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CRD4: EU Commission adopts amending ITS on benchmarking of internal approaches

The EU Commission has adopted an [Implementing Regulation](#) amending the implementing technical standards (ITS) as regards benchmark portfolios, reporting templates and reporting instructions under the Capital Requirements Directive (CRD4).

Under CRD4, internal approaches used for the calculation of own funds requirements for market and credit risk are subject to an annual assessment by competent authorities. The amending ITS, which reflect revisions proposed by the European Banking Authority (EBA) in May 2022,

will replace annexes I, II, IV, V and VI to reflect the EBA's proposals for the 2023 benchmarking exercise.

The Implementing Regulation will enter into force 20 days after its publication in the Official Journal.

EU Commission adopts ITS on reporting of intragroup transactions and risk concentration under Financial Conglomerates Directive

The EU Commission has adopted an [Implementing Regulation](#) laying down ITS under the Financial Conglomerates Directive (FICOD) with regard to supervisory reporting of risk concentrations and intra-group transactions.

The ITS set out the scope, frequency and format of reporting on significant intra-group transactions and risk concentrations.

The Implementing Regulation will enter into force on the twentieth day following that of its publication in the Official Journal.

ECB publishes SSM supervisory priorities for 2023-25

The European Central Bank (ECB) has published its [supervisory priorities](#) for the single supervisory mechanism (SSM) for 2023-25.

The priorities focus on supervisory efforts to strengthen the resilience of the banking sector to immediate macro-financial and geopolitical shocks, particularly those caused by Russia's invasion of Ukraine, whilst also ensuring that supervised institutions stay focused on addressing the structural vulnerabilities that were identified in 2021, which remain highly relevant.

For each priority, the ECB has set out vulnerabilities, objectives and expected activities under the supervisory work programme. The priorities identified for 2023-25 focus on:

- strengthening resilience to immediate macro-financial and geopolitical shocks, which includes addressing shortcomings in credit risk management including exposures to vulnerable sectors, and lack of diversification of funding sources and deficiencies in funding plans;
- digitalisation challenges and strengthening management bodies' steering capabilities, which includes addressing deficiencies in digital transformation strategies, operational resilience frameworks, managements bodies' functioning and steering capabilities, and risk data aggregation and reporting; and
- increasing efforts to address climate change, including material exposures to physical and transition risk drivers.

ESAs publish joint advice on review of securitisation prudential framework

The European Supervisory Authorities (ESAs) have published [joint advice](#) to the EU Commission on the review of the securitisation prudential framework. This is in response to the EU Commission's October 2021 call for advice.

The ESA's proposals are intended to improve the consistency and risk sensitivity of the capital framework for banks whereas the liquidity

framework for banks and the prudential framework for (re)insurers should be maintained as it currently stands. However, the ESAs believe that recalibrating the securitisation prudential framework would not be a solution that in itself would ensure the revival of the securitisation market.

With regard to banks' capital framework, the ESAs make the following recommendations:

- some technical quick fixes aimed at improving the framework's consistency and clarity;
- a more substantial recommendation which recognises the reduced model and agency risk associated with the securitisation originators by reducing the risk weight floor for senior tranches retained by originators under a set of appropriate safeguards. In particular, the recommendation focuses on why this may support further growth in the significant risk transfer market in a prudent manner, by promoting the issuance of resilient securitisations without jeopardising financial stability; and
- general issues on the securitisation risk weight formulas that underpin the framework are raised where further work is needed to reach conclusions.

As regards the liquidity framework for banks, the ESAs consider that the current framework should be kept as it currently stands.

Regarding the insurance sector, the ESAs conclude that the Solvency II framework does not seem to influence insurance activity in EU securitisation. On the coherence of the existing calibration methods with the overall Solvency II framework and with the securitisation framework of the Capital Requirements Regulation (CRR) for banks, the ESAs conclude that, although some changes could be feasible, their potential effectiveness in reviving the securitisation market remains uncertain and would come at the cost of increased complexity. The ESAs do not advise changes to the current framework of Solvency II with regard to the prudential treatment of securitisation.

The ESAs stress that further analytical work should be conducted to gain a holistic understanding of the relevant factors driving the securitisation market, some of which lie outside the scope of the prudential framework, including the recent monetary policy environment and the role of the due diligence and transparency requirements.

Additionally, the European Securities and Markets Authority (ESMA) has started the revision process of the disclosure templates for securitisation transactions with a view to introducing greater proportionality and to simplify the templates.

EBA consults on overall recovery capacity guidelines

The EBA has launched a [consultation](#) on its draft guidelines on the overall recovery capacity (ORC) in recovery planning.

The objective of the ORC is to provide a summary of the overall capability of an institution to restore its financial position after a significant deterioration by implementing suitable recovery options. Through the assessment of an institution's overall recovery capacity, competent

authorities can understand to what extent an institution would be able to recover from a range of potential crisis situations.

The guidelines are intended to harmonise the observed practices on the ORC determination and assessment, so as to improve the usability of recovery plans and make crisis preparedness more effective.

A public hearing is scheduled for 14 February 2023 and comments are due by 14 March 2023.

Digital finance: ESMA publishes guidance to applicants under DLT pilot regime

ESMA has published a [final report](#) including guidelines on standard templates, forms and formats to apply for permission to operate a DLT market infrastructure.

This follows a consultation launched in July 2022. The report summarises and analyses the feedback received, as well as containing the final guidelines.

The guidelines include templates to be used by market participants to apply for specific permission to operate any type of DLT market infrastructure under the DLT Pilot Regulation. They also include templates for the applicant DLT market infrastructures to request limited exemptions from specific requirements under MiFIR, MiFID2 or CSDR, provided they comply with certain conditions.

ESMA has strongly encouraged applicants to anticipate the formal entry into force of the guidelines, and to liaise with their national competent authority to prepare their application for permission to operate a DLT market infrastructure.

The guidelines enter into force on 23 March 2023.

MiFID2: ESMA publishes statement to deprioritise supervisory actions on RTS 27 reports

ESMA has issued a [statement](#) to promote coordinated action by national competent authorities (NCAs) under MiFID2.

ESMA expects NCAs not to prioritise supervisory actions against execution venues relating to the periodic reporting obligation on them to publish the RTS 27 reports, from 1 March 2023 until the forthcoming legislative amendment to the relevant Article of MiFID2 applies.

The Directive amending MiFID2 under the Capital Markets Recovery Package temporarily suspended the RTS 27 reporting requirement until 28 February 2023. The EU Commission's legislative proposal on the MiFID2/MiFIR review includes a proposal to delete the obligation to publish RTS 27 reports. This proposal is currently subject to the legislative procedure at the EU Parliament and EU Council.

ESMA has observed a lack of clarity among market participants on the suspension of the obligation to publish RTS 27 reports, if the negotiations between the Council and the Parliament last beyond the expiration date of the temporary suspension on 28 February 2023.

ESMA currently does not expect the MiFID2/MiFIR legislative procedure to have been completed by 28 February 2023 and therefore believes that it is

likely that the RTS 27 reporting obligation will temporarily re-apply after 28 February 2023 until the reviewed MiFID2 Directive applies.

MiFID2: ESMA publishes supervisory briefing on cross-border activities of investment firms

ESMA has published a [supervisory briefing](#) on the supervision of the cross-border activities of investment firms under MiFID2.

The supervisory briefing, which follows ESMA's March 2022 peer review report and seeks to improve home authorities' approach to supervision and promote supervisory convergence, covers:

- authorisation of firms with cross-border plans;
- processing of passport notifications and their impact on the supervisory approach applied to firms;
- arrangements in place to carry out ongoing supervisory activities;
- carrying out of ongoing supervision; and
- carrying out of investigations and inspections.

Basel Committee oversight body endorses global bank prudential standard for cryptoassets and work programme for 2023-24

The Group of Central Bank Governors and Heads of Supervision (GHOS) that oversees the Basel Committee on Banking Supervision (BCBS) has endorsed a finalised [prudential standard](#) on banks' cryptoasset exposures and the Committee's work programme and strategic priorities for 2023-24.

The new standard is intended to provide a global regulatory framework for internationally active banks' exposures to cryptoassets, including tokenised traditional assets, stablecoins and unbacked cryptoassets. GHOS members agreed to implement the standard by 1 January 2025 and tasked the Basel Committee with monitoring the implementation and effects of the standard.

The GHOS has also tasked the Basel Committee with continuing to assess bank-related developments in cryptoasset markets, including the role of banks as stablecoin issuers, custodians of cryptoassets and broader potential channels of interconnections. More generally, the Committee will continue to collaborate with other standard-setting bodies and the Financial Stability Board to ensure a consistent global regulatory treatment of stablecoins.

The GHOS also endorsed the strategic priorities and work programme of the Committee for 2023–24, which places a high priority on work related to the ongoing digitalisation of finance, climate-related financial risks and monitoring, implementing and evaluating the Basel III framework.

FSB publishes report proposing strengthening liquidity management framework for open-ended funds

The Financial Stability Board (FSB) has published its [assessment](#) of the effectiveness of its 2017 recommendations on liquidity mismatch in open-ended funds (OEFs). The assessment, which forms part of the FSB's work

programme to enhance the resilience of non-bank financial intermediation (NBFIs), includes proposals for further policy work in this area.

Amongst other things, the report concludes that:

- authorities have made meaningful progress in implementing the recommendations to address vulnerabilities in OEFs stemming from liquidity mismatch;
- lessons learnt since their publication, including during the March 2020 market turmoil, have produced new insights into liquidity management challenges in segments of the OEF sector; and
- while the recommendations remain broadly appropriate, providing more clarity on and being more specific about the policy outcomes they seek to achieve would make them more effective from a financial stability perspective.

The FSB and the International Organization of Securities Commissions (IOSCO) intend to carry out follow-up policy work based on the assessment's findings, which will involve:

- revisions to the FSB and IOSCO recommendations to address structural liquidity mismatch and promote greater inclusion and use of liquidity management tools (LMTs) as well as to clarify the appropriate roles of fund managers and authorities in implementing these recommendations;
- development of detailed guidance on the design and use of LMTs;
- work to enhance the availability of OEF-related data for financial stability monitoring; and
- steps to promote the use of stress testing.

FSB reports on final transition away from LIBOR

The FSB has published a [progress report](#) on the transition from LIBOR and other benchmarks to robust reference rates.

The report:

- provides an overview of LIBOR transition efforts, covering success to date and remaining transition steps, including anchoring the financial system in overnight risk-free rates (RFRs);
- provides updates from member jurisdictions on other benchmark transition efforts;
- presents findings from the FSB's questionnaire on supervisory issues related to LIBOR transition, conducted in June 2022; and
- sets out the FSB's conclusions and next steps.

The report notes that while significant progress has been made, especially among FSB jurisdictions where exposure to LIBOR is the highest, there may be some residual risk arising from relatively low awareness of transition among users of USD LIBOR in jurisdictions where LIBOR exposure is low.

The FSB has called for market participants to take active steps to address existing legacy contracts in preparation for the end of the remaining panel-

based USD LIBOR settings and for the winding down of temporary synthetic LIBOR rates.

The FSB has also encouraged market participants to use the most robust reference rates to achieve the intended benefits.

UK EMIR: PRA and FCA publish final policy on margin requirements for non-centrally cleared derivatives

The Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) have published a [policy statement](#) (PS11/22) on margin requirements for non-centrally cleared derivatives.

PS11/22 makes amendments to the binding technical standards (BTS) 2016/2251 which supplement UK EMIR. It follows the July 2022 consultation on the proposed amendments, which respondents were generally supportive of. The PRA and FCA have made minor changes to the proposals, including:

- extending the eligibility of EEA UCITS as collateral to provide a transitional period for firms to become compliant with the new requirements relating to the treatment of third-country funds as eligible collateral; and
- increasing the fall-back transition period for circumstances where firms come into scope of the margin requirements for the first time, and the rules would otherwise apply immediately.

The final rules came into effect upon the publication of PS11/22.

HM Treasury, CMA, FCA and PSR issue joint statement on future of open banking

HM Treasury, the Competition and Markets Authority (CMA), the FCA and the Payment Systems Regulator (PSR) have published a [joint statement](#) on the work of the Joint Regulatory Oversight Committee on the future of UK Open Banking.

The joint statement provides an update on the work of the committee, including emerging thinking on the vision and design of a future open banking entity, ahead of a further statement in Q1 2023 setting out the common authorities' views and recommendations.

The three priority areas identified by the regulators are unlocking the potential of Open Banking payments, adopting a scaleable model, and establishing a sustainable footing for the ongoing development of the Open Banking ecosystem. They agree that the future entity should:

- have effective regulatory oversight, with a new long-term regulatory framework to govern the ecosystem;
- have a broad-based and equitable funding model; and
- be independent, well-governed and underpinned by a set of values and cultures that include an emphasis on integrity and promoting ethical behaviours.

FCA consults on retail disclosures

The FCA has published a [discussion paper](#) on the future disclosure framework for retail investments (DP22/6).

DP22/6 relates to the implementation of the future regulatory framework (FRF) and follows the publication of HM Treasury's consultation paper on revoking PRIIPs and UCITS disclosure requirements as part of the 9 December 2022 UK Edinburgh Reforms.

The FCA is seeking feedback on the replacement disclosure regime, including:

- aligning the delivery of information with the consumer journey;
- whether the durable medium requirement constrains the medium in which information is provided;
- how to future-proof the new framework;
- the relationship between product manufacturers and distributors on the responsibility for producing retail disclosure;
- when regulated disclosures should be produced;
- the presentation of retail disclosure, including the introduction of layering, interactive approaches and the use of plain language; and
- the content of disclosures, including the level of standardisation, presenting cost as a single figure, how risk and performance should be calculated and displayed, and how the new regime can complement other disclosure documents, such as the forthcoming Sustainability Disclosure Requirements (SDR).

Comments are due by 7 March 2023.

FCA reviews diversity and inclusion approaches in financial services

The FCA has published a [multi-firm review](#) on how financial services firms are designing and embedding diversity and inclusion (D&I) strategies.

The review found that, among other things:

- many firms' strategies were generic and did not take a holistic view, lacking both a clear articulation of purpose and actions oriented to achieving their goals;
- firms are not systematically tracking the effectiveness of their measures and initiatives;
- there was considerable variation in the range of data that firms are collecting and the level of analysis conducted on that data and few firms have actionable data beyond gender and ethnicity;
- firms were not generally making significant efforts to get to the main reasons behind their issues in representation, for example, not using qualitative feedback such as exit interviews to provide insight into the numbers;
- while many firms said senior managers would be held accountable for progress and that it was part of their objectives, it was unclear how progress to goals would actually affect a performance grade or reward, and many firms could not give examples of situations that would call for a tangible adjustment to reward; and

- few firms talked about the behavioural biases that affect inclusion or the role of systemic discrimination and interventions were usually limited in scope and likely effectiveness.

The FCA has encouraged firms to consider these findings in the development of their D&I strategies and practices.

The review also includes the results of the pilot data survey issued in 2021 to better understand the D&I data that firms were collecting.

BoE consults on supervisory approach to wholesale cash distribution

The Bank of England (BoE) has published a [consultation paper](#) on its supervisory approach to wholesale cash distribution. The paper sets out how the BoE would use new powers contained in the Financial Services and Markets (FSM) Bill to ensure wholesale cash distribution remains effective, resilient and sustainable into the future to support retail access to cash in the UK.

The proposals cover:

- the BoE's approach to wholesale cash distribution oversight;
- principles for the wholesale cash distribution market oversight regime;
- high-level codes of practice for participating members, with a consultation on a detailed legal text to follow in Q1 2023; and
- fees required to fund the BoE's supervisory activity.

In addition, the BoE has indicated that should a systemic entity emerge in the wholesale cash distribution market, it will be subject to a prudential supervisory regime, similar to the one that currently applies to systemic payment systems.

Comments are due by 10 February 2023.

UK regulators delay publication of Regulatory Initiatives Grid

The Financial Services Regulatory Initiatives Forum, which comprises UK regulators, has [announced](#) a delay to the publication of the sixth edition of the Regulatory Initiatives Grid.

Publication of the Grid, which sets out the planned timetable for key initiatives with the aim of supporting greater regulatory coordination, has been delayed from November 2022 to the New Year in order to take account of the Government's 9 December 2022 Edinburgh Reforms to the UK's regulatory framework for financial services.

The Grid was last updated in May 2022.

Given the delay, and with the aim of providing clarity and to support stakeholder planning, the BoE and PRA have published an interim list of the following upcoming publications:

- Policy Statement – Insurance Special Purpose Vehicles: Further updates to authorisation and supervision;
- Policy Statement – Remuneration: Unvested pay, Material Risk Takers and Public Appointments;

- Policy Statement – Amendments to the Depositor Protection rules including clarifications on the protection of e-money customers should a safeguarding institution fail and the treatment of joint account holders for temporary high balance protection;
- Policy Statement – Margin requirements for non-centrally cleared derivatives: Amendments to BTS 2016/2251 (jointly with the FCA);
- Supervisory Statements - Outsourcing & third-party risk management policy for FMI's;
- Consultation Paper – Insurance Insolvency Enhancements;
- Consultation Paper – Central Bank Digital Currency;
- Consultation Paper – Remuneration: Small Firm Proportionality (jointly with FCA); and
- Consultation Paper – Non-performing exposures capital deduction.

ACPR publishes AML/CTF principles of sectoral application regarding digital assets service providers

The Autorité de contrôle prudentiel et de résolution (ACPR), in conjunction with the French intelligence unit TRACFIN and the French Ministry of Economy, has published [sectoral application principles for regulated digital assets services providers](#) (PSAN). The explanatory document, which is not binding, sets out and provides specific guidance on anti-money laundering/counter terrorism financing (AML/CTF) regulations applicable to PSANs in France and is intended to facilitate the development and implementation by PSANs of compliant AML/CTF preventive systems and asset freeze policies.

The document supplements the first report on registered PSANs published in July 2021.

BaFin publishes review of climate-related and environmental risks management by small and medium German banks

The German Federal Financial Supervisory Authority (BaFin) has [published](#) the results of its joint investigation with Deutsche Bundesbank on climate-related and environmental risks management in the BaFinJournal, as part of a cross-institutional review by the ECB.

The investigations revealed that German small and medium banks need to enhance their risk management in the areas of 'corporate governance and risk appetite', 'risk management framework' and 'credit risk'. In each of these areas, five institutions were rated deficient. Furthermore, most of the reviewed institutions lacked concrete performance and risk key indicators for an effective management and limitation of climate-related and environmental risks. Advanced practices were observed only in very few cases.

Currently, the sole BaFin guidance in this regard is the BaFin note on dealing with sustainability risks, dated 13 January 2020. Going forward, BaFin aims to amend the Minimum Requirements for Risk Management (MaRisk) to include ESG risk management minimum requirements. Until such time institutions can turn to the good practices table set out by BaFin

in the BaFinJournal article and the ECB good practices for climate related and environmental risk management of November 2022 for guidance.

BaFin publishes updated circular on high-risk jurisdictions

The BaFin has published [Circular 09/2022](#) (GW) on high-risk jurisdictions. The circular lists the high-risk jurisdictions pursuant to Commission Delegated Regulation (EU) 2016/1675 and provides information on ‘High-Risk Jurisdictions subject to a Call for Action’ as well as ‘Jurisdictions under Increased Monitoring’. The circular further addresses the legal consequences and BaFin’s measures in relation to high-risk jurisdictions.

High-risk jurisdictions are third countries with strategic deficiencies in their regime on anti-money laundering and countering terrorist financing and proliferation financing, posing significant risks to the international financial system.

The circular replaces the previous BaFin circulars on the content of the EU and FATF country lists regarding deficiencies in countering money laundering, terrorist financing and proliferation financing.

CSSF issues circular on survey of amount of covered deposits held on 31 December 2022

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), acting in its function as Depositor and Investor Protection Council (Conseil de Protection des Déposants et des Investisseurs) (CPDI), has issued [CSSF-CPDI circular 22/32](#) dated 14 December 2022 regarding the survey of the amount of covered deposits held as of 31 December 2022.

The circular is addressed to all members of the Luxembourg deposit protection scheme, the Fonds de garantie des dépôts Luxembourg (FGDL) (in particular to all credit institutions incorporated under Luxembourg law, to the POST Luxembourg, and to Luxembourg branches of non-EU/EEA credit institutions), and reminds them that the CPDI collects the amount of covered deposits on a quarterly basis in order to identify the trends and changes in the relevant indicators of deposit guarantee throughout the year.

The circular further draws members’ attention to the provisions of the CSSF-CPDI circular 16/02, notably as regards the exclusion of structures assimilated to financial institutions and the treatment of omnibus accounts. The volume of eligible and covered deposits in omnibus and fiduciary accounts and the number of beneficiaries (ayants droit) are to be reported where FGDL members wish to ensure deposit protection for relevant beneficiaries and to allow the CPDI to prepare the FGDL for the reimbursements of such deposits.

In addition, FGDL members are requested to provide the data at the level of their legal entity, including branches located within other Member States, by 19 January 2023 at the latest.

In order to transmit these data, institutions are requested to complete the table attached to the circular, which is also available on the CSSF’s website. The file containing the data must be duly completed and submitted regardless of the circumstances in which the entity may find

itself. The file shall respect the special surveys naming convention, as defined by CSSF circular 08/344, and shall be submitted via secured channels (E-File/SOFiE).

A member of the authorised management, i.e. the member in charge of the FGDL membership in accordance with CSSF circular 13/555, must review and approve the file prior to its transmission to the CSSF.

FINMA publishes partially revised FinMIO-FINMA

The Swiss Financial Market Supervisory Authority (FINMA) has [issued](#) a partially revised FINMA Financial Market Infrastructure Ordinance (FinMIO-FINMA).

In the Ordinance, FINMA specifies the content to be reported for derivative transactions that are subject to a reporting obligation. The Ordinance provides for the creation of the technical specifications for the persons subject to a reporting obligation and for the operational introduction of staggered transitional periods spanning 15 months in total. These measures are intended to strengthen market supervision in the long term.

In response to benchmark reforms, FINMA has also updated the catalogue of interest-rate derivatives that need to be cleared through a central counterparty. As previously, FINMA aligned itself closely with EU law in this area.

The revised Ordinance will enter into force on 1 February 2023.

FINMA publishes revised circular on operational risks and resilience at banks

FINMA has published a fully revised [circular](#) on operational risks at banks. With the revision, FINMA has taken account of technological developments and clarified its supervisory practice with regard to the management of operational risks, particularly in connection with information and communication technology, handling critical data and cyber risks. The circular also adopts the revised principles for managing operational risks and the new principles on operational resilience published by the BCBS in March 2021.

The circular will enter into force on 1 January 2024. It will replace the Swiss Bankers Association's Recommendations for Business Continuity Management (BCM) that are recognised as a minimum standard. Additional transitional provisions for ensuring operational resilience apply over two years.

China releases new fund management rules for panda bonds issuance

The People's Bank of China (PBOC) and the State Administration of Foreign Exchange (SAFE) have [jointly released](#) the 'Circular on the Management of Money Raised by Overseas Institutions through Issuing Bonds within China' to further facilitate the opening of the China bond market. The provisions will take effect from 1 January 2023.

Panda bonds are Renminbi-denominated bonds issued by overseas issuers in the China Inter-bank Bond Market (CIBM) or on domestic exchanges. Launched in 2005, the panda bond market has witnessed exceptional growth in recent years.

Among others, the following key developments reflected in the circular are worth noting:

- unified rules – management rules for panda bonds, including those concerning foreign exchange registration, remittances and the opening of accounts, will be aligned between the CIBM and exchange-traded bond market;
- registration and account opening – overseas issuers are required to register with the SAFE system through the interface at account banks through the lead underwriter. Where the panda bonds will be issued in multiple tranches, issuers will only need to register for account opening before the first tranche and submit information relating to the actual monies raised after each subsequent tranche;
- hedging – overseas issuers are allowed to trade derivatives referencing onshore RMB and foreign currencies for hedging purposes with qualified Chinese domestic financial institutions; and
- outward remittance – overseas institutions are expressly allowed to keep issuance proceeds within China or remit them overseas. However, the use of proceeds shall be consistent with the prospectus, and the proceeds used within China shall comply with regulations on foreign direct investment, foreign debt, etc., where applicable.

China issues consultation draft of administrative measures for supervision of financial market infrastructures

The PBoC has issued the '[Administrative Measures for the Supervision of Financial Market Infrastructures \(2022 Consultation Draft\)](#)' for public consultation until 14 January 2023. The consultation draft is intended to establish an overarching regime applicable to various types of financial market infrastructures (FMIs) and ensure the efficiency of the overall financial system.

Among others, the following aspects of the consultation draft are worth noting:

- definition of FMIs and systematically important FMIs – the consultation draft covers six types of FMIs: financial asset depositories, clearing and settlement systems (including central counterparties engaging in clearing and settlement), trading facilities, trade repositories, important payment systems, and fundamental credit reference systems. FMIs will be supervised by the authority that approves their establishment. The consultation draft further defines systematically important FMIs as FMIs with a large number and a wide distribution of participants; FMIs with a high market share; FMIs with complex businesses and close ties with financial institutions, or that are mutually connected with other systematically important FMIs; and/or FMIs providing irreplaceable key services in the financial market, the failure of which due to any material risk event may have a material adverse impact on the financial system and the real economy. Systematically important FMIs may be supervised by multiple authorities according to their respective duties;
- regulatory coherence with international standards – the consultation draft expressly provides that during the construction, operation and

maintenance of FMIs, the Principles for Financial Market Infrastructures (PFMI) and other international standards shall be considered;

- market access – the consultation draft sets out the conditions for establishing an FMI in China, including, among others, the qualifications of shareholders, directors, supervisors and senior management, the capital requirements, and the requirements for systems. The consultation draft further sets out requirements on the cross-border provision of FMI services; the cross-border FMI service provider should have engaged in FMI services for at least three years, be subject to comparable and comprehensive regulation and supervision in its home jurisdiction, and have no record of material violation or major incidents; and
- operational requirements – the consultation draft sets out the operational requirements for FMI operators in respect of, among others, key personnel management, technical specifications, emergency response mechanism for system failures and disaster backup mechanism.

HKEX announces new HKD-RMB dual counter model and dual counter market making programme in securities market

The Hong Kong Exchanges and Clearing Limited (HKEX) has [announced](#) the introduction of a new Hong Kong Dollar (HKD)-Renminbi (RMB) dual counter model and an inaugural dual counter market making programme in its securities market to further support the listing, trading, and settlement of RMB counters in Hong Kong.

Under the proposed model, investors will be able to interchange securities listed in both HKD and RMB counters. The HKEX plans to introduce a new dual counter market making programme to support the liquidity of RMB counters and minimise price discrepancies between the two counters. In addition, dual counter market makers engaged to conduct market making and liquidity providing activities may qualify for a stamp duty exemption for their eligible transactions, subject to necessary legislative amendments. These measures are intended to support the initiative of allowing Mainland China investors to trade RMB-denominated securities through the southbound Stock Connect currently being explored with the authorities in Mainland China. The HKEX expects to commence onboarding for these initiatives in the first half of 2023 subject to regulatory approvals and market readiness.

The HKEX will announce the commencement date of the model and publish the list of dual counter securities for the market making programme in due course.

HKMA publishes good practices relating to green and sustainable products

The Hong Kong Monetary Authority (HKMA) has published a [circular](#) on due diligence processes for green and sustainable products. The HKMA has recently undertaken a round of thematic examinations on the development and ongoing management of green and sustainable products. The objective of the review was to ensure that the authorised institutions examined have put in place proper systems of control to ensure that these

products and the related funds are managed in a way consistent with their climate strategies, thereby reducing potential exposures to greenwashing risks. The good practices identified are summarised around five high-level principles for reference by the industry below:

- setting up a robust product governance framework for green and sustainable products;
- conducting comprehensive ‘greenness assessments’ of clients and transaction due diligence for green lending;
- performing post-offering monitoring and controls to ensure the proper management of green and sustainable products;
- enhancing transparency and accountability in respect of green and sustainable products; and
- building appropriate expertise in product development and comprehensive due diligence processes.

As authorised institutions continue to develop their green and sustainable banking business, the HKMA expects them to take into account the above good practices in building up their climate risk management capability.

HKMA revises SPM module on code of conduct

The HKMA has issued a revised version of its [supervisory policy manual module ‘CG-3 Code of Conduct’](#) (SPM module) as a statutory guidance, by notice in the government gazette, under section 7(3) of the Banking Ordinance. Following consultation with two industry associations, the HKMA has revised the SPM module mainly to:

- strengthen the conflicts of interest policy requirements;
- incorporate the relevant provisions of the Prevention of Bribery Ordinance and provide guidance to raise staff awareness on corruption prevention;
- update the existing guidelines to enhance the internal control systems for enforcing the Code of Conduct; and
- enhance the clarity of guidance in relation to the adoption of group policies for foreign bank branches.

The HKMA expects authorised institutions to review whether their code of conduct and internal control systems are consistent with the principles set out in the revised module and, if needed, to adopt all necessary changes by 1 July 2023.

SFC announces investor identification regime to launch in March 2023

Following the issuance in August 2021 of the consultation conclusions on proposals to implement the investor identification regime for the securities market in Hong Kong (HKIDR), the Securities and Futures Commission (SFC) has been monitoring market readiness by conducting three rounds of surveys. The survey results indicate that whilst significant progress has been made to prepare for the implementation, some relevant regulated intermediaries (RRIs) may need more time to update client identification information and obtain express consent from individual clients for the use of their personal data under the HKIDR. The SFC has therefore decided to

provide more time for the industry's preparation and [announced](#) its intention to launch the HKIDR on 20 March 2023.

Upon the launch of HKIDR, RRI's will be required to tag the relevant Broker-to-Client Assigned Number (BCAN) to every on-exchange order and off-exchange trade reportable to the Stock Exchange of Hong Kong Limited (SEHK). Orders or trades without BCANs or with BCANs in an incorrect format will be rejected. The SFC has referred intermediaries to the HKEX's circular dated 12 December 2022 for details of the requirements.

The SFC has also reminded RRI's that they should have obtained all written or other forms of express consent from each individual client regarding the collection, storage, processing and use of personal data in relation to such client's BCANs and client identification data under the HKIDR in accordance with the SFC's requirements and all applicable data privacy laws including the Personal Data (Privacy) Ordinance. The SFC has referred intermediaries to its circular dated 13 September 2021 for details.

FSA publishes final code of conduct for ESG evaluation and data providers

The Financial Services Agency (FSA) has [published](#) the final version of its code of conduct for environmental, social and governance (ESG) evaluations and data providers.

Following the focused technical committee's report on ESG evaluation and data providers, the FSA published a draft version of the code of conduct for public consultation in July 2022. The code of conduct conforms with the International Organization of Securities Commission (IOSCO)'s November 2021 report on achieving consistent and comparative ESG disclosures and presents specific principles and guidelines that ESG evaluation providers may adopt to improve the quality and transparency of their services, including internal control mechanisms, disclosure items, and steps for communication with companies subject to evaluations.

The code of conduct comprises six principles which ESG evaluation and data providers need to take on, and recommendations to investors and companies. They are not legally binding but apply on a 'comply or explain' basis. ESG evaluation and data providers that support the code of conduct will need to disclose whether or not they are complying with it or alternatively explain their reasons for non-compliance, as applicable.

The first and most important principle is securing quality of ESG evaluation and data. The code of conduct does not call for consistency in this respect; given the wide variety of ESG evaluations and services provided, the code of conduct is based on the idea that inconsistency itself is not a problem and that it is more important to clarify the methodology behind the ESG evaluation.

The second principle is human resource development, the third is independence to manage conflicts of interests, the fourth is transparency, the fifth is confidentiality and the sixth is communication. The FSA has highlighted that this is in line with what IOSCO has suggested, but that the code of conduct covers evaluation not only of corporates but also of ESG

bonds and loans. In addition, the code of conduct focuses on mutual dialogue among companies, investors and ESG rating and data providers.

In addition to the code of conduct, the FSA is proceeding with new disclosure requirements under which Japanese companies will need to disclose sustainability information from June 2023. Japan is participating in discussions towards the establishment of international standards in the International Sustainability Standards Board (ISSB), and is considering specific details of sustainability disclosure in Japan, taking into account the ISSB discussions. Furthermore, apart from the code of conduct, the Stewardship Code stipulates that when an institutional investor discloses a clear policy for fulfilling its stewardship responsibility, it should clearly indicate how it will consider sustainability issues in accordance with its investment strategy. In addition, the Corporate Governance Code stipulates that listed companies should appropriately disclose their sustainability initiatives when disclosing their management strategies.

The FSA intends to monitor this area continuously, respond to developments, and consider over a three year term whether or not to take further actions, which could include revising the code of conduct.

FSA publishes final guidelines on creating, recordkeeping and reporting of transaction information in respect of derivatives transactions

The FSA has [published](#) the finalised version of its ‘Guidelines for Creating, Recordkeeping and Reporting of Transaction Information specified in Article 4(1) of the Cabinet Office Order on the Regulation of Over-the-Counter Derivatives, etc’.

In September 2022, the FSA published a draft version of the guidelines seeking industry comments. Based on the comments received from 17 individuals and organisations including overseas organisations, the finalised guidelines have been prepared to provide the trade repository, the Financial Instruments Clearing Organisation, and the Financial Instruments Business Operator etc., with details of the matters required to be provided by them in respect of certain derivatives transactions.

The finalised guidelines are effective from 1 April 2024.

MAS consults on proposed revisions to guidelines on fair dealing

The Monetary Authority of Singapore (MAS) has launched a [consultation](#) on its proposed amendments to the Guidelines on Fair Dealing – Board and Senior Management Responsibilities for Delivering Fair Dealing Outcomes to Customers.

Amongst other things, the MAS is proposing to widen the scope of the guidelines to apply to all financial institutions (FIs), all financial products and services offered by them, and all their customers. The MAS is also proposing to incorporate key principles and guidance on the fair treatment of customers at various stages of the customer journey. Some of the principles include:

- putting in place sound and objective processes to assess applications received for financial products and services;

- designing and manufacturing products and services that are suitable for target customer segments; and
- delivering products and services to customers as they have been led to expect and exercising right-of-review clauses judiciously.

In particular, the MAS is seeking comments on proposals to:

- expand the application of the guidelines to all FIs, and all financial products and services offered by them to all their customers, on a proportionate basis relevant to the nature of these products and services;
- include expectations on sound and objective process to assess applications for financial products and services under Outcome 1;
- apply the guidelines to product manufacturers, and not just distributors, and include expectations on the design and manufacturing of products and services within Outcome 2 of the guidelines;
- incorporate the principles of transparency, consideration of customer's interests, and accountability and product governance, and include expectations to provide customers with information that accurately represents the products and services offered and delivered to them, within Outcome 4 of the guidelines; and
- include expectations of disclosing the right of review (RoR) clauses and exercising them judiciously, within Outcome 4 of the guidelines.

Comments on the consultation are due by 8 February 2023.

MAS issues revised notices on residential property loans fact sheet

The MAS has [issued](#) revised Notices 632A, 1106A, 825A, and 115A on Residential Property Loans Fact Sheet (collectively, the Fact Sheet or FS Notices) following its November 2021 public consultation.

The FS Notices outline information that must be included in the required fact sheets to borrowers before granting a residential property loan.

Among other things, the Notices have been revised to:

- provide that 'signed' or 'signature' and its grammatical variations as used in the FS Notices have the same meanings under section 2(1) of the Electronic Transactions Act 2010;
- require merchant banks, finance companies, banks, and direct insurers (as applicable) to ensure that the key features of the credit facility (such as interest rate) set out in the fact sheet are consistent with those in the letter of offer; and
- introduce new requirements on disclosures where the merchant bank, finance company, bank or direct insurer (as applicable) receives a joint expression of interest from borrowers for an application for credit facilities, or re-financing or restructuring of existing credit facilities.

In addition, the MAS has also made administrative amendments to Form 1 of the FS Notices.

The revised Notices are effective from 15 December 2022.

Australian Government consults on climate-related financial disclosures

The Australian Government has launched a [consultation](#) seeking initial views on key considerations for the design and implementation of its commitment to standardised, internationally-aligned requirements for the disclosure of climate-related financial risks and opportunities in Australia, in addition to views on other relevant requirements.

In particular, comments are sought on:

- the costs and benefits of Australia aligning with international practice on climate-related financial risk disclosure;
- adopting a phased approach to climate disclosure, with the first report for initially covered entities being financial year 2024-25;
- entities for which mandatory climate disclosures should apply initially;
- aligning climate reporting requirements with the global baseline envisaged by the International Sustainability Boards;
- key considerations that should inform the design of a new regulatory framework, in particular when setting overarching climate disclosure obligations;
- situating new climate reporting requirements in relation to other periodic reporting requirements;
- applicable considerations to materiality judgements when undertaking climate reporting, and the reference points for materiality;
- the level of assurance required for climate disclosures, who should provide and whether the assurance providers be subject to independence and quality management standards;
- applicable considerations to requirements to report emissions including use of any relevant Australian emissions reporting frameworks;
- defining a common baseline of metrics to ensure consistency between disclosures, including industry-specific metrics;
- applicable considerations to ensure covered entities provide transparent information about how they are managing climate related risks, including what transition plans they have in place and any use of greenhouse gas emissions offsets to meet their published targets;
- whether a particular disclosure requirement and/or assurance of those requirements are to commence in different phases;
- specific capability or data challenges to be considered when implementing new requirements;
- cases for when entities have to provide supporting information necessary to meet required disclosures, and the governance of such information;
- the suitability of 'reasonable grounds' requirements and disclosures of uncertainties or assumptions in the context of climate reporting;

- whether there are particular considerations on how other reporting obligations would interact with new climate reporting requirements, and addressing them;
- flexibility to incorporate the growth of other sustainability reporting in the practical design of these reforms;
- mandating digital reporting for sustainability risk reporting, and the barriers and costs for such implementation; and
- proposed potential structures (or any other) that would best improve the effectiveness and efficiency of the financial reporting system, including to support the introduction of climate related risk reporting.

The Government has clarified that submissions in response to the consultation will be used to inform a specific design proposal for further consultation in 2023. At that time, views will be sought on more detailed proposals for the new reporting requirements, their implementation and sequencing.

Comments on the consultation are due by 17 February 2023.

RECENT CLIFFORD CHANCE BRIEFINGS

UK asset managers face new rules to clamp down on ‘greenwashing’ – a new regulatory regime for sustainability labels and disclosures

The FCA is consulting on new rules to clamp down on ‘greenwashing’ by increasing the transparency around the sustainability credentials of investment products. The proposed rules are contained in its consultation paper on SDR and investment labels, which sets out a specific labelling and disclosure regime that builds upon its November 2021 discussion paper on this topic.

This briefing paper discusses the proposed requirements for asset managers and how these differ from similar rules in the EU and the US.

<https://www.cliffordchance.com/briefings/2022/12/uk-asset-managers-face-new-rules-to-clamp-down-on--greenwashing-.html>

UK Edinburgh Reforms – the new securitisation framework?

The UK Government announced a package of proposed reforms to financial services regulation on 9 December 2022. The ‘Edinburgh Reforms’ are intended to drive growth and competitiveness in the UK financial services sector.

The Edinburgh Reforms announced last week cover 43 core files, of which securitisation is just one. Reforming the regulation of securitisation in the UK falls into the first tranche for implementation, along with prospectuses and payments.

This briefing paper discusses the specifics of the changes proposed to the securitisation regulatory framework.

<https://www.cliffordchance.com/briefings/2022/12/uk-edinburgh-reforms-the-new-securitisation-framework.html>

Interlocking directorates in Americas

Following the recent announcements in the US relating to enforcement against interlocking directorates under Section 8 of the Clayton Act, this briefing paper outlines regulations and risks in other jurisdictions in Central America and South America that relate to interlocking directorates.

<https://www.cliffordchance.com/briefings/2022/12/interlocking-directorates-in-americas.html>

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

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

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