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Benchmarks Regulation: EU Commission adopts Delegated Regulation extending transitional period for third country benchmarks

The EU Commission has adopted a [Delegated Regulation](#) extending the transitional period for existing benchmarks and non-EU benchmarks until 31 December 2025.

The Delegated Regulation extends the transitional period set out in the Benchmarks Regulation (BMR) by a further two years to allow non-EU benchmarks to continue to be used in the EU.

The Commission considers it necessary to extend the transitional period, which is currently set to expire on 31 December 2023, in order to ensure continued access by market participants in the EU to most of the world's benchmarks.

The Delegated Regulation follows the Commission's targeted consultation on the regime applicable to the use of benchmarks administered in a third country.

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

Capital Markets Union: Provisional agreement reached on AIFMD2

The EU Council and Parliament have [reached](#) a provisional agreement on the Commission's proposed directive to improve the regulatory framework applicable to EU investment funds (AIFMD2).

The EU Commission adopted AIFMD2 as part of the Capital Markets Union (CMU) legislative package in November 2021. The proposed directive would amend the Directive on Undertaking for Collective Investment in Transferable

Securities (UCITS) and the Alternative Investment Fund Managers Directive (AIFMD).

Among other things, AIFMD2 aims to:

- enhance the integration of asset management markets in Europe and modernise the framework for key regulatory aspects;
- enhance the availability of liquidity management tools (LMTs), with new requirements for managers to provide for the activation of these instruments;
- increase transparency on delegation rules, by ensuring that supervisors are well-informed about the extent to which fund managers rely on expertise from third parties; and
- establish an EU framework for funds originating loans, i.e. funds that provide credit to companies, supplemented with several requirements to alleviate risks to financial stability and to ensure an appropriate level of investor protection.

The provisional agreement on AIFMD2 needs to be confirmed by the Council and the Parliament before it can be formally adopted.

Money Market Funds: EU Commission publishes review report

The EU Commission has published a [report](#) submitted to the EU Parliament and Council on the adequacy of the Money Market Funds Regulation (MMFR).

The report provides the Commission's assessment of the MMF sector, current market structure and recent market developments, as well as the adequacy of the MMFR from a prudential and economic point of view.

While the Commission broadly finds that the MMFR has significantly strengthened the regulatory framework for MMFs in the EU and that safeguards have been working as intended, it also identifies shortcomings for further assessment, such as:

- increasing the resilience of EU MMFs, such as by decoupling the potential activation of LMTs from regulatory liquidity thresholds; and
- structural problems that are external to MMFs, including those linked to underlying short-term markets.

The Commission also notes that EU MMFs will benefit from the ongoing review of the AIFM and UCITS Directives (AIFMD2), which aims to introduce new harmonised rules to increase the availability of LMTs for open-ended funds and will further strengthen the resilience of EU MMF's liquidity management in cases of stress.

EMIR: EU Commission consults on amending equivalence decision for Australia

The EU Commission has launched a [consultation](#) on a draft Implementing Decision that amends the equivalence decision on Australian financial markets.

The Commission is proposing to amend the annex to Implementing Decision (EU) 2016/2272 under the European Market Infrastructure Regulation (EMIR) to reflect an additional financial market established in Australia that has

obtained authorisation from the Australian Securities and Investments Commission (ASIC) to trade in derivatives.

Comments are due by 14 August 2023.

EMIR: ESMA publishes revised RTS on CCP margin measures

The European Securities and Markets Authority (ESMA) has published a [final report](#) setting out revised regulatory technical standards (RTS) with respect to the procyclicality of central counterparty (CCP) margin.

ESMA has proposed targeted changes to EMIR Delegated Regulation (EU) 153/2013 intended to further harmonise the policies and procedures by CCPs for selecting, assessing and reviewing anti-procyclicality (APC) measures, while also providing more granularity on existing tools to align their implementation across the EU.

The final report has been submitted to the EU Commission, which now has three months to decide whether to endorse the proposed revised RTS under an amending Delegated Regulation.

EBA publishes decision on *ad hoc* ESG data collection

The European Banking Authority (EBA) has published a [decision](#) on the *ad hoc* collection of institutions' ESG data.

The decision is intended to provide national competent authorities (NCAs) and the EBA with the necessary data and tools to fulfil their monitoring functions and ESG-related mandates, which include setting up a risk monitoring framework and contributing to the EU Commission's strategy for financing the transition to a sustainable economy.

The EBA will collect ad-hoc basis data that is already available to large, listed institutions as part of their Pillar 3 disclosure obligations with respect to ESG risks.

The decision amends Decision EBA/DC/2020/335 of 5 June 2022 concerning the European Centralised Infrastructure of Data (EUCLID) to reflect this *ad hoc* data collection in the data reporting obligations listed in the Annex to that decision.

The decision entered into force 6 July 2023.

EBA publishes overall recovery capacity guidance

The EBA has published its [final 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 the institution to restore its financial position after a significant deterioration by implementing suitable recovery options. The assessment by competent authorities of an institution's ORC helps to establish to what extent an institution would be able to recover from a range of potential crisis situations.

The guidelines consist of:

- a section addressed to institutions, providing guidance on setting up a reliable ORC framework; and

- a section addressed to competent authorities, intended to harmonise the core elements of the ORC assessment from a quantitative and qualitative perspective.

The guidelines aim 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.

EBA updates recommendations on AT1, Tier 2 and TLAC-MREL instruments

The EBA has published an [updated report](#) on the monitoring of Additional Tier 1 (AT1), Tier 2, and total loss-absorbing capacity (TLAC) and minimum requirement for own funds and eligible liabilities (MREL) instruments.

The report merges two previous separate reports on AT1 and Tier 2 and TLAC-MREL. The report concludes that there is convergence and standardisation in terms of drafting of the terms and conditions of the instruments and issuance programmes. The EBA expects forthcoming issuances to continue to retain a high level of standardisation in their terms and limit complexity.

The report adds new recommendations on certain contractual clauses of the corresponding documentation, including:

- TLAC/MREL disqualification events clauses in own funds issuances are deemed acceptable;
- risk-adjusted capital Tier 2 instruments (RAC Tier 2) are discouraged;
- alignment event clauses are allowed under certain conditions;
- institutions should be able to demonstrate that interest rate reset mechanisms do not entail incentives to redeem; and
- a degree of supervisory flexibility has been introduced on tap issuances from small issuers, in particular in case of episodes of market volatility.

EBA launches public consultation on draft templates for collecting climate related data

The EBA has [launched](#) a public consultation on draft templates for collecting climate related data from EU banks. This is part of the one-off Fit-for-55 climate risk scenario analysis, which the EBA is carrying out with the European Supervisory Authorities (ESAs) and with the support of the European Central Bank (ECB) and the European Systemic Risk Board (ESRB). The draft templates are accompanied by a template guidance, which includes definitions and rules for compiling the templates.

The consultation closes on 11 October 2023.

ESMA publishes 2022 UCITS and AIFMD sanction reports

ESMA has published its 2022 reports on the use by NCAs of sanctions [under the Undertakings for Collective Investments in Transferable Securities \(UCITS\) Directive](#) and the [AIFMD](#).

The reports contain an overview of the applicable legal framework and information on the penalties and measures imposed by NCAs from 1 January 2022 to 31 December 2022. Both these reports and previous iterations show that, besides a limited number of NCAs issuing an increasing number of

sanctions, the level of sanctions issued at national level has remained stable and generally low.

ESMA reports on 2022 cross-border provision of investment services

ESMA and NCAs have [completed](#) an analysis of the cross-border provision of investment services during 2022.

Data was collected and analysed across 29 jurisdictions. ESMA's key findings include:

- around 380 firms provided services to retail clients on a cross-border basis, with 59% of them being investment firms and 41% being credit institutions;
- approximately 7.6 million clients in the EU/EEA received investment services from firms located in other EU/EEA Member States;
- in terms of number of firms, Cyprus is the primary location for firms providing cross-border investment services in the EU/EEA, accounting for 23% of the total firms passporting investment services. Luxembourg and Germany follow with 16% and 13%;
- in terms of number of EU/EEA retail clients receiving cross-border investment services, more than 75% are served by firms based in Cyprus, Germany, and Sweden;
- the average number of retail clients per firm was about 19,000;
- as host Member States, Germany, Spain, France and Italy are the most significant destinations (in terms of number of retail clients) for investment firms providing services cross-border in other Member States; and
- approximately 5,700 complaints were recorded by firms relating to the provision of cross-border investment services to retail clients.

ESMA aims to continue performing the data collection exercise on an annual basis and intends to publish a report on the findings at the next iteration of the exercise in 2024.

EIOPA reports on product oversight and governance

The European Insurance and Occupational Pensions Authority (EIOPA) has published a [peer review report](#) on product oversight and governance (POG).

The peer review assessed the overall maturity of the supervisory framework on POG developed by NCAs to supervise the application of POG requirements by insurance manufacturers.

EIOPA found that most NCAs have adapted their supervisory approaches and processes to the supervision of POG requirements in line with the provisions introduced by the Insurance Distribution Directive (IDD) and the POG Delegated Regulation. Several NCAs were in the process of improving their supervisory POG frameworks to ensure good consumer outcomes during the peer review's reference period, while some NCAs were still building their supervisory POG framework.

Based on the report findings, EIOPA has issued a set of recommended actions to national supervisors with the objective of further strengthening POG supervision. EIOPA intends to monitor and assess NCAs' implementation of

the recommended actions to the extent that they have not already been implemented.

FSB publishes global regulatory framework for crypto-asset activities

The Financial Stability Board (FSB) has published its [global regulatory framework](#) for crypto-asset activities to promote the comprehensiveness and international consistency of regulatory and supervisory approaches.

The framework consists of two distinct sets of recommendations:

- [high-level recommendations for the regulation, supervision and oversight of cryptoasset activities and markets](#); and
- [revised high-level recommendations for the regulation, supervision, and oversight of 'global stablecoin' arrangements](#).

The final recommendations draw on the implementation experiences of jurisdictions and build on the principles – ‘same activity, same risk, same regulation’; high-level and flexible; and technology neutral – that informed the consultative framework. The FSB has strengthened both sets of high-level recommendations in three areas:

- ensuring adequate safeguarding of client assets;
- addressing risks associated with conflicts of interest; and
- strengthening cross-border cooperation.

The recommendations focus on addressing risks to financial stability and do not comprehensively cover all specific risk categories related to crypto-asset activities such as central bank digital currencies (CBDCs). The global framework includes a shared workplan that the FSB and sectoral standard-setting bodies (SSBs) have developed for 2023 and beyond.

IOSCO reports on compliance carbon markets

The Board of the International Organization of Securities Commissions (IOSCO) has published a [final report](#) on compliance carbon markets (CCMs).

The report examines the specific characteristics of CCMs compared to traditional financial markets and sets recommendations intended to make markets efficient and function with integrity. The recommendations are addressed to relevant authorities to allow for the flexibility jurisdictions and regulatory authorities need in order to be consistent with their legal mandates as CCMs are established in their jurisdictions.

The recommendations relate to:

- the transparency and predictability of primary market decisions and market structures for primary markets;
- allowance allocation mechanisms, market stability mechanisms and primary market access; and
- market integrity, transparency and structure at the secondary market level.

The report also includes a selection of applicable IOSCO Objectives and Principles of Securities Regulation and IOSCO Principles for the Regulation and Supervision of Commodities Derivatives Markets.

The Board intends to publish a report on voluntary carbon markets later in 2023.

BoE consults on FMI fee rates for 2023/24

The Bank of England (BoE) has launched a [consultation](#) on the fees regime for financial market infrastructure (FMI) supervision for 2023/24.

The consultation sets out:

- the proposed fee rates to meet the BoE's 2023/24 funding requirement for its FMI supervisory activity and the policy activity that supports this which is expected to be GBP 13.8 million (a 19% increase on fees levied in 2022/23); and
- the BoE's application of special project fees (SPF) for the 2023/24 fee year, for which the BoE expects to recover approximately GBP 0.18 million.

The consultation is relevant to all FMIs that currently pay FMI supervisory fees to the BoE or are expecting to do so within the 2023/24 fee year, including incoming CCPs and incoming central securities depositaries (CSDs).

Comments are due by 21 September 2023.

FCA consults on Rule Review Framework

The Financial Conduct Authority (FCA) has [published](#) a draft Rule Review Framework setting out how it intends to monitor and review whether rules are meeting their intended outcomes.

The draft Framework, which is in line with an obligation to review rules under the Financial Services and Markets Act 2000 (FSMA) (as amended by the Financial Services and Markets Act 2023), applies to all FCA Handbook rules, provides a summary of its approach to new and existing rules, and sets out the following three types of review:

- evidence assessment for determining whether a rule is working as intended;
- post implementation review for establishing whether a rule or policy intervention has met its intended outcomes, as measured by key changes, outcomes and discussions with stakeholders; and
- ex post impact evaluations for measuring the impact of policy or rule interventions on intended outcomes, focusing on causal methods and planned in advance, at policy development stage.

Actions that the FCA may take where rules are not working as intended include providing additional guidance or sharing information, conducting a more detailed review or, following the policy development process, rule changes.

The Framework also covers the FCA's intended approach to reporting and Government-directed reviews.

The FCA's immediate priorities for review will be considered in the context of the forthcoming Consumer Duty and the repeal and replacement of retained EU law (REUL).

The FCA has invited feedback on the draft Framework and comments are due by 15 September 2023.

FCA launches permanent Digital Sandbox

The FCA has [announced](#) that its Digital Sandbox for firms to test new products and services will be made permanent.

Originally only available temporarily to firms participating in pilots and TechSprints, the permanent Sandbox will provide participants with access to:

- datasets and application programme interfaces (APIs);
- data security protection;
- a collaborative platform; and
- an observation deck.

Applications for access to the permanent Sandbox can be made from 1 August 2023. The FCA expects the approval process to take a maximum of four weeks.

FCA publishes webpage on repeal and replacement of retained EU law

The FCA has published a [new webpage](#) on the repeal and replacement of REUL with FCA rules under the Financial Services and Markets Act 2023.

The webpage sets out overarching principles for the replacement of REUL in the FCA Handbook as well as key documents, current status and next steps for the following files:

- UK IDD, including an intention to publish a consultation in Q4 2023;
- UK MiFID and MiFIR, and the Wholesale Markets Review (WMR) reforms, including an intention to publish further consultations on commodities derivatives and transparency reforms in Q4 2023;
- UK MMFR, including an intention to publish a consultation in Q4 2023;
- UK PRIIPs Regulation, noting that a consultation is forthcoming;
- Payment Accounts Regulations 2015 (SI 2015/2038) (PARs), which is being repealed by HM Treasury and will not be replaced with FCA rule;
- UK Revised Payment Services Directive (PSD2) and Electronic Money Directive (EMD) and regulations, noting that a consultation is forthcoming;
- the prospectus regime, including an intention to publish feedback on engagement papers in Q4 2023;
- UK Securitisation Regulation, including an intention to publish a consultation in Q3 2023;
- UK Short-Selling Regulation (SSR), including an intention to publish a consultation in 2023; and
- UK European Long-Term Investment Fund Regulation (ELTIF), which is being repealed on 1 January 2024 and will not be replaced as no ELTIFs have been established in the UK and the UK Long-Term Asset Fund (LTAF) regime provides an alternative fund structure.

FCA seeks views on public offers and admission to trading regime

The FCA has published two papers seeking views [on elements of the new public offers](#) and [admission to trading regime](#) under the Edinburgh Reforms.

The new regime will allow the FCA to set specific rules for types of public offers of securities that are not admitted to a public market. The first paper seeks views on the FCA's future rules relating to the new regulated activity of operating a public offer platform.

The regime will also create a new type of multilateral trading facility (MTF) admission document known as the MTF admission prospectus which will be subject to the same statutory liability and compensation scheme as regulated market prospectuses. The FCA will have the power to make certain MTFs operating as primary markets (primary MTFs) require the production of an MTF admission prospectus in specified circumstances. The second paper seeks views on the FCA's initial considerations relating to primary MTFs.

Written responses are due by 29 September 2023. The FCA intends to consult on specific rules in 2024.

FRC issues call for evidence on IFRS Sustainability Disclosure Standards

The Financial Reporting Council (FRC) in its role as the Secretariat to the UK Sustainability Disclosure Technical Advisory Committee has [issued](#) a call for evidence to inform the proposed endorsement of the IFRS Sustainability Disclosure Standards in the UK.

The International Sustainability Standards Board (ISSB) published IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information and IFRS S2 Climate-related Disclosures in June 2023.

This call for evidence seeks views on whether application of these standards in a UK context will result in disclosures that are understandable, relevant, reliable and comparable for investors. It also considers technical feasibility, timeliness alongside financial reporting, and proportionality of costs to benefits.

The call for evidence closes on 11 October 2023.

HM Treasury announces new rules on bank account closures

HM Treasury has published a [press release](#) announcing new rules on the closure of bank accounts intended to balance freedom of expression with the right to manage commercial risk.

The new rules, which follow a January 2023 call for evidence on the Payment Services Regulations and media reports of account closures due to political beliefs, include:

- obligations on banks to explain and delay any decision to close an account; and
- increasing the notice period for the termination of payment services contracts to 90 days.

The new rules will be introduced through secondary legislation using powers under the Financial Services and Markets Act 2023.

The press release notes the new rules run alongside a separate forthcoming review of the requirements for politically exposed persons (PEPs) by the FCA, details of which are expected by the end of September 2023.

Treasury Committee publishes Government's response to regulating crypto report

The Treasury Committee has published the [Government's response](#) to its May 2023 report on regulating crypto.

While HM Treasury recognises many of the consumer risks described in the report, as well as the pressing need for robust and effective regulation, it firmly disagrees with the Committee's recommendation to regulate retail trading and investment activity in unbacked cryptoassets as gambling rather than as a financial service, noting that such an approach would risk creating misalignment with international standards and approaches.

The response also notes that the Government is taking action to mitigate consumer risks, including through the introduction of a dedicated financial promotions regulatory regime for cryptoassets, which is due to come into force by late 2023, and in proposals set out in HM Treasury's February 2023 consultation on cryptoasset regulation.

UK Government publishes responses on implementation of UNCITRAL model laws on insolvency

The UK Government has published its responses to its [consultation](#) of the UK implementation of two model laws adopted by the United Nations Commission on International Trade Law (UNCITRAL).

The Government believes that enacting the model laws will enhance the UK's insolvency regime and will ensure that the UK stays aligned with international best practice.

The Government intends to further consider issues raised in relation to the Model Law on Recognition and Enforcement of Insolvency-related Judgments (MLIJ) to ensure they are resolved before proceeding. It hopes to legislate and implement the Model Law on Enterprise Group Insolvency (MLEG) at the earliest opportunity.

UK EMIR: PRA consults on bilateral margining requirements

The Prudential Regulation Authority (PRA) has published a [consultation paper](#) (CP13/23) on amendments to the RTS for risk-mitigation techniques for over-the-counter (OTC) derivative contracts not cleared by a CCP under the retained EU Regulation on OTC derivative transactions, CCPs and trade repositories (UK EMIR).

Specifically, the paper sets out the FCA and PRA's proposal to extend the temporary exemptions for single-stock equity options and index options from the UK bilateral margining requirements from 4 January 2024 to 4 January 2026. The regulators believe the extension would allow time to gather evidence on current market practices and risks so they can assess the best permanent framework for the UK.

The paper also sets out the proposed approach to model pre-approval in relation to bilateral initial margin models. The PRA and FCA are not proposing to develop and introduce a formal pre-approval requirement at this stage and will continue to use the existing framework and supervisory powers to ensure models and practices meet requirements.

Comments are due by 18 October 2023.

PRA consults on Pillar 3 remuneration disclosure requirements

The PRA has launched a [consultation](#) (CP14/23) on its proposals to enhance proportionality of Pillar 3 remuneration disclosure requirements, by reducing the number of remuneration disclosures required for many smaller banks and building societies.

This follows on from the PRA's February 2023 consultations on liquidity and disclosure requirements for simpler-regime firms (CP4/23) and enhancing remuneration proportionality for small firms (CP5/23). The PRA is still considering the feedback received to these consultations. With CP14/23 on the proposed remuneration disclosure requirements, the PRA is aiming to deliver a complete disclosure package for firms in scope of CP4/23 and CP5/23.

In CP14/23, the PRA proposes changes regarding:

- remuneration disclosure for small firms;
- disclosure by listed and non-listed simpler-regime firms;
- small remuneration firms that are not eligible to be simpler-regime firms; and
- transitional small and non-complex institution (SNCI) firms that are eligible to be small remuneration firms.

Comments are due by 20 September 2023.

The PRA intends to publish the final policy on remuneration disclosures as part of the Strong and Simple Framework expected in Q4 2023, and to align the implementation date for proposals set out in CP14/23 with the Pillar 3 proposals set out in CP4/23. The PRA expects this to be early in the second half of 2024.

UK regulators publish summer update to Regulatory Initiatives Grid

The co-chairs of the Financial Services Regulatory Initiatives Forum have published an [update](#) on the Regulatory Initiatives Grid following Royal Assent of the Financial Services and Markets Act 2023.

The update notes the significance of the Act for the financial services regulatory landscape and provides an overview of the most significant developments since the publication of the latest version of the Grid in February 2023, such as:

- changes to the UK regulators' objectives and accountability mechanisms;
- an intention to provide further progress and information on Forum members' work on REUL files such as Solvency II, the Prospectus Regulation and the Securitisation Regulation;

- an intention to reflect regulatory framework reforms, particularly those relating to the Government's programme of repealing and replacing REUL for financial services, in the next version of the Grid;
- the launch of the BoE's first system-wide exploratory scenario (SWES) exercise in June 2023;
- the publication of the updated Green Finance Strategy in March 2023;
- an intention by the FCA to publish a policy statement on Sustainability Disclosure Requirements (SDRs) and investment labels in Q4 2023, rather than Q3 2023;
- the continued publication of synthetic US dollar LIBOR after 30 June 2023, when the US dollar LIBOR panel ceased; and
- the publication of final FCA rules to support the implementation of the Government's Mortgage Charter.

A full update of the Grid is planned for Q4 2023.

CRD4: ACPR publishes methods for calculating and publishing prudential ratios

The Autorité de contrôle prudentiel et de résolution (ACPR) published the [2023 notice](#) on the methods for calculating and publishing prudential ratios in compliance with CRD4 and the MREL requirements.

The notice specifies how the ACPR supervises the implementation of requirements arising from CRD4 and CRR, as amended by CRD5 and CRR2 respectively, and IFR/IFD in relation to solvency, large exposures, leverage, liquidity and the reporting of encumbrances on assets.

The notice now includes information relating to the MREL requirements set forth in BRRD, as amended by BRRD2.

Clean and blacklined versions showing the changes made since the 2022 notice have been published.

CSSF issues regulation transposing ECB Guidelines on the exercise of options and discretions for less significant institutions

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued [Regulation No. 23-03](#), amending Regulation CSSF No. 18-03.

The Regulation transposes Guideline (EU) 2022/508 of the ECB on the exercise of options and discretions available in EU law by NCAs in relation to less significant institutions (LSIs). The Regulation modifies the existing rules in Regulation CSSF No. 18-03 on full large exposure exemptions and introduces new provisions on liquidity buffers and the net stable funding ratio (NSFR). Certain other provisions are repealed including those related to IAS 19, hedging sets, grandfathering rules on certain own fund items, and the option referred to in Article 471 of the Capital Requirements Regulation (CRR) relating to the deduction of certain equity holdings.

The Regulation entered into force on 12 July 2023.

Luxembourg Parliament passes Bill to improve and modernise the Luxembourg investment funds legal framework

The Luxembourg Parliament has passed a [Bill](#) that aims to increase the competitiveness of Luxembourg as a financial centre by modernising the legal framework for Luxembourg funds.

The bill of Law 8183 amends the SICAR, SIF, RAIF, UCI and AIFM Laws in a number of ways, paving the way for the ‘retailisation’ of alternative investment funds, a trend recently seen in other financial centres. The key changes include:

- amending the definition of “well-informed investors” under the RAIF Law, the SICAR Law and the SIF Law. The minimum investment threshold of €125,000 will be lowered to €100,000 and the definition of “well-informed investor” will be harmonised across the SIF, SICAR and RAIF Laws;
- extending the deadline to meet the minimum amount of assets under management to 12 months for a Part II UCI and to 24 months for SIFs, RAIFs, and SICARs;
- making available new legal forms to structure Part II UCIs, to bring them in line with RAIFs and SIFs. Currently, Part II UCIs can only be structured as public limited companies (*société anonyme*) and as FCP (fonds commun de placement). Under the new rules, other structures are possible, e.g. a partnership limited by shares (*société en commandite par actions*), simple limited partnership (*société en commandite simple*), special limited partnership (*société en commandite spéciale*), limited liability company (*société à responsabilité limitée*), or cooperative organised as a public limited company (*société coopérative organisée sous forme de société anonyme*);
- providing more flexible rules for the issuance price of closed-ended Part II UCI units. Under the current rules, units of Part II UCIs must be issued at NAV (as is the case for UCITS). The new rules will permit closed-ended Part II UCIs to freely determine the issuance price;
- making changes to the RAIFs marketing rules. Such funds can be marketed to non-professional investors in Luxembourg, provided they qualify as “well-informed investors”; and

amending the subscription tax regime e.g. Part II UCIs, RAIFs and SIFs authorised as ELTIFs are exempt from subscription tax.

China publishes Provisional Administrative Measures for Generative Artificial Intelligence Services

The Cyberspace Administration of China (CAC), together with six other PRC regulatory authorities, have jointly published the final version of the [‘Provisional Administrative Measures on Generative Artificial Intelligence Services’](#) (GenAI Measures), which will become the first set of regulatory rules applicable to generative artificial intelligence (AI) in China.

Among others, the following key aspects are worth noting:

- application scope – the GenAI Measures apply to any person that utilises generative AI technology to provide services (including, among others, generating text, pictures, audio and video content) to the public in China

(‘providers’). It should be noted that, other than those directly providing generative AI services, the services indirectly provided in China, e.g., via programming interfaces and APIs, will also be captured by the GenAI Measures. A safe harbour is provided for research on and utilisation of generative AI technologies by enterprises or public institutions, as long as no generative AI services are provided to the public in China;

- foreign investment and regulatory approval – the GenAI Measures reiterate that foreign investors investing in generative AI technology in China shall comply with relevant PRC laws and regulations on foreign investment, and the Providers shall obtain the relevant regulatory approvals before providing generative AI services in China. The CAC retains the power to call for the implementation of technical measures against generative AI services originating overseas that are provided to the public in China and which are not in line with the GenAI Measures and/or other PRC laws and regulations;
- classified and graded supervision – PRC regulators will support the development of generative AI services in a prudent manner, and follow a classified and graded approach in further improving the regulatory framework;
- responsibilities of providers. The providers should be responsible for: the content produced using their services; the legitimacy of the data used to train the underlying generative AI; and the fulfilment of the relevant governance requirements such as a robust complaint handling system. A service agreement shall be put into place between the providers and users of generative AI services;
- filing requirements – any provider providing services that may relate to public opinion or be capable of mobilising or influencing social viewpoints shall complete a CAC security assessment and the regulatory procedures stipulated under the ‘Administrative Measures on Algorithm Recommendation for Internet Information Services’;
- generated content – the content generated may not contain what is prohibited from circulation in China. Discriminatory content shall be avoided throughout the whole process. The Providers shall also take appropriate measures to improve the accuracy and reliability of the content generated; and
- data used to train AI – the Providers shall, in respect of the data used to train AI, ensure that: data used should originate from legitimate sources and legitimate base models; such data does not infringe on others’ intellectual property rights; consent from data subject(s) should be obtained if personal information is included, unless otherwise permitted by laws and regulations; effective measures are taken to improve the authenticity, accuracy, objectivity and diversity of data; and the relevant requirements stipulated under PRC laws and regulations in relation to cyber security, data security and personal information protection are complied with. The Providers are required, upon request from PRC regulators, to explain the sources, volume, types, marking logistics and the algorithm mechanism of data used for AI training, and to provide data and/or technological assistance to the extent necessary.

The GenAI Measures take effect from 15 August 2023.

Singapore Government gazettes Financial Services and Markets (Composition of Offences) Regulations 2023

The Singapore Government has gazetted the [Financial Services and Markets \(Composition of Offences\) Regulations 2023](#).

In particular, the Regulations allow offences (including continuing offences) punishable only with a fine under the Financial Services and Markets Act 2022 to be compounded by the Authority in accordance with section 177 on composition of offences under the 2022 Act.

The Regulations are effective from 14 July 2023.

RECENT CLIFFORD CHANCE BRIEFINGS

EU Foreign Subsidies Regulation – increased risk on M&A transactions

The new Foreign Subsidies Regulation increases transaction risk for all companies doing deals with a significant European nexus. There are also new filing processes to contend with, and potentially longer deal timelines and increased transaction costs.

To tackle this problem, the Commission has added the new Regulation to its legislative toolbox. The Regulation gives the Commission powers to investigate foreign subsidies and take action if it concludes they adversely affect the EU's internal market, including the power to block M&A transactions and public procurement bids.

This briefing paper discusses the Regulation.

https://www.cliffordchance.com/insights/thought_leadership/across-the-board/articles/2023/07/eu-foreign-subsidies-regulation-increased-risk-on-m-and-a-transactions.html

What does the European Commission's digital euro proposal mean for the future of money in the EU?

On 28 June 2023, the European Commission published its proposals for a digital euro as part of a 'Single Currency Package'. The proposal shows what the potential scope of the currency and some of its key features might be. However, much has still to be confirmed, including whether a digital euro will ever be issued.

This briefing paper considers some of the proposed key features of the digital euro, its proposed interaction with the EU's wider reform of payment services regulation, how data privacy and AML concerns are being addressed and the next steps in the EU legislative process.

<https://www.cliffordchance.com/briefings/2023/07/what-does-the-european-commission-s-digital-euro-proposal-mean-f.html>

Changing times – Recent developments in the UK and EU securitisation regulatory frameworks

The UK and EU securitisation regulatory frameworks have been a hive of activity in July 2023. The European Commission has adopted final draft RTS on risk retention, ESMA has published an updated set of questions and answers on the EU Securitisation Regulation, and, in the UK, HM Treasury

has published a near-final version of the statutory instrument replacing the UK Securitisation Regulation.

This briefing paper looks at these recent developments and what they mean for the market, as well as the possible next steps for the regulation of securitisation in the UK and EU.

<https://www.cliffordchance.com/briefings/2023/07/changing-times--recent-developments-in-the-uk-and-eu-securitisation.html>

Revoking and replacing retained EU law – how do FSMA 2023 and the REUL Act compare?

The passage into law of the Financial Services and Markets Act 2023 and the Retained EU Law (Revocation and Reform) Act 2023 will speed up the process of revoking and replacing REUL as part of UK law.

This briefing paper outlines how ‘FSMA 2023’ and the ‘REUL Act’ address the revocation and replacement of REUL, discusses the impact of the REUL Act on financial services legislation and compares the provisions of and powers under the two Acts.

<https://www.cliffordchance.com/briefings/2023/07/revoking-and-replacing-retained-eu-law--how-do-fsma-2023-and-the.html>

European Commission approves EU-US data privacy framework

On 10 July 2023, the European Commission reached an ‘adequacy decision’ under the European Union (EU) General Data Protection Regulation (GDPR), approving transfers of personal data to organisations located in the United States that will be certified under the newly-established Trans-Atlantic Data Privacy Framework (DPF) agreed between the US and the EU.

This long-awaited decision replaces the EU-US ‘Privacy Shield’, which was invalidated by the Court of Justice of the European Union (CJEU) in the Schrems 2 case in 2020 (see our article on Schrems 2). Although the adequacy decision is likely also to be challenged before the CJEU, for the time being the decision dispels the considerable uncertainty around transfers of personal data regulated by the EU GDPR to the U.S. that arose following Schrems 2. It should greatly simplify the risk analysis associated with these transfers, even where they are made to U.S. recipients which do not participate in the DPF. Businesses will need to review their compliance strategies to explore taking advantage of the opportunities presented by the DPF and EU adequacy decision.

This briefing paper discusses the framework.

<https://www.cliffordchance.com/briefings/2023/07/european-commission-approves-eu-u-s--data-privacy-framework.html>

UK Financial Services and Markets Act 2023 – Building a ‘smarter regulatory framework’

The UK Financial Services and Markets Act 2023 aims to build a ‘smarter regulatory framework’ replacing existing REUL on financial services and markets and making other changes to update the UK regulatory regime.

The Act will revoke REUL on financial services and markets and give HM Treasury broad powers to make regulations restating and revising that law and

designating additional activities for regulation in the UK. It will also make changes to the UK regulators' objectives and the mechanisms for their accountability.

In addition, the Act will implement the outcomes of other reviews, including the reviews of the regulation of wholesale markets, FMI, digital settlement assets, critical third-party service providers, financial promotions and access to cash and of the regimes for CCPs and insurers in financial difficulties. It also will give HM Treasury new powers to implement mutual recognition arrangements with other countries and modify the rules for approving changes in control of authorised persons. The government has now published its more detailed plans for delivering the new framework using the powers under the Act, developing the proposals set out when the Chancellor of the Exchequer announced his Edinburgh reforms in December 2022.

This briefing paper provides an overview of the Act and the main changes made to the UK financial regulatory system.

<https://www.cliffordchance.com/briefings/2023/07/uk-financial-services-and-markets-act-2023--building-a-smarter-.html>

Spain – the CNMC confirms that it will determine the scope and duration of the prohibition to participate in public tenders in its decisions

The Spanish Markets and Competition Commission (CNMC) has published its notice on the criteria for determining the prohibition to participate in public tenders.

This briefing paper discusses the notice.

<https://www.cliffordchance.com/briefings/2023/07/spain--the-cnmc-confirms-that-it-will-determine-the-scope-and-du.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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