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**International Regulatory Group
Contacts**

[Marc Benzler](#) +49 69 7199 3304

[Caroline Dawson](#) +44 207006 4355

[Steven Gatti](#) +1 202 912 5095

[Lena Ng](#) +65 6410 2215

[Gareth Old](#) +1 212 878 8539

[Mark Shipman](#) + 852 2826 8992

[Donna Wacker](#) +852 2826 3478

**International Regulatory Update
Editor**

[Joachim Richter](#) +44 (0)20 7006 2503

To email one of the above, please use firstname.lastname@cliffordchance.com

Clifford Chance LLP,
10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

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Capital requirements: EU Commission adopts new EU banking rules package

The EU Commission has adopted a review of the Capital Requirements Regulation (CRR) and the Capital Requirements Directive (CRD). The new rules finalise the implementation of the Basel III agreement, and are also intended to contribute to Europe's recovery from the COVID-19 pandemic and the transition to climate neutrality.

The review consists of two legislative proposals which amend the CRD and the CRR respectively ([CRD5](#) and [CRR3](#)), and a third legislative proposal to amend the CRR in the area of resolution, known as the ['daisy chain' proposal](#).

The package comprises rules which:

- implement the final elements of Basel III and aim to strengthen the EU banking sector's resilience to economic shocks without resulting in significant increases in capital requirements;
- focus on sustainability and contribute to the green transition by requiring banks to systemically identify, disclose, and manage environmental, social, and governance (ESG) risks as part of their risk management; and
- strengthen supervision practices to ensure sound management of EU banks and better protect financial stability through assessments of senior staff's requisite skills and knowledge, better supervision tools for the oversight of fintech groups, and harmonising rules on the establishment of branches of third-country banks in the EU.

The proposals will now be discussed by the EU Parliament and Council.

Sustainable finance: ESAs publish final RTS on taxonomy-related disclosures under 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 [final report](#) setting out draft regulatory technical standards (RTS) on taxonomy-related product disclosures under the Sustainable Finance Disclosure Regulation (SFDR).

The draft RTS aim to establish a single rulebook for sustainability disclosures under the SFDR and the Taxonomy Regulation (TR) by amending the existing SFDR RTS on the content and presentation of pre-contractual and periodic disclosures to include additional specific taxonomy-related disclosure requirements for products making sustainable investments contributing to climate or other environmental objectives.

As well as some targeted revisions, the proposed changes broadly cover:

- information on environmental objectives to which the investment underlying the financial product contributes; and
- information on how and to what extent investments underlying the financial product are in economic activities that qualify as environmentally sustainable under the TR.

A consolidated version of the SFDR RTS incorporating the proposed amendments is set out in section 5 of the final report.

The draft RTS have been submitted to the EU Commission for endorsement, which is expected to take place within three months. The Commission intends to combine all the SFDR RTS, including those published on 4 February and 22 October 2021, into a single delegated act.

The ESAs have proposed an application date for the RTS of 1 January 2022, although they note that the EU Commission has indicated an expected application date of 1 July 2022.

BRRD: SRB updates guidance on impracticability to include bail-in recognition clauses

The Single Resolution Board (SRB) has published an [updated version](#) of its guidance on its approach to and expectations in relation to notifications of impracticability to include bail-in recognition clauses in relevant third country law governed contracts under Article 55(2) of the Bank Recovery and Resolution Directive (BRRD).

Changes include:

- updated legislative references to the technical standards on the conditions for impracticability (Delegated Regulation (EU) 2021/1527) and on notification formats and templates (Implementing Regulation (EU) 2021/1751);
- a requirement for banks to submit notifications, if any, in XBRL format; and
- practical instructions for banks reporting categories of liabilities, in line with EBA Reporting Framework 3.0.

CRR: EBA publishes final draft RTS on alternative standardised approach for market risk as part of FRTB roadmap

The EBA has published its [final draft RTS](#) on gross jump-to-default (JTD) amounts and on residual risk add-on under CRR. The final draft RTS provide technical specifications for the implementation of these two elements of the alternative standardised approach for market risk. They are part of the phase three deliverables of the EBA roadmap for the new market and counterparty credit risk approaches.

PSD2: EBA consults on amendments to RTS on SCA&CSC

The EBA has launched a [consultation](#) on the amendment of its [RTS](#) on strong customer authentication and secure communication (SCA&CSC) under the Payment Services Directive (PSD2) with regard to the 90-day exemption from SCA for account access.

The proposed amendment aims to address a number of issues that the EBA identified in the application of the exemption, particularly in cases where account servicing payment service providers (ASPSPs) across Member States have not made use of the exemption and request SCA for each account access, or where they request SCA more frequently than every 90 days, as permitted by the RTS.

The EBA is proposing to:

- introduce a new mandatory exemption from SCA for the specific use cases when the access is done through an account information service provider (AISP) that is subject to certain safeguards and conditions aimed at ensuring the safety of customers' data; and
- retain the exemption in Article 10 of the RTS to be voluntary for cases where customers access the data directly and extend the 90-day timeline in Article 10 for the renewal of SCA to the same 180-day period applied where account data is accessed through an AISP.

A public hearing will take place online on 11 November 2021, and comments are due on 25 November 2021.

EBA publishes opinion on protection of client funds by deposit guarantee schemes

The EBA has published an [opinion](#) on the treatment of client funds under the Deposit Guarantee Schemes Directive (DGSD).

The EBA assessed the current approaches to the protection of funds deposited with credit institutions on behalf of clients by entities that are themselves excluded from DGS protection. The EBA observed that there are discrepancies across the EU, and within Member States, in relation to the protection of client funds by DGSs depending on what sort of entity deposits them on behalf of its clients.

The opinion calls on the EU Commission to clarify the DGSD to ensure that funds deposited on behalf of clients are uniformly protected across the EU. The opinion also recommends how to avoid a risk of contagion spreading from a failed bank to entities which placed client funds with that bank, and to ensure that credit institutions contribute to the DGS funds based on the amounts of protected client funds they hold.

SRB publishes guidance on separability for transfer tools

The SRB has published [operational guidance](#) on how firms can meet the SRB's expectations regarding separability.

The guidance follows the publication of the SRB's expectations for banks and sets out more detail on the content of separability analysis reports (SAR) and transfer playbooks required of banks whose preferred resolution strategy (PRS) envisages a transfer tool, such as sale of business, asset separation or bridge institution.

The SRB also notes that, due to the end 2023 deadline for separability analyses, separability work to operationalise partial transfer tools is a general working priority during the 2022 resolution planning cycle.

Both documents are due by 31 December 2022.

ESMA issues statement on investment recommendations made on social media

ESMA has issued a [public statement](#) on investment recommendations made on social media platforms. The statement sets out what qualifies as an investment recommendation, the rules applicable to recommendations disseminated on social media, and the consequences of non-compliance.

Specifically the statement reminds stakeholders that, under the EU Market Abuse Regulation, firms and individuals making investment recommendations, including via social media, must disclose identities, present their recommendations in an objective way, and disclose all relationships or circumstances that could impair objectivity. If these rules are not followed, recommenders can face fines or further supervisory actions, including referral to public prosecutors.

FSB publishes letter to G20 and final COVID-19 report

The Financial Stability Board (FSB) has published a [letter](#) from its Chair to G20 finance ministers and central bank governors ahead of the summit which took place in Rome on 30-31 October 2021.

The letter sets out an overview of the FSB's work during the Italian G20 Presidency, including in response to the COVID-19 pandemic, in relation to technological innovations, and to understand and address climate-related financial risks. It also notes that the FSB is developing its 2022 workplan in concert with the incoming G20 Indonesian Presidency.

A [final report](#) on lessons learnt from the COVID-19 pandemic from a financial stability perspective, which updates the assessment provided in the July interim report, is published alongside the letter and, among other things, highlights the following broader policy issues:

- monitoring policy responses as they are wound down, in order to identify systemic vulnerabilities early on;
- addressing debt overhang in the non-financial corporate sector, including an intention to publish a decision paper on the topic later this year and a thematic peer review on corporate debt workouts in 2022;
- promoting resilience amidst rapid technological change;
- completing the remaining elements of the post-2008 crisis reform agenda; and
- examining in due course how macroprudential policy has functioned during the pandemic and its aftermath.

FSB publishes 2021 annual report

The FSB has published its [2021 annual report](#) on promoting global financial stability.

Originally published to report on the implementation and effects of the G20 financial regulatory reforms since 2015, the 2021 edition has been broadened to reflect the FSB's shift to new topics and covers:

- a high level assessment of current vulnerabilities in the global financial system, noting that COVID-19 continues to dominate the outlook for financial stability, and highlighting that stretched asset valuations and high non-financial sector debt could test financial resilience;
- the main findings of the FSB's ongoing financial stability work, including on the resilience of non-bank financial intermediation (NBFIs), on cyber incident response and recovery, on risks from global stablecoin arrangements, to enhance cross-border payments, and to assess and address climate-related financial risks; and

- progress by FSB members in implementing, and effects of, G20 reforms, including regulatory adoption of core Basel III elements, and the need to close gaps in the operationalisation of banks' resolution plans and to implement effective resolution regimes for insurers and central counterparties.

The report was delivered to the G20 ahead of the summit which took place in Rome on 30-31 October 2021.

Green finance: NGFS publishes report to assess implementation of climate-related risks recommendations

The Network for Greening the Financial System (NGFS), comprising 98 central banks and supervisors and 16 observers with the aim of meeting the goals of the Paris Agreement, has published a [report](#) on the implementation of the recommendations of its [guide for supervisors](#).

The report is intended to assess the progress made by NGFS supervisors in integrating climate-related and environmental risks into their supervisory frameworks. It also identifies 12 focus areas built on the five recommendations set out in the NGFS guide for supervisors published in May 2020.

The progress report, part of the NGFS' contribution to the 2021 United Nations Climate Change Conference (COP26), notes that supervisors have:

- implemented climate-related risks assessments;
- allocated adequate resources to address climate-related risks;
- included climate-related risks in their supervisory activities; and
- developed supervisory expectations for climate-related risks.

BCBS, CPMI and IOSCO consult on margining practices

The Basel Committee on Banking Supervision (BCBS), the Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) have jointly launched a [consultative report](#) on margining practices during the March 2020 market turmoil.

The report looks at margin calls in March and April 2020, margin practice transparency, predictability and volatility across various jurisdictions and markets, as well as market participants' liquidity management preparedness. The report finds that:

- variation margin calls in both centrally and non-centrally cleared markets in March were large, and significantly higher than in February 2020;
- initial margin requirements for centrally cleared markets increased by roughly USD 300 billion over March 2020, and varied substantially across and within asset classes; and
- initial margin requirements on non-centrally cleared derivatives remained relatively stable during the stress period.

The report identifies potential areas for further policy work, including:

- increasing transparency in centrally cleared markets;

- enhancing liquidity preparedness of market participants as well as liquidity disclosures;
- identifying data gaps in regulatory reporting;
- streamlining variation margin processes in centrally and non-centrally cleared markets;
- evaluating the responsiveness of centrally cleared initial margin models to market stresses; and
- evaluating the responsiveness of non-centrally cleared initial margin models to market stresses.

Comments are due by 12 January 2022. The BCBS, CPMI and IOSCO intend to produce a final report following the consultation period.

IOSCO updates outsourcing principles

IOSCO has published a set of [updated outsourcing principles](#) for regulated entities that outsource tasks to service providers. The principles cover the following areas:

- due diligence in the selection and monitoring of a service provider and its performance;
- the contract with a service provider;
- information security, business resilience, continuity and disaster recovery;
- confidentiality issues;
- concentration of outsourcing arrangements;
- access to data, premises, personnel and associated rights of inspection; and
- termination of outsourcing arrangements.

UK regulators publish climate change adaptation reports

The Financial Conduct Authority (FCA), the Prudential Regulation Authority (PRA), The Pensions Regulator (TPR) and the Financial Reporting Council (FRC) have published a [joint statement](#) on the publication of climate adaptation reports as requested by the UK Government under the Climate Change Act 2008.

The reports set out how climate change affects the regulators' respective responsibilities and the actions they and the financial sector are taking in response.

The [FCA's report](#):

- discusses, among other things, key themes of the FCA's climate change strategy, how firms are addressing and adapting to climate-related risks and opportunities, how firms are planning to transition to net zero, and the role of capital mobilisation in financing both climate change adaptation and mitigation; and
- includes a timeline of forthcoming FCA ESG publications, such as a discussion paper on the proposed sustainability disclosure regime (SDR) and product labels in November 2021, and policy statements on TCFD-aligned disclosures in December 2021.

The [PRA's report](#):

- examines climate-related financial risks, including the impact on the UK banking and insurance sectors, progress by firms in meeting PRA supervisory expectations, and the PRA's supervisory approach for 2022; and
- sets out key initial findings on the relationship between climate change and the regulatory capital framework, and an intention to undertake further analysis to explore enhancements.

[TPR's report](#):

- sets out the climate-related risks for occupational pension schemes, an overview of regulations and law, including the proposed new code of practice and the Pension Schemes Act 2021, and findings from surveys conducted in 2020 on how defined contribution and defined benefit schemes are adapting to change; and
- an intention to publish guidance on schemes' climate risk reporting and, during the 2023 review of regulations made under the 2021 Act, to work with the Department for Work and Pensions to share best practice examples from TCFD reports.

The FRC intends to publish its report later this year.

Payment and Electronic Money Institution Insolvency (England and Wales) Rules 2021 (SI 2021/1178) made

[The Payment and Electronic Money Institution Insolvency \(England and Wales\) Rules 2021](#) (SI 2021/1178) have been made.

The new rules provide detailed operating provisions to support a special administration process commenced for a payment institution or electronic money institution. This process is designed for insolvent non-bank institutions whose business was to facilitate the transfer or storage of money through card, mobile and electronic wallet systems.

The SI follows the consultation on the draft rules which took place in December 2020, which resulted in changes to the draft rules including:

- the requirement for insolvency practitioners to provide a reasonable notice period before a claims bar date comes into effect;
- clarification of the full hierarchy of expenses;
- the requirement for notice of a bar date to be given to all persons whom the administrator believes to have a right to assert a security interest or other entitlement over the relevant funds; and
- the requirement for the special administrator to engage closely with payment systems operators during the special administration.

The rules will come into force on 12 November 2021.

Draft Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2021 published

A [draft version](#) of the Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2021 has been published.

The regulations require certain companies to provide climate-related financial disclosures in their strategic reports, including:

- traded companies, banking companies, authorised insurance companies, and companies carrying on insurance business which satisfy various conditions, including the requirement to have more than 500 employees;
- companies which have securities admitted to trading on the Alternative Investment Market; and
- companies which do not fall within another category, but which have a turnover of more than GBP 500 million.

The regulations will come into force on 6 April 2022.

Draft Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 published

A [draft version](#) of the Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 has been published, along with a draft explanatory memorandum.

The draft regulations make consequential amendments to primary and secondary legislation relating to the UK implementation of certain standards developed by the BCBS that were implemented in the EU by CRR2 and the Investment Firms Prudential Regime (IFPR) for FCA investment firms.

The draft regulations will also, among other things:

- amend the Capital Requirements Regulation (Amendment) Regulations 2021 (SI 2021/1078) (CRR Amendment Regulations) to revoke provisions in Part Seven and Part Eight of the UK Capital Requirements Regulation (575/2013) (UK CRR) relating to the leverage ratio;
- insert a new Article 269a into the UK CRR on the securitisation of non-performing loans (NPLs) that implements a BCBS technical amendment on the capital treatment of securitisations on NPLs;
- amend the Financial Services and Markets Act (PRA-Regulated Activities) Order 2013 (SI 2013/556) to remove the reference to the EUR 730,000 initial capital requirement for the designation of investment firms and to give the PRA the power to designate any firm that is authorised to deal as principal or that has applied for such a permission; and
- remove FCA investment firms from the scope of the Special Resolution Regime (SRR) under the Banking Act 2009.

The regulations will enter into force on 1 January 2022, except for the amendments to the CRR Amendment Regulations, which will enter into force on the day after the day on which the regulations are made.

FCA finalises rules for new authorised fund regime for investing in long term assets

The FCA has issued a [policy statement](#) (PS21/14) setting out its final rules for a new category of open-ended authorised funds, the Long Term Asset Fund (LTAF), designed to invest in long-term, illiquid assets. The introduction of the

LTAf is intended to help facilitate an environment where investors that wish to invest in productive finance assets can do so. The new rules embed longer redemption periods, high levels of disclosure, and strong liquidity management and governance features.

The new Handbook rules and guidance will come into force on 15 November 2021. The FCA intends to consult in H1 2022 on whether to enable a broader range of consumers to invest in LTAFs in a controlled way.

BaFin updates interpretation and application guidance in relation to German Money Laundering Act

The German Federal Financial Supervisory Authority (BaFin) has updated its [Interpretation and Application Guidance](#) in relation to the German Money Laundering Act (Geldwäschegesetz - GwG).

The update became necessary to reflect the significant amendments to the GWG introduced by way of the Transparency Register and Financial Information Act (TraFinG) which took effect on 1 August 2021.

An additional reason for the update is the Interpretation and Application Guidance - Special Part for Credit Institutions, which was published in June 2021.

The guidance applies to all obliged entities under the GwG that are subject to BaFin's supervision pursuant to section 50 No. 1 GwG. BaFin provides and regularly updates this guidance pursuant to section 51 para 8 GwG to facilitate the implementation of due diligence obligations and internal security measures by obliged entities as required by the statutory provisions for the prevention of money laundering and terrorist financing.

BaFin consults on ordinance regarding audits at crowdfunding service providers under new section 32f WpHG

BaFin has launched a [consultation](#) on a draft ministerial ordinance on the concretisation of audits at crowdfunding service providers pursuant to section 32f of the German Securities Trading Act (WpHG) (Schwarmfinanzierungsdienstleister-Prüfungsverordnung).

Section 32f WpHG has been newly created in connection with the implementation of the Crowdfunding Regulation (Regulation (EU) 2020/1503) into German law and will enter into force on 10 November 2021. The provision introduces audits to monitor compliance with the obligations under the Crowdfunding Regulation. In particular, section 32f para 1 authorises BaFin to conduct special inspections, while para 2 sentence 1 obliges crowdfunding service providers to have their compliance with the obligations under the Crowdfunding Regulation reviewed by a suitable auditor once a year.

The ordinance will be issued on the basis of section 32f para 8 WpHG, which authorises the Federal Ministry of Finance (including by delegation to BaFin) to enact provisions on the structure, content and manner of the audit reports to be delivered in relation to the annual audits as well as on the type, scope and timing of the special inspections and annual audits.

Comments are due by 19 November 2021.

BaFin consults on circular regarding requirements for own estimates of LGD

BaFin has launched a consultation on a [draft circular](#) containing further requirements for own estimates of loss given default (LGD) under the Internal Ratings-Based (IRB) approach.

By way of the circular, BaFin will incorporate the EBA's extended requirements for own LGD estimates as set out in the guidelines for the estimation of LGD appropriate for an economic downturn (EBA/GL/2019/03) and the guidelines on credit risk mitigation for institutions applying the IRB approach with own estimates of LGDs (EBA/GL/2020/05) into its administrative practice as of 1 January 2022.

With its circular 3/2019 (BA), BaFin had incorporated the EBA guidelines on PD estimation, LGD estimation and the treatment of defaulted exposures (EBA/GL/2017/16) into its administrative practice as of 1 January 2021. The requirements for own estimates of LGDs set out therein have since been extended by the EBA through the above mentioned guidelines.

Comments are due by 19 November 2021.

BaFin expects fair and transparent implementation of BGH ruling on invalid changes to banks' general terms and conditions

BaFin has published a [supervisory notice](#) setting out its expectations of the banking industry with respect to the implementation of the judgment of the German Federal Court of Justice (Bundesgerichtshof – BGH) of 27 April 2021 (XI ZR 26/20). In that ruling, the BGH held certain clauses in banks' general terms and conditions (AGB), pursuant to which customers are deemed to have consented to any changes of the AGB (irrespective of their content) in the absence of an express timely rejection, to be invalid *vis-à-vis* consumers.

In view of the judgment's far reaching implications, BaFin expresses its expectation that credit institutions will follow an open, transparent and cooperative approach as to its implementation including:

- informing customers clearly and comprehensively about the BGH ruling and its consequences;
- indicating a specific point of contact for customers' questions regarding the ruling;
- creating a valid contractual basis for the future without exerting pressure on customers to consent to any AGB changes;
- refraining from charging amounts pursuant to provisions implemented by invalid deemed consent, and promptly refunding any such amounts previously collected;
- providing customers with information regarding previous AGB changes to facilitate the determination of refund claims; and
- creating respective reserves.

BaFin has indicated that institutions should take these steps now without delay in case they have not already done so. Should an institution permanently and systematically fail to comply with the BGH decision and the related supervisory expectations, BaFin will consider taking supervisory measures.

Luxembourg bill on granting of State guarantee to credit lines contracted by Luxembourg Deposit Guarantee Fund lodged with Parliament

[Bill No. 7905](#) on deposit protection schemes has been lodged with the Luxembourg Parliament.

The main purpose of the bill is to amend the Luxembourg law of 18 December 2015 on the failure of credit institutions and certain investment firms to introduce an additional safety net for the benefit of the Luxembourg Deposit Guarantee Fund FGDL, and thus further strengthen depositor protection, by means of a guarantee granted by the Luxembourg State to credit lines contracted by the FGDL.

The new guarantee will facilitate the implementation of financing mechanisms by the FGDL in the event of short-term needs by making it easier to obtain the funds necessary to honour its commitments.

The bill authorises the Government to grant a State guarantee for credit lines contracted by the FGDL in return for appropriate remuneration. The State guarantee is capped at a maximum total amount of EUR 1 billion.

With this bill, the Government also intends to address the concerns raised by the Luxembourg State Council (Conseil d'Etat) and the International Monetary Fund respectively on the need for a special law and the establishment of adequate financing mechanisms for the FGDL.

The lodging of Bill No. 7905 with the Luxembourg Parliament constitutes the start of the legislative procedure.

PFSA sets out position on certain aspects of risk management of investment funds and alternative investment companies

The Polish Financial Supervision Authority (PFSA) has published a [statement](#) setting out its position on certain aspects of risk management of investment funds and alternative investment companies. The statement applies to investment fund companies and alternative investment company (AIC) managers operating on the basis of a permit, as well as to statutory auditors providing management systems certification services.

HKMA updates supervisory policy in relation to share market financing

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) to authorised institutions (AIs) informing them of an update to its supervisory policy in relation to share margin financing. The update pertains to [paragraph 7.1.4](#) of the supervisory policy manual (SPM) module CRS-4 'New Share Subscription and Share Margin Financing', which requires AIs to set maximum loan-to-value (LTV) ratios for share collateral in line with prevailing market norms. The SPM module further prescribes the market norms for different categories of shares with reference to common market practices in Hong Kong.

Given the global nature of Hong Kong's wealth management and private banking business, and benchmarking against the latest supervisory practices in other major financial centres, the HKMA considers the continued enforcement of the requirement to observe market norms in the setting of

maximum LTV ratios is no longer appropriate. Als were no longer expected to fulfil such requirement with effect from 22 October 2021. However, the other requirements in the SPM module will continue to apply.

The HKMA has stressed that the change in supervisory policy is not intended to relax the existing supervisory standards on Als' share margin financing business. Als have been advised to continue to undertake the business in a prudent manner.

The HKMA has indicated that it plans to initiate a comprehensive review of the SPM module, considering that the settlement process for initial public offerings of shares is going to be overhauled under the fast interface for new issuance arrangement in 2022-23.

Japanese Government approves operational rules on TORF calculation under Financial Instruments and Exchange Act

The QUICK Benchmarks Inc. (QBS), which is a group company of the QUICK Corp. and was established in January 2021 to calculate and publish the Tokyo Term Risk Free Rate (TORF), has [announced](#) that the Japanese Government has approved its operational rules for the benchmark calculation and publication of TORF along with the following relevant rules under Article 156-87 (1) of the Financial Instruments and Exchange Act:

- TORF code of conduct;
- contingency plan for TORF calculation and publication;
- conflict of interest management policy of TORF;
- complaints consultation management rule of TORF; and
- TORF calculation guidelines.

The QBS has emphasised that it intends to contribute to the sound growth and development of financial and capital markets by maintaining TORF's transparency of calculation and soundness of operation.

On 27 April 2021, the QBS was [designated](#) as a 'specified financial benchmark administrator', while TORF (which is one of the interest benchmarks for the Japanese yen and an alternative to LIBOR) was designated as a 'specified financial benchmark' under the Financial Instruments and Exchange Act.

FSA announces publication of social bond guidelines

The Financial Services Agency (JFSA) has announced the publication of the [Social Bond Guidelines](#). The guidelines are intended to promote the wider adoption of social bonds (i.e., bonds that limit the use of proceeds to social projects that contribute to solving social issues) by the private sector in Japan by ensuring the credibility of the social benefits of social bonds while reducing the cost to and administrative burden on issuers.

The guidelines, which are designed to be consistent with the International Capital Market Association's social bond principles originally formulated in June 2017, describe the elements that social bonds are expected to possess, and provide practical examples and interpretations of the possible approaches that could ensure that a bond has these elements. The guidelines also recommend that issuers:

- develop a framework for issuing social bonds or explain to investors the alignment to the four core components of social bonds set out in the guidelines: use of proceeds, process for project evaluation and selection, management of proceeds, and reporting;
- summarise relevant information to investors within the context of their own overarching sustainability strategy; and
- undergo external reviews, if the issuer determines that it needs an objective assessment of its own actions in relation to the four core components of the framework for issuing social bonds, and disclose the results of review.

With regard to green bonds, the Ministry of the Environment formulated the Green Bond Guidelines in 2017. In light of the fact that the Green Bond Guidelines are already being used as practical guidance for issuing Green Bonds in Japan, the Social Bond Guidelines are intended to share the same basic structure as the Green Bond Guidelines.

ASIC publishes latest quarterly report

The Australian Securities and Investments Commission (ASIC) has published a [report](#) to provide an update on its enforcement and regulatory work undertaken during the quarter from 1 July to 30 September 2021.

The update states that during the quarter, ASIC focused on providing industry with regulatory guidance, maintaining market integrity, and targeting enforcement action to deter misconduct in support of its vision for a fair, strong and efficient financial system, in the face of particularly difficult circumstances caused by the COVID-19 pandemic.

The report also highlights that ASIC is working with domestic and international regulatory agencies on capital markets initiatives to address market fragmentation and support innovation. ASIC intends to continue to work closely with market operators to identify and disrupt actions that threaten the integrity of markets, including monitoring a range of platforms for illegal market manipulation activity and exposing common tactics used to lure investors.

ASIC surveillance of investment switching by super fund executives identifies concerns with trustees' conflicts arrangements

ASIC has [published](#) its findings following surveillance on personal investment switching by directors and senior executives of superannuation trustees, identifying concerns with trustees' management of conflicts of interest.

ASIC intended to look into concerns about whether directors and senior executives of superannuation funds were using price-sensitive valuation information for personal gain by switching investment options based on their knowledge of the timing of the revaluation of unlisted assets. The surveillance revealed conduct that fell below ASIC's expectations. ASIC's key concerns with trustees' management of conflicts of interest include the following:

- failure to identify investment switching as a risk;
- disparity among trustees in the level of engagement by their boards on the issue of conflicted investment switching by directors and executives;

- lack of preventative control measures, such as trade pre-approvals or switching blackout periods, to limit executives' ability to switch investment options;
- inadequate oversight of investment switching; and
- lack of oversight of related parties (such as a spouse) of directors and executives of superannuation funds.

ASIC also noted that some trustees that did not have oversight processes in place for investment switching by their directors and executives at the time of the surveillance have since indicated that they were looking to implement such processes moving forward.

ASIC has indicated that it will continue to follow up with trustees about areas for improvement in their conflict management frameworks, and consider appropriate regulatory actions against misconduct causing consumer harm. It is also continuing to gather additional information and consider next steps on some of the trading activity identified during the surveillance.

RECENT CLIFFORD CHANCE BRIEFINGS

The new EU Insurance Recovery and Resolution Directive

The new EU recovery and resolution directive (IRRD) will create a harmonised recovery and resolution planning framework for EU insurance and reinsurance companies and groups. It will give new resolution authorities powers to resolve insurance and reinsurance companies and their holding companies where they are failing or likely to fail, as an alternative to normal insolvency proceedings.

IRRD will also require insurance and reinsurance companies and their holding companies to include new bail-in and resolution stay recognition clauses in many contracts governed by the law of a non-EU state.

This briefing discusses the new IRRD.

<https://www.cliffordchance.com/briefings/2021/10/the-new-eu-insurance-recovery-and-resolution-directive.html>

European Commission publishes annual work programme – what's in store for 2022?

Every year, the European Commission adopts a work programme which sets out the legislative proposals that will be published in the following year. On 19 October 2021, the European Commission adopted its Work Programme for 2022, providing a detailed outline of the legislative initiatives we can expect to see over the course of the coming year. During her annual State of the Union speech in September 2021, Commission President Ursula von der Leyen had already provided an insight into what we should expect. Among other things, she listed a new European Chips Act, as well as an amendment to the Blocking Statute Regulation and an update to certain competition policy instruments. These have now been set out in the work programme, along with information about the expected timing of the Commission's proposals throughout 2022.

In line with the priorities of the current Commission, the initiatives put forward revolve around six themes: the environment, technology, business and

employment, foreign policy, education and lifestyle, and democracy and freedom.

This briefing takes a closer look at the European Union's legislative and policy agenda for 2022 and setting out some of the key initiatives to present a forward-looking view.

<https://www.cliffordchance.com/briefings/2021/10/european-commission-publishes-annual-work-programme---what-s-in-.html>

UK Net Zero Strategy – a clearer view of the challenges to 2050

Ahead of its Presidency of COP26, the UK Government has published its Net Zero Strategy to 2050. The Strategy covers all business sectors and some cross-cutting themes.

This briefing explores major new elements of policy, some of the major uncertainties, and key challenges faced by business in planning and implementing a path to Net Zero by 2050.

<https://www.cliffordchance.com/briefings/2021/10/uk-net-zero-strategy---a-clearer-view-of-the-challenges-to-2050.html>

FinCEN flexes new expertise in clear warning to companies broadly involved in processing ransomware payments

The latest study on ransomware from the US Treasury's Financial Crimes Enforcement Network reflects the US Government's continuing coordinated focus on cybercrime, and ransomware in particular. The study shows increasing ability by FinCEN, and potentially other parts of government, to chart the flow of ransomware payments, particularly in bitcoin, in traditional 'follow the money' style, and to identify the most frequently used exchanges and services ransomware actors use to launder their proceeds. According to the study, victims predominantly sourced payment funds from US-registered exchanges and extortionists use foreign centralized convertible virtual currency exchanges as their 'preferred cash-out points'.

This briefing discusses the results of the study.

<https://www.cliffordchance.com/briefings/2021/10/fincen-flexes-new-expertise-in-clear-warning-to-companies-broadl.html>

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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Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

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London, E14 5JJ

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