

# CLIFFORD CHANCE

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## **Coronavirus: MiFID2 Quick Fix and Prospectus Regulation amendments published in Official Journal**

[Directive \(EU\) 2021/338](#) amending MiFID2 as regards information requirements, product governance and position limits (MiFID2 Quick Fix) and [Regulation \(EU\) 2021/337](#) amending the Prospectus Regulation have been published in the Official Journal (OJ).

MiFID Quick Fix, which seeks to simplify information requirements and support the growth of euro-denominated derivatives markets, entered into force on 27 February 2021 and is applicable from 28 February 2022. Member States are required to transpose the amendments into national law by 28 November 2021.

Regulation (EU) 2021/337, which introduces a short-form 'EU Recovery Prospectus' available until 31 December 2022, enters into force on the 18 March 2021.

Both measures form part of the Capital Markets Recovery Package aimed at facilitating the EU's economic recovery from the COVID-19 pandemic.

## **Banking Union: EU Commission consults on BRRD/SRMR/DGSD review**

The EU Commission has launched a [public consultation](#) as part of its review of the bank crisis management and deposit insurance (CMDI) framework set out in the Bank Recovery and Resolution Directive (BRRD), the Single Resolution Mechanism Regulation (SRMR) and the Deposit Guarantee Schemes Directive (DGSD).

The consultation, which follows the publication of a targeted, more technical consultation on 26 January 2021, seeks stakeholder views on general objectives and the focus of the review, in particular:

- whether the CMDI framework has achieved its objectives;
- whether the measures and procedures available in the current legislative framework have contributed effectively to the management of banks' crises;
- whether the use of resolution should be extended to a larger population of banks;
- whether the conditions for accessing different sources of funding in resolution and insolvency should be revised;
- whether the measures currently available when the conditions for resolution and insolvency are not met should be maintained;
- the potential reform of the use of DGS funds in the future framework;
- whether any major issues relating to depositor protection require clarification or a policy response;
- the scope of depositor protection in the future framework;
- whether the rules on depositor information are sufficient; and
- views on the European Deposit Insurance Scheme (EDIS).

The consultation closes on 20 May 2021.

## **Sustainable finance: ESAs publish supervisory statement on application of SFDR**

The European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), and the European Securities and Markets Authority (ESMA), have published a [supervisory statement](#) on the application of the Sustainable Finance Disclosure Regulation (SFDR).

Aimed at mitigating the risk of divergent application, the supervisory statement recommends that national competent authorities, financial market participants and financial advisers use the draft regulatory technical standards (RTS) on disclosures as a reference for the purposes of applying the provisions of the SFDR in the interim period between the application of SFDR on 10 March 2021 and the later application of the draft RTS.

In the final report on the draft RTS published and submitted to the EU Commission for endorsement on 4 February 2021, the ESAs proposed an application date for the RTS of 1 January 2022.

The annex to the statement sets out the application timeline for entity-level principal adverse impact disclosures and for financial products' periodic reporting, and a summary table of the application dates of the SFDR and Taxonomy Regulation (TR) disclosure obligations.

The ESAs intend to publish a consultation on taxonomy-related product disclosures under the TR, which amends certain empowerments under SFDR, in March 2021.

### **CRR2: EBA publishes final draft RTS on indirect exposures to underlying clients in derivative and credit derivative contracts**

The EBA has published a [final report](#) setting out draft RTS on determining indirect exposures to underlying clients in derivative and credit derivative contracts under Article 390(9) of the second Capital Requirements Regulation (CRR2).

The draft RTS propose one calculation methodology for certain categories of derivative and credit derivative contracts with a single underlying debt or equity instrument, in particular:

- options on debt and equity instruments;
- credit derivative contracts; and
- other derivatives having as underlying a debt or equity instrument.

The RTS also propose a methodology for calculating exposures which arise from contracts with multiple underlying reference names.

The draft RTS are intended to ensure appropriate consistency across different aspects of the regulatory calculation framework for large exposure, and also to be compatible with the jump-to-default (JTD) approach under the Fundamental Review of the Trading Book (FRTB) and the CRR, as well as the corresponding draft RTS on JTD that the EBA is developing.

The final draft RTS on indirect exposures will be submitted to the EU Commission for adoption.

### **Investment firms: EBA consults on draft technical standards on supervisory cooperation**

The EBA has published two consultations on draft RTS and draft implementing technical standards (ITS) on cooperation and information exchange between competent authorities under the Investment Firms Directive (IFD).

The [consultation on draft RTS on colleges of supervisors](#) for investment firms groups seeks views on the conditions under which the colleges, established with a view to making supervision of cross-border investment firms more effective and efficient, exercise their tasks.

The [consultation on draft RTS and ITS on information exchange](#) between competent authorities of home and host Member States seeks views on the information that shall be exchanged in relation to investment firms operating through a branch or their freedom to provide services in one or more Member States other than those in which they are incorporated, and the standard forms, templates and procedures for the exchange of that information.

A public hearing is taking place on 7 April 2021 and the consultation closes on 23 April 2021.

## **PSD2: EBA issues opinion on actions to remove obstacles preventing third party providers from accessing payment accounts**

The EBA has issued an [opinion](#) on supervisory actions national competent authorities (NCAs) should take to ensure that banks remove any obstacles preventing third party providers from accessing payment accounts, in compliance with the recast Payment Services Directive (PSD2).

The EBA expects NCAs to conduct an assessment of the progress made by account servicing payment service providers (ASPSPs) in removing obstacles to the provision of account information and payment initiation services. In cases where obstacles remain, the NCAs should take supervisory action by 30 April 2021, such as issuing an instruction or warning to the ASPSP or requiring an amendment to its rules, procedures or systems.

If the ASPSPs do not remove the obstacles by the deadline set by the NCAs, then the NCAs should take further supervisory measures, including imposing fines or revoking exemptions from the contingency mechanism already granted to ASPSPs under the regulatory technical standards on strong customer authentication and common and secure communication.

## **ESMA consults on draft RTS and ITS under crowdfunding framework and publishes first Q&A**

ESMA has published a [consultation](#) on draft RTS and ITS under Regulation (EU) 2020/1503 on European crowdfunding service providers (ECSPs) for business. In particular, ESMA is seeking feedback on proposed RTS and ITS covering the following issues;

- complaints handling;
- conflicts of interest;
- business continuity plans;
- applications for authorisation;
- information provided to clients on the default rate of projects;
- entry knowledge tests and simulations of the ability to bear loss for investors;
- key investment information sheets;
- reporting by crowdfunding service providers to NCAs and by NCAs to ESMA; and
- the publication of national provisions on marketing requirements.

Also published is a [questions and answers \(Q&A\) document](#). The Q&As covers the use of special purpose vehicles (SPVs) for the provision of crowdfunding services.

Comments on the consultation are due by 28 May 2021.

## **ESMA consults on methodology to calculate a benchmark in exceptional circumstances**

ESMA has launched a [consultation](#) on draft guidelines detailing the obligations applicable to administrators that use a methodology to calculate a benchmark in exceptional circumstances under the EU Benchmarks Regulation (BMR).

During exceptional circumstances such as the COVID-19 pandemic, administrators can use an alternative methodology to calculate a benchmark. ESMA is consulting on clarifications and specifications regarding the adjustments of benchmarks in exceptional circumstances in relation to:

- transparency of methodology;
- oversight function; and
- record keeping requirements.

The draft guidelines aim to ensure that benchmarks administrators have in place a transparent framework when consulting on material changes to the methodology in a short time period.

Comments are due by 30 April 2021. ESMA expects to publish the final guidelines in Q3 2021.

## **EMIR: ESMA publishes guidelines on CCP supervisory reviews and evaluations**

ESMA has published a final report setting out [guidelines](#) intended to assist competent authorities in applying provisions of the European Market Infrastructure Regulation (EMIR) on the review and evaluation of central counterparties (CCPs).

The guidelines are intended to address common procedures and methodologies for reviewing CCPs' arrangements, strategies, processes and mechanisms. In particular, they discuss CCP review and evaluation in relation to the following areas:

- capital requirements;
- organisational requirements;
- business continuity;
- conduct of business;
- prudential requirements; and
- interoperability arrangements.

## **MiFIR: ESMA publishes annual report on waivers and deferrals for non-equity instruments**

ESMA has published its [second annual report](#) on the application of waivers and deferrals for non-equity instruments under MiFIR.

The report is based on waivers for which ESMA issued an opinion between 1 January and 31 December 2019, and includes an overview of the deferral regime applied across different Member States.



Main findings of the report include:

- the largest number of pre-trade transparency waiver notifications were submitted by the Netherlands, reflecting the establishment of subsidiaries of trading venues operating in the UK in the context of Brexit;
- 80% of requests were split among the illiquid waiver, the large-in-scale (LIS) waiver, the order management facility (OMF) waiver and the size specific to the financial instrument (SSTI) waiver;
- the non-equity waivers assessed predominantly related to a variety of instruments, but mainly bonds, IR derivatives and equity derivatives, commodity derivatives and FX derivatives; and
- for post-trade transparency, LIS transactions deferrals were commonly used across trading venues for different types of non-equity instruments.

ESMA intends to publish the next annual reports covering the application of the waivers and deferral regimes in 2020 in the second half of 2021.

## **ECB publishes supervisory memoranda of understanding**

The European Central Bank (ECB) has published [memoranda of understanding](#) with UK, European and non-European authorities.

This includes a memorandum of understanding (MoU) on post-Brexit supervisory cooperation with the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA), effective from 1 January 2021. The ECB has also published MoUs with:

- the Swedish Financial Supervisory Authority (Finansinspektionen), the Financial Supervisory Authority of Norway (Finanstilsynet), the Danish Financial Supervisory Authority (Finanstilsynet) and the Finnish Financial Supervisory Authority (Finanssivalvonta);
- the Abu Dhabi Global Market's Financial Services Regulatory Authority;
- the National Bank of Moldova; and
- the Netherlands Authority for the Financial Markets.

This follows the ECB's recent decision to publish existing supervisory MoUs as well as those signed in the future, with the aim of enhancing transparency and accountability. The ECB intends to publish a second group of supervisory MoUs that have already been signed by the end of April 2021. The MoUs are published on a dedicated page on the ECB's banking supervision website.

## **ECB issues opinion on EU Commission's markets in cryptoassets legislative proposal**

The ECB has issued an [opinion](#) on the EU Commission's proposal for a regulation on markets in cryptoassets (MiCA), which was adopted in September 2020. Overall the ECB welcomes the aims of the MiCA Regulation, however it believes there are some areas of the proposal, particularly relating to the responsibilities of the ECB, the Eurosystem and the European System of Central Banks (ESCB), that require adjustment.

Among other things, the ECB recommends amending the proposed regulation to:

- clarify that the regulation does not apply to the issuance by central banks of central bank money based on distributed ledger technology or in a digital form as a complement to existing forms of central bank money;
- clarify the distinction between cryptoassets that may be characterised as financial instruments (and thus fall under the scope of MiFID2) and those that do not (and thus fall under the scope of the MiCA Regulation);
- grant national competent authorities additional powers to address asset-referenced tokens that become a threat to financial stability, monetary policy transmission or monetary sovereignty;
- clarify the supervisory responsibilities and tasks of the ECB and EBA, particularly in instances where the issuer of significant stablecoins is a significant credit institution; and
- provide for the introduction of safeguards to prevent a possible concentration of custodians or the investment of a token's reserve assets.

The opinion also sets out the ECB's considerations regarding various issues raised by the regulation, including on the conduct of monetary policy, the operation of payment systems, the prudential supervision of credit institutions and the safeguarding of financial stability.

## **FSB publishes letter on key priorities for 2021**

The Financial Stability Board (FSB) has published a [letter](#) from its Chair to G20 finance ministers and central bank ministers ahead of their virtual meeting on 26 February 2021.

The letter sets out the FSB's key priorities for 2021, including:

- addressing COVID-19 related vulnerabilities, with an intention to report on the orderly unwinding of support measures and the challenges of rising corporate debt levels as well as its evaluation of too-big-to-fail reforms for banks in April, and to publish a final report on initial lessons learned in October;
- increasing the resilience of non-bank financial intermediation (NBFIs), with an intention to consult on policy proposals to enhance money market fund (MMF) resilience in July;
- enhancing cross-border payments, with an intention to publish a final set of quantitative targets for pursuing key roadmap objectives and an update on stablecoins in October; and
- better understanding the relationship between climate-related risks and the financial system, including an assessment of data availability, work on disclosure standards and a review of regulatory and supervisory approaches to addressing risks.

The FSB also intends to continue work aimed at:

- ensuring a smooth transition away from LIBOR;
- enhancing CCP resilience, recovery and resolvability; and
- exploring further harmonisation of cyber incident reporting.



The FSB published its 2021 work programme on 20 January 2021.

## **IOSCO sets out plans to improve sustainability-related disclosures**

The International Organization of Securities Commission (IOSCO) has issued a [press release](#) setting out the work it intends to undertake to improve the sustainability-related disclosures by companies and asset managers. Following the work conducted by IOSCO's Sustainable Finance Task Force (STF) in 2020, IOSCO concluded that investor demand for sustainability-related information is currently not being properly met. It has therefore identified the following three priority areas to improve upon:

- progress towards the globally consistent application of a common set of international standards for sustainability-related disclosures;
- the use of industry-specific, quantitative metrics in companies' sustainability-related disclosures and the standardisation of narrative information; and
- the coordination across approaches, including reconciling a focus on enterprise value creation with meeting investors' wider sustainability information needs, and the closer integration of those two aspects with reporting under current accounting standards frameworks and the independent assurance of companies' disclosures.

IOSCO also notes it is committed to working with the IFRS Foundation Trustees on the establishment of a Sustainability Standards Board (SSB), which will sit alongside the International Accounting Standards Board (IASB) and will be responsible for delivering an effective system architecture for setting sustainability disclosure standards. IOSCO calls for the SSB to build on existing sustainability-related reporting frameworks, including the approach to climate-related disclosures developed by an alliance of leading sustainability reporting organisations. It also recommends the SSB takes a 'building blocks' approach to establishing a global sustainability reporting system, which would provide a consistent and comparable baseline of sustainability-related information that is material to enterprise value creation, while also providing flexibility for coordination on reporting requirements that capture wider sustainability impacts.

## **HM Treasury publishes final report of independent review of UK fintech sector**

HM Treasury (HMT) has published the [final report](#) of the independent review into the UK's fintech sector, led by Ron Kalifa OBE. The Kalifa review, which was announced in the March Budget 2020, was established to identify priority areas of focus for industry, regulators and policy makers for the fostering of innovation, support of growing firms and promotion of the integration of new technologies across UK financial services. The final report sets out a five point plan, designed to address the risks posed to the sector by competitor jurisdictions, the regulatory uncertainty around Brexit and the challenges of COVID-19, and to capitalise on the opportunities in the areas of employment, trade, inclusion and recovery.

Key recommendations to the Government include:

- adopting specific policy initiatives to support emerging technology, such as digital ID and data standards;

- establishing a 'scalebox', an enhanced regulatory sandbox designed to support firms focusing on scaling innovative technology;
- establishing a digital economy taskforce, responsible for developing a policy roadmap for tech and digital strategy and to act as a single touchpoint for the private sector;
- ensuring that fintech forms an integral part of global trade policy;
- expanding tax-incentivised investment schemes and ensuring companies can continue to qualify for them if their business models became regulated in the future;
- improving the UK listing environment with free float reduction and dual class shares;
- developing an international action plan to identify public and private sector key objectives and priority markets, and launching an international fintech taskforce responsible for putting the plan into action;
- establishing a Centre for Finance, Innovation and Technology, mandated and backed by the Government but led by the private sector to coordinate policies designed to the expand the fintech sector with a focus on jobs, trade, global leadership, inclusion and recovery;
- creating a new visa stream for fintech specialists from around the world; and
- nurturing the growth potential of the top ten fintech clusters, including producing a three-year strategy for each cluster and increasing the investment in research and development.

The report also recommends that a review is scheduled for February 2022 at which point the public and private sector should report on the progress they have made in delivering the above recommendations.

## **HM Treasury consults on expanded resolution regime for CCPs**

HMT has published a [consultation paper](#) on an expanded resolution regime for CCPs. The proposed new regime would provide the Bank of England (BoE) with additional powers intended to mitigate the risk and effects of CCP failure, as well as the subsequent risks to financial stability and public funds.

The proposed additional powers for the BoE include the following, amongst others:

- requiring a CCP to make ex ante changes to its arrangements in order to remove material impediments to resolvability;
- placing a CCP into resolution before its own recovery measures have been exhausted, if those continued recovery actions would likely compromise financial stability;
- suspending termination rights;
- taking control of a CCP;
- prohibiting or restricting the payment of dividends, buybacks or variable remuneration, as well as the power to remove and replace directors and senior executives;

- loss-allocation powers and safeguards, including deviation from a CCP's rules and arrangements, a 'no creditor worse off' (NCWO) safeguard, as well as powers to generate additional loss absorbing capacity through writing down unsecured liabilities (in non-default scenarios) and collecting cash contributions from clearing members; and
- delaying enforcement of a clearing member's obligation in resolution.

The proposed changes are intended to bring the UK into alignment with international standards developed by the FSB. HMT notes that the proposed regime is not significantly different from the EU regime, aside from in certain technical areas.

Comments on the consultation are due by 28 May 2021. HM Government will consider how best to legislate for the consultation proposals and bring legislation when parliamentary time allows.

### **BoE publishes Dear CEO letter on resolvability assessment framework submissions**

The BoE has published a [Dear CEO letter](#) ahead of the first resolvability assessment framework (RAF) report submissions due in October 2021.

The letter emphasises the importance the BoE places on the exercise, as well as the importance of firms taking ownership of their resolvability more generally, and covers:

- the BoE's work in maintaining the UK resolution regime, including its commitment to Parliament that major UK banks will be resolvable by 2022, and the steps to be taken by firms in order to prepare for resolution;
- transparency in the resolution process, including disclosures by firms and public statements by the BoE;
- the three resolvability outcomes firms need to achieve by January 2022, including examples of good practice; and
- firms' assurance arrangements, including governance processes, testing arrangements and capability design.

The BoE intends to engage firms on the operational arrangements for the first RAF cycle later in 2021.

### **BoE publishes plan to transform data collection in financial sector**

The BoE has published its [plan](#) to transform its ability to collect data in the financial sector in 2021 and over the next decade. This follows a year-long data collection review that was announced in the BoE's response to Huw van Steenis' Future of Finance report, and the publication of a discussion paper on transforming data collection in January 2020.

The plan is intended to tackle strains on the current data collection process and on the suppliers of data within the financial sector, as well as to address the expectations of participants across the financial system that they should have high quality, timely data available to guide them in their decision-making. It sets out planned reforms and next steps, including the creation of a joint work programme with the FCA and industry.

The FCA and the PRA have written a [Dear CEO letter](#) to regulated firms to update them on the BoE's plan and to set out what the BoE and regulators need from firms in order to address the challenges posed by data collection.

## **FCA publishes guidance on fair treatment of vulnerable customers**

The FCA has published [final guidance](#) for firms on the fair treatment of vulnerable customers.

The guidance sets out the FCA's expectations of how firms should comply with their obligations under the Principles for Businesses to treat customers fairly, including:

- understanding the needs of their target market and customer base;
- ensuring staff have the right skills and capability to recognise and respond to the needs of vulnerable customers;
- responding to customer needs throughout product design, flexible customer service provision and communications; and
- monitoring and assessing whether they are meeting and responding to the needs of customers with characteristics of vulnerability, and making improvements where they are not.

The FCA has also published a [MoU](#) with the Equality and Human Rights Commission (EHRC) setting out how they will co-operate and work together on equalities issues.

## **Working Group on Sterling Risk-Free Reference Rates publishes papers on transitioning away from GBP LIBOR in loan market**

The Working Group on Sterling Risk-Free Reference Rates has published two papers to support market participants in moving new and refinanced loan issuance away from GBP LIBOR and to cease new issuance of GBP LIBOR-linked loans by the end of March 2021.

It is a recommended milestone of the Working Group that, from the end of March 2021, GBP LIBOR is no longer used in any new lending or other cash products that mature after the end of 2021. The papers include:

- a [question and answer document](#) relating to the end-Q1 2021 recommended milestone; and
- a [best practice guide](#) on conventions for new GBP SONIA referencing loans (including refinancing and renewals) and for the transition of legacy GBP LIBOR referencing loans, covering bilateral loans, syndicated loans and other loans where GBP LIBOR is in use.

The best practice guide consolidates information from previous publications to provide a single point of reference for best practice for GBP loans maturing after the end of 2021.

## **Working Group on Sterling Risk-Free Reference Rates publishes paper on ending new use of GBP LIBOR-linked derivatives and updates roadmap**

The Working Group on Sterling Risk-Free Reference Rates has published a [paper](#) to support market participants in meeting its upcoming recommended milestones for ending new use of GBP LIBOR in derivatives.

The paper details the limited circumstances when it may be appropriate to enter into new GBP LIBOR-linked derivatives after the relevant milestones, for risk management of existing positions and to support transition flows for active conversion. The Working Group's key expectation is that any new GBP LIBOR-linked derivatives expiring after the end of 2021, entered into after the recommended milestones, be based on SONIA.

The Working Group has also updated its [priorities and roadmap](#) for transition by end-2021. For the GBP LIBOR-linked derivatives market the recommended milestones (except for risk management of existing positions) are:

- by end-Q1 2021, cease initiation of new GBP LIBOR-linked linear derivatives that expire after the end of 2021;
- by end-Q2 2021, cease initiation of new GBP LIBOR-linked non-linear derivatives that expire after the end of 2021;
- during Q2/Q3 2021, cease initiation of new cross-currency derivatives with a LIBOR-linked sterling leg, that expire after the end of 2021; and
- progress active conversion of all legacy GBP LIBOR contracts where viable through to completion by end-Q3 2021.

## **Sustainable Finance Committee of German Federal Government presents final report**

The Sustainable Finance Committee (SFC) appointed by the German Federal Government has presented a [report](#) with 31 recommendations on how the transformation of the German economy can be financed with a sustainable financial system.

The Sustainable Finance Committee was established in June 2019 to advise the German Federal Government on the formulation and implementation of a sustainable finance strategy in the current legislative term. It comprises 38 practitioners from the financial industry and real economy, academia, and civil society.

Amongst other things, the recommendations made by the SFC in its now submitted final report, entitled 'Shifting the Trillions – A Sustainable Financial System for the Great Transformation' focus on the following areas:

- the German Federal Government's crucial role in establishing a coherent, future-proof, and sustainable policy framework;
- corporate reporting regarding sustainability risks and impacts;
- appropriate knowledge and qualifications required for the transformation in management, financial institutions, financial advice and credit assessment, and in the regulatory authorities;
- sustainability-supporting financial products; and

- alignment of public-sector financial institutions' lending and investment policies with the targets of international treaties and frameworks ratified by the German Federal Government.

## **BaFin publishes circular on reporting information for resolution planning purposes**

The German Federal Financial Supervisory Authority (BaFin) has published a [circular](#) on reporting information systems for the provision of information for resolution planning purposes (Mindestanforderungen an Informationssysteme zur Bereitstellung von Informationen für Bewertungen im Rahmen einer Abwicklung).

The circular is addressed to all institutions and undertakings identified under section 2, para.1 and section 1, no.3 of the German Recovery and Resolution Act (Sanierungs-und Abwicklungsgesetz (SAG)) respectively, that do not fall under the jurisdiction of the Single Resolution Board pursuant to article 7 para.2, 4b or 5 of the Single Resolution Mechanism Regulation (SRMR), and that do not have an insolvency scenario defined as their resolution strategy.

The circular sets out the requirements for institutions to maintain appropriate systems and processes to allow them to provide essential information for effective and efficient resolution within 24 hours of a request being made by the resolution authority. Essential information in this context includes any information that is required for a valuation under: article 20, para.1 of the SRMR; section 69, para.1 and article 20 para.16 of the SRMR; or section 146 para.1 of the SAG.

## **CSSF announces new e-Prospectus filing application**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has announced in the February issue of its [newsletter](#) the go-live date for its new e-Prospectus application for filing prospectuses.

The e-Prospectus application will apply to the filing of prospectuses for securities offered to the public or admitted to trading on a regulated market under the Prospectus Regulation ((EU) 2017/1129) and the Luxembourg law of 16 July 2019 on prospectuses for securities.

The new application will replace the current procedure of submitting files via email from 1 March 2021.

Access to the application will require authentication with a LuxTrust certificate, which will be linked to an e-Prospectus account. The CSSF recommends that those who do not have a LuxTrust certificate order one as soon as possible in order to be able to submit files via the e-Prospectus application.

## **CSSF publishes revised mandatory form for notification of NAV calculation errors and investment breaches by investment funds**

The CSSF has introduced a [revised version](#) of the mandatory notification form to be used for the transmission of net asset value (NAV) calculation errors and investment breaches by undertakings for collective investment (UCIs) in accordance with [Circular 02/77](#).

The main changes brought to the revised form include the introduction of additional drop-down menus (e.g. categorisation of investment breaches), the



removal of some data fields (e.g. share class specific information) and the addition of some data fields (notably on corrective measures implemented at the level of the UCI for avoiding the reoccurrence of similar incidents in the future).

The CSSF has also published [additional explanations](#) in relation to the revised form, in which it reminds entities that the notification procedure for NAV calculation errors and investment breaches continue to be applicable to UCITS and Part II UCIs as well as to specialised investment funds (SIFs).

The CSSF further indicates that the notification procedure must start immediately after the occurrence of a NAV calculation error or non-compliance with investment rules, and that it expects a complete form to be submitted within 4 to 8 weeks of the detection of the incident. However, the CSSF specifies that:

- for non-compliance with investment rules that do not involve time consuming calculations, the form should be submitted within 4 to 6 weeks following their detection; and
- for non-compliance with investment rules involving more time-consuming calculations and for regularisation process of NAV calculation errors involving the compensation of individual investors (which may both take longer time), the form should be submitted within 6 to 8 weeks.

### **CSSF sets out simplified submission process for approval of new sub-fund under an existing investment fund**

The CSSF has issued a press release concerning the simplification of the submission process for the approval of a new sub-fund under an existing regulated investment fund structure subject to the CSSF's prudential supervision.

The simplified process consists of the completion and submission to the CSSF of a [new single application questionnaire](#) replacing the four application questionnaires currently in use for the approval by the CSSF of a new sub-fund created within an existing:

- UCITS or Part II UCI subject to the Law of 17 December 2010 on undertakings for collective investment funds;
- SIF subject to the Law of 13 February 2007 on specialised investment funds;
- SICAR subject to the Law of 15 June 2004 on investment companies in risk capital.

The new questionnaire is an Excel file (downloadable from the CSSF website), which has been designed to further standardise the data, information and documents necessary to the CSSF for the examination of the application made. It compiles information and data already requested under the former questionnaires, but also requires certain additional information in relation to, amongst others things:

- the fee structure applicable to the new sub-fund,
- the classification of the new sub-fund as Article 8, Article 9 or other product under the Sustainability Financial Disclosure Directive (SFDR), with the completion of an additional ESG section for an Article 8/9 sub-fund;

- the use of benchmarks by the new sub-fund under the BMR; and
- the use of derivatives by, and correlative obligations applicable to, the new sub-fund under the EMIR.

The new questionnaire was introduced with immediate effect from 23 February 2021 and one single questionnaire must be completed for each new sub-fund of an existing UCITS, Part II UCI, or SICAR for which an approval by the CSSF is requested. Filings using the former questionnaires will however still be accepted by the CSSF until 12 March 2021.

### **Hong Kong and the United Arab Emirates sign MOU to enhance collaboration on fintech**

The Hong Kong Monetary Authority (HKMA) and the Central Bank of the United Arab Emirates (CBUAE) have signed a [MOU](#), with a view to strengthening co-operation between the two jurisdictions in promoting innovative financial services and regulatory development.

Under the MOU, the two authorities have agreed that the CBUAE will join the multiple central bank digital currency bridge project collaboratively implemented by the HKMA, the Bank of Thailand, the Digital Currency Institute of the People's Bank of China and the Bank for International Settlements Innovation Hub Centre in Hong Kong.

### **FSC announces measures to strengthen liquidity management of specialised credit finance companies**

The Financial Services Commission (FSC) has [announced](#) a set of measures designed to strengthen the liquidity management of specialised credit finance companies.

To address concerns regarding credit finance companies turning into a conduit of systemic risk in times of an unexpected economic shock such as COVID-19, owing to their heavy reliance on debt finance, the following key measures have been introduced:

- best practice guidelines, which mainly provide guidance with regard to the role of the board of directors and management of the company, liquidity risk indicators and liquidity assessment and management;
- inclusion of qualitative indicators under the rules of the Credit Finance Association to bolster credit finance companies' disclosure requirements at par with those governing the banking sector;
- making improvements to the liquidity assessment criteria to better reflect credit finance companies' abilities to respond to liquidity crisis; and
- gradually lowering the maximum leverage allowed for credit finance (non-credit card) companies, from the current level of ten times to nine times in 2022-2024 and to eight times from 2025.

### **MAS publishes notice to persons providing account issuance services on prevention of money laundering and countering financing of terrorism**

The Monetary Authority of Singapore (MAS) has published a [new notice to persons](#) providing account issuances services exempted under the Payment Services (Exemption for Specified Period) Regulations 2019 on the prevention

of money laundering and countering the financing of terrorism (MAS Notice PSN01AA).

The MAS Notice PSN01AA is a transitional arrangement and is intended to substantially apply the requirements of the notice to holders of stored value facilities on the prevention of money laundering and countering the financing of terrorism ([MAS Notice PSOA-N02](#)) to exempted persons providing account issuance services.

The MAS Notice PSN01AA will be applicable to these exempt persons until such time that the exemption applicable to such exempt person under Regulation 3(1), read with Regulation 3(2), of the Payment Services (Exemption for Specified Period) Regulations 2019 ceases.

The MAS Notice PSN01AA is effective from 11 February 2021.

## **ASIC revises sunset date for litigation funding legislative instrument**

The Australian Securities and Investments Commission (ASIC) has revised the duration of relief relating to litigation funding schemes. The [ASIC Corporations \(Amendment\) Instrument 2021/116](#) amends [ASIC Corporations \(Litigation Funding Schemes\) Instrument 2020/787](#) by changing the sunset date from 1 October 2030 to 22 August 2025.

Instrument 2020/787 was designed to provide exemptions from certain provisions in Chapters 5C and 7 of the Corporations Act 2001 for litigation funding schemes in order to facilitate the implementation of the new regulatory framework for litigation funding schemes. Instrument 2021/116 introduces a five-year sunset date in order to address:

- concerns with the original term raised by the Senate Standing Committee for the Scrutiny of Delegated Legislation; and
- the overlap between the matters addressed by Instrument 2020/787 and the recommendations in the final report of the Parliamentary Joint Committee inquiry into litigation funding and the regulation of the class action industry, published in December 2020, which the Australian Government is yet to respond to.

ASIC has indicated that it will continue to monitor and, if necessary, further modify Instrument 2020/787 to ensure that it is operating effectively and consistently with the policy intent of the legislative framework applicable to litigation funding schemes.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **A new chapter in UK-Japan economic and trade relations**

The new trade agreement between the UK and Japan, the Comprehensive Economic Partnership Agreement (CEPA) came into force on 1 January 2021.

As a result, the UK-Japan trading relationship is no longer governed by the Japan-EU Economic Partnership Agreement (JEEPA).

This briefing considers how the provisions of CEPA depart from the EPA regime and, in the context of Brexit, what impact the new arrangements have on key sectors.

<https://www.cliffordchance.com/briefings/2021/02/a-new-chapter-in-uk-japan-economic-and-trade-relations.html>

## **OFAC risk isn't virtual for digital currency payment processors**

On 18 February 2021, the US Department of the Treasury's Office of Foreign Assets Control announced a settlement of apparent US sanctions violations by Atlanta, Georgia-based BitPay, Inc. involving its provision of digital currency payment processing services to purchasers of goods and services located in Crimea, Cuba, Iran, North Korea, Sudan and Syria.

The case highlights the sanctions risks for US companies that provide services in connection with digital currency payments and indicates sanctions compliance controls that may be appropriate to mitigate such risks. BitPay did not voluntarily self-disclose the apparent violations, but OFAC determined that they were not egregious and therefore assessed a base penalty of USD 2,255,000. OFAC then reduced the final penalty to USD 507,375 based on a number of mitigating factors including BitPay's cooperation with OFAC, remedial measures and compliance enhancements.

This briefing discusses the case.

<https://www.cliffordchance.com/briefings/2021/02/OFAC-Risk-Isnt-Virtual-for-Digital-Currency-Payment-Processors.html>

# C L I F F O R D C H A N C E

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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