

INTERNATIONAL REGULATORY UPDATE 19 – 23 AUGUST 2019

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Working group issues recommendations on impact of EONIA transition on cash and derivatives products

The working group on euro risk-free rates has issued its [recommendations](#) addressing the impact that the transition from the euro overnight index average (EONIA) to the euro short term rate (€STR) will have on cash and derivatives products. The report analyses the implications of the transition and sets out recommendations to market participants on how to smooth the transition primarily from an operational and valuation standpoint.

The report urges market participants to prepare for:

- the change in EONIA's publication time from day T at 19:00 CET to the next business day T+1 at 9:15 CET that will follow the change in EONIA's methodology as of 2 October 2019 (representing transactions executed on

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1 October 2019); and

- the discontinuation of EONIA on 3 January 2022.

Additionally the working group makes recommendations to market participants regarding the change in EONIA's publication time and the transition period until EONIA is discontinued on 3 January 2022.

NPLs: ECB revises supervisory expectations for prudential provisioning of new non-performing exposures

The European Central Bank (ECB) has published a [communication](#) detailing changes to its supervisory expectations for prudential provisioning of new non-performing exposures (NPEs) specified in the addendum to the ECB guidance to banks on non-performing loans (NPLs).

The decision follows the adoption of a new EU regulation outlining the Pillar 1 treatment for NPEs. Regulation 2019/630, which entered into force on 26 April 2019, complements existing prudential rules and requires a deduction from own funds when NPEs are not sufficiently covered by provisions or other adjustments.

Changes to the addendum's supervisory expectations include the following:

- scope of the ECB's supervisory expectations for new NPEs to be limited to NPEs arising from loans originating before 26 April 2019, which are not subject to Pillar 1 NPE treatment; and
- alignment with the Pillar 1 treatment of NPEs set out in the new EU regulation of relevant prudential provisioning time frames, progressive path to full implementation, split of secured exposures, and the treatment of NPEs guaranteed or insured by an official export credit agency.

BaFin publishes guidance note regarding prospectus and permission requirements for crypto tokens

The German Federal Financial Supervisory Authority (BaFin) has [published](#) a guidance note regarding prospectus and licensing requirements for crypto tokens. The guidance note is addressed to all natural or legal persons who issue crypto tokens in Germany or conduct business in connection with crypto tokens, ICOs and STOs.

The aim of the guidance note is to provide support to issuers of crypto tokens in the classification of these under prospectus and licensing requirements. As part of the guidance note, BaFin therefore sets out which information and documents the issuers should submit so that inquiries in advance of an ICO can be answered quickly and efficiently. The guidance note also deals with the nature of crypto tokens and provides information on the classification as securities according to Regulation (EU) 2017/1129 (Prospectus Regulation) or the German Securities Prospectus Act (WpPG) and as investment assets according to the German Investment Asset Act (VermAnlG). In addition, the guidance note covers the prospectus or information requirements according to the WpPG as well as licensing obligations according to the German Banking Act (KWG), the German Payment Services Supervisory Act (ZAG) and the German Capital Investment Act (KAGB).

The guidance note also takes into account BaFin's experience in administrative practice and continuing enquiries regarding the characteristics

of crypto tokens and obligations in connection with issuances as a result of the publication of BaFin's information letter of 20 February 2019 on the general supervisory classification of crypto tokens as financial instruments in the field of securities supervision.

BaFin publishes circular on MREL requirements for institutions with insolvency proceedings as resolution strategy

BaFin has published [Circular 08/2019 \(A\)](#) – Minimum Requirement for Own Funds and Eligible Liabilities (MREL) for institutions for which insolvency proceedings can be considered as a resolution strategy.

The circular applies to institutions in respect of which BaFin is the competent national resolution authority pursuant to Article 7 paragraph 3 SRM Regulation and section 1 nos. 1 to 3 and section 3 of the German Recovery and Resolution Act (SAG). It describes BaFin's administrative practice with regard to the determination of minimum requirements for own funds and eligible liabilities pursuant to Article 12 of the SRM Regulation and the compliance requirements pursuant to section 49 paragraph 1 and section 50 paragraph 1 SAG for institutions and groups for which the implementation of insolvency proceedings as a resolution strategy is credible and feasible.

BaFin publishes update to minimum requirements for deposit business

BaFin has published [Circular 07/2019 \(WA\)](#) – Minimum Requirements for the Proper Performance of Deposit Business and the Protection of Customer Financial Instruments for Investment Firms (Mindestanforderungen an die ordnungsgemäße Erbringung des Depotgeschäfts und den Schutz von Kundenfinanzinstrumenten für Wertpapierdienstleistungsunternehmen (MaDepot)).

The MaDepot are intended to provide users with an overview and compilation of the essential supervisory requirements for investment services firms in the context of deposit business. In addition, they are intended to reflect BaFin's administrative practice on selected issues insofar as they can be generalised.

The circular covers the following aspects:

- organisational requirements that institutions must fulfill in order to protect customer financial instruments;
- conduct requirements for the custody and administration of client financial instruments; and
- recording and safekeeping obligations.

The circular is not intended to be conclusive and covers only selected aspects of the relevant regulations. BaFin will maintain an ongoing dialogue with practitioners in order to take into account the need for further interpretation or changes.

CSSF issues circular on new modalities for submission of documents required under CSSF Circular 19/544

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued [circular 19/727](#) dated

26 July 2019 on the new modalities for submission of documents to the CSSF for the purposes of CSSF Circular 12/544.

The circular applies to all support professionals of the financial sector exercising one or several of the activities defined in Articles 29-1 to 29-6 of the law of 5 April 1993 on the financial sector, as amended. In the interest of an optimisation of the supervision and simplification of treatment of documents, the circular sets out new modalities and deadlines for the submission of the documents required under Circular 12/544. Documents which must be supplied in the way prescribed in the new circular include the risk assessment report (RAR), the descriptive report (DR), and the account closure documents report. The circular further lists as a reminder all supporting documents expected for the RAR, the DR, and the account closure.

All documents must be submitted in a PDF file and allow the reader to select text or be processed with an optical character recognition program. In addition, manually signed documents must be supplied on paper. Both the final version and an annotated version highlighting the changes undertaken since the previous year of the RAR and the DR must be supplied. All documents must be sent within seven months after the end of the business year. The circular also includes a naming convention for the files to be submitted.

The circular entered into force on 26 July 2019.

China issues notice to strengthen regulation of local asset management companies

The China Banking and Insurance Regulatory Commission (CBIRC) has issued a [circular](#) on enhancing the supervision and administration of local asset management companies, imposing stricter requirements on the market entry and business operation of non-performing assets by local asset management companies (AMCs).

Amongst other things, the regulatory measures in the circular on strengthening supervision of local AMCs cover:

- market entry – the establishment of local AMCs should be strictly controlled and subject to filing with the CBIRC; and
- market exit – the licence of a local AMC may be cancelled through a joint decision by the CBIRC and the corresponding local financial service regulator. The circular also clarifies the procedures for a local AMC's bankruptcy.

The circular further clarifies the requirements for the business operation of local AMCs as follows:

- business requirements – the acquisition and disposal of non-performing assets should (i) be true and effective, (ii) adopt fair market pricing, and (iii) implement a true and complete transfer of assets and risk;
- business restrictions – local AMCs are prohibited from, amongst other things:
 - besides main transaction documentation, executing other side agreements to affect the true and complete transfer of assets and risks;
 - entering into any explicit or implicit repurchase provisions;

- assisting financial institutions in concealing their non-performing assets;
 - providing financing to enterprises or projects in the name of non-performing asset purchases; and
 - purchasing any credit assets without actual underlying assets or transactions; and
- financing activities – local AMCs may not publicly issue debt financing instruments without approval.

HKMA issues circular on revised implementation schedule for margin requirements for non-centrally cleared derivatives

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) to inform all authorised institutions that it intends to adopt the revised implementation schedule for the margin requirements for non-centrally cleared derivatives, taking into account the one-year phased extension announced by the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO) in July 2019.

The HKMA has indicated that, under the revised implementation schedule, the current final phase of initial margin requirements, originally scheduled on 1 September 2020, will be postponed to 1 September 2021. An interim phase with an aggregate average notional amount of non-centrally cleared derivatives threshold of HKD 375 billion will also be introduced for the one-year period starting from 1 September 2020. Moreover, the supervisory policy manual module titled 'CR-G-14: Non-centrally Cleared OTC Derivatives Transactions - Margin and Other Risk Mitigation Standards' will be amended accordingly before the end of year 2019.

The HKMA expects authorised institutions to make all relevant arrangements on a timely basis and comply with the requirements by this revised timeline.

HKMA revises supervisory policy manual module relating to guideline on application of Banking (Disclosure) Rules

The HKMA has issued a [revised version](#) of its supervisory policy manual (SPM) module titled 'CA-D-1: Guideline on the Application of the Banking (Disclosure) Rules' as a guidance note.

The SPM module has been revised mainly to provide updated interpretative guidance on the application of the Banking (Disclosure) Rules, which have been substantially amended since 2017 to incorporate the first two phases of the 'Basel revised Pillar 3 Framework'.

In response to a recent query raised by the industry regarding the expectation for overseas incorporated authorised institutions to conduct before publication an internal review of disclosures under the guideline, the HKMA has confirmed that they may adopt such practice as soon as practicable, preferably no later than for disclosures relating to a reporting period ending on or after 31 December 2019.

MAS issues Notice 656 on exposures to single counterparty groups for banks incorporated in Singapore

The Monetary Authority of Singapore (MAS) has issued a new [Notice 656](#) on Exposures to Single Counterparty Groups for Banks Incorporated in

Singapore. MAS Notice 656 will be applicable to all Singapore incorporated banks.

Amongst other things, MAS Notice 656 sets out provisions with regard to:

- the limits on exposures of a reporting bank to a single counterparty group (large exposures limit);
- the types of exposures to be included and excluded when determining a reporting bank's exposures in relation to the large exposures limit;
- the basis for computation of exposures (as set out in Annex C of the Notice) for the purposes of determining compliance with the large exposures limit and regulatory reporting requirements;
- eligible credit risk mitigation techniques;
- the approach for aggregation of exposures;
- monitoring of compliance with the large exposures limit;
- regulatory reporting requirements; and
- the actions required in the event of a breach of the large exposures limit.

MAS Notice 656 is effective from 1 October 2020.

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This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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