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## **Digital finance: EU Parliament adopts regulation on market infrastructures based on DLT**

The EU Parliament has [adopted](#) at first reading a regulation on a pilot regime for market infrastructures based on distributed ledger technology (DLT). The regime is intended to allow market infrastructures to experiment with restricted uses of DLT under exemptions from the requirements of certain financial services legislation.

The EU Council and EU Parliament reached political agreement on the proposed regulation on 24 November 2021. The Council must now formally adopt the proposed regulation, which will enter into force 20 days after it is published in the Official Journal and will apply nine months after that.

## **Digital finance: ECON Committee publishes report setting out position on proposed regulation on markets in cryptoassets**

The EU Parliament's Economic and Monetary Affairs (ECON) Committee has published a [report](#) containing its negotiating position on the EU Commission's Markets in Cryptoassets (MiCA) proposal.

The report sets out various amendments to the proposal, including:

- requiring the EU Commission to develop a legislative proposal to include any cryptoasset mining activities that contribute substantially to climate change under the EU taxonomy by 1 January 2025; and
- granting the European Securities and Markets Authority (ESMA) supervisory responsibility over the issuance of asset-referenced tokens and the European Banking Authority (EBA) responsibility over electronic money tokens.

The final negotiating position does not include a provision that appeared in earlier drafts which would have prohibited the use of the energy-intensive 'proof-of-work' mechanism.

The text was adopted with 31 votes to 4 and 23 abstentions. The EU Council adopted its negotiating position on 24 November 2021. Once a provisional political agreement is found between their negotiators, both institutions will formally adopt the regulation.

## **MiFID2 Quick Fix: EU Commission adopts Delegated and Implementing Regulations on position management controls and reports**

The EU Commission has adopted a [Delegated Regulation](#) and an [Implementing Regulation](#) developed under Directive (EU) 2021/338 (MiFID2 Quick Fix), which forms part of the EU's Capital Markets COVID-19 Recovery Package.

The Delegated Regulation sets out regulatory technical standards (RTS) aimed at ensuring a more harmonised and convergent implementation of position management controls by trading venues by:

- introducing general monitoring obligations for trading venues;
- specifying what an accountability level is, that accountability levels should be set for commodity derivatives made available for trading that are or can be physically settled, and what exchanges have to do when a position exceeds the accountability level; and
- requiring trading venues to assess the adequacy and effectiveness of the accountability levels, and specifying reporting requirements of trading venues to their national competent authority (NCA).

The Implementing Regulation amends implementing technical standards (ITS) with regard to the format of commodity derivative position reports by investment firms and market operators. In particular, it replaces Table 2 of Annex II to Implementing Regulation (EU) 2017/1093 as a consequence of the exclusion of securitised derivatives from the scope of the position limit regime.

The Delegated Regulation will now be scrutinised by the EU Council and Parliament, and enter into force on the twentieth day following its publication in the Official Journal. The Implementing Regulation will also enter into force on the twentieth day following its publication in the Official Journal.

### **CRR: EU Commission adopts ITS on main indices and recognised exchanges**

The EU Commission has adopted an [Implementing Regulation](#) containing amendments to the ITS on the main indices and recognised exchanges under the Capital Requirements Regulation (CRR).

The most material changes to the ITS include:

- revising the methodology used to identify the main indices whose components can be used as collateral;
- including third country exchanges from those jurisdictions for which the Commission has adopted equivalence decisions under MiFID2 to reflect the amendment to the CRR definition of ‘recognised exchange’; and
- excluding UK exchanges from the list of recognised exchanges as the Commission has not adopted an equivalence decision under MiFID2 for the UK.

The ITS will enter into force on the twentieth day following their publication in the Official Journal.

### **ECB issues opinion on amendments to CRR**

The European Central Bank (ECB) has issued an [opinion](#) on the EU Commission’s proposed amendments to the CRR.

Overall the ECB welcomes the Commission’s proposals and has emphasised the importance of finalising the EU implementation of the Basel III reforms in a timely, full and faithful manner. However, it also identifies areas where it believes the proposals could be improved.

Among other things, the ECB has:

- encouraged the EU legislative bodies to conclude the legislative process promptly and without an unduly long implementation period to ensure that banks can withstand future crises;
- emphasised its support for the faithful implementation of the Basel III reforms but has commented that the proposed deviations and implementation choices could leave pockets of risk insufficiently addressed in the banking sector;
- identified risks in the proposed prudential treatment of real estate exposures, credit risk from unrated corporates, and counterparty credit risk, specifically in regard to proposals relating to the implementation of the output floor, which the ECB notes include significant transitional arrangements leading to lower risk weights than those envisaged in the Basel standards;
- expressed concern that the proposal to implement the new standardised approach for credit risk contains several new deviations from Basel III standards which may reduce the consistency and safety of the new standardised approach and leave certain risks uncovered; and
- expressed a preference for an implementation of the new standardised approach for operational risk where the internal loss multiplier is determined by historical losses incurred by the institution and gradually introduced.

The ECB has provided a technical working document accompanied by explanatory text, which contains its specific drafting recommendations on the proposed amendments.

## **EBA publishes guidelines on SREP common procedures and methodologies**

The European Banking Authority (EBA) has published its [final revised guidelines](#) on common procedures and methodologies for the supervisory review and evaluation process (SREP) and supervisory stress testing.

The revisions are intended to implement the amendments to the Capital Requirements Directive (CRD 5) and Capital Requirements Regulation (CRR 2) and promote convergence towards best supervisory practices.

The EBA believes the changes affect the SREP framework's main elements including:

- business model analysis;
- assessment of internal governance and institution-wide control arrangements;
- assessment of risks to capital and adequacy of capital to cover these risks; and
- assessment of risks to liquidity and funding and adequacy of liquidity resources to cover these risks.

The guidelines will apply from 1 January 2023.

## Fundamental Review of the Trading Book: EBA publishes final draft RTS on default probabilities and losses given default

The EBA has published its [final draft regulatory technical standards \(RTS\)](#) on default probabilities (DPs) and losses given default (LGDs) for the default risk model for institutions using the new internal model approach (IMA) under the Fundamental Review of the Trading Book.

Institutions that use the IMA to compute own funds requirements for market risk are required to compute additional own funds requirements using an internal default risk model for their positions in traded debt and equity instruments included in IMA trading desks. The final draft RTS clarify the requirements for estimating PDs and LGDs under the default risk model. In particular, they specify that:

- an internal methodology used to calculate PDs and LGDs under the default risk model should meet all requirements applicable to the corresponding internal ratings-based approach; and
- institutions may produce conservative 'fallback' PD and LGD values, which are to be used only where needed.

The RTS also set out the requirements that external sources must fulfil for their estimates to be used under the default risk model, including that the methodology employed to derive the PDs and LGDs is conceptually sound.

## EBA reports on AML/CFT supervision of banks

The EBA has published its findings from an assessment of competent authorities' approaches to the anti-money laundering and countering the financing of terrorism (AML/CFT) supervision of banks.

The [report](#) summarises the findings from the second year of EBA's ongoing reviews of competent authorities that are responsible for the AML/CFT supervision of banks in the European Union (EU) and in the European Economic Area (EEA).

Overall, the EBA found that most competent authorities were on track and committed to strengthening their approach to AML/CFT supervision. The EBA found that several competent authorities have taken steps to put in place a holistic approach to tackling ML/TF risks in the banking sector. Furthermore, AML/CFT teams in almost all competent authorities that the EBA reviewed have grown significantly and are set to expand further, and cooperation with prudential supervisors and other EU AML/CFT supervisors has become a clear priority for all, in line with the EBA's regulatory framework.

Among the common challenges that supervisors face, the EBA highlights difficulties in:

- identifying ML/TF risks in the banking sector and in individual banks;
- translating ML/TF risk assessments into risk-based supervisory strategies;
- using available resources effectively, including by ensuring sufficiently intrusive onsite and offsite supervision; and
- taking proportionate and sufficiently dissuasive enforcement measures to correct AML/CFT compliance weaknesses.

The EBA intends to continue its implementation reviews and provide support and training for all competent authorities to build capacity and to support the effective implementation of the comprehensive regulatory AML/CFT framework the EBA has put in place.

### **IOSCO consults on recent retail investor trends**

The International Organization of Securities Commissions (IOSCO) has launched a [consultation](#) on proposals to develop a regulatory toolkit to help jurisdictions address emerging retail market conduct issues arising from the rapidly changing retail investment landscape.

The consultation paper sets out the findings from a recent survey of IOSCO members on the retail market conduct implications of developments such as COVID-19, the rise of social media and gamification, and activist retail activity. Key findings from the survey include:

- retail trading volumes have increased and fraudulent online activity has escalated over the past eighteen months;
- social media and online platforms are increasingly being used to promote scams;
- retail investors are increasingly pushed towards ‘digitalization’;
- various apps and online trading platforms are using gamification techniques to attract retail investors and influence their trading behaviour;
- IOSCO members are concerned about the suitability of cryptoassets for retail investors and the potential for related fraudulent activity and scams; and
- the rise in digital trading platforms and social media influence may result in high-risk and gambling-type investment opportunities.

The paper also sets out some authorities’ approaches to addressing these developments.

IOSCO is seeking feedback on the concerns and issues identified by the survey, and on the value of developing a toolkit which regulators could use when considering their strategies for evaluating and addressing the risks posed by changing retail investor behaviour.

Comments are due by 23 May 2022.

### **BoE reaffirms commitment to FX Global Code**

The Bank of England (BoE) has renewed its [statement of commitment](#) to the FX Global Code.

The code was first published by the Global Foreign Exchange Committee in 2017, and was updated in July 2021 following a three year review of its implementation. By renewing its statement of commitment, the BoE has attested that its internal processes are consistent with the principles of the revised code.

The BoE strongly encourages all market participants, including its regular counterparties, to similarly review the updated code and renew their statements of commitment.



## **FCA publishes policy statement on UK PRIIPs Regulation and KIDs RTS**

The Financial Conduct Authority (FCA) has published a policy statement ([PS22/2](#)) on the scope of the onshored Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation and the regulatory technical standards (RTS) on key information documents (KIDs).

This follows a consultation (CP21/23) launched in July 2021. PS22/2 outlines changes the FCA is making to the PRIIPS Regulation, including:

- introducing rules to clarify the scope of the PRIIPs Regulation for corporate bonds, making it clearer that certain common features of these instruments do not make them into a PRIIP;
- introducing interpretative guidance to clarify what it means for a PRIIP to be made available to retail investors; and
- amending the PRIIPs RTS to:
  - replace the requirements and methodologies for presentation of performance scenarios in the KID with a requirement for narrative information on performance to be provided;
  - address the potential for some PRIIPs to be assigned an inappropriately low summary risk indicator in the KID; and
  - address concerns about certain applications of the slippage methodology when calculating transaction costs.

The FCA will also make consequential date changes to the PRIIPs RTS and Handbook rules to align them with the extension of the Undertakings for Collective Investment in Transferable Securities (UCITS) exemption contained in the PRIIPs Regulation (as enacted in retained EU law) from 31 December 2021 to 31 December 2026.

The Handbook rules and RTS came into force on 25 March 2022, with a transition period which will end on 31 December 2022, by which date firms must apply the new requirements.

## **FCA publishes letter on custody and fund services supervision strategy**

The FCA has published a Dear Chief Executive [letter](#) outlining its supervisory priorities in relation to the custody and fund services sector.

The letter sets out the FCA's views of the key risks in the sector, and its expectations for firms in relation to those risks and its supervisory priorities, which cover:

- operational resilience and cyber;
- protection of custody assets and money (CASS);
- depository oversight;
- speculative and illiquid investments; and
- market and regulatory changes, such as the Investment Firms Prudential Regime (IFPR), which came into force on 1 January 2022.

## **CMA reports on future of open banking implementation**

The Competition and Markets Authority (CMA) has published a [report](#), summarising the responses it received to its consultation on the future oversight of open banking, as well as its recommendations for next steps.

In its consultation, the CMA sought views on the design and role of an entity to succeed the Open Banking Implementation Entity (OBIE), an independent organisation set up by the largest UK retail banks to implement open banking in 2017. In light of the responses received, the CMA has concluded that the future entity should:

- have effective regulatory oversight;
- have independent and accountable leadership, with a majority of independent directors on its board;
- have a clear purpose, as set out by its board;
- be adequately resourced to carry out its functions through a more broadly-based and sustainable funding model;
- effectively serve the interests of consumers and small and medium sized businesses, including consideration for how these groups should be represented in its governance;
- be sustainable and adaptable to the future needs of the sector; and
- have a system to effectively support the monitoring and enforcement of the Retail Banking Market Investigation Order 2017.

Alongside the report, the CMA, HM Treasury, the Financial Conduct Authority (FCA) and the Payment Systems Regulator (PSR) have published a [joint statement](#) setting out their plans to establish a Joint Regulatory Oversight Committee, which will be responsible for overseeing the future entity. The Committee will draw up proposals for the design of the future entity by the end of 2022.

## **BaFin announces cessation of most COVID-19 crisis response measures**

The German Federal Financial Supervisory Authority (BaFin) has [announced](#) that it intends to terminate most of its COVID-19 crisis response measures, implemented at the onset of the pandemic, on 30 June 2022.

In March 2020, BaFin adapted its administrative practice within its existing frameworks to mitigate for German companies the adverse economic consequences of the pandemic and its containment efforts. Measures included support for German banks and savings banks (Sparkassen) in the distribution of their own, as well as public, funds to companies in need of financing to sustain their business operations. The measures were published on BaFin's website in the form of frequently asked questions (FAQs) and were periodically revised.

Following review, BaFin has concluded that the majority of these measures are no longer required and can be actively discontinued in instances where they have not already lapsed.

A select number of measures set forth in the FAQs are to remain in place, including those on:

- State aid programmes extending beyond 30 June 2022;



- supervisory requirements on trading via remote working (until MaRisk is amended accordingly); and
- exceptions relating to on-site inspections with respect to the review of the annual financial statements of supervised entities.

The archived and current FAQs can be accessed on BaFin's website.

### **CSSF publishes Circular 22/802 on application of EBA guidelines on treatment of structural FX under Article 352(2) of CRR**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has published [Circular 22/802](#) dated 18 March 2022.

The circular informs its addressees that the CSSF, in its capacity as competent authority, applies the guidelines of the EBA on the treatment of structural FX under Article 352(2) of the CRR, which were published on 1 July 2020.

The circular is addressed to all credit institutions designated as less significant institutions under the Single Supervisory Mechanism (SSM), to all CRR investment firms, and to all Luxembourg branches of credit institutions or CRR investment firms incorporated in a third country, which are required to comply with the EBA's guidelines. Significant supervised entities under the SSM should refer to the relevant rules of the European Central Bank (if any).

The guidelines set out the criteria under which competent authorities should authorise the exclusion of a position in a foreign currency from the calculation of its net open currency positions, where such foreign currency position is of a structural nature and taken by institutions to hedge against the adverse effect of exchange rates on their capital ratios.

The circular applies to its addressees on an individual and consolidated basis and with immediate effect.

### **CSSF publishes Circular 22/803 on introduction of semi-annual data collection on lending indicators related to commercial real estate**

The CSSF has published [Circular 22/803](#) dated 18 March 2022.

The circular is addressed to all Luxembourg credit institutions and all Luxembourg branches of EU and non-EU credit institutions that offer commercial real estate loans, and is applicable as of its publication date.

Following up on the Recommendation of the European Systemic Risk Board (ESRB) of 21 March 2019, which amended Recommendation ESRB/2016/14 on closing real estate data gaps (ESRB/2019/3), the CSSF, as the national designated authority, intends to introduce a semi-annual data collection on lending indicators related to commercial real estate (CRE) in Luxembourg.

The semi-annual reporting concerns loans that are granted for acquiring a CRE property or are secured by a CRE property, if the amount reported in FINREP Table 18, row 0140, column 010 (i.e. the gross carrying amount for loans and advances to non-financial corporations, of which: loans collateralised by commercial immovable property), exceeds EUR 250 million at 31 December of the previous year.

The collection of data and indicators will help identify any build-up of systemic risks and assess the potential need for macroprudential intervention. The collection of granular and consistent data will also help with the effective capturing of market developments and analysis of systemic risks.

The circular introduces the definitions of these indicators, which should be submitted via a dedicated template available on the CSSF website in April and in October of each year.

### **Bank of Spain enacts Circular 2/2022 on rules governing submission of payment statistics by payment service providers and payment system operators**

The Bank of Spain (Banco de España) has enacted [Circular 2/2022](#) of 15 March 2022, which sets out the rules governing the submission of payment statistics to the Bank of Spain by payment service providers and payment system operators. The circular repeals and supersedes Circular 2/2015 of 22 May 2015.

The main purpose of the new circular is to adapt and align Spanish legislation with Regulation (EU) 1409/2013 of the European Central Bank on payments statistics, as amended by Regulation (EU) 2020/2011 of the European Central Bank. Specifically it:

- updates the submission procedure;
- updates the type and frequency of payments statistics that must be submitted; and
- further elaborates on the types of entities that may be exempt from providing payments statistics, as well as the Bank of Spain's ability to grant these exemptions.

### **SFC provides guidance on managing risks of business email compromise**

The Securities and Futures Commission (SFC) has issued a [circular](#) to licensed corporations (LCs) on measures to manage the risks of business email compromise (BEC) schemes. BEC schemes are a type of cyber fraud whereby individuals posing as known business contacts deceive unwary staff into sending them money or sensitive information. According to the SFC, these incidents have, in some cases, resulted in the leakage of client information and/or significant financial losses to LCs.

The circular sets out the SFC's expected standards to mitigate the risks and impact of this form of cyber fraud. Among other things, the SFC expects LCs to:

- have internal control procedures and financial and operational capabilities which can be reasonably expected to protect their operations and clients from financial losses arising from theft, fraud and other dishonest acts, as well as professional misconduct or omissions;
- establish effective policies and procedures to provide guidance to their staff on managing BEC risks;
- establish true identities of their clients and authorised representatives during the account opening process;
- periodically review and update official records to keep client contact information accurate and up-to-date;

- issue acknowledgement notifications to the clients' registered address, email or mobile phone when amendments are requested and when they are made;
- implement effective confirmation procedures for requests with amounts over a reasonable threshold; and
- stay alert to, and handle with extra care, any email requests that are inconsistent with the client's normal practices.

The SFC has clarified that the stated control measures and techniques are non-exhaustive in nature. LCs are expected to review their own circumstances and ensure that appropriate and effective control procedures are put in place and effectively enforced.

### **Australian Government consults on licensing and custody regime for crypto asset secondary service providers**

The Australian Government has launched a [public consultation](#) pertaining to licensing and custody requirements for crypto asset secondary service providers pursuant to the recommendations of the Senate Select Committee on Australia as a Financial and Technology Centre.

The consultation proposals intend to provide a framework for minimum standards of conduct, including for custody of private keys and the suitability of key persons to be operating secondary service provider businesses (through fit and proper person tests). In turn, these changes are intended to provide regulatory clarity and give confidence to both consumers and businesses, encouraging investment and innovation in the local crypto ecosystem.

Comments on the consultation are due by 27 May 2022.

### **ASIC consults on financial services licensing requirements for corporate collective investment vehicles**

The Australian Securities and Investments Commission (ASIC) has launched [consultation](#) seeking industry feedback on its proposed licensing requirements for corporate collective investment vehicles (CCIVs).

In particular, the consultation paper sets out ASIC's proposals on various licensing-related matters, along with how it intends to:

- assess Australian financial services (AFS) licence applications from corporate directors seeking to operate a CCIV;
- assess AFS licence applications from individuals seeking to provide financial product advice on, and/or deal in, CCIV securities; and
- administer the licensee obligations that will apply to CCIV corporate directors.

The consultation also proposes updates to five licensing-related regulatory guides. The licensing requirements will come into effect on 1 July 2022 when the CCIV regime commences.

Comments on the consultation are due by 14 April 2022.

## **ASX consults on over-the-counter fallback rate provisions and product eligibility enhancements**

The Australian Securities Exchange (ASX) has launched a [consultation](#) outlining proposed changes to the ASX Clear (Futures) over-the-counter (OTC) Rules and Handbook to:

- implement benchmark fallback rate provisions in relation to the OTC interest rate derivatives products cleared by ASX, in accordance with the global benchmark reform agenda - for the purpose of providing fallback rate certainty in the event of an Index Cessation Event or an Administrator/Benchmark Event for bank bill swap rate (BBSW) and bank bill benchmark rate (BKBM), ASX proposes to implement the fallback rate provisions for the BBSW and BKBM benchmark rates set out in the 2021 International Swaps and Derivatives Association (ISDA) definitions to both new and legacy trades; and
- introduce OTC product enhancements to support the Actual/Actual International Capital Market Association (ICMA) Day Count Convention for the clearing of assets swaps and the International Monetary Market (IMM) Australian Dollars (AUD) roll convention, the industry convention to enable swaps to roll on ASX's bank bill futures dates.

Subject to consultation feedback and regulatory clearance, it is expected that the amendments to the ASX OTC Rules and Handbook will be effective from 27 June 2022.

Comments on the consultation are due by 29 April 2022.

## **SEC proposes rule amendments to enhance and standardise climate-related disclosures**

The Securities and Exchange Commission (SEC) has [proposed](#) rule amendments which are intended to enhance and standardise the climate-related information SEC-registered firms provide to their investors.

The proposed rules would require SEC-registered firms to include certain climate-related information in their registration statements and periodic reports, including:

- climate-related risks and their impact on the firm's business, strategy and outlook;
- the firm's governance of climate-related risks and relevant risk management process;
- the firm's direct and indirect greenhouse gas emissions;
- certain climate-related financial statement metrics and related disclosures (to be included as a note to the firm's audited financial statements); and
- information on the firm's climate-related targets, goals and transition plans, if relevant.

The proposed disclosures broadly align with those recommended under existing frameworks, such as the Task Force on Climate-Related Financial Disclosures and the Greenhouse Gas Protocol, which are already followed by many firms.

The public comment period for the proposals will remain open for 30 days after it is published in the Federal Register or until 9 May 2022 (whichever is later).

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

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