INTERNATIONAL REGULATORY UPDATE 8 – 12 NOVEMBER 2021

- **NPLs: EU Council approves directive on credit servicers and purchasers**
- **EU Commissioner McGuiness to propose extension of equivalence decision for UK CCPs**
- **UCITS: ECON Committee adopts reports on PRIIPs KIDs amendments**
- **ESMA publishes final draft RTS and ITS on crowdfunding service providers**
- **EBA publishes final draft RTS on assessing minimum LGD values for exposures secured by immoveable property**
- **EBA publishes final draft RTS on individual portfolio management by crowdfunding service providers**
- **EBA publishes draft ITS on Pillar 3 disclosure of interest rate risk exposures**
- **EBA publishes guidelines on recovery plan indicators**
- **EBA publishes guidance on granting authorisation as credit institution**
- **EBA consults on machine learning in credit risk modelling**
- **Sustainable finance: ECB issues opinion on proposed regulation on European green bonds**
- **BCBS finalises revisions to market risk disclosure requirements and voluntary disclosure of sovereign exposures**
- **BCBS provides updates on climate-related financial risks, crypto assets, G-SIB assessment methodology and disclosure standards**
- **Financial Services Future Regulatory Framework Review: HMT consults on reform proposals**
- **FMSB, BoE and FCA sign MoU on fair and effective FICC markets**
- **BoE consults on approach to non-UK CCPs**
- **PRA publishes responses to occasional consultation paper CP13/21**
- **HMT and BoE issue statement on next steps for UK CBDC**
- **Banque de France reports on its experiments with wholesale CBDC**
- **BaFin welcomes IDW Practice Note on Disclosure Regulation for**

Clifford Chance's International Regulatory Update is a weekly digest of significant regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.

To request a subscription to our Alerter: Finance Industry service, please subscribe to our Client Portal, where you can also request access to the Financial Markets Toolkit and subscribe to publications, insights and events.

If you would like to know more about the subjects covered in this publication or our services, please contact:

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

auditors

- **BaFin revokes circular on minimum requirements for security of inter-net payments**
- **BaFin publishes new AML/CFT circular on high-risk third countries**
- **BaFin fully implements revised EBA ML/TF risk factors guidelines**
- **BRRD2: Council of Ministers approves legislative decrees adapting national legislation to Directive (EU) 2019/879**
- **CSSF updates additional guidance for credit institutions related to specific reporting aspects**
- **CSSF provides clarification on holding of ancillary liquid assets by UCITS**
- **FINMA publishes risk monitor for 2021**
- **HKMA publishes new code of practice chapter on operational continuity in resolution**
- **HKEX publishes guidance on climate disclosures and analysis of IPO applicants' corporate governance and ESG practice**
- **HKEX consults on operational model for derivatives holiday trading**
- **Singapore Government launches national programme to deepen artificial intelligence capabilities in financial services**
- **MAS publishes information paper setting out economic considerations for retail central bank digital currency in Singapore context**
- **MAS responds to feedback and publishes revised guidelines on corporate governance**
- **APRA and RBA publish joint statement on actions pertaining to climate change financial risk**
- **APRA sets out framework for using macroprudential tools to promote financial stability**
- **ASIC publishes cost recovery implementation statement for 2020-21.**

NPLs: EU Council approves directive on credit servicers and purchasers

The EU Council has adopted the directive on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU. This follows adoption of the directive by the EU Parliament in October 2021.

The directive will regulate the transfer of non-performing loans (NPLs) from banks to secondary buyers and is intended to foster the development of NPL secondary markets, in order to allow banks to clean their balance sheets while protecting borrowers' rights. Credit servicers (who act on behalf of credit purchasers and manage rights and obligations under a non-performing credit agreement) will require authorisation and be subject to supervision by Member States' competent authorities.

Following publication in the Official Journal and entry into force, there will then be an implementation deadline of 24 months.

EU Commissioner McGuiness to propose extension of equivalence decision for UK CCPs

Mairead McGuinness, the EU Commissioner for Financial Services, Financial Stability and the Capital Markets Union, has announced the EU Commission's proposed way forward for central clearing.

The EU Commission is concerned that over-reliance on UK-based central counterparties (CCPs) for some clearing activities is a source of financial stability risk in the medium term and intends to pursue its work to develop the capacity of EU-based CCPs as a means to reduce such over-reliance.

The Commission plans to come forward with measures to make EU-based CCPs more attractive to market participants by:

- exploring ways to enhance liquidity in EU CCPs and expanding the range of clearing solutions on offer from EU infrastructures; and
- strengthening the EU's supervisory framework for CCPs, including a stronger role for EU-level supervision.

However, in order to address financial stability risks in the short term, the Commissioner has indicated that she intends to extend the equivalence decision for UK-based CCPs in early 2022.

UCITS: ECON Committee adopts reports on PRIIPs KIDs amendments

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has adopted two reports on the EU Commission's proposals concerning the use of key information documents (KIDs) under the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation by management companies of undertakings for collective investment in transferable securities (UCITS).

The reports set out amendments to the texts proposed by the Commission for:

- a directive amending the UCITS Directive to ensure PRIIPs KIDS are considered as satisfying the key investor requirements for UCITS; and
- a regulation amending the PRIIPs Regulation to extend the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of UCITS and non-UCITS from the requirement to provide retail investors with a PRIIPs KID.

Among other things, the ECON Committee proposes that the Commission's proposal to extend the transitional arrangement by six months to 30 June 2022 be extended by twelve months to 31 December 2022.

ESMA publishes final draft RTS and ITS on crowdfunding service providers

The European Securities and Markets Authority (ESMA) has published its final report on draft regulatory and implementing technical standards (RTS and ITS) under Regulation (EU) 2020/1503 on European crowdfunding service providers (ECSPs) for business. The RTS and ITS cover 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;
- cooperation between national competent authorities (NCAs);
- reporting by ECSPs to NCAs and by NCAs to ESMA; and
- the publication of national provisions on marketing requirements.

ESMA consulted on the technical standards in February 2021 and has made some minor amendments in light of the feedback received. These include:

- adding a definition of 'significant business interruption' into the RTS on business continuity plans;
- clarifying the meaning of 'material changes' in the RTS on applications for authorisation;
- adjusting the list of information ECSPs are required to gather under the RTS on entry knowledge tests, to improve proportionality; and
- increasing the flexibility around how project owners calculate annual interest rates.

The technical standards have been submitted to the EU Commission for endorsement.

EBA publishes final draft RTS on assessing minimum LGD values for exposures secured by immoveable property

The European Banking Authority (EBA) has published its final draft RTS under Articles 124(4) and 164(8) of the Capital Requirements Regulation (CRR), specifying the types of factors and conditions to be considered for the assessment of the appropriateness of risk weights and of minimum loss given default (LGD) values.

The final draft RTS provide technical specifications to help ensure coherence and harmonisation of periodic assessments by authorities across the EU, while preserving flexibility.

For those institutions applying the standardised approach, the key elements for the assessment of risk weighs are the loss experience and the loss expectation relating to exposures secured by immovable property within the respective Member State. The final draft RTS specify the types of factors that authorities should consider during the risk weight assessment on the basis of the loss experience of exposures secured by immovable property and forward-looking immovable property market developments.

For those institutions applying the internal ratings-based approach to retail exposures secured by residential or commercial immovable property, the final draft RTS clarify the conditions to be considered when assessing the appropriateness of minimum LGD values. In their assessments, relevant authorities should consider whether minimum LGD values cover the sources of systemic risks beyond economic downturn considerations and idiosyncratic risks.

EBA publishes final draft RTS on individual portfolio management by crowdfunding service providers

The EBA has published its final draft RTS on individual portfolio management by crowdfunding service providers in the EU (ECSPs).

In particular, the RTS specify the information that ECSPs must provide to investors on credit risk assessment and the composition of the portfolio, including:

- the measurement techniques used for credit risk assessments, in order to demonstrate that they are appropriate for the complexity and level of risks underlying the individual projects, the portfolio and the project owners; and
- the key characteristics of each loan included in a portfolio, in order to ensure investors have a full understanding of their features and risk profile.

The draft RTS also specify the policies, procedures and organisational arrangements that ECSPs should have in place in relation to any contingency funds they may set up to provide investors with compensation in the event of a borrower default or to smooth their returns. The provisions are designed to ensure the existence of these funds does not hide or misrepresent the underlying risks for investors.

The final RTS will now be submitted to the EU Commission for endorsement, before they are subject to scrutiny by the EU Parliament and Council.

EBA publishes draft ITS on Pillar 3 disclosure of interest rate risk exposures

The EBA has published draft ITS on Pillar 3 disclosure of institutions' exposures to interest rate risk on positions not held in the trading book (IRRBB).

The ITS put forward comparable disclosures that will help institutions comply with the requirements laid down in the revised Capital Requirements Regulation (CRR2). They will amend the comprehensive ITS on institutions' public disclosures, in line with the strategic objective of developing a single and comprehensive Pillar 3 package that should facilitate implementation by institutions and further promote market discipline.

The ITS include templates for the disclosure of information on:

- institutions' IRRBB risk management objective and policy;
- institutions' internal assumptions for the calculation of their IRRBB exposure values; and
- the impact of changes in interest rates on institutions' economic value of equity and net interest income.

They also include transitional provisions that should facilitate institutions' disclosures while the EBA's IRRBB policy framework is being finalised.

These disclosure requirements apply to large institutions and to other institutions except those that are not listed, in accordance with the provisions of Articles 433a and 433c of the CRR.

EBA publishes guidelines on recovery plan indicators

The EBA has published new guidelines on recovery plan indicators.

The guidelines are intended to establish a common EU approach for developing the framework of recovery plan indicators and strengthen the quality of the recovery indicators framework, while contributing to effective crisis preparedness of institutions.

They also aim to help institutions to monitor and respond to the emergence and evolution of stress.

The guidelines provide additional guidance on the calibration of thresholds of recovery indicators to ensure that recovery options are implemented early enough, so as to be effective. They also emphasise the importance of constant monitoring of recovery indicators and timely notification of their breaches to supervisors. The minimum list of indicators includes three new additional recovery indicators (MREL/TLAC, asset encumbrance and liquidity position) to the minimum list of recovery indicators and one of them (cost of wholesale funding) has been removed.

The EBA first issued guidelines on recovery plan indicators in 2015, which have been repealed with the publication of these guidelines, which have been amended based on practical experience acquired in recovery planning.

EBA publishes guidance on granting authorisation as credit institution

The EBA has published its guidelines on a common assessment methodology for granting authorisation as a credit institution under the Capital Requirements Directive (CRD4).

The draft guidelines advocate for a risk-based approach and insist on the importance of consistency with the supervisory approaches applied in going concern situations. They also consider the proportionality principle for all relevant assessment criteria and apply to both traditional and innovative business models and/or delivery mechanisms.

This is the first guidance addressed to all competent authorities across the EU in charge of granting authorisation as a credit institution and covers the authorisation requirements set out in CRD4. It also includes guidance on money laundering or terrorist financing (ML/TF) risks and highlights the importance of cooperation with the anti-money laundering (AML) supervisor and other public bodies, in accordance with CRD4.

EBA consults on machine learning in credit risk modelling

The EBA has published a discussion paper on the challenges and opportunities coming from the world of machine learning, should it be applied in the context of internal ratings-based (IRB) models to calculate regulatory capital for credit risk.

The EBA acknowledges that machine learning may play an important part in the way financial services will be designed and delivered in the future. The EBA is considering providing a set of principle-based recommendations to ensure an appropriate use of such techniques by institutions in the context of IRB models.

The discussion paper covers:

- the definition, learning paradigms and current use of machine learning in credit risk modelling;
- the challenges and potential benefits of machine learning models; and
- how to ensure a possible prudent use of machine learning models going forward.

Sustainable finance: ECB issues opinion on proposed regulation on European green bonds

The European Central Bank (ECB) has issued an opinion on the EU Commission's proposal for a regulation on European green bonds. The opinion responds to a request from the EU Parliament on 14 October 2021.

Overall, the ECB welcomes the scope of the proposed regulation, which covers issuers that are financial and non-financial undertakings, sovereign issuers, and issuers of covered bonds and of securitisations.

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

- clarify that the EU Green Bond Standard (EUGBS) cannot be interpreted as preventing credit institutions from fully applying Capital Requirements Regulation (CRR) requirements;
- clarify that sovereign issuers should not be subject to supervision by national competent authorities (NCAs);
- replace the term 'debt' by 'financial claim' in order to align the definition with the International Financial Reporting Standards (IFRS);
- allocate bond proceeds by applying the respective delegated acts applicable at the point in time when the bond was issued for the entire lifetime of the bond;
- clarify that several factsheets and allocation reports could be produced for each individual bond in order to facilitate data processing;
- integrate the information contained in the factsheet into the prospectus by using the standardised template provided in Annex I of the proposed regulation;
- clarify that where no automatic designation is made under the Prospectus Regulation, the home Member State should designate a NCA for such issuer, except sovereign bodies; and
- make the EUGBS mandatory for newly issued green bonds.

BCBS finalises revisions to market risk disclosure requirements and voluntary disclosure of sovereign exposures

The Basel Committee on Banking Supervision (BCBS) has published its final revisions to the market risk disclosure requirements.

The revisions reflect changes to the minimum capital requirements for market risk published in January 2019 and the subsequent consultation on adjustments to the Pillar 3 templates in November 2019. The changes include a traffic light approach for capital requirements as a consequence of the profit and loss attribution (PLA) test for banks that use the internal models approach (IMA) and a simplified standardised approach (SSA) as an alternative way of calculating capital requirements for market risk.

The revised requirements will come into effect on 1 January 2023.

The BCBS has also published its final standards for the voluntary disclosure of sovereign exposures.

Following a November 2019 consultation on the introduction of three disclosure templates, the BCBS has not reached a consensus on making changes to the regulatory treatment of sovereign exposures and has therefore agreed to make the templates voluntary. Jurisdictions will decide whether to require their banks to implement the templates, which require relevant banks to disclose their sovereign exposures and risk-weighted assets by jurisdictional breakdown, by currency denomination breakdown, and according to the accounting classification of the exposures.

The BCBS will update the consolidated Basel framework to include a new chapter containing the full finalised disclosure templates in due course.

BCBS provides updates on climate-related financial risks, cryptoassets, G-SIB assessment methodology and disclosure standards

The BCBS has published updates on its work regarding climate-related financial risks, cryptoassets, the global systemically important banks (G-SIBs) assessment methodology and disclosure standards.

The BCBS is developing a suite of potential measures to address climate-related financial risks to the global banking system. In particular, the BCBS plans to consult on a set of principles for the effective management and supervision of climate-related financial risks at internationally active banks.

The BCBS also intends to launch a further consultation with a proposed prudential treatment of banks' cryptoasset exposures by mid-2022, following an initial consultation held in June 2021.

Additionally, the BCBS has finalised a technical amendment to the Basel Framework which relates to the process used by the BCBS to review the G-SIBs assessment methodology. The three year review cycle has been replaced with a process of ongoing monitoring and review, to ensure that it remains appropriate over time.

The BCBS has also approved the final standards for Pillar 3 disclosures related to the revised market risk framework and a set of voluntary disclosures for banks' sovereign exposures. The BCBS plans to publish the final disclosure standards shortly.

Financial Services Future Regulatory Framework Review: HMT consults on reform proposals

HM Treasury (HMT) has published a further consultation setting out proposals for reform as part of its Financial Services Future Regulatory Framework (FRF) Review aimed at developing the UK's long-term regulatory approach to financial services post-Brexit.

The consultation sets out the Government's response to the feedback received on its October 2020 Phase II consultation concerning the overall approach to the post-EU framework, and makes a series of proposals, including:

- repealing, over a number of years, retained EU law setting out direct regulatory requirements that apply to firms and concurrently replacing it with regulators' rules;
- a new power for HMT to apply 'have regards' and to place obligations on regulators to make rules in relation to specific areas of regulation;
- establishing a new, limited Designated Activities Regime (DAR) to allow the regulation of certain activities outside the FSMA authorisation process, such as short selling;
- new secondary objectives on growth and international competitiveness for the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA), and amending the regulatory principle for sustainable growth to reference climate change and a net zero economy;
- a new statutory requirement for the PRA and FCA to respond to HMT recommendations on an annual basis, and a requirement for HMT to publish the responses and lay them before Parliament;
- a new power for HMT to require regulators to review their rules when in the public interest, as well as a new statutory requirement for regulators to publish and maintain a framework for conducting rule reviews;
- new accountability mechanisms requiring regulators to consider the impact of rule making and approaches to supervision on deference arrangements, such as equivalence decisions, and trade agreements;
- new statutory requirements for the PRA and FCA to notify the relevant Parliamentary committee when they publish a consultation on any matter, and to respond in writing to formal committee responses;
- placing the FCA's Listing Authority Advisory Panel (LAAP) and the PRA's insurance sub-committee on a statutory footing;
- a new statutory requirement to systematise the existing practice of regulators publishing information on panel engagement, and a new requirement for regulators to maintain statements on their processes for appointment panel members; and
- statutory requirements on regulators' cost-benefit analysis (CBA) processes.

The consultation closes on 9 February 2022.

FMSB, BoE and FCA sign MoU on fair and effective FICC markets

The Fixed Income Currencies and Commodities (FICC) Markets Standards Board (FMSB), Bank of England (BoE) and FCA have signed a tri-party memorandum of understanding (MoU).

The MoU sets out a high-level framework for the continued cooperation between the three bodies in relation to the delivery of the FMSB's primary objectives. These objectives, which were set as part of the Fair and Effective Markets Review, include:

- promoting fair and effective global wholesale FICC markets;
- producing guidance on how business should be conducted to eliminate or mitigate vulnerabilities; and
- sharing this guidance globally and supporting its adoption.

The following points are agreed under the MoU:

- the FMSB will provide regular updates to the FCA and BoE on the progress it has made on its strategy;
- the FMSB will provide the FCA and BoE with copies of its proposed standards and other publications so that they may provide comments as appropriate;
- the BoE can determine whether, and to what extent, it will incorporate the FMSB's standards and statements of good practice into its own processes and operations; and
- the FMSB will hold both 'open' and 'closed' meetings, and the FCA and BoE will be invited to participate as observers in all 'open' sessions.

BoE consults on approach to non-UK CCPs

The BoE has published two consultation papers on its approach to non-UK central counterparties (CCPs) under the UK European Market Infrastructure Regulation (EMIR).

The first consultation seeks views on a draft statement of policy (SoP) setting out the BoE's proposed tiering approach to recognising incoming CCPs seeking to provide clearing services in the UK, whereby individual incoming CCPs will be classified as either Tier 1, not systemically important, or Tier 2, systemically important to the UK's financial stability. Both Tier 1 and Tier 2 CCPs will be subject to recognition requirements, while Tier 2 CCPs will be subject to additional UK EMIR requirements and to direct supervision and regulation by the BoE.

The BoE proposes a two stage approach:

- first, a systemic risk assessment, where the BoE will use the following initial triage criteria to determine whether a CCP be designated as Tier 1 or Tier 2:
  - whether it has GBP 10 billion or more of UK clearing member initial margin;
  - whether it has GBP 1 billion or more of UK clearing member default fund contributions; or

  - whether it has an interoperability arrangement in place with a UK CCP; and
- secondly, for CCPs that meet one or more of those criteria, proportionality and informed reliance assessments to determine the extent to which the BoE is able to rely on the incoming CCP's home regulatory and supervisory authorities.

The second consultation seeks views on a draft SoP setting out the BoE's proposed approach to assessing comparable compliance, whereby Tier 2 incoming CCPs may request to be recognised to provide clearing services in the UK. Among other things, the BoE proposes to:

- grant comparable compliance for specific areas where it considers equal or comparable supervisory outcomes are achieved through the home regimes; and
- defer to home authorities and not engage in independent direct regulation or supervision of those specific areas.

Both consultations close on 25 February 2022, and the BoE proposes that the final policy be implemented from 1 July 2022.

PRA publishes responses to occasional consultation paper CP13/21

The PRA has published a policy statement (PS25/21) setting out its final rules and feedback on its occasional consultation paper CP13/21.

In CP13/21, the PRA proposed to:

- amend reporting requirements to improve understanding of defined benefit pension schemes' risk profiles, increase consistency, and ensure a level playing field for firms (Chapter 2);
- amend reporting requirements to delete a legacy template and update various rules and policy documents to prepare for the end of LIBOR (Chapter 3);
- amend the scope of Chapter 4 of the Definition of Capital Part of the PRA Rulebook to refer to Capital Requirements Regulation (CRR) firms rather than UK banks (Chapter 4);
- amend the method of submission and make minor formatting corrections to the Branch Return, and clarify the accompanying reporting guidance (Chapter 5); and
- update a reference in Rule 2.4(5) in the Audit Committee Part of the PRA Rulebook, and correct an error in supervisory statement 'Written reports by external auditors to the PRA' (SS1/16) (Chapter 6).

The PRA received no responses on the proposals in Chapters 3, 4 and 6, and received four responses to Chapters 2 and 5. In light of the comments received, the PRA has made minor amendments to correct errors, improve clarity, and amend effective dates, but has otherwise published the final rules as consulted upon. The final rules will enter into force as follows:

- Chapter 2 on 1 December 2021;

- Chapter 3 on 10 November 2021 for the deletion of FSA042, and on 1 January 2022 for FSA017 instructions and Mortgage Lenders and Administrators Return guidance notes;
- Chapters 4 and 6 on 1 January 2022; and
- Chapter 5 on 31 May 2022.

HMT and BoE issue statement on next steps for UK CBDC

HMT and the BoE have issued a statement setting out next steps for the exploration of a UK central bank digital currency (CBDC). The envisioned CBDC would be issued by the BoE for retail payments and would exist alongside cash and bank deposits.

The next steps include:

- a consultation in 2022 setting out HMT and BoE's assessment of the case for a UK CBDC, including the merits of developing an operational and technology model (the 'research and exploration phase');
- a publication of a technical specification informed by the results of the consultation, which will set out the proposed conceptual architecture for the CBDC and may involve testing of a potential design (the 'development phase'); and
- the launch of a UK CBDC, **provided that** the previous phases have demonstrated that it is desirable and operationally and technologically robust, by, at the earliest, the second half of the decade.

HMT and the BoE note that no decision has been made yet on whether a CBDC will be introduced and that each of the above steps will only be followed after careful consideration by authorities as to whether there is a need to proceed.

Banque de France reports on its experiments with wholesale CBDC

The Banque de France has published a report on its experiments with a wholesale CBDC. The report covers nine experiments, selected from close to 40 proposals, which were conducted as of September 2020 in conjunction with domestic and international private sector players, as well as other central banks and public authorities. The tests focused on ways of integrating a CBDC into innovative procedures for the exchange and settlement of financial assets, based on new technologies such as distributed ledger technology (DLT), and in a multi-currency and cross-border setting.

The aim of this program is to promote and preserve the role of central bank money in the settlement of retail payments (digital euro) and transactions between financial intermediaries (wholesale CBDC), to ensure the security of financial transactions.

The report notes that the issuance of a wholesale CBDC available to a large number of market participants could affect the role of financial intermediaries and the transmission of monetary policy. Hence, the Banque de France considers it to be important that central banks retain full control over a wholesale CBDC as soon as it has entered circulation. The report also concludes that additional important questions need to be examined further.

CLIFFORD CHANCE

BaFin welcomes IDW Practice Note on Disclosure Regulation for auditors

The Institute of Public Auditors in Germany (IDW), in coordination with the German Federal Financial Supervisory Authority (BaFin), has issued a practice note to provide guidance to auditors on the implementation of the EU Disclosure Regulation.

The Disclosure Regulation stipulates that providers of financial products must provide potential investors with information relevant for their investment decision-making with respect to environmental, social, governance (ESG) sustainability factors in a standardised manner.

Since March 2021, BaFin has been tasked with supervising compliance with the Disclosure Regulation in connection with the EU Taxonomy Regulation in the financial services sector and therefore has an important role in preventing greenwashing.

With the German Fund Jurisdiction Act (Fondsstandortgesetz), the German legislator has assigned to auditors the task of assessing whether obliged persons comply with the requirements of the Disclosure Regulation. The German legislator has thereby expressed that it generally considers such an audit to be necessary on an annual basis for every person subject to disclosure requirements.

In this context the auditors should not only verify whether the obliged person is making the required disclosures. In the case of disclosures where there is a high risk of greenwashing, they must also satisfy themselves that the disclosures are correct and complete.

The practice note is intended to support auditors in this regard. It describes the subject matter of the audit and provides initial guidance on the audit procedure. The supervisory requirements of BaFin were taken into account, which are based on the currently estimated risk potential for greenwashing.

BaFin revokes circular on minimum requirements for security of inter-net payments

BaFin has revoked its circular on minimum requirements for the security of internet payments (MaSi) with immediate effect.

The background to this is that the requirements of the circular have now been fully replaced by the German Payment Services Supervision Act (Zahlungsdiensteaufsichtsgesetz) and by the following more specific regulations:

- EU Commission Delegated Regulation (EU) 2018/389;
- BaFin's circular on the reporting of major payment security incidents;
- BaFin's circular on supervisory requirements for IT in financial institutions (BAIT); and
- BaFin's circular on supervisory requirements for IT at payment services providers (ZAIT).

These regulations ensure a higher level of protection than the revoked circular.

BaFin publishes new AML/CFT circular on high-risk third countries

BaFin has published its Circular 15/2021 on third-country jurisdictions which have strategic deficiencies in their regimes for anti-money-laundering and countering the financing of terrorism (AML/CFT) that pose significant threats to the international financial system (high-risk third countries).

The circular is addressed to all obliged entities under the German Money Laundering Act (Geldwäschegesetz) which are under the supervision of BaFin and supersedes BaFin's previous respective circulars.

BaFin regularly publishes new circulars reflecting updated statements and information reports adopted at the Financial Action Task Force (FATF)'s plenary sessions as well as amendments to the Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 by identifying high-risk third countries with strategic deficiencies.

BaFin fully implements revised EBA ML/TF risk factors guidelines

BaFin has announced that it has fully implemented the European Banking Authority (EBA) guidelines on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions (ML/TF Risk Factors Guidelines) under Articles 17 and 18(4) of Directive (EU) 2015/849. The guidelines are aimed at the financial industry and supervisory authorities.

The original EBA guidelines of 2017 had to be revised, amongst other things, because certain groups of obliged entities had not been sufficiently taken into account. The revised version, first published in March 2021, contains additional sectoral guidelines on crowdfunding platforms, corporate finance, payment initiation services providers (PISPs) and account information service providers (AISPs) and for firms providing activities of currency exchange offices.

BaFin has incorporated the revised version of the guidelines into its revised Interpretation and Application Guidance in relation to the German Money Laundering Act of October 2021.

BRRD2: Council of Ministers approves legislative decrees adapting national legislation to Directive (EU) 2019/879

The Italian Council of Ministers has approved:

- the decree implementing Directive (EU) 2019/879, amending Directive 2014/59/EU (BRRD) with regard to the loss-absorbing capacity and recapitalisation of credit institutions and investment firms; and
- the decree for the adaptation of national legislation to Regulation (EU) 806/2014, establishing uniform rules and a procedure for the resolution of credit institutions and certain investment firms under the Single Resolution Mechanism and the Single Resolution Fund and amending Regulation (EU) 1093/2010, as amended by Regulation (EU) 2019/877.

The decrees will be published in the Italian Official Gazette shortly.

CSSF updates additional guidance for credit institutions related to specific reporting aspects

The Commission de Surveillance du Secteur Financier (CSSF) has issued an updated version of its additional guidance for credit institutions related to specific reporting aspects.

The updated version contains additional guidance relating to:

- LEVER C 40.00 and C 47.00 templates; and
- LAREX C 27.00 template.

Regarding the LEVER C 40.00 template, the CSSF provides additional guidance relating to specific fields that require special attention either because they are new with respect to the table preceding 30 June 2021 or because the implementing technical standards instruction on the field has to be read carefully.

The LEVER C 47.00 template has changed significantly since 30 June 2021. The CSSF has therefore provided additional guidance regarding the section 'Leverage Exposure', which has been enlarged by incorporating new items and fields as a result of the new CRR2 provisions, and the table section 'Requirements' which has been newly added.

Regarding the LAREX C 27.00 template, the objective of the added guidance is to provide further instructions on how properly to use the counterparty codes in the template, the content of which has been amended following the release of European Banking Authority taxonomy V3.0 (taxonomy to be used starting reference period June 2021 onwards).

CSSF provides clarification on holding of ancillary liquid assets by UCITS

The CSSF has updated its FAQs on the law of 17 December 2010 on undertakings for collective investment and its FAQs concerning the Money Market Funds Regulation to clarify the circumstances and the extent to which UCITS are allowed to hold ancillary liquid assets.

Ancillary liquid assets should be limited to bank deposits at sight, such as cash held in current accounts with a bank accessible at any time, and should be held for the purpose of covering current or exceptional payments or for the time necessary to reinvest in eligible assets. They should be limited to a maximum of 20% of the net assets of a UCITS and this limit can only be temporarily breached in case of exceptionally unfavorable market conditions.

Bank deposits, money market instruments or money market funds do not constitute ancillary liquid assets as they are eligible assets for a UCITS and should be disclosed in the investment policy if the UCITS is authorised to invest in such instruments.

UCITS are expected to comply with the conditions described in these new questions of the FAQs as soon as possible and by 31 December 2022 at the latest, considering the best interests of investors.

FINMA publishes risk monitor for 2021

The Swiss Financial Market Supervisory Authority (FINMA) has published its 2021 Risk Monitor, identifying six significant risks for the financial sector, which are unchanged from the previous year:

- the persistent low interest rate environment;
- a possible correction in the real estate and mortgage market;
- defaults or adjustments to corporate loans or bonds abroad;
- cyberattacks;
- money laundering; and
- increased impediments to cross-border market access.

FINMA sees heightened risks in the real estate and mortgage market, while the other risks remain equally significant as in the previous year. On the basis of progress made by supervised entities, FINMA has downgraded last year's principal risk of a disorderly abolition of LIBOR benchmark rates (no longer considered a principal risk).

FINMA notes that the real estate market has proved resilient in the face of the coronavirus pandemic, partly due to government support packages and monetary policy interventions, and that mortgage volumes have actually increased further. The investment property sub-market shows indications of overheating, while investor and user markets have diverged in recent years. Price growth has accelerated further in the owner-occupied housing market, with property prices having increasingly decoupled from the development of income and consumer prices.

The 2021 Risk Monitor also discusses climate risks for the financial sector as a longer-term trend. Together with the supervised institutions, FINMA is working to adequately capture the financial risks associated with climate change and to incorporate them into the institutions' risk management systems.

HKMA publishes new code of practice chapter on operational continuity in resolution

The Hong Kong Monetary Authority (HKMA) has published a new chapter of the code of practice titled 'OCIR-1: Resolution Planning – Operational Continuity in Resolution' under the Financial Institutions (Resolution) Ordinance (FIRO). The new chapter is intended to:

- explain the HKMA's policy in relation to operational continuity in resolution (OCIR);
- set out the HKMA's expectations regarding the ex-ante arrangements authorised institutions should put in place to secure the continuity in resolution of services that are essential to the continued performance of critical financial functions and to support post-stabilisation restructuring in a timely manner; and
- provide guidance to authorised institutions on the HKMA's approach to resolution planning and resolvability assessment (including the removal of impediments to orderly resolution) as regards OCIR.

HKEX publishes guidance on climate disclosures and analysis of IPO applicants' corporate governance and ESG practice

The Stock Exchange of Hong Kong Limited (SEHK), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), has published guidance on climate disclosures, with a view to:

- helping listed companies assess their response to risks arising from climate change; and
- providing practical tips and step-by-step guidance to assist listed issuers in preparing the Task Force on Climate-Related Financial Disclosures (TCFD)-aligned climate change reporting.

The SEHK's environmental, social and governance (ESG) reporting requirements incorporate certain key recommendations of the TCFD released in 2017. Meanwhile, Hong Kong's Green and Sustainable Finance Cross-Agency Steering Group has announced plans for mandatory TCFD-aligned climate-related disclosures by 2025.

The SEHK has indicated that it will review its ESG reporting framework to further align with the TCFD recommendations, and collaborate with other regulators to work on a roadmap to evaluate and potentially adopt the new standard(s) to be developed by the International Sustainability Standards Board under the International Financial Reporting Standards Foundation.

Separately, the SEHK has published an analysis that focuses on IPO applicants' practices on corporate governance, board gender diversity and ESG matters. The SEHK evaluated the prospectuses of new applicants seeking a primary listing on the Exchange between July 2020 and June 2021, and further tracked the diversity progress of newly-listed issuers by reviewing their corporate governance reports. The review is intended to enhance IPO applicants' readiness for compliance with the SEHK's corporate governance/ESG requirements by providing guidance regarding prospectus disclosures and expected practice for meaningful and decision-useful information.

Based on the review, the SEHK recommends IPO applicants to:

- instil a strong corporate culture that fully adopts and prioritises compliance and governance measures of integrity, and embed the compliance culture into their everyday workflows;
- not have single gender boards and prioritise achieving board gender diversity; and
- conduct a thorough analysis and assessment to identify material ESG risks, and consider making appropriate disclosure on climate-related issues and initiatives to reduce carbon emissions.

HKEX consults on operational model for derivatives holiday trading

The HKEX has launched a consultation proposing the introduction of an operational model for non-Hong Kong Dollar (HKD) denominated futures and options trading and clearing services on Hong Kong public holidays (derivatives holiday trading), with the exception of New Year's Day when the market will remain closed.

The proposal is part of the HKEX's commitment to enhance Hong Kong's market microstructure in order to support global investors. It is intended to reinforce Hong Kong's competitiveness as an international risk management centre and enable investors actively to manage their derivatives portfolios during Hong Kong holidays, when the markets of their underlying securities may be open.

Under the proposed operational model, participation in derivatives holiday trading will be optional, with exchange participants classified as either holiday trading participants or non-holiday trading participants. Similarly, products will be classified as either holiday trading products or non-holiday trading products. To ensure clarity and transparency to the market, the HKEX proposes to allow only holiday trading participants access to holiday trading products, even on regular business days.

Subject to market feedback and regulatory approval, the HKEX intends to launch derivatives holiday trading in April 2022, with a readiness test or market rehearsal to be held in the first quarter of 2022. The HKEX has indicated that the details of the first batch of non-HKD products to be included as holiday trading products will be announced in due course.

Comments on the consultation are due by 6 December 2021.

Singapore Government launches national programme to deepen artificial intelligence capabilities in financial services

The Singapore Government has launched the National Artificial Intelligence (AI) Programme in Finance, which is a joint initiative by the Monetary Authority of Singapore (MAS) and the National AI Office (NAIO) at the Smart Nation and Digital Government Office (SNDGO).

The AI Programme is part of Singapore's broader national AI strategy and intended to build deep AI capabilities within Singapore's financial sector to strengthen customer service, risk management, and business competitiveness.

Under the AI Programme, the MAS and the SNDGO will provide funding, contribute government data, and convene the necessary expert stakeholders to drive AI adoption in the financial sector.

MAS publishes information paper setting out economic considerations for retail CBDC in Singapore context

The MAS has published an information paper which sets out its initial assessment of the economic case for a retail CBDC in Singapore and its potential implications for financial stability and monetary policy. In particular, the information paper:

- focuses on the key economic considerations around the issuance of a retail CBDC in Singapore;
- lays out key developments in the payment landscape that have ignited interest in a retail CBDC;
- discusses the potential benefits of a retail CBDC for Singapore;

- highlights the risks to credit creation, financial stability and monetary policy if a cash-like CBDC is issued, as well as some safeguards that could mitigate these risks; and
- highlights areas that require further in-depth study.

Overall, the MAS' current view is that there is no pressing need for a retail CBDC in Singapore now. The MAS will proceed with further technological and policy explorations of a retail CBDC, although this should not be taken as a commitment to its issuance. Further in-depth analyses on the implications of a retail CBDC for the MAS' regulatory frameworks, operational and legal considerations and its impact on the financial sector among others, still need to be undertaken in parallel. The MAS has also indicated that it will remain open to a broad spectrum of possible policy options, including other modalities of public-private partnerships.

MAS responds to feedback and publishes revised guidelines on corporate governance

The MAS has issued revised guidelines on corporate governance (CG guidelines) for designated financial holding companies (FHCs), banks, direct insurers, reinsurers and captive insurers which are incorporated in Singapore (FIs), together with its response to the feedback received on its May 2021 consultation paper on proposed revisions to the CG guidelines.

The CG guidelines were revised to align and strengthen corporate governance standards across FIs. In particular, the revisions to the guidelines:

- incorporate the changes that were made to the Code of Corporate Governance (CG Code) in August 2018;
- make revisions to the additional guidelines (AGs) within the CG guidelines to align with international standards and industry good practices;
- add a new AG on the appointment of a non-director as a member of the Board Risk Committee (BRC);
- include certain provisions and AGs from the previous version of the CG guidelines in the Banking (Corporate Governance) Regulations 2005 and the Insurance (Corporate Governance) Regulations 2013 (CG regulations) for mandatory compliance; and
- refine the compliance approach for different categories of FIs. In particular, FIs which are banks, Tier 1 insurers, and designated FHCs that own banks or Tier 1 insurers are to fully observe the principles of the CG Code contained within the CG guidelines, while FIs which are Tier 2 insurers and other designated FHCs are to observe the principles or explain any variance. Every FI is expected to observe the provisions and the AGs, or explain any variances. FIs listed on the Singapore Exchange (SGX) may explain variances in their annual reports while FIs that are not listed on the SGX may do so in their annual reports or on their company websites.

In its response to the feedback received, the MAS has clarified the following:

- the new AG 9.9 allows FIs to appoint an expert, who is not a director, to their BRC. MAS clarified that it is not encouraging FIs to do so but leaving the option open to FIs if they find such appointment useful;

- MAS has revised Provision 2.2 such that only locally-incorporated Tier 1 insurers, local banks, qualifying full banks, full banks and their designated financial holding companies are subject to the expectation for a majority independent board where the Chairman is non-independent. Provision 2.2 will be effective from 31 December 2022 to give the FIs sufficient time to consider making any changes to their board composition;
- for all other FIs, MAS will retain the existing expectation for at least half of the board to be independent;
- on AG 6.9 for FIs to conduct an independent annual review of compensation practices, the MAS has clarified that the Remuneration Committee (RC) may waive the conduct of the review for a particular year where the RC is satisfied that there are no material changes to the FI's remuneration policies, or applicable regulations or guidelines. Such decision and supporting justification should be documented; and
- the MAS will no longer include in the CG regulations a responsibility for the Board to review at least annually the bank's/insurer's business objectives, strategies and its corporate governance as well as culture and conduct frameworks. The MAS will instead allow reviews to be conducted on a periodic basis and where there are material developments.

The revised CG guidelines supersede and replace the CG guidelines issued on 3 April 2013.

Expectations in the revised CG guidelines that relate to disclosures are effective from 1 January 2022 and will apply to the FIs' annual reports covering financial years commencing from 1 January 2022.

All other expectations in the revised CG guidelines are effective from 1 April 2022, except for Provision 2.2 which will be effective from 31 December 2022. FIs are expected to provide explanations for variances observed from 1 April 2022 in their annual reports covering financial years commencing from 1 January 2022 or on their websites.

APRA and RBA publish joint statement on actions pertaining to climate change financial risk

The Australian Prudential Regulation Authority (APRA) and the Reserve Bank of Australia (RBA) have published a joint statement on the actions they are taking to ensure financial institutions and the Australian financial system are prepared to respond to the financial risks of climate change.

The statement highlights that both APRA and the RBA have been building capacity to conduct analysis and research on climate change based financial issues and are actively considering the steps that can be taken to achieve their respective mandates in view of climate-related risks, including:

- integrating climate-related risks into financial stability monitoring and micro-supervision;
- analysing the effect of climate-related risks on the macroeconomy and financial stability;
- building awareness and intellectual capacity and encouraging knowledge sharing; and
- integrating sustainability factors into their own operations.

CLIFFORD
CHANCE

APRA sets out framework for using macroprudential tools to promote financial stability

APRA has published an information paper outlining its framework for the use of macroprudential policy measures to promote the stability of Australia's financial system.

The information paper is intended to give financial industry stakeholders a better understanding of the risk factors APRA considers in assessing the appropriateness of macroprudential interventions, the choice of tool or combination of tools, the types of macroprudential measures it could deploy in the future, and how they might be implemented.

To support the implementation of the framework, APRA has launched a consultation on a proposed new attachment to the Prudential Standard APS 220: Credit Risk Management (APS 220) in order to formalise and embed credit-based macroprudential policy measures within its prudential standards.

At present, APRA's ability to implement macroprudential measures is somewhat indirect, with credit measures typically enforced through the potential imposition of higher capital requirements where needed. The proposed attachment to APS 220, Macroprudential policy: credit measures, is intended to require authorised deposit- taking institutions (ADIs) to:

- ensure they have the ability to limit growth in particular forms of lending;
- moderate higher risk lending during periods of heightened systemic risk or meet particular lending standards, at levels determined by APRA; and
- ensure there would be adequate reporting in place to monitor against limits.

The proposed attachment includes a set of credit-based macroprudential measures particularly in terms of lending limits and lending standards that could be used to address systemic risks if needed. It also requires ADIs to preposition in advance to address potential barriers to implementation, supporting a timely response to any emerging risks.

Comments on the consultation are due by 28 February 2022.

ASIC publishes cost recovery implementation statement for 2020-21

The Australian Securities and Investments Commission (ASIC) has published its cost recovery implementation statement (CRIS) for 2020-21 as required under the Australian Government Cost Recovery Guidelines.

The latest CRIS is intended to outline ASIC's estimated regulatory costs for 2020-21 and how these will be recovered as industry levies under the industry funding model. It summarises the feedback ASIC received to its July 2021 consultation on the draft CRIS for 2020-21 and includes:

- an explanation of the cost recovery model, including the business process, outputs and how ASIC allocates costs to calculate the levies and fees for service;
- a forecast of ASIC's regulatory costs;
- estimates of the levies that each regulated subsector will pay;

- actual costs ASIC incurred in the previous financial year for each subsector, and the variance between the actual costs and the estimated costs in last year's CRIS; and
- an assessment of the risks associated with the industry funding model and how those risks have been managed.

The final industry levies, which will be based on ASIC's actual regulatory costs and the business metrics submitted by entities in each subsector, are planned to be published in December 2021 and invoiced in January 2022.

CLIFFORD
CHANCE