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- **Ministry of Finance adds core business sectors to FEFTA public notices**
- **ARRC updates Term SOFR scope of use recommendations**
- **Tradeweb files made-available-to-trade determination for certain SOFR and SONIA swaps for CFTC approval.**

EU institutions publish joint statement on Capital Markets Union

The EU Commission has published a [joint statement](#) from representatives of the EU Parliament, the EU Council and the Commission reaffirming the EU's commitment to finalising initiatives relating to the Capital Markets Union (CMU) as quickly as possible.

Among other things, the statement notes:

- that the Commission has almost completed all the actions set out in the 2020 CMU Action Plan by presenting seven legislative initiatives currently under negotiation;
- an intention to finalise those proposals before the next EU Parliament elections in 2024; and
- an intention by the Commission to present three additional legislative proposals in the coming weeks covering retail investors, data access in finance; and cross-border taxation procedures for investment.s.

EU Council adopts greenhouse gas emissions legislation

The EU Council has [adopted](#) five laws intended to cut greenhouse gas emissions within the main sectors of the EU economy.

The laws are part of the 'Fit for 55' package, which sets the EU's policies in line with its commitments to reduce its net greenhouse gas emissions by at least 55% by 2030 compared to the 1990 levels and to achieve climate neutrality in 2050. The adopted laws are:

- Directive amending the Emissions Trading System (ETS) Directive;
- Regulation amending the Monitoring, Reporting and Verification (MRV) Shipping Regulation;
- Regulation amending the ETS Aviation Directive;
- Regulation establishing a Social Climate Fund; and
- Regulation establishing a Carbon Border Adjustment Mechanism.

The EU Parliament formally adopted the laws on 18 April 2023.

RTS on CCP resolution framework published in OJ

[Commission Delegated Regulation \(EU\) 2023/840](#) has been published in the Official Journal.

The Delegated Regulation contains regulatory technical standards (RTS) which, among other things:

- specify the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources to be used under Article 9(14) of the CCP resolution framework Regulation; and
- extend the list of available investments to instruments already accepted as collateral from clearing members in the CCP's collateral policy with the exception of bank guarantees, derivatives and equities.

The Delegated Regulation will enter into force on 11 May 2023.

CRR: EBA reports on final draft RTS on determination of exposure value of synthetic excess spread

The European Banking Authority (EBA) has published its [final report](#) on draft RTS on the determination by originator institutions of the exposure value of synthetic excess spread (SES) under article 248(4) of the Capital Requirements Regulation (CRR).

The CRR, as amended by the capital markets recovery package (CMRP), requires that SES is considered a securitisation position by the originator institution with regard to a synthetic securitisation.

The final draft RTS, among other things:

- specify the calculation of the components that should be included in the exposure value of SES, taking into account the relevant losses expected to be covered by SES;
- include a derogation from that exposure value in the specific case of the SES designated for future periods that does not encumber the originator institution's income statement in a manner similar to an unfunded guarantee, subject to certain conditions;
- introduce a legal provision has been introduced for certain synthetic transactions featuring SES to ensure a continuation of existing securitisation transactions; and
- reflect feedback received to the EBA's August 2022 consultation on the draft RTS.

The EBA will submit the final draft RTS to the EU Commission for adoption.

CRD4: EBA publishes opinion on RTS on supervisory outlier tests

The EBA has published an [opinion](#) in response to the EU Commission's amendments relating to a draft Delegated Regulation containing RTS under the Capital Requirements Directive (CRD4).

The draft RTS specify the supervisory shock scenarios, the common modelling and parametric assumptions and the definition of a large decline, for the purposes of the supervisory outlier tests (SOT) of the exposures of institutions to the interest rate risk arising from non-trading book activities and their impact on net interest income (NII) and economic value of equity.

The opinion follows the EU Commission's proposed amendments with regard to what constitutes a large decline of the NII. The opinion sets out the EBA's response to the Commission, which includes:

- amending the initial draft RTS to retain the methodology for a large decline but amend the level of what constitutes a large decline, replacing the original level of 2.5% of Tier 1 Capital with a level of 5% of Tier 1 Capital in view of the current rate conditions;
- stressing that the SOT NII should be understood as an additional metric for the supervisory review of the institutions' exposures to interest rate risks for banking book (IRRBB) with no automaticity in the exercise of supervisory measures and stressing that it is not expected that integrating this threshold in an institution's internal systems would necessarily lead to mechanic recalibration actions; and
- setting out the EBA's current scrutiny plans on IRRBB which will encompass reconsideration in the short term of the level of the threshold and in the longer term may include a revision of the methodology.

The EBA also stresses the importance of adopting the RTS without delay, given the recent events and market turmoil, which are also related to IRRBB aspects.

CRD/IFD: EBA consults on guidance on benchmarking diversity practices

The EBA has launched a [consultation](#) on draft guidelines on the benchmarking of diversity practices under the CRD and the Investment Firms Directive (IFD).

The guidelines, which relate to Articles 75(1) and 91(11) of the CRD and Articles 26 and 34(1) of the IRD, cover the information that competent authorities should collect from credit institutions and investment firms about diversity practices, including the composition of the management body, diversity policies and the gender pay gap at the level of the management body. They also include templates for data collection.

According to the EBA, the guidelines are necessary to ensure harmonised benchmarking which will allow competent authorities to monitor diversity trends over time. The aspects of diversity that will be analysed include:

- gender;
- age;
- educational and professional background; and
- the geographical provenance of members of the management bodies.

Comments are due by 24 July 2023. The new reporting format is expected to apply for the collection of data in 2025 for the financial year 2024. The EBA intends to publish analysis and a benchmarking report every three years.

ESAs publish Spring 2023 risk report

The European Supervisory Authorities (ESAs) have published their [Spring 2023 Joint Committee report](#) on risks and vulnerabilities in the EU financial system.

The ESAs are calling on national supervisors, financial institutions and market participants to remain vigilant in the face of mounting risks and take the following policy actions:

- remain prepared for a deterioration in asset quality and keep a close eye on loan loss provisioning;
- consider and account for the broader impact of policy rate increases and sudden risks in risk premia on financial institutions and market participants;
- closely monitor liquidity risks arising from investments in leveraged funds and the use of interest rate derivatives;
- take into account inflation risk and inflationary trends when testing, monitoring and reviewing products;
- pursue prudent capital distribution policies to ensure long-term financial resilience given the uncertain medium-term outlook for profitability;
- maintain strong regulatory frameworks including implementing the finalisation of Basel III and avoid deviations from EIOPA's advice on Solvency II review;
- enhance risk management capabilities and disclosures for ESG risks; and
- allocate adequate resources and skills to ensure the security of information and communication technology infrastructures.

FSB publishes statement on final preparations for US dollar LIBOR transition

The Financial Stability Board (FSB) has published a [statement](#) to encourage final preparations for the US dollar LIBOR transition.

Between now and end-June 2023, the FSB recommends that firms with remaining USD LIBOR exposures should take the steps set out in the FSB's Global Transition Roadmap. The FSB encourages market participants to act now to remediate legacy LIBOR contracts in order to help reduce uncertainty upon the end of the USD LIBOR panel and to avoid operational risk in the event of a pile up of outstanding contracts.

To help address outstanding legacy contracts that are not covered under the United States federal legislation (the LIBOR Act), the Financial Conduct Authority (FCA) will permit use of the synthetic settings in all legacy contracts except cleared derivatives. The FSB reminds market participants that synthetic LIBOR rates only provide a temporary bridge to alternative reference rates, and market participants should take active steps to address existing legacy contracts in preparation for the permanent cessation of USD LIBOR rates.

The FSB also reminds market participants who have remaining legacy contracts referencing 3-month sterling LIBOR to take necessary steps to ensure that they are prepared for its permanent cessation at end-March 2024.

The FSB notes that it is essential that the transition is anchored in risk-free reference rates (RFRs) that are robust and underpinned by deep, credible and liquid markets, to avoid the vulnerabilities experienced with LIBOR. The FSB recognises that term RFRs may be a useful transition tool, but emphasises the need for their use to remain limited in order to avoid diminishing the underlying RFR market. The FSB encourages all administrators of term RFRs to strongly

consider matching their licensed scope of use to the recommendations of the official sector and national working groups.

Additionally, the International Organization of Securities Commissions (IOSCO) has launched a review of credit sensitive rates (CSRs) and SOFR term rate alternatives to USD LIBOR that present themselves as compliant with IOSCO's Principles for Financial Benchmarks. IOSCO expects its review to be finalised by June 2023.

Bank of England announces changes to provision of US dollar repo operations

The Bank of England (BoE) has published a [market notice](#) on changes to the provision of US dollar repo operations from 1 May 2023.

The BoE, the Bank of Japan, the European Central Bank (ECB) and the Swiss National Bank, in consultation with the Federal Reserve, have jointly decided to revert from daily to weekly 7-day maturity operations, which provide liquidity via the standing US dollar liquidity swap line arrangements.

Effective from 1 May 2023, the frequency of the BoE's 7-day US dollar repo operations will revert from daily to once per week. According to the schedule posted on the BoE's website, operations will usually run on Wednesdays.

Digital Markets, Competition and Consumers Bill published

The Department for Business and Trade has introduced the [Digital Markets, Competition and Consumers \(DMCC\) Bill](#) to Parliament.

Among other things, the Bill aims to:

- ban the practice of facilitating fake reviews or advertising consumer reviews without taking reasonable steps to check they are genuine;
- ensure that consumers can exit subscriptions in a straightforward, cost-effective, and timely way, and require that businesses issue a reminder to consumers when a free trial or introductory offer is coming to an end; and
- provide the Competition Markets Authority (CMA) with additional powers.

The Bill establishes a Digital Markets Unit (DMU) within the CMA with powers to try and tackle the root causes of competition issues in digital markets. For example, if a firm is deemed to have strategic market status in key digital services, the DMU will be able to step in to set tailored rules on how they behave and operate.

FCA publishes guidance for LDI managers

The FCA has published [guidance and recommendations](#) for Liability Driven Investment (LDI) managers so that they can address risks to market integrity and financial stability.

The publication follows the BoE's March 2023 paper on LDI minimum resilience and sets out further recommendations on risk management and operational arrangements to address specific vulnerabilities that arose within LDI managers during the volatility in the UK gilt market in September 2022.

As the vulnerabilities which existed in LDI may arise in other firms and sectors, the FCA expects other market participants, including asset managers, to also consider its recommendations.

FCA publishes Market Watch Newsletter No. 73

The FCA has published the [73rd edition of Market Watch](#), its newsletter on market conduct and transaction reporting issues, outlining observations and recent findings from its market abuse peer review into firms offering contracts for difference (CFDs) and spread bets.

While findings were broadly positive, the newsletter focuses on the following areas requiring improvement:

- identifying market abuse risks;
- market abuse surveillance responsibilities;
- surveillance systems;
- identifying 'narrowing the spread' market manipulation;
- surveillance alert investigations;
- front office and the tipping off risk; and
- countering the risk of market abuse-related financial crime (SYSC 6.1.1R).

The FCA intends to continue to visit CFD providers and other firms to assess their Suspicious Transaction and Order Report (STOR) arrangements and work to ensure they meet their regulatory obligations.

PRA publishes occasional consultation paper

The Prudential Regulation Authority (PRA) has launched an [occasional consultation paper](#) (CP8/23) proposing minor amendments to a statement of policy and PRA rules.

In particular, CP8/23 proposes to:

- amend the PRA's statement of policy on its approach to the publication of Solvency II technical information (TI) in relation to the valuation of insurance liabilities for each relevant currency;
- insert the definition of 'participating Solvency II undertaking' in the Group Supervision Part of the PRA Rulebook;
- update the definition of 'accounting principles' in the Glossary of the PRA Rulebook; and
- correct the reference number of the form used to notify the PRA of an auditor appointment in the Auditors Part of the PRA Rulebook.

Comments are due by 22 June 2023.

FINMA publishes annual assessment of recovery and resolution plans of systemically important institutions

The Swiss Financial Market Supervisory Authority (FINMA) has [published](#) its annual assessment of recovery and resolution planning by systemically important Swiss financial institutions for the 2022 reporting period. The assessment does not take account of subsequent events, in particular the merger of UBS and Credit Suisse.

The institutions submitted their emergency planning documents by mid-2022. The resolvability work by the large banks was assessed as of the end of 2022.

According to FINMA, the rules for systemically important institutions provide for crisis preparations in addition to increased capital and liquidity requirements. While crisis preparations meant that the authorities had options on the table during the Credit Suisse crisis in the way of the restructuring plan and emergency plan, it is clear that there are important lessons to be learned for future crisis preparations.

As part of the provisions on systemically important institutions, the amendments to the Liquidity Ordinance came into force on 1 July 2022, with a transitional period until the beginning of 2024. These amendments further develop the liquidity requirements for systemically important institutions.

Bank of Italy publishes information on product intervention powers and assessment of risks

The Bank of Italy has [published](#) its most recent assessment of the risks to financial stability relating to the exercise of its power to prohibit or limit the marketing, distribution or sale of financial instruments (the product intervention power).

The Italian regulatory framework implementing MiFIR gives the Bank of Italy the product intervention power in order to preserve the stability of the national financial system. In this context, the Bank of Italy regularly carries out regular analyses and assessments of the risks to financial stability that may arise from financial instruments circulating in Italy.

In its most recent assessment, carried out using data up to 31 December 2022, the Bank of Italy acknowledges that although certain complex products (such as additional tier 1 (AT1) bonds and certificates) are particularly risky, it confirms that it will not exercise its product intervention powers in connection with said instruments as they do not bring about any risk yet to the financial stability of Italy.

CSSF issues communiqué on new Q&A related to revised external auditor long-form report and new self-assessment questionnaire for banks

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a communiqué on a [new Q&A document](#) aiming to clarify certain elements of the self-assessment questionnaire (SAQ) and other aspects related to the introduction of the new long-form report following the entry into force of CSSF circulars 22/821 and 22/827.

Since the publication of CSSF circulars 22/821 and 22/827, the CSSF has received questions from credit institutions and branches of credit institutions to whom the new external auditor's long-form report and SAQ framework applies. As some of the questions could be relevant for other entities as well, the CSSF has decided to publish these questions and answers.

The Q&A relating to the SAQ sections concern topics such as bank governance, ICT risk management and control, PSD2, MiFID, credit risk, large exposures, related parties and consolidation as well as languages to be used for filling in the self-assessment questionnaire. The Q&A on the long-form report itself concern topics including its scope of application, the mission of the external auditor, submission procedures as well as the continued existence of the management letter.

The Q&A will be updated on a regular basis as necessary.

CSSF issues communiqué on publications related to the SFDR and the Taxonomy Regulation

The CSSF has issued a [communiqué](#) providing an overview of publications recently published by the ESAs in respect of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR), Delegated Regulation (EU) 2022/1288 (SFDR RTS), and Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment (Taxonomy Regulation).

Among other things, the communiqué highlights that a third set of Q&As on the interpretation of SFDR has recently been adopted by the EU Commission and published by the ESAs on 14 April 2023. Concomitantly to the publication of the third set of Q&As, amendments to the first and second Q&As on the interpretation of SFDR were adopted by the EU Commission and published by the ESAs.

The communiqué also draws attention to recently published draft delegated acts relating to the EU Taxonomy Regulation. The first draft delegated act notably provides a new set of technical screening criteria for the four environmental objectives pursuant to Article 9 (c) to (f) of the EU Taxonomy Regulation:

- the sustainable use and protection of water and marine resources;
- the transition to a circular economy;
- pollution prevention and control; and
- the protection and restoration of biodiversity and ecosystems.

It also provides amendments to Delegated Regulation (EU) 2021/2178 (the Taxonomy Disclosures Delegated Act).

The second draft delegated act amends Delegated Regulation (EU) 2021/2139 (Climate Delegated Act) to add or complement the technical screening criteria for climate change mitigation for certain economic activities in the transport and manufacturing sectors.

The draft delegated acts are open for feedback until 3 May 2023.

The communiqué further notes that the ESAs further published a joint consultation paper on a proposed review of the SFDR RTS regarding principal adverse impacts (PAI) and financial product disclosures. Comments can be submitted via a dedicated response form until 4 July 2023.

CAA issues circular on annual reporting of (re-)insurance brokerage firms

The Luxembourg insurance sector supervisory authority Commissariat aux Assurances (CAA) has published a [circular letter](#) (LC 23/7) modifying the circular letter on annual reporting of insurance or reinsurance brokerage firms and brokers who are natural persons (LC 23/5).

LC 23/5 has been slightly adjusted as set out in LC 23/7 to avoid a misunderstanding between the gross premiums negotiated by the broker during the reference year and the outstanding relating to life insurance policies taken from other intermediaries during the reference year.

The new annual reporting under LC 23/5 applies first for the reference year 2022 and LC 23/7 entered into force on its publication with immediate effect.

CAA issues circular on amending the scheme of operations for reinsurance undertakings

The CAA has published a [circular letter](#) (LC 23/8) on the notification process for changes made to a reinsurance undertakings' scheme of operations.

Luxembourg insurance and reinsurance undertakings are required to notify the CAA of any extension of the operations or major amendment to the scheme of operations under Article 49(2) of the amended Law of 7 December 2015 on the insurance sector (LIS).

For captive reinsurance undertakings, the acceptance of a new reinsurance treaty can quickly lead to a material increase in liabilities or premiums collected. It is difficult to define strict criteria to determine what will be considered a major amendment given, for example, the different risk typologies and the variety in the different types of captive reinsurance undertakings. LC 23/8 is intended to facilitate notifications to the CAA by structuring and streamlining the process of modifying the scheme of operations in cases where:

- there is a submission of a request for a multiple (used for the calculation of the claims fluctuation provision) relating to a new risk; or
- there is a submission of a request for a multiple relating to an existing modified risk (excluding run-off).

The notification process consists of two successive phases including the submission of preliminary information and the submission of the complete application file for the amendment of the operations scheme.

Where reinsurance undertakings fall into either of the cases listed above, they must submit to the CAA, without delay, the information requested in the Phase 1 annex to the circular. The information will enable the CAA to determine whether there is a need to provide a complete operations scheme amendment file. The CAA will inform the reinsurance undertaking of any further modalities to be pursued. Where relevant, the CAA will ask undertakings to provide information requested in the second phase. If not, the CAA will directly analyse requests for multiples and clarify that second phase application of the file is not necessary.

HKMA publishes guidelines for second round of climate risk stress test

The Hong Kong Monetary Authority (HKMA) has published a [set of guidelines](#) for the second round of the climate risk stress test (CRST).

Following its pilot CRST in 2021, the HKMA has enhanced its CRST framework with a view to obtaining a more comprehensive assessment of authorised institutions' exposures to climate risks, as well as further strengthening their capabilities in managing them. The major enhancements incorporated in the second round of the CRST are the following:

- scenarios - a new 5-year scenario is introduced to assess the potential impacts on participating authorised institutions arising from simultaneous economic and climate-related shocks;

- assessment requirements - apart from the exposures highly vulnerable to climate-related shocks, exposures which are usually considered less susceptible to climate change will also be covered in the second round of the CRST; and
- reporting standards - reporting standards which are more detailed than those adopted in the pilot exercise have been developed for each of the scenarios in the second round of the CRST.

To harmonise with the cycle of the HKMA's supervisor-driven stress testing programme and reduce the reporting burden on participating authorised institutions, the second round of the CRST will be undertaken over an extended period spanning from June 2023 to June 2024.

Ministry of Finance adds core business sectors to FEFTA public notices

The Ministry of Finance (MoF) has [published](#) amendments to the Foreign Exchange and Foreign Trade Act of Japan (FEFTA) public notices to add certain core business sectors, which are business sectors where foreign investors are required to file a pre-closing foreign direct investment (FDI) filing for inward direct investment and the filing requirement are exempted in very limited cases.

Following consultation, it has been confirmed that the following sectors will be added in order to secure stable supply chains and address the risk of technology leakage and diversion of commercial technologies into military use, among others:

- fertilisers (potassium chloride, etc.) importing;
- machine tools/industrial robots manufacturing, etc.;
- storage batteries manufacturing/material manufacturing;
- metals and mineral products refining;
- metal 3D printers manufacturing/metal powder manufacturing;
- permanent magnets manufacturing/material manufacturing;
- semiconductors manufacturing of manufacturing equipment, etc.,
- natural gas wholesaling; and
- marine equipment engine manufacturing, etc.

In addition, the amendments have:

- clarified that drones are covered by Aircraft Manufacturing, which is a core business sector; and
- added manufacturing of antibacterial products and petroleum refining and others to the scope of specified acquisition.

The amendments aim to ensure that 'specially designated critical commodities' under the Economic Security Promotion Act are fully covered as core business sectors.

Promulgated on 24 April 2023, the revised FEFTA public notices will apply to inward direct investment and equivalent actions to be made after the 30-day transitional period (i.e., on or after 24 May).

ARRC updates Term SOFR scope of use recommendations

The Alternative Reference Rates Committee (ARRC) has published a [summary](#) and update of its Term SOFR scope of use recommendations.

The ARRC has updated its recommendations to include a limited refinement that aims to ensure that Term SOFR remains a sustainable and useful tool for the business loan market.

The popularity of the Term SOFR rates in business lending has led dealers to take on Term SOFR risk as they have helped clients hedge these loans. The ARRC believes that it is appropriate to recognize a further option for laying off some of this Term SOFR risk, in addition to clarifying already existing options under its recommendations, while continuing to emphasize that use of Term SOFR should remain limited overall.

The ARRC's existing recommendations recognize the ability of end users to use Term SOFR derivatives to hedge Term SOFR business loans or legacy LIBOR products that have converted to Term SOFR. The ARRC's update of its recommendations additionally recognizes the ability of end users to enter into Term SOFR-SOFR basis swaps (but not other Term SOFR derivatives) in a wider set of circumstances, even when they do not hold Term SOFR cash assets that they are seeking to hedge.

The ARRC emphasizes that it has not altered its position in respect of interdealer trading of Term SOFR,

Tradeweb files made-available-to-trade determination for certain SOFR and SONIA swaps for CFTC approval

Tradeweb's TW SEF LLC (TW SEF) has filed a [voluntary certification](#) with the Commodity Futures Trading Commission (CFTC) requesting its approval of the determination of certain SOFR and SONIA swaps as made-available-to-trade (MAT).

In its certification letter, TW SEF proposes that interest rate swaps referencing the below tenors be designated as MAT:

- SOFR swaps (including trades starting at spot or with the next two international monetary market (IMM) dates) with 2y, 3y, 4y, 5y, 6y, 7y, 10y, 12y, 15y and 30y tenors; and
- SONIA swaps (including trades starting at spot or with the next two IMM dates) with 1y, 2y, 3y, 4y, 5y, 6y, 7y, 8y, 9y, 10y, 12y, 15y, 20y, 25y and 30y tenors.

If approved by the CFTC, this MAT determination would subject these swaps to the CFTC's mandatory trade execution requirements, effective 1 June 2023. Swaps subject to these requirements must be executed on an SEF or designated contract market.

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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