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KPMG in South Africa

Regulatory Updates for the week ended 10 March 2017

FinWatch – A Weekly Newsletter

Find the latest edition of **FinWatch** which provides a gist of all regulatory developments impacting the financial services industry in South Africa.

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Regulatory Developments

FSB fined A security dealer R2 million for FMA contravention

The Directorate of Market Abuse referred a case against a security dealer to the Enforcement Committee after investigations revealed that he created a deceptive appearance of the trading activity, and an artificial price, with reference to futures contract. The Enforcement Committee imposed an administrative penalty of R2 million together with a costs order for contravening of the Financial Markets Act [prohibited trading practices]. For more information, please contact KPMG's [Mark Danckwerts](#). [FSB](#)

Discussion of the cybercrimes and cybersecurity bill

Sabinet has published a document which provides the description of the Cybercrimes and Cybersecurity Bill, 2015. The document covers the following points:

- **Purpose of the bill:** The key objectives of the bill include the following:
 - o Creating offences and prescribing penalties;
 - o Further regulating jurisdiction and the powers to investigate, search and gain access to or seize items;
 - o Further regulating aspects of international cooperation with respect to the investigation of cybercrime;
 - o Providing for the establishment of a 24/7 point of contact as well as various structures to deal with cyber security;
 - o Regulating the identification and declaration of National Critical Information Infrastructures and providing for measures to protect National Critical Information Infrastructures
- **Background of the bill:** This section provides a brief on the history of cyber-crimes and

the steps taken to ensure cyber security. As per the section, the bill is part of a review process of the laws on the Statute Book which deals with cyber security and matters related to cyber security.

- **Objects of the bill:** This section contains details on the definitions; offences; jurisdiction; powers to investigate, search and gain access to or seize and international cooperation; establishing of a 24/7 point of contact; Structures to deal with cyber security; National Critical Information Infrastructure Protection; evidences; general obligations of electronic communications service providers and liability; agreements with foreign state; and general provisions.

In a similar development, the Department of Telecommunications and Postal Services (DTPS) briefed the Portfolio Committee on the current state of and way forward regarding cybersecurity in South Africa. There was also a briefing by the South African Banking Risk Information Centre (SABRIC) on the banking sectors experience of and response to cybersecurity. Please contact [Nathan Desfontaines](#) for more information. [Parliamentary Monitoring Group](#)

Key initiatives taken by the regulatory authorities with respect to market conduct and financial transformation, as mentioned in 2017 Budget

- The National Treasury and the Reserve Bank will introduce new regulations to ensure standardized, transparent and comparable securitizations for investors. This enhanced disclosure will allow greater simplicity for investors, which will provide more credit in key areas such as mortgages.
- The National Treasury is engaging with the industry to develop insurance and banking market-development roadmaps, building on Financial Sector Charter procurement targets.
- To ensure that South Africa's regulatory framework remains at a high global standard, a comprehensive financial markets review will be undertaken in 2017, modelled on the Fair and Effective Markets Review in the UK. It will focus on competition and conduct practices, aiming to improve effectiveness to the benefit of market participants and customers. The review will begin in April 2017. For more information, please contact [Mark Danckwerts](#).
- A FinTech regulatory framework will form part of the Conduct of Financial Institutions Bill in 2017. This framework could include a "regulatory sandbox", to encourage innovation within a controlled environment while managing any potential risks. Please contact [Frank Rizzo](#) to discuss further.
- The Cooperative Banks Development Agency is putting in place a national banking platform with administrative and support capabilities, an information and communications technology system, and access to the national payment system.
- In order to broaden competition and market participation, the Financial Services Board has awarded new stock exchange licenses to two operators (4 Africa Exchange and ZAR X). Detailed information is available in the [budget annexure](#).

In a separate matter, the BBBEE Commission has declared that the Draft Financial Services Sector Code in its current form "does not advance radical economic transformation, but rather regresses it"

The Commission briefed the committee on its perspective of the Draft Sector Code. It also holds the view that the Draft Sector Code "appears to compromise the incentive for financial sector players to compete by subjecting products on which they should compete on to transformational interventions." The Draft Sector Code was published for comment in March 2016. It seeks to harmonizes the amended codes of good practice with the existing financial sector code published in 2012. The Draft Code applies to, inter alia, banks, the insurance industry, retirement funds, collective investment schemes and brokers. Please contact [Nhlamu Dlomu](#) for more information,

[Sabinet](#)

A financial services provider to pay R 10m fine to settle with credit regulator

A financial services provider will be paying a R10-million fine and give partial relief to an undisclosed number of customers who were scammed in the scheme. This is in terms of a secret deal between the bank and the National Credit Regulator (NCR). In July 2014, the "Drive-a-new-car-for-R699-a-month" scheme imploded, leaving about 24,000 consumers in a dangerous financial position. At the heart of the scheme was an advertising deal where consumers could earn a fee for using their cars as billboards for the scheme. The fees generated from advertising the scheme effectively subsidized the vehicle instalment. But when the company stopped paying the advertising rebate, consumers, mostly low-income

earners, were unable to pay their instalments and fell into arrears. The company's sales staff, who acted as agents of the banks, had failed to conduct proper affordability assessments, or understated consumers' living expenses, and that some consumers who were in arrears on their home loans or other credit agreements had been approved for credit. All of these misdemeanors constituted reckless lending, which is unlawful under the National Credit Act (NCA). For more information, please contact [Walter Palk](#). [News Monitor](#)

National Assembly gives the trade and industry portfolio committee its go-ahead to develop a bill amending the National Credit Act

The National Assembly has given the trade and industry portfolio committee its go-ahead to develop a bill amending the National Credit Act. The proposed bill would aim to provide capped debt relief in the form of debt forgiveness to help the indebted consumers and promote change in borrowing and spending habits. It would also provide for simpler and more vigorous enforcement of the act, the criminal prosecution of lenders who contravene the law, legal certainty on the application of the in duplum rule and effective debt counselling for low-income consumers. The bill is supported by the Department of Trade and Industry (DTI), which is considering its own debt-forgiveness measures. As per the committee's report to the National Assembly, these new provisions will have the effect of providing relief to the over-indebted in South Africa and further limiting the abuse of consumers by the unethical lenders. The committee plans to do a socioeconomic impact assessment of its proposals to determine how best to reduce the reckless lending by credit providers. The report acknowledged that debt-relief measures would affect access to credit and cost of credit, but the economy would benefit in the long term. Please contact KPMG's [Finn Elliot](#) to discuss further. [The News Monitor](#)

FATF February 2017 meeting outcome

South Africa participated in the second meeting of the Financial Action Task Force (FATF). The main issues dealt with in this meeting were:

- Work on terrorist financing, which continues to be a priority for the FATF.
- FATF work on improving transparency and beneficial ownership.
- Impact of recent FATF work on de-risking.
- Discussion of the mutual evaluation report of Sweden.
- Two public documents identifying jurisdictions that may pose a risk to the international financial system.
- Jurisdictions with strategic anti-money laundering and combating the financing of terrorism (AML/CFT) deficiencies for which a call for action applies
- Jurisdictions with strategic AML/CFT deficiencies for which they have developed an action plan with the FATF
- Statement on Brazil's progress in addressing the deficiencies identified in its mutual evaluation report, since the FATF's statement of October 2016.
- Forum of the Heads of FATF Financial Intelligence Units. For more information, please contact [Tersia Rossouw](#). [FIC](#)

FATF Outcome of Plenary Discussion on South Africa's 12th Mutual Evaluation Follow-up report

The Financial Action Task Force (FATF) deferred a decision on the issuing a public statement on compliance by South Africa with standards against money laundering and terrorist financing, until its next meeting in June. The Plenary considered the FATF's 12th Mutual Evaluation Follow-up Report on South Africa's process to remedy deficiencies identified in the 2009 mutual evaluation. These deficiencies relate to gaps in legislation on adequate customer due diligence and record-keeping measures. These are considered serious deficiencies and are addressed in the FIC Amendment Bill which was passed by Parliament in May 2016. The FIC Amendment Bill has not yet come into force as had been expected when this matter was last discussed by the FATF Plenary in June 2016. Please contact [Tersia Rossouw](#) for more information. [FIC](#)

Financial sector conduct Bill out for comment this year

Public consultation on a draft Conduct of Financial Institutions Bill is 'scheduled' to take place this year, with promulgation expected during 2018. This is according to the latest updated review of progress with the Financial Services Board's (FSB's) 'treating customers fairly' approach to regulating financial sector market conduct. While the Financial Sector Regulation Bill currently with the NCOP could be promulgated soon, current financial sector laws will remain in effect 'in the medium term', along with the FSB's powers to make subordinate legislation. Please contact [Finn Elliot](#) to discuss further.

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Market Developments

Africa

Update to Foreign Exchange Directive (Nigeria)

On March 3, 2017, the Central Bank of Nigeria updated its foreign exchange directives to increase FX availability to all end-users and ensure that a fair and verifiable exchange rate operates in the market. These updates are:

- Open a teller point for retail FX transactions, including buying and selling, in all locations in order to ensure access to foreign exchange by their customers and other users, without any hindrance
- All banks must have an electronic display board in all their branches; showing rates of all trading currencies, and customers must insist on processing FX transactions based on the displayed rates
- Banks are mandated to process and meet the demand for Travel Allowances (PTA/BTA) by end-users within 24 hours of such application, as long as the end users meet basic requirements already outlined in earlier directives
- Banks are mandated to process and meet demands for school fees and medical bills within 48 hours of such application. [CBN](#)

Bank of Mauritius announces a new category of Investment Banking license (Mauritius)

The Bank of Mauritius informed the public that the Ministry of Financial Services, Good Governance and Institutional Reforms has made a proposal to introduce a new category of Investment Banking license, namely 'Investment Adviser – Corporate Finance' under the Securities Act. As the list of activities of an Investment Adviser – Corporate Finance and those of an Investment Bank would overlap and could lead to regulatory arbitrage, the Bank agreed that Investment Banking Licensing be transferred to the Financial Services Commission, provided that such activity does not entail deposit taking. The bank also notified that Rule 6(2) of the Financial Services (Investment Banking) Rules 2016, provides that, 'No person holding an Investment Banking license shall conduct Banking Business as defined in the Banking Act unless that person holds a banking license issued by the Bank of Mauritius under the Banking Act'. [Bank of Mauritius](#)

International

Financial regulators of Japan and UK announce Exchange of Letters on Co-operation Framework to support innovative FinTech companies (UK)

The Financial Services Agency of Japan (JFSA) and the UK's Financial Conduct Authority (FCA) have exchanged letters on a Co-operation Framework to support innovative FinTech companies. The Exchange of Letters between the JFSA and the FCA will provide a regulatory referral system for Innovator Businesses from Japan and the UK seeking to enter the other's market. The authority that receives an Innovator Business referral will provide support to the Innovator Businesses by reducing regulatory uncertainty and time to market. In addition, the Exchange of Letters will encourage the regulators to share information about financial services innovation in their respective markets, reduce barriers to entry in a new jurisdiction and further encourage innovation in both countries. [FCA](#)

FCA publishes update to pension redress methodology (UK)

The Financial Conduct Authority (FCA) announced proposals for updating the methodology used to calculate the redress owed to consumers who were given unsuitable advice to transfer out of a defined benefit (DB) pension scheme. The FCA's proposed changes to the methodology include:

- To update the inflation rates used to better reflect likely inflation
- To update the pre-retirement discount rate so that it acknowledges the Pension Protection Fund (PPF)
- To update the post retirement discount rate and acknowledging the likelihood that consumers will take a pension commencement lump sum
- To update the mortality assumptions

- To make allowance for gender-neutral annuity rates
- To assume that male and female consumers are the same age as their spouse to simplify the approach
- To simplify the assumption about the proportion of people married or in a civil partnership at retirement
- To make allowance for enhanced transfer values (ETVs)
- To update these assumptions on a regular basis to reflect the fact that markets are often volatile. [FCA](#)

PRA and FCA New banks seminar (UK)

The PRA and FCA New Bank Start-up Unit (NBSU) will be holding a seminar for those working with organizations thinking about becoming a bank in the United Kingdom, firms currently going through the bank authorization process or recently authorized banks who are now navigating the regulatory requirements. The seminar is aimed at:

- Senior executives who are, or are likely to play, a key role in the business planning and development of an application to become a new bank;
- Senior executives of recently authorized banks; and
- Senior executives/partners at professional services firms who are currently giving advice and support to firms on becoming a new bank. [PRA](#)

FCA published Insurance Distribution Directive consultation (UK)

The Financial Conduct Authority (FCA) published the first of its two consultation papers on the implementation of the Insurance Distribution Directive (IDD). The Insurance Mediation Directive (IMD) was designed to encourage competition between insurance firms, as well as ensure appropriate levels of protection for customers, across the EU. The IDD aims to strengthen and consolidate the existing rules of IMD. The consultation paper covers the FCA's proposals for the application of the directive, which include the following areas:

- professional and organizational requirements
- complaints handling and out-of-court redress
- professional indemnity insurance (PII)
- changes to conduct of business rules (for non-investment insurance contracts)
- the regulatory regime for ancillary insurance intermediaries

The IDD will apply more broadly than the IMD and bring consumer protection rules in line with those in other financial markets. [FCA](#)

FCA extended the Senior Managers and Certification Regime (SMCR) (UK)

FCA extended and brought in force the rules regarding regulatory references for Senior Managers and staff in the Certification Regime. The Certification Regime applies to staff in roles that can cause 'significant harm' to either the firm or its customers. This includes, for example, investment and mortgage advisers. The Conduct Rules, which have applied to Senior Managers and staff in the Certification Regime for a year, also apply to all other staff taking effect immediately, apart from those undertaking purely ancillary functions, such as security staff. [FCA](#)

PRA released its key reforms for Strengthening accountability (UK)

PRA published the background and key changes to the accountability regimes for PRA regulated firms, together with links to materials and information on forms and policy development, and upcoming changes in March 2017 covering The Senior Managers & Certification Regime (SM&CR) changes and requirements related to the following two aspects of the strengthening accountability regimes have taken effect:

- The regulatory reference requirements made in [PS27/16](#) on 'Strengthening accountability in banking and insurance: PRA requirements on regulatory references (part II)'
- The SM&CR-related Financial Conduct Authority (FCA) requirements such as the implementation of the 'full' Certification Regime and the rolling out of the Conduct Rules to a wider range of employees. The Bank of England and Financial Services Act 2016 requires the full SM&CR to be extended to insurers. During Q2 2017 the PRA and FCA will consult on the extension, with implementation expected in 2018. [PRA](#)

FCA published a policy statement on Payment protection insurance complaints: final rules and guidance (UK)

The main changes made by FCA relative to their proposal requires firms that sold PPI to write to previously rejected mis-selling complainants who are eligible to complain again in light of Plevin.

Having carefully considered all the feedback FCA took the following steps:

- FCA set out final rules and guidance as follows: a new rule that sets a deadline by which consumers will need to make their PPI complaints or lose their right to have them assessed by firms or by the Financial Ombudsman Service; this rule will come into force on 29 August 2017, with the deadline falling on 29 August 2019.
- FCA-led communications campaign designed to inform consumers of the deadline, which will start when the deadline rule comes into force on 29 August 2017
- FCA set a new fee rule on 18 firms to fund this consumer communications campaign, which will come into force on 31 March 2017, with the first half of the fee collected one month later. [FCA](#)

FCA released its findings on dealing commission expenditure across 31 investment managers (covering asset managers, wealth managers and host-authorized corporate director providers) (UK)

FCA Reviewed investment managers on commission expenditure and the following were the findings from the research:

- A few firms in the sample covered the cost of externally produced research from their own resources rather than using dealing commission.
- The majority of firms continued to treat the receipt of corporate access from brokers as a free provision.
- Firms were also unable to demonstrate that research and execution were treated as distinctly separate services.
- Challenge and validation from front line management and control functions over the compliant use of dealing commission was commonly missing. [FCA](#)

FCA released its findings on Investment manager's efforts to ensure effective oversight of best execution (UK)

The FCA expected firms to deliver consistent best execution for their clients and follow thematic review on best execution and payment for order flow. As per the research most firms had failed to take on board the findings of the thematic review. The pace of change in improving client outcomes in best execution was slow, with few firms having a cohesive strategy for improving client outcomes. Many firms had not conducted a robust gap analysis since 2014 and therefore much of the poor practice outlined in the thematic review had not been addressed. [FCA](#)

Director of Bank, PRA made a speech on refining the Standardized Capital Regime (UK)

The Director of The Bank of England, PRA made a speech covering The post-financial crisis prudential reforms introduced to improve the resilience of the UK banking sector. The following initiatives have been taken by the Bank of England:

- The Basel Committee is being assisted to create greater risk sensitivity in the standardized capital approach, which should reduce the variability between standardized and IRB risk weights.
- Bank of England proposed to refine the PRA's Pillar 2A capital framework for banks and building societies using the standardized capital approach and published a consultation paper on 24 February setting out their thoughts on it.
- Bank of England proposed to reform the application process for banks and building societies wanting to move from the standardized capital approach to utilize IRB models and announced that they will be publishing a consultation paper later this month on this initiative. [Bank of England](#)

APRA issued a consultation paper on Counterparty Credit Risk to all ADI's (Australia)

APRA released a consultation paper for all Authorized Deposit-taking Institutions(ADIs) on Counterparty Credit risk. As part of that consultation, APRA proposed that the new requirements in APS 180 with an additional option that an ADI with immaterial counterparty credit risk exposure may apply for approval to implement the requirements by 1 January 2019. In light of feedback received during consultation, as well as consideration of the timetable for adoption of such requirements in other jurisdictions, APRA is advising affected ADIs that the new requirements will not take effect until 1 January 2019 at the earliest. Prior to finalizing these requirements, APRA intends to release in 2017 an additional consultation package on counterparty credit risk, including the associated reporting requirements. This second consultation will also give further consideration to a simple, alternative methodology for ADIs with an immaterial level of exposure to counterparty credit

risk. [APRA](#)

ASIC released Enforcement Report which highlights key outcomes from 2016. (Australia)

ASIC's key outcomes over the last six months are covered in detail, in areas such as insider trading, consumer credit, protecting retail investors, and continuous disclosure. The report also covers ASIC's key priorities and long-term challenges going forward, including:

- Aligning conduct in a market-based system with investor and consumer trust and confidence;
- Digital disruption and cyber resilience in our financial services and markets;
- Structural change in Australia's financial system
- Complexity in financial markets and products
- Globalization of financial markets, products and services.

ASIC's future areas of focus remain consistent, including:

- Ensuring that gatekeepers adhere to the high standards required by law, particularly where breaches indicate poor corporate culture or governance
- Enforcing responsible lending practices in the credit industry, including a focus on systemic breaches by licensees

Conduct risk and the integrity of financial market benchmarks. [ASIC](#)

ACCA released its view on improving Corporate Governance. (Australia)

The CFO, South Africa published ACCA's views on Corporate Governance. As per ACCA Government needs to show stronger support for voluntary measures which improve corporate governance rather than impose a legislative mandate, according to the ACCA (the Association of Chartered Certified Accountants). "Excessive focus on prescriptive legal measures on corporate governance not only risks introducing burdensome change for its own sake, but can end up masking the very problems they seek to resolve, as firms seek technical compliance rather than reform," says ACCA's Head of Corporate Governance Jo Iwasaki. [CFO South Africa](#)

AUSTRAC shares insights from compliance assessments (Australia)

In a new report on AUSTRAC's 2016 compliance assessments of reporting entities, entities that provide assessments that AUSTRAC deemed as appropriate, explored the extent of how their products, services or delivery channels could be misused by criminals to launder money or fund terrorism. The results were used to tailor compliance systems and processes. [AUSTRAC](#)

AUSTRAC launches world-first alliance to combat serious financial crime (Australia)

The Fintel Alliance comprises 19 partners including AUSTRAC, AFP, NSW Police, ATO, the big four banks, Western Union, PayPal and UK Financial Intelligence Unit. The Alliance is tasked to identify, target, disrupt and deter money laundering and counter-terrorism financing, underpinned by a new Financial Intelligence Analyst Course. [AUSTRAC](#)

IAIS announces systemic risk assessment and policy work plan (US)

The International Association of Insurance Supervisors (IAIS) has adopted a systemic risk assessment and policy work plan as part of developing an activities-based approach to systemic risk assessment for its next three-year systemic risk review cycle. The work plan consists of:

- Developing an activity-based approach for assessing systemically risky activities;
- Finalizing policy measures to address systemically risky activities as part of ComFrame
- Releasing the revised 2019 systemic risk assessment methodology for public consultation by year-end 2018; and
- Basing the planned revisions to the higher loss absorbency (HLA) requirements on Insurance Capital Standards (ICS). [\[Press Statement\]](#)

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Accounting Updates

FASB issued proposed simplifications to Accounting procedures for Non-employee Share-based payments

The Financial Accounting Standards Board ([FASB](#)) issued a proposed Accounting Standards Update (ASU) intended to reduce cost and complexity and to improve financial reporting for nonemployee share-based payments. Stakeholders are encouraged to review

and provide comments on the proposal. The proposed ASU would expand the scope of Compensation—Stock Compensation, which currently only includes payments to employees, to include payments for goods and services to nonemployees. Consequently, the accounting for share-based payments to nonemployees and employees would be similar. The proposed ASU would supersede Equity Based Payments to Non-Employees. [FASB](#)

SEC accepts 2017 GAAP Financial Reporting Taxonomy

The Financial Accounting Standards Board (FASB) announced that the US Securities and Exchange Commission (SEC) accepted the [2017 GAAP Financial Reporting Taxonomy](#). The GAAP Financial Reporting Taxonomy is a list of computer-readable tags in extensible Business Reporting Language (XBRL) format that allows companies to tag precisely the thousands of pieces of financial data that are included in typical long-form financial statements and related footnote disclosures. The tags allow computers to automatically search for, assemble, and process data so it can be readily accessed and analyzed by investors, analysts, regulators, and others. [FASB](#)

The IFRS Foundation publishes the IFRS Taxonomy 2017

The IFRS Foundation today published the IFRS Taxonomy 2017, which reflects the IFRS Standards as issued by the International Accounting Standards Board at 1 January 2017, including Standards published but not yet effective at that date. The IFRS Taxonomy 2017 is available for both the full IFRS Standards and the IFRS for SMEs. The [IFRS Taxonomy 2017](#) incorporates the [IFRS Taxonomy Update 1](#) and [IFRS Taxonomy 2](#) published since the annual IFRS Taxonomy 2016. These Updates related to the Disclosure Initiative (Amendments to IAS 7) and Applying IFRS 9 Financial Instruments with IFRS 4 Insurance Contracts (Amendments to IFRS 4) respectively. The IFRS Taxonomy 2017 also includes the final changes resulting from the [Proposed Taxonomy Update 3-Common Practice](#) (agriculture, leisure, franchises, retail and financial institutions) modified in the light of comments received on that document. [IFRS](#)

Proposed amendments to the Code of Professional Conduct for registered auditors

The Independent Regulatory Board for Auditors (IRBA) has issued a notice on proposed amendments to the Code of Conduct with respect to the audit profession. The proposed amendments are in accordance with the provisions of the Auditing Profession Act No. 26. The IRBA has invited comments with respect to the following areas –

- Improving the Structure of the Code – Phase 2 – The written comments can be submitted to the IRBA by May 11, 2017.
- Proposed Revisions Pertaining to Safeguards in the Code – Phase 2 – The written comments can be submitted to the IRBA by April 11, 2017.

The comments submitted by the public will be considered by the IRBA's Committee for Auditor Ethics (CFAE) before publishing the final amendments. [Sabinet](#)

The adoption of international quality control, auditing, review, other assurance, and related services pronouncements in terms of the Auditing Profession Act, 26 of 2005

The IRBA has published a notice to adopt, issue and prescribe publications related to the quality control, review, other assurance and related service pronouncements for the period 2016–17. These publications will replace documents published during the period 2015–16. The IRBA code was issued in March 2014 and became effective from April 1, 2014 including the amendments to the Code. This Code has additional requirements for registered auditors in South Africa. [Sabinet](#)

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Upcoming Events and Conferences

Speech by Governor of the Bank of England on PRA's approach to supervising insurers (UK)

Deputy Governor of the Bank of England and Chief Executive of the Prudential Regulation Authority (PRA) who will be giving a speech on the PRA's approach to supervising insurance companies. The governor's speech will explore the PRA's approach to supervising insurance companies and coincide with the publication of a report from the

Bank's Independent Evaluation Office on the PRA's approach to its insurance objective, focusing on how it is interpreted, implemented and communicated. [London Business School](#)

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