting.
- Proposes integration by issuers, regulated entities of ESG-specific issues in overall risk.
- Data quality, sustainable instruments definition, eligible projects and activities.

## EU

### ESMA 2019 Risk Assessments

On Feb. 7, ESMA issued its 2019 risk assessment work program.

- Overview of analytical, research, data and statistical activities ESMA plans for 2019.
- Focused on further developing the proprietary data sources/analytical exploitation.
- As market data collected under AIFMD, MiFID or EMIR mandates/others becomes available, ESMA is finalizing framework for processing, management and analysis.
- Will generate market statistics, risk indicators, metrics based on new proprietary data.
- Annual reports on derivatives, AIFs, cost/past performance of long-term retail investment products (UCITS, retail AIFs and structured retail products), MiFID II statistical report.
- In-depth analysis on market and fund liquidity, fund leverage, impact of innovation especially in areas of infrastructure or advice.
- Continue impact assessment activities, regulatory work program, improve stress testing work re CCPs and investment funds.

### ESMA Convergence Priorities

On Feb. 6, ESMA issued 2019 priorities for supervisory convergence work program.

- Sets work streams to promote sound, efficient, consistent supervision across EU.
- To ensure supervisory convergence regarding UK's decision to withdraw from EU.
- Make data and its use more robust, consistent by developing, clarifying reporting methodologies and providing guidance to ensure complete and high-quality data.
- Drive forward consistency in applying MiFID II/MiFIR and understand challenges.
- Safeguard free movement of services in EU through adequate investor protection.
- And also foster of supervisory convergence in the field of financial innovation.

### EIOPA Work Program For 2019

On Feb. 5, EIOPA issued 2019 work plan under 2019-2021 program to support strategic priorities.

- Activities in support of 4 strategic priorities continue to work on two cross-cutting themes.
- Put sustainability as central theme; examine how to include sustainability considerations in supervisory and regulatory framework.
- Assess impact of digitalization on consumers and industry to identify technology-neutral supervisory approaches, using proportionality.
- Includes single rulebook to support supervisory convergence via harmonized rules.

### ESMA Role for Non-EU Branches

On Feb. 6, ESMA issued supervisory briefing on supervision of non-EU branches of EU firms.

- MiFID II briefing designed to assist NCAs in their supervision of establishment of branches in non-EU countries by EU firms providing investment services, activities.
- Covers supervisory expectations in relation to authorization of investment firms.
- Supervisory activity, cooperation with non-EU competent authorities, and ongoing activities of non-EU branches including the reporting and collection of information.
- Issues initially identified in discussion on Brexit risks, but relevant beyond Brexit.
- Briefing applies in any case where EU firm establishes a branch in non-EU jurisdiction.

### ESMA Fund Liquidity Stress Test

On Feb. 5, ESMA consulted on guidelines on liquidity stress testing for UCITS and AIFs.

- In Apr. 2018, ESRB requested ESMA develop guidance for individual AIFs, UCITS.
- Draft guidelines for fund managers aim to promote convergence in how national competent authorities (NCAs) supervise funds liquidity stress testing across EU.
- Set out 14 principle-based criteria, for managers' liquidity stress tests to follow.
- The draft principles require stress test to be tailored towards the individual fund.
- Reflect most applicable risks, be sufficiently extreme/unfavorable yet plausible.
- Sufficiently model how a manager likely to act under stressed market conditions.
- Stress test should be embedded into fund's overall risk management framework.
- Outlined how depositories should fulfill their obligations, re liquidity stress tests.

### ESMA EU Prospectus Thresholds

On Feb. 8, ESMA listed thresholds for prospectus exemptions in the various EU member states.

- The prospectus regulation introduced the new prospectus threshold of 1mn euros, MS may raise threshold to the maximum of 8mn euros, if offer will not be passported to another MS.
- ESMA document contains information provided by NCAs setting out a short description of the national thresholds below which no prospectus is required.
- Includes a summary of any national rules which apply to offers below that particular threshold, and hyperlinks to the relevant national legislation and rules.

## UK

### Government Brexit Plan B Approach

On Feb. 5, 2019, UK GVT PM May gave a speech on the Northern Ireland backstop.

- Can only get a deal through Parliament if legal changes are made to the NI backstop.
- On Feb. 6, 2019, EU CMSN Juncker and the Irish Taoiseach gave joint statement.
- Backstop is integral part of withdrawal agreement, a necessary legal guarantee to protect peace and to ensure there will be no return to hard border in Ireland.
- Will continue to seek agreement on orderly withdrawal, but step up no-deal preparation.
- On Feb. 7, 2019, EU CMSN Juncker and the UK PM May issued a joint statement.
- May raised options for dealing with concerns, Juncker underlined that EU27 won't reopen withdrawal agreement, expressed his openness to add wording to political declaration.

### FCA Brexit Transitional Power

On Feb. 1, FCA outlined how it would use the temporary transitional power in no-deal scenario.

- Draft regulations enable the UK regulators to delay or phase in changes to regulatory requirements for 2yrs in no-deal scenario.
- FCA intends to use the power to ensure that firms and other regulated persons can generally continue to comply with their regulatory obligations as they did pre-exit.
- Set out areas where it would not be consistent with the FCA's statutory objectives to grant transitional relief, so should begin preparing to comply with the changed obligations now.
- May interact with proposed Treasury powers to make equivalence decisions.

### FCA No-Deal Brexit Repositories

On Feb. 1, FCA issued statement on requirements for TRs and reporting counterparties if no-deal.

- If wish to offer services in UK, will need to be registered with / recognized by FCA.
- Regulations provide for conversion, temporary registration regime, give FCA powers to process advance applications.
- FCA in advanced stages of preparation with TRs to ensure operational from exit day.
- UK reporting counterparties must ensure connected to registered/recognized UK TR, to fulfill reporting obligations from exit day.
- Encouraged UK reporting counterparty to engage with TRs on contingency planning.
- ESMA published statement clarifying TRs and reporting counterparties obligations under EU derivatives regime in no-deal scenario.

### FCA, BoE, ESMA Brexit Cooperation

On Feb. 1, FCA, ESMA agreed two MoUs with EU regulators re no-deal Brexit cooperation.

- Multilateral MoU between EU/EEA securities regulators and FCA covers supervisory cooperation, enforcement and information exchange between regulators and FCA.
- MoU with ESMA on supervision of CRAs, TRs, allows ESMA to continue mission and meet its mandate re investor protection, orderly markets, and financial stability in EU.
- On Feb. 4, 2019, BoE and ESMA agreed MoUs on cooperation and information-sharing arrangements with respect to CCPs, CSDs.
- MoUs state intent to consult, cooperate, exchange information in connection with ESMA's on-going, immediate access, to all information it requests re CCPs, CSDs.

### PRA Longevity Risk Transfers

On Feb. 5, PRA proposed simplifying Solvency II pre-notification expectations by updating SS18/16.

- Will change how firms notify the PRA of new longevity risk transfer arrangements.
- Highlight additional key risk (basis risk) which should be included in firms' assessment of residual risks to which transactions give rise.
- For large and/or complex transactions, does not propose to change expectations.
- For other transactions, streamlined notification process, reporting via a template.
- Will also remove the need for the information to be reviewed by PRA in advance.

### FCA Fund Manager Guidance

On Feb. 4, FCA issued 2nd set rules and guidance on asset management following market study.

- Based on Apr. 2018 consultation proposals with minor drafting amends.
- Covers how to describe fund objectives, policies to make more useful to investor.
- Fund manager must explain why/how funds use particular benchmarks, or how investors should assess the performance of fund.
- If use benchmarks, must reference them consistently across a fund's documents.
- Fund managers who present a fund's past performance must do so against each benchmark used as constraint on portfolio construction or as performance target.
- If a performance fee is specified in prospectus, it must be calculated based on a scheme's performance after deduction of all other fees.
- Clarified how Chapter 4 of COBS applies to key investor information document.



## AML & Enforcement

### FinCEN Dir Blanco AML Speech

On Feb. 4, FinCEN Director Blanco spoke at SIFMA conference on AML emerging topics.

- Discussed regulatory reform efforts, including focus on innovation and information sharing.
- Value of suspicious activity reports filed, including re elder financial exploitation.
- Highlighted Dec. 2018, \$14.5bn penalty against UBS, for its inadequate risk based AML program, and due diligence program.
- Reminded institutions of obligation to fully evaluate, identify AML risks of businesses and services offer, should develop an AML program to mitigate risks.

### FINTRAC AML Compliance Tools

On Feb. 7, C-FINTRAC launched tools to help businesses comply with AML/CFT rules.

- FINTRAC compliance framework describes principles with tools and services used.
- New assessment manual on how compliance examinations are conducted and with businesses to prepare for an examination of AML compliance, policies, procedures.
- Revised policy on administrative monetary penalty, and sample penalty calculation.
- Notice on approach to cases, where business voluntarily declares non-compliance.

### UK Treasury Post-Brexit Sanctions

On Feb. 1, UK Treasury issued guidance on post-Brexit sanctions in no-deal scenario.

- Sanctions and anti-money laundering act 2018 (SAMLA) will enable sanctions to continue uninterrupted, SIs under SAMLA will transfer EU sanctions into UK law.
- UK continues to be bound by EU and UN sanctions, SIs only in force if no-deal.
- FCO published statutory guidance, and OFSI has updated guidance on financial sanctions.
- On Feb. 4, 2019, UK GVT issued a statutory instrument on post-Brexit sanctions, making minor / technical amendments.

### CAN Exchange Crypto Losses

On Jan. 31, QuadrigaCX exchange reported loss, administration after founder's death.

- Applied for creditor protection in Nova Scotia Supreme Court per Companies' Creditors Arrangement Act (CCAA).
- Ernst & Young are appointed independent third party, to oversee proceedings.
- Company worked to address liquidity issues, including an attempt to locate and secure significant cryptocurrency reserves it held in cold wallets to which access code lost.
- Sought to find financial institution to accept bank drafts to transfer to them.
- The efforts have been unsuccessful, and updates will be issued after hearing.
- Media reported exchange owes \$137mn in cryptocurrency to 115,000 clients.



© Reg-Room LLC. Reg-Room and the accompanying design are registered trademarks of Reg-Room LLC. All rights reserved. The information contained in this document should not be copied or further distributed without permission, and does not constitute legal advice.

### Contact and Subscription Information

[info@reg-track.com](mailto:info@reg-track.com)

**Reg-Track system**

**<https://reg-track.com>**

**Check out our new Regulatory Reg-Track system:  
[Calendar](#)**

## **CENTER *for*** **REGULATORY** **STRATEGY** **AMERICAS**

About the Deloitte Center for Regulatory Strategy

The Deloitte Center for Regulatory Strategy provides valuable insight to help organizations in the financial services, health care, life sciences, and energy industries keep abreast of emerging regulatory and compliance requirements, regulatory implementation leading practices, and other regulatory trends.

Home to a team of experienced executives, former regulators, and Deloitte professionals with extensive experience solving complex regulatory issues, the Center exists to bring relevant information and specialized perspectives to our clients through a range of media including thought leadership, research, forums, webcasts, and events.

[www.deloitte.com/us/centerregulatorystrategies](http://www.deloitte.com/us/centerregulatorystrategies)

This publication contains general information only and Deloitte is not, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor.

Deloitte shall not be responsible for any loss sustained by any person who relies on this publication.

Material contained in this document is based on publically available information or otherwise attainable from public sources.

### **About Deloitte**

As used in this document, "Deloitte" means Deloitte LLP and its subsidiaries. Please see [www.deloitte.com/us/about](http://www.deloitte.com/us/about) for a detailed description of the legal structure of Deloitte LLP and its subsidiaries. Certain services may not be available to attest clients under the rules and regulations of public accounting.