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CCPRRR: RTS on resolution plans and colleges published in OJ

[Commission Delegated Regulations \(EU\) 2023/1192](#) and [\(EU\) 2023/1193](#) containing regulatory technical standards (RTS) under the Regulation on central counterparty (CCP) recovery and resolution (CCPRRR) have been published in the Official Journal.

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The first RTS specify the contents of the written arrangements and procedures for the functioning of the resolution colleges and are aimed at ensuring the consistent and coherent functioning of EU resolution colleges.

The second RTS specify the contents of the resolution plan, including the key elements of a resolution plan, material changes to a resolution plan, and the timeframe for implementation of a resolution plan.

The Delegated Regulations will enter into force on 11 July 2023.

DORA: ESAs consult on first set of technical standards

The European Supervisory Authorities (ESAs) have launched a [public consultation](#) on the first batch of policy products under the Digital Operational Resilience Act (DORA). This includes the following four draft RTS and one set of draft implementing technical standards (ITS), which are intended to ensure a consistent and harmonised legal framework:

- [RTS on ICT risk management framework and RTS on simplified ICT risk management framework](#);
- [RTS on criteria for the classification of ICT-related incidents](#);
- [ITS to establish the templates for the register of information](#);
- [RTS to specify the policy on ICT services performed by ICT third-party providers](#).

Comments on the consultation are due by 11 September 2023. The ESAs will be organising an online public hearing on 13 July 2023.

The final draft technical standards are to be submitted to the EU Commission for adoption by 17 January 2024.

EU Commission requests ESMA's technical advice on review of UCITS eligible assets

The European Securities and Markets Authority (ESMA) has published a [letter](#) from the EU Commission requesting technical advice on the review of the Eligible Assets Directive (2007/16/EC), which specifies the scope of assets which are eligible for investment by undertakings for collective investment in transferable securities (UCITS).

The Commission has mandated ESMA to carry out an assessment of the implementation of the Eligible Assets Directive, analyse any divergences and provide recommendations on how to keep the Directive in line with market developments. In particular, ESMA is requested to:

- propose clarifications on key definitions and criteria against which the eligibility of an asset is assessed, including analysing whether and to what extent cross-references to other EU legal frameworks could improve legal clarity and consistency; and
- assess the risks and benefits of UCITS gaining exposures to asset classes that are not directly investable for UCITS, including the extent to which UCITS have gained direct and indirect exposures to certain asset categories that may give rise to divergent interpretations and / or risk for retail investors.

ESMA is requested to deliver its advice by 31 October 2024.

MiFID2: ESMA launches call for evidence on sustainability in suitability and product governance

ESMA has launched a [call for evidence](#) on integrating sustainability preferences into suitability assessment and product governance arrangements under MiFID2. The objective of the call for evidence is to gather industry feedback to help ESMA better understand the evolution of the market and provide answers as to how firms apply the new MiFID rules on sustainability.

In particular, it is intended to help ESMA:

- develop a better understanding of how MiFID2 requirements are being implemented and applied by firms across the EU and the challenges firms face in their application;
- gain a better understanding of investor experience and reactions to the inclusion of sustainability factors in investment advice and portfolio management services; and
- collect information, views and data on main trends on aspects related to the provision of sustainable investment products and services to retail clients.

ESMA has previously updated its guidelines on [suitability](#) and [product governance](#) requirements following the inclusion of sustainability-related requirements for investment firms in MiFID2.

Comments are due by 15 September 2023.

Capital Markets Union: ECON Committee publishes third draft report on listing proposals

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has published a [draft report](#) dated 14 June 2023 on the proposed Listing Act Regulation amending the Prospectus Regulation, Market Abuse Regulation (MAR) and the Markets in Financial Instruments Regulation (MiFIR).

The report sets out amendments to the proposed Regulation as well as further comments in an explanatory statement on all the Listing Act proposals, which were originally published by the Commission in December 2022 and are aimed at reducing the administrative burden of listing on EU public markets and further developing the Capital Markets Union (CMU).

The explanatory statement, which is the same as that contained in the ECON Committee's reports on the other Listing Act proposals, namely the draft Directive on multiple-vote share structures and the draft Listing Act Directive amending MiFID and repealing the Listing Directive, proposes:

- maintaining the EUR 12 million threshold for prospectus requirements while allowing Member States to adopt a lower EUR 5 million threshold;
- removing the 300 page limit on prospectus documents;
- strengthening the ESG requirements under the Prospectus Regulation;
- removing the proposed text on insiders lists under MAR;
- introducing a harmonised code of conduct for issuer-sponsored research, and extending the issuer non-objection requirement to any trading venue under the Markets in Financial Instruments Directive (MiFID2); and

- widening multiple-voting structures to all regulated markets.

CRR2/CRD5: EBA publishes final amending ITS on supervisory disclosure

The European Banking Authority (EBA) has published its [final draft](#) amending ITS on supervisory disclosures.

The ITS specify the format, structure, contents list and annual publication date of the supervisory information to be disclosed by competent authorities. The amendments incorporate changes resulting from the Capital Requirements Regulation (CRR2) and the Capital Requirements Directive (CRD5), in particular the changes related to supervisory reporting and investment firms.

The amended ITS are also aimed at enhancing the quality and comparability of the reported data by supervisors and providing the market with more information, enhancing transparency in this regard.

ECB consults on revised guide to internal models

The European Central Bank (ECB) has launched a [public consultation](#) on its [revised guide to internal models](#). The revision reflects updates to the legal framework and builds on the ECB's experience gained in supervising internal models over the years.

In the revised version under consultation, the guide provides clarification on:

- how banks should include material climate-related and environmental risks in their models;
- requirements for common definitions of default;
- counterparty credit risk;
- how to measure default risk in trading book positions; and
- reverting to the standardised approach.

The ECB has also published a [set of FAQs](#) on the consultation.

Comments are due by 15 September 2023.

FSB consults on toolkit for enhancing third-party risk management and oversight

The Financial Stability Board (FSB) has launched a [consultation](#) on a new toolkit for financial authorities and financial institutions as well as service providers for their third-party risk management and oversight. The toolkit has been developed against a backdrop of digitalisation of the financial services sector and growing reliance of financial institutions on third-party service providers for a range of services, some of which support their critical operations. The primary emphasis of the toolkit is on critical services given the potential impact of their disruption on financial institutions' critical operations and financial stability.

The toolkit is intended to:

- reduce fragmentation in regulatory and supervisory approaches to financial institutions' third-party risk management across jurisdictions and different areas of the financial services sector;

- strengthen financial institutions' ability to manage third-party risks and financial authorities' ability to monitor and strengthen the resilience of the financial system; and
- facilitate coordination among relevant stakeholders (i.e. financial authorities, financial institutions and third-party service providers).

Comments are due by 22 August 2023.

IOSCO consults on goodwill accounting and disclosures

The International Organization of Securities Commissions (IOSCO) has launched a [consultation](#) on goodwill to help identify good practices for addressing the risk of unrecognised impairment on accumulated goodwill balances and related disclosures arising from business combinations.

IOSCO's Committee on Issuer Accounting, Audit and Disclosure has identified the risk of unrecognised impairment on accumulated goodwill and related disclosures as an area of concern, particularly in times of increasing economic uncertainty.

IOSCO intends to use the feedback received to formulate a set of recommendations for regulators, auditors, issuers and those charged with governance. The recommendations will also underpin IOSCO's engagement with standard setters, including the International Accounting Standards Board (IASB), on improvements to accounting, reporting and disclosure requirements related to goodwill.

IOSCO has reminded issuers of the importance of their accounting and disclosures resulting in a fair and transparent presentation of the financial position, performance and cash flows of the company. This means that the goodwill should not be stated at an amount in excess of its recoverable amount, that impairment losses should be recognised in a timely manner, and that disclosures of significant judgements and key assumptions related to the recoverability be transparent.

Comments are due by 20 September 2023.

BaFin consults on draft FAQs on Remuneration Ordinance for Institutions

The German Federal Financial Supervisory Authority (BaFin) has [launched](#) a consultation on a set of draft FAQs on the German Remuneration Ordinance for Institutions (InstitutsVergV), which is intended to replace the interpretation guideline on the InstitutsVergV of 16 February 2018.

In line with its common practice, BaFin has adopted the EBA's guidelines on sound remuneration policies under CRD4 (EBA/GL/2021/04) in its supervisory practice. These guidelines shall be applied directly, with minor exceptions specified in the [FAQs](#).

In addition to the EBA guidelines, the FAQs address cases which are either not covered by the EBA guidelines or where the application of proportionality aspects appears necessary.

Changing the format to an FAQ collection does not mean that BaFin is abandoning its supervisory practice as described in the interpretation guideline, unless it is being updated in the FAQ collection.

Comments are due by 4 August 2023.

BaFin extends authorisation of deferred trade-publication

BaFin has [issued](#) three general decrees (Allgemeinverfügungen) extending the authorisation of deferred publication of the details of transactions within the framework of post-trade transparency. Transactions in financial instruments can therefore continue to be published later than is generally required under MiFIR. The general decrees, which are based on Articles 7, 11 and 21 of MiFIR respectively, apply from 3 July 2023, thereby tying in with the corresponding previous general decrees that will expire on 2 July 2023.

In detail, the general decrees are the following:

- a [general decree](#) on the authorisation of deferred publication of transactions in non-equity instruments on trading venues operated by an investment services firm;
- a [general decree](#) on the authorisation of deferred publication of over-the-counter (OTC) transactions in non-equity instruments by investment services firms; and
- a [general decree](#) on the authorisation of deferred publication of transactions in equity instruments on trading venues operated by an investment services firm.

The deferred publication of OTC transactions in equity instruments can still not be authorised separately. These are covered by the authorisation for trading venues under MiFIR. Trading venues that fall under the supervision of BaFin must obtain BaFin's approval before making use of the authorisation of deferred publication.

The general decrees can be revoked by BaFin at any time with effect for the future.

Polish Financial Supervision Authority amends Recommendation S on management of credit exposures secured by mortgages

The Polish Financial Supervision Authority (KNF) has [amended](#) Recommendation S, which concerns good practices in the management of credit exposures secured by mortgages.

The amendments made by the KNF concern:

- the inclusion in the Recommendation of guaranteed housing loans covered by the governmental programme;
- the inclusion in the Recommendation of housing loans covered by the governmental interest rate subsidy programme;
- a buffer for interest rate increases, to be taken into account when determining the customer's creditworthiness;
- the introduction of new expectations regarding the inclusion of prepayment models; and
- the introduction of new expectations regarding information on mortgage risks that should be communicated to customers.

The KNF expects banks and branches of credit institutions to adjust their activities to the amendments in Recommendation S by 1 July 2024.

Cross-industry forum on interest rate benchmarks publishes key results of second survey on LIBOR transition

The Cross-Industry Forum on Interest Rate Benchmarks has held its [fifth meeting](#) at the head office of the Bank of Japan.

The meeting focussed mainly on exchanging information on the [key results](#) of the questionnaire survey on the transition away from USD LIBOR, domestic and international trends, and the progress of the LIBOR transition. The meeting also discussed trends regarding alternative interest rate benchmarks in the Japanese markets.

Amongst other things, the results of the second questionnaire survey, which was carried out between 25 April 2023 and 12 May 2023, highlight the following:

- for all contract types, over 80% of respondents have no existing contracts referencing USD LIBOR or are expecting to fully complete the transition by end-June 2023 ('all completed' and 'no contracts at end-Dec. 2021');
- even among respondents with contracts for which the transition would not be completed by end-June 2023, the majority are expected to complete the transition of over 80% of contracts by end-June. Compared to end-March and end-May, the transition is expected to progress steadily;
- most respondents with contracts for which the transition would not be completed by end-June 2023 (18 out of the total 52 respondents) plan to continue negotiations until the day of the first revision of interest rates in or after July and consider applying US federal law. Some respondents plan to consider using synthetic USD LIBOR; and
- as of end-May 2023, the transition has been completed for over 70% of loans and bonds and over 90% of derivatives. By end-June 2023, 90% of contracts of all types are expected to be completed.

FSA discloses discussion paper on possible upcoming amendments to tender offer bid regulations

In addition to [the possible upcoming amendments to large shareholding reporting regulations](#), the Japan Financial Services Agency (FSA) has also disclosed a [discussion paper](#) providing some details on the possible upcoming amendments to tender offer bid (TOB) regulations, which include the following:

- open market transactions and third-party allotments – currently, the purchase of shares in the open market or by way of third-party allotment does not trigger TOB regulations even if a substantial part of the voting rights are subsequently held by a single shareholder as a result. The committee will consider whether a purchase in such a manner should still be out of the scope of the TOB regulations;
- lower threshold – the current threshold of one third, triggering application of the TOB regulations, is to be reviewed. Through the amendment, the TOB process may be required even when an investor is acquiring less than a third. The actual threshold is still under discussion;
- European model regulations – currently, in Japan, an investor must launch a mandatory TOB procedure if they intend to acquire more voting rights than a certain threshold. The introduction of a voluntary offer framework

plus a mandatory offer framework (under which a bidder must make a mandatory offer for all shares if it acquires shares carrying a certain percentage of the target's voting share rights) like in the UK TOB regulations may be considered in the future meeting of the committee;

- opt-in/opt-out approach – the introduction of an opt-in/opt-out approach where mandatory TOB procedures are exempted if shareholders who are out of scope of the offer accept them in the articles of incorporation or at a shareholders' meeting; and
- measures to prevent oppressive TOB – such measures include, among others, lowering the current threshold obliging a bidder to purchase all the shares, establishing an additional offer period, limiting cases where a TOB is allowed. In addition, injunctive relief and other remedies as well as a more flexible TOB framework are likely to be discussed.

The amendments are still subject to discussion and there is no guarantee that they will be formally proposed as amendments.

MAS publishes whitepaper on proposed standards for digital money

The Monetary Authority of Singapore (MAS) has published a [technical whitepaper](#) on Purpose Bound Money (PBM), proposing a common protocol to specify conditions for the use of digital money such as central bank digital currencies, tokenised bank deposits, and stablecoins on a distributed ledger.

The whitepaper builds on the MAS' Project Orchid, and aims to encourage greater research among central banks, financial institutions (FIs), and fintechs, to understand the design considerations in the use of digital money. It is supported by the public release of PBM source codes and software prototypes that demonstrate the concept of PBM and how it can be used to embed digital money in escrow arrangements.

Developed in collaboration with international bodies, central banks and other industry players, the whitepaper covers the following:

- technical specifications that outline the PBM lifecycle from issuance to redemption, and the protocol to interface with digital currencies backing it; and
- business and operating models for how arrangements could be programmed such that money is transferred only upon fulfilment of service obligations or terms of use.

The PBM protocol is designed to work with different ledger technologies and forms of money to enable users to access digital money using the wallet provider of their choice. With a common protocol, the same infrastructure can be used across multiple use cases. Stakeholders using different wallet providers can transfer digital assets to one another without the need for customisation.

A group of FIs and fintech firms are launching trials to test the usage of PBM under different scenarios.

RECENT CLIFFORD CHANCE BRIEFINGS

The new EU and UK competition regimes for horizontal cooperation agreements

The EU Commission has issued its final amended texts of its horizontal guidelines and the block exemption Regulations relating to Research & Development and Specialisation which deal with the application of the EU prohibition on anticompetitive agreements to arrangements between actual or potential competitors. These revised texts will introduce a number of changes and clarifications to the EU regime for horizontal agreements when they enter into force on 1 July 2023.

Following the UK's departure from the EU, the UK Government has issued its own block exemptions and has published its own draft guidance on horizontal agreements earlier this year, which differs from its EU equivalent rules in certain material respects.

This briefing paper discusses the new EU and UK competition regimes for horizontal cooperation agreements.

<https://www.cliffordchance.com/briefings/2023/06/the-new-eu-and-uk-competition-regimes-for-horizontal-cooperation.html>

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

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