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## **ESMA publishes second overview of national rules governing fund marketing**

The European Securities and Markets Authority (ESMA) has published its second [report](#) on national rules governing the marketing of investment funds under the Regulation on cross-border distribution of funds.

ESMA's key findings are that:

- the transposition of the Directive on cross-border distribution of funds and the entry into force of ESMA's guidelines on funds' marketing communications helped to achieve a greater level of harmonisation in areas where national divergences existed (as identified in ESMA's first report, submitted in 2021); and
- despite the powers NCAs have under the Regulation, only a limited number of NCAs carried out any ex-ante verifications of marketing communications, while an increasing number of NCAs reported carrying out ex-post verifications.

ESMA is due to submit its next report to the EU Parliament, Council and Commission in two years.

## **ESMA and NCAs launch common supervisory action on disclosures and sustainability risks in investment fund sector**

ESMA and the national competent authorities (NCAs) have [launched](#) a common supervisory action (CSA) on sustainability-related disclosures and the integration of sustainability risks. The aim of the CSA is to assess the compliance of supervised asset managers with the relevant provisions in the Sustainable Finance Disclosure Regulation (SFDR), the Taxonomy Regulation and relevant implementing measures, including the relevant provision in the UCITS and AIFMD implementing acts on the integration of sustainability risks.

NCAs will share knowledge and experiences on how to foster convergence in how they supervise sustainability-related disclosure. The main objectives include:

- assessing whether market participants adhere to applicable rules and standards in practice;
- gathering further information on greenwashing risks in the investment management sector; and
- identifying further relevant supervisory and regulatory intervention to address the issue.

### **EMIR: EBA publishes final draft RTS on initial margin model**

The European Banking Authority (EBA) has published its [final draft regulatory technical standards](#) (RTS) on initial margin model validation (IMMV) under the European Market Infrastructure Regulation (EMIR).

The draft RTS set out the supervisory procedures to ensure the prudent use of initial margin models for OTC derivatives. They are intended to enhance compliance with the margin framework for non-cleared OTC derivatives laid down by the Basel Committee for Banking Supervision (BCBS) and International Organization of Securities Commissions (IOSCO).

The final draft RTS, among other things:

- set out the supervisory procedures for the validation of initial margin (IM) models applied for the exchange of IM;
- envisage a proportionate application of supervisory procedures including a standard supervisory procedure to ensure an in-depth validation of the largest banking counterparties and a pragmatic and simplified approach applied to smaller counterparties; and
- envisage a phased-in implementation of the supervisory requirements to ensure a smooth model validation process which will allow more time for smaller counterparties to comply with the new requirements.

The EBA has also published an [opinion](#) calling on the EU co-legislators to consider the establishment of a central validation function in the EU and suggesting that the scope of entities subject to the RTS should be reconsidered so as to apply only to the most significant counterparties.

### **Basel Committee consults on revisions to core principles for effective banking supervision**

The Basel Committee on Banking Supervision has launched a public [consultation](#) on revisions to the core principles for effective banking supervision. The core principles set out minimum standards for the sound prudential regulation and supervision of banks and banking systems. The proposed revisions reflect supervisory developments and structural changes affecting the banking system since the previous update in 2012.

Comments are due by 6 October 2023.

## **IOSCO publishes statement on alternatives to USD LIBOR**

The International Organization of Securities Commissions (IOSCO) has [concluded its review](#) of the extent to which four benchmarks, developed as potential substitutes for USD LIBOR, have implemented IOSCO's 2013 Principles for Financial Benchmarks. The benchmarks included two credit sensitive rates and two Term SOFR rates.

IOSCO identified varying degrees of vulnerability of concern with each rate's implementation of the Principles in scope, as compared to SOFR, along with areas for improvement. IOSCO has also stated that the review confirmed regulatory authorities' concerns that certain credit sensitive rates currently in use exhibit some of the same inherent 'inverted pyramid' weaknesses as LIBOR and that, absent modification, their use may threaten market integrity and financial stability. The Term SOFR rates reviewed were somewhat better placed among the rates reviewed but IOSCO believes that Term SOFR rates are suitable for limited use only, as already highlighted by the Financial Stability Board and certain working groups and regulatory bodies.

For all benchmark administrators, IOSCO recommends that:

- administrators should consider and clearly disclose how they have considered applying the 'concept of proportionality' in assessing compliance with the IOSCO Principles;
- administrators should consider licensing restrictions for use of credit sensitive rates and Term SOFR rates within certain products or by certain user groups, to the extent that restrictions would be appropriate for their rates as a way to prevent widespread usage which would be disproportionate to the underlying markets a benchmark seeks to measure;
- administrators should consider whether to improve the transparency of their rates, either through their methodology documentation or by making underlying statistical data more readily available; and
- administrators, as well as their auditors and independent consultants, should refrain from any representation that the credit sensitive rates reviewed are 'IOSCO-compliant'.

IOSCO has emphasised that market participants considering using credit sensitive rates should proceed with caution and consider the risks identified in the review. IOSCO has also urged regulated market participants considering using credit sensitive rates to contact their relevant authorities before doing so.

## **FSB and IOSCO consult on liquidity management in open-ended funds**

The Financial Stability Board (FSB) and IOSCO have launched separate consultations relating to liquidity in open-ended funds.

The FSB [is consulting](#) on revisions to its 2017 policy recommendations to address structural vulnerabilities from liquidity mismatch in open-ended funds. The proposed revisions incorporate lessons learnt since 2017 and are intended to enhance specificity on the intended policy outcomes to make the recommendations more effective from a financial stability perspective.

IOSCO [is consulting](#) on its draft guidance on anti-dilution liquidity management tools. The guidance is intended to support entities responsible

for open-ended funds to effectively implement the recommendations for liquidity risk management for collective investment schemes, in normal and stressed market conditions. It identifies five anti-dilution liquidity management tools including:

- swing pricing;
- valuation at bid or ask prices;
- dual pricing;
- anti-dilution levies; and
- subscription/redemption fees.

The guidance covers the design and use of these tools by open-ended funds including:

- calibration of liquidity costs and appropriate action thresholds;
- oversight of liquidity management tools by fund boards;
- managers' boards or depositories;
- disclosure to investors; and
- overcoming barriers to effective implementation.

Together, IOSCO's guidance and the FSB's revised policy recommendations are expected to lead to a strengthening of liquidity management by open-ended fund managers compared to current practices.

Comments on both consultations are due by 4 September 2023.

## **FSB releases plenary statement on global financial stability**

The FSB Plenary has issued a [statement](#) following its regular meeting on 6 July in which it discussed preliminary lessons learned from the recent banking sector turmoil and the outlook for global financial stability.

In light of the takeover of Credit Suisse by UBS, the FSB has reprioritised its work programme and included additional focus on lessons for the resolution framework, as well as the interactions between interest rate and liquidity risk across the financial system and the role of technology and social media in deposit runs. By the end of 2023 the FSB intends to report the findings of an in-depth review on the resolution of global systemically important banks (G-SIBs) and of systemically important banks more broadly, which will explore:

- effective public backstop arrangements;
- optionality in implementation of resolution strategies;
- the scope of resolution planning and loss-absorbing capacity requirements;
- the impact of digital innovation on resolution preparedness; and
- the role of deposit insurance in resolution arrangements.

The Plenary also discussed:

- its intention to deliver reports to the G20 in September 2023 on the financial stability risks of leverage in the non-bank sector and on progress on its work programme to enhance resilience in non-bank financial intermediation (NBFi);

- its intention to deliver an updated roadmap for addressing climate-related financial risks to the G20 in July 2023 to reflect the progress made across a range of international organisations;
- its joint paper with the International Monetary Fund (IMF) to synthesise the IMF and FSB policy recommendations on crypto-asset and stablecoin; and
- the end of the remaining USD LIBOR panels at end-June 2023.

## **Financial Services and Markets Act 2023 published**

The [Financial Services and Markets Act 2023](#), which received Royal Assent on 29 June 2023, has been published.

The Act is intended to implement the outcomes of the UK Government's future regulatory framework (FRF) review and to make other significant changes to the structure and content of UK financial services regulation.

Key measures cover:

- the revocation of retained EU law on financial services;
- providing HM Treasury with new regulatory powers;
- changes to the UK regulators' objectives and accountability mechanisms;
- the implementation of other reviews, including in relation to wholesale markets, financial market infrastructure, digital settlement assets, critical third-party service providers, financial promotions, cash access and wholesale cash industry, and measures for insurers in financial difficulties;
- allowing HM Treasury to implement mutual recognition arrangements;
- requiring firms to have specific permission to approve financial promotions; and
- extending powers to impose conditions on changes in control of authorised firms.

## **Wholesale Markets Review: FCA consults on consolidated tape, publishes trading venue perimeter guidance and introduces wholesale markets pre-application support service**

The Financial Conduct Authority (FCA) has [launched](#) a consultation ([CP23/15](#)) on a proposed framework for a UK consolidated tape, a policy statement ([PS23/11](#)) with guidance on the trading venue perimeter, and a wholesale markets [pre-application support service](#) (PASS).

CP23/15 seeks feedback on the FCA's proposed:

- framework for establishing a consolidated tape;
- criteria for how a consolidated tape provider would operate; and
- tender process for appointing a consolidated tape provider.

The FCA hopes that a consolidated tape will increase transparency and access to trading data by lowering its cost and improving data quality. The FCA is proposing a consolidated tape first for bonds, followed by equities. Comments are due by 15 September 2023.

The FCA has also published its final guidance on the trading venue perimeter. This follows a consultation (CP22/18) launched in September 2022, as part of the Wholesale Markets Review.

Among other things, PS23/11 covers:

- technology providers;
- voice brokers;
- portfolio managers operating internal matching systems;
- systems operated for the sole purpose of executing trades on regulated trading venues;
- primary market activity by crowdfunding platforms; and
- bulletin boards.

The guidance comes into force on 9 October 2023. From this date, the European Securities and Markets Authority (ESMA)'s market structures Q&As dealing with the trading venue perimeter will be set aside, so that they do not form part of FCA's supervisory expectations going forward. The FCA will continue to have regard to all other Q&As in section 5 of the ESMA market structures Q&As, in line with its approach to EU non-legislative materials.

The FCA has also launched a pre-application support service (PASS) for overseas wholesale firms and their advisers wishing to expand into the UK, wholesale firms already in the UK but planning to set up in the devolved nations and outside the south-east, and those with innovative, complex or high-risk business models. The PASS is planned to start in July 2023.

## **FCA publishes US dollar LIBOR notices**

The FCA has [published](#) a number of notices implementing its decisions regarding the methodology and use of synthetic US dollar LIBOR.

The US dollar LIBOR bank panel ended on 30 June 2023. The overnight and 12-month US dollar LIBOR settings have permanently ceased. 1-, 3- and 6-month US dollar LIBOR settings are to be published using a synthetic methodology until September 2024.

The FCA has published:

- an [Article 23D](#) notice requiring LIBOR's administrator to change the way the 1-, 3- and 6- month LIBOR settings are calculated;
- an [Article 23C](#) notice allowing use of these synthetic rates in all legacy contracts except cleared derivatives, in line with the draft notices the FCA published in April 2023; and
- two technical Annex 4 notices which modify the relevant legislation in respect of the US dollar LIBOR settings.

All new use of synthetic US dollar LIBOR is prohibited under the Benchmarks Regulation. The FCA has reminded firms to prepare for the final synthetic LIBOR settings to cease at the end of September 2024 and emphasised that parties to contracts still referencing US dollar LIBOR should be taking steps to transition to robust, appropriate reference rates, re-negotiating with counterparties where necessary. The FCA has further reminded market participants that it does not want to see transition to credit sensitive rates

which have the potential to reintroduce the financial stability risks associated with LIBOR.

## **FCA sets out results of liquidity management multi-firm review**

The FCA has [published](#) the results of its [multi-firm review of liquidity management](#) by authorised fund managers and an accompanying [Dear CEO letter](#).

Amongst other things, the FCA found that:

- the tools for effective liquidity management were usually in place at firms, but these lacked coherence when viewed as a full process and were not always embedded into daily activities;
- many firms attached insufficient weight to liquidity risk management in their governance oversight arrangements, with insufficient challenge and escalation, particularly in volatile environments;
- there was a wide range of approaches to liquidity stress testing, with some methodologies insufficient to assess actual liquidity of the portfolio, using assumptions that were not appropriately conservative;
- firms typically had governance and organisational arrangements in place to meet large one-off redemptions, but did not have sufficient arrangements in place to oversee cumulative or market-wide redemptions that could have a significant impact on a fund; and
- there were wide variations in the application of anti-dilution tools such as swing pricing, which could affect the price investors receive when redeeming.

The FCA expects asset managers to review their firm's liquidity management arrangements, consider the application of the FCA's findings together with the accompanying Dear CEO letter, and make any enhancements that may be necessary.

Although the review mainly focussed on authorised fund managers, the FCA expects all asset managers and managers of alternative investment funds to consider the findings for their business too.

## **FCA launches survey on how cryptoasset firms are preparing for financial promotions regime**

The FCA has published a [letter](#) from its Director for Consumer Investments Supervision, Policy and Competition, Lucy Castledine, reminding all firms marketing cryptoassets to UK consumers, including firms based overseas, that they must comply with the financial promotion regime from 8 October 2023.

The FCA has asked firms to acknowledge receipt of the letter and to complete an [online survey](#) by 4 August 2023 to help the FCA understand what firms are doing to prepare for the regime.

The letter reminds firms of the four routes to lawfully communicate cryptoasset promotions to UK consumers under the regime, namely that:

- the promotion is communicated by an authorised person;
- the promotion is made by an unauthorised person but approved by an authorised person;



- the promotion is communicated by a cryptoasset business registered with the FCA under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs); or
- the promotion otherwise complies with the conditions of an exemption in The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.

The letter warns firms that promotions that are not made using one of these routes will be in breach of section 21 of the Financial Services and Markets Act 2000 (FSMA).

The letter also includes information for firms on how to prepare for the regime and, in particular, on registration under the MLRs.

### **FCA sets out regulated fees and levies for 2023/24**

The FCA has published a policy statement ([PS23/10](#)) setting out the 2023/24 periodic regulatory fees and levies for the:

- FCA;
- Financial Ombudsman Service; and
- levies collected on behalf of government departments.

The FCA has also published its feedback to the responses to its consultation paper on draft fees and levies rules (CP23/7).

### **PRA consults on its approach to reviewing its rules**

The Prudential Regulation Authority (PRA) has published a consultation paper ([CP11/23](#)) setting out its proposed approach to reviewing its rules, as required by the Financial Services and Markets Act 2023. The PRA reviews existing rules to assess if they are operating effectively and delivering their intended impact.

Rules may be reviewed for various reasons, including whether:

- the rules have not adequately addressed the risk for which they were designed or if new information emerges to inform the calibration of the rules compared to the risk they address;
- the rules have given rise to unintended consequences;
- firms are arbitraging or avoiding the rules in unanticipated ways;
- the structure of the economy or financial system has evolved;
- relevant international standards affecting the rule have changed; or
- the nature of the issue addressed by the rules has evolved.

The PRA aims to use the consultation to gather responses from all stakeholders on how it can enhance its approach to rule review.

Comments are due by 29 September 2023.

### **PRA publishes policy statement on depositor protection**

The PRA has published a policy statement ([PS7/23](#)) setting out its response to the final part of the representation to its September 2022 consultation paper (CP9/22) on depositor protection.

PS7/23 also contains:

- the PRA's final rules concerning the relevant amendments to the Depositor Protection Part of the PRA Rulebook (DP) (Appendix 1);
- the updated PRA supervisory statement (SS) 18/15 - Depositor and dormant account protection (SS18/15) (Appendix 2);
- the updated PRA statement of policy (SoP) - Deposit Guarantee Scheme (SoP - DGS) (Appendix 3); and
- the updated PRA SoP - Calculating risk-based levies for the Financial Services Compensation Scheme deposits class (SoP - RBL) (Appendix 4).

### **Treasury Committee launches call for input on small business access to finance and SME lending**

The House of Commons Treasury Committee has [launched an inquiry](#) into small business access to finance and small and medium-sized enterprise (SME) lending.

The Committee intends to examine the key challenges SMEs face when seeking finance, the regulation of small business lending, and the role the Government can play in enhancing lending to small businesses.

Among other things, the Committee plans to investigate:

- the accessibility of finance;
- the role of financial innovation in business lending;
- the role of the Bank of England's Term Funding Scheme, credit reference agencies and Government State aid in encouraging small business lending;
- whether SMEs have adequate access to a complaints procedure for disputes with banks or lenders;
- the effectiveness of the Business Banking Resolution Service;
- the impact of Basel 3.1 reforms on access to finance; and
- the performance of the Financial Ombudsman Service (FOS) in handling complaints.

Comments are due by 13 August 2023.

### **BaFin updates minimum requirements for compliance function and additional requirements governing rules of conduct, organisation and transparency**

The German Federal Financial Supervisory Authority (BaFin) has [published](#) an update of its [Circular 05/2018 \(WA\)](#) – Minimum Requirements for the Compliance Function and Additional Requirements Governing Rules of Conduct, Organisation and Transparency (MaComp).

The update relates to the incorporation of the [ESMA guidelines](#) on certain aspects of the MiFID2 appropriateness and execution-only requirements of 12 April 2022 into special part BT 6 of MaComp. The previous content of special part BT 6 relating to the content and provision of the suitability statement pursuant to section 64 para. 4 of the German Securities Trading Act has been moved to part BT 7 of MaComp.

Amongst other things, the ESMA guidelines include requirements on the information to be provided to clients on the suitability assessment and on which data investment services enterprises must obtain about their clients' knowledge and experience.

### **CSSF issues regulation setting countercyclical buffer rate for Q3 2023**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued [Regulation No. 23-02](#) on the setting of the countercyclical buffer rate for the third quarter of 2023. The Regulation was published in the Luxembourg official journal and on the CSSF website on 30 June 2023.

The Regulation provides that the countercyclical buffer rate applicable to the relevant exposures located in Luxembourg remains set at 0.50% for the third quarter of 2023.

The Regulation entered into force upon publication.

### **CSSF and Luxembourg FIU sign an AML/CFT public-private partnership for specialised PFS with several industry organisations**

The CSSF has published a [press release](#) on the signing of a public-private partnership by the CSSF, the Financial Intelligence Unit Cellule de Renseignement Financier (CRF), the Association of Luxembourg Compliance Officers (ALCO), the Luxembourg Alternative Administrators Association (L3A), the Luxembourg Association of Family Offices (LAFO) and the Luxembourg Private Equity Association (LPEA) on 22 May 2023.

The goal of the partnership is to have an integrated approach in which public authorities and the representatives of specialised professionals of the financial sector (specialised PFS) that have signed up to the partnership pool their knowledge and skills to detect, prevent and combat money laundering and terrorist financing (AML/CTF) together. This public-private dialogue is intended to help provide clarity on risks related to specialised PFS activities and defining regulatory explanations and aims to identify specific areas or issues where more regulatory guidance is needed.

### **Polish Financial Supervision Authority assesses capability of WIBOR interest rate benchmark to measure market and economic reality**

The Polish Financial Supervision Authority (KNF) has [conducted an assessment](#) of the capability of the WIBOR interest rate benchmark to measure the market and economic reality. The KNF concluded that WIBOR has the capability to measure the market and economic reality it was designed to measure. According to the KNF's assessment, WIBOR responds appropriately to changes in liquidity conditions, changes in central bank rates and economic reality.

## **Financial Services and Markets (Amendment) Act 2023 gazetted**

The Singapore Government has gazetted the [Financial Services and Markets \(Amendment\) Act 2023](#) (FSM(A)A), which was passed by the Singapore Parliament on 9 May 2023 and assented to by the President on 29 May 2023.

The FSM(A)A amends the Financial Services and Markets Act 2022 and the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 to provide for a legal framework that facilitates information sharing through the Collaborative Sharing of Money Laundering/Terrorism Financing Information & Cases (COSMIC) platform.

COSMIC is a secure digital platform for financial institutions (FIs) to share information with each other on customers that exhibit multiple red flags indicative of potential illicit activities.

The FSM(A)A sets out provisions for COSMIC's initial phase, during which all sharing will be on a voluntary basis. The Monetary Authority of Singapore (MAS) will prescribe six Singapore banks that will participate in COSMIC in the initial phase. Amongst other things, the FSM(A)A will:

- permit the sharing of customer information solely for the purposes of mitigating money laundering, terrorism financing and proliferation financing risks, and such sharing may be done despite any legal or contractual restrictions. Customer information sharing will only be permitted if the customer's behaviour or transaction activities exhibit pre-determined red flags that cross stipulated thresholds;
- prohibit FIs from disclosing the information obtained from COSMIC except in specified circumstances. FIs will also be required to establish controls to safeguard information security and confidentiality;
- provide statutory protection from civil liability for FIs in respect of their disclosure of risk information onto COSMIC, **provided that** the disclosure was made with reasonable care and in good faith, and in accordance with the disclosure thresholds;
- require participant FIs to ensure accuracy and completeness of the information shared on COSMIC and to correct any errors or omissions, especially if a customer has provided further clarifications to address earlier financial crime concerns; and
- allow the MAS access to information on COSMIC for supervisory purposes and allow the Suspicious Transaction Reporting Office direct access to use COSMIC information as an additional data source for its own analysis.

The Financial Services and Markets (Amendment) Act 2023 will come into operation on a date that the Minister appoints by notification in the Government Gazette.

## **SC-STs publishes final recommendations on adjustment spreads for conversions of SIBOR loans to SORA**

The Steering Committee for Singapore Dollar Swap Offer Rate (SOR) & Singapore Interbank Offered Rate (SIBOR) Transition to Singapore Overnight Rate Average (SORA) (SC-STs) has [published its final recommendations](#) on the approach to convert SIBOR loans to SORA, particularly the setting of

adjustment spreads to account for the difference between SIBOR and compounded SORA.

With the transition from SOR to SORA completed, with all outstanding SOR retail loans having transitioned out in October 2022, the industry will now shift its efforts towards the SIBOR transition. The SC-STS' final recommendations are set out in its response to its March 2023 consultation on Adjustment Spreads for the Conversion of Legacy SIBOR Loans to SORA.

Amongst other things, the SC-STS has recommended that corporate loans (including SME loans, bilateral corporate loans and syndicated loans) apply an adjustment spread of 0.2059% and 0.3571% respectively to convert loans referencing 1-month and 3-month SIBOR to compounded SORA. These represent the 5-year historical median spreads between SIBOR and compounded-in-advance SORA in the relevant tenor over the period 30 June 2018 to 30 June 2023.

Retail loans will transition in two phases as follows:

- the first phase will be an active transition phase from 1 September 2023 to 30 April 2024 during which: (i) customers may choose to take up either the SIBOR-SORA Conversion Package (SIBOR-SCP) or any of their bank's prevailing packages; (ii) the SIBOR-SCP will be structured as: 3-month SORA compounded-in-advance + customer's existing SIBOR margin + Adjustment Spread (Retail); and (iii) the Adjustment Spread (Retail) will be determined as the average difference between SIBOR and compounded-in-advance SORA over the preceding three-month period; and
- the second phase will be an automatic conversion phase, which will take place in June 2024 for remaining customers who did not participate in the active transition phase and their banks will apply the SIBOR-SCP with the Adjustment Spread (Retail) set at 0.2426% and 0.3571% respectively to convert loans referencing 1-month and 3-month SIBOR to 3-month compounded-in-advance SORA, representing the 5-year historical median spreads between SIBOR and compounded-in-advance SORA over the period 30 June 2018 to 30 June 2023.

The SC-STS has encouraged market participants and customers with SIBOR loans to adopt the guidance to convert their SIBOR exposures to SORA ahead of SIBOR's discontinuation after 31 December 2024.

## **MAS announces investor protection measures for digital payment token services and consults on amendments to Payment Services Regulations**

The MAS has [announced](#) new requirements for digital payment token (DPT) service providers (DPTSPs) to safekeep customer assets under a trust before the end of the year. The MAS also plans to restrict DPTSPs from facilitating lending and staking of DPTs by their retail customers.

These measures follow from the MAS' [October 2022 consultation](#) proposing regulatory measures to enhance investor protection and market integrity in DPT services. In the first part of its response to the feedback, the MAS notes that the respondents were broadly supportive of the following proposals which MAS will proceed to implement. Amongst other things, they include:

- segregation of customers' assets from DPTSP's own assets and held in trust on a separate set of blockchain addresses. Individual customers' assets may be commingled in an aggregated pool;
- safeguarding of customers' moneys with financial institutions in Singapore;
- conducting daily reconciliation of customers' assets at entity-level and keeping proper books and records - DPTSPs are to be independently audited on their compliance with the segregation and custody requirements;
- provision of monthly statement of accounts;
- maintaining adequate systems, processes, controls, human resources, and governance arrangements to ensure the integrity and security of customers' DPTs, such as having the movement of customers' assets controlled by senior managers and personnel who reside in Singapore and keeping at least 90% of customers' DPTs in cold wallets;
- ensuring that the custody function is operationally independent from other business units; and
- providing clear disclosures to customers on the risks involved in having their assets held by the DPTSP.

To implement the above segregation and custody requirements, the MAS has launched a [subsequent consultation](#) proposing amendments to the Payment Services Regulations (PS Regulations). The MAS intends to effect the proposed amendments to the PS Regulations by October 2023. Notwithstanding the above, the MAS expects DPTSPs to prepare to comply with the policy positions in relation to segregation and custody as set out in the response paper by October 2023. The MAS intends to publish guidelines setting out further expectations on these requirements near the date of the publication of the finalised amendments to the PS Regulations.

Comments on the consultation are due by 3 August 2023.

## **MAS responds to consultation on regulatory measures to enhance investor protection and market integrity in digital payment token services and consults on proposed measures on market integrity**

The MAS has published the [first part](#) of its two-part response to feedback received on its October 2022 consultation on proposed regulatory measures to enhance investor protection and market integrity in DPT services.

In the first part of its responses, the MAS notes that most respondents agreed with the MAS' observations on good industry practices to address market integrity risks, and some respondents suggested the imposition of further measures to prevent market abuse and unfair trading practices.

To address the suggestions, the MAS has launched a [separate consultation](#) proposing requirements for DPTSPs to address unfair trading practices and prohibitions against unfair trading practices generally applicable to all market participants.

Amongst other things, the MAS proposals pertain to:

- requirements for all DPTSPs to maintain adequate systems, processes, controls, human resources, and governance arrangements, in a manner

that is commensurate with the nature, scale and complexity of their business, to (i) handle and execute customers' orders in a fair, orderly, and timely manner; and (ii) prevent and detect unfair trading practices; and

- requirements for DPTSPs operating a trading platform to ensure that the operation of the DPT trading platform is fair, orderly, and transparent. This includes having clear rules on the correction or cancellation of error trades, and controls and corrective action to prevent, avoid or rectify potential disorderly trading conditions.

Regarding the fair, orderly, and timely handling and execution of customers' orders, the MAS has proposed that:

- policies and procedures for handling and executing customers' orders should include the factors which DPTSPs take into account and the considerations for determining the relative importance of the various factors;
- DPTSPs do not receive any commission or other form of payment from other persons for routing customers' orders to them;
- DPTSPs handle and execute the orders in accordance with the time of receipt when comparable orders are received from different customers; and
- DPTSPs maintain policies and procedures to correct or cancel error trades, including pre-trade risk controls for electronic systems.

Regarding the prevention and detection of unfair trading practices, the MAS has proposed that DPTSPs:

- conduct surveillance of orders and transactions on a real-time basis;
- have fair and objective procedures to investigate any potentially unfair trading practices and take appropriate action, including referring to the MAS for review, where appropriate;
- maintain proper records with adequate details of all on-chain and off-chain orders (including cancellation of orders) and transactions for a period of five years;
- maintain a controlled list of persons with access to material non-public information on a need-to-know basis and information barriers to restrict access of material non-public information to this list of persons; and
- maintain policies and procedures in relation to personal trading activities by their officers and employees, which should address pre-dealing and post-dealing procedures, periodic education, monitoring, and review, and restrictions.

Regarding its proposed prohibitions against unfair trading practices, the MAS has proposed to introduce provisions for DPTs that are similar to the provisions under the Securities and Futures Act 2001 on market misconduct, insider trading and liability. The MAS also intends to issue guidelines setting out its expectations, followed by a detailed consultation on regulatory requirements and subsidiary legislation in due course.

In addition, the first response paper also sets out the MAS' responses to the feedback received on the proposed investor protection measures for DPT

services. The MAS has launched a [subsequent consultation](#) proposing amendments to Payment Services Regulations to implement the measures.

Comments on the consultation are due by 3 August 2023.

## **MAS publishes guidance on effective use of data analytics to detect and mitigate ML/TF risks from misuse of legal persons**

The MAS has published an [information paper](#) on the effective use of data analytics (DA) to detect and mitigate money laundering/terrorist financing (ML/TF) risks from the misuse of legal persons.

The information paper sets out positive DA use cases and information for financial institutions (FIs) to refer to in enhancing detection and mitigation of misuse of legal persons risks. The MAS has highlighted that even though the paper does not impose new regulatory obligations, FIs are encouraged to review their existing controls against the practices set out in the paper and assess whether there is scope to incorporate or enhance the use of DA in their ML/TF risk detection.

Amongst other things, the MAS expects FIs to:

- remain vigilant and be discerning of the true purpose of transactions that they facilitate for their customers; and
- to continually improve their detection capabilities and understanding of new risk typologies in this area, which includes shifting beyond the traditional threshold-based monitoring and applying DA to detect hidden linkages and ML/TF risks at scale.

In relation to FIs' progress on detection and mitigation of risks, the MAS notes that there has been:

- an increase in suspicious transaction reports (STRs) filed by FIs in relation to potential misuse of legal persons after the MAS's issuance of the legal persons guidance paper in June 2019;
- an increase in exploration and use of DA to detect risks; and
- proactive identification and alerting authorities by FIs to emerging typologies and networks of bad actors.

The MAS notes that its COSMIC platform should further strengthen the financial system's collective defences against ML/TF risks when implemented in 2024. COSMIC will initially focus on priority ML/TF risks facing Singapore, including risks from the misuse of legal persons. The MAS expects FIs to continue to enhance their technological and DA capabilities to effectively detect cases that meet COSMIC sharing thresholds.

Contributed by Clifford Chance Asia, a Formal Law Alliance in Singapore between Clifford Chance Pte Ltd and Cavenagh Law LLP.

## **MAS, SGX and CDSC collaborate on global access to climate transition-related data**

The MAS, the Singapore Exchange (SGX Group) and the Secretariat of the Climate Data Steering Committee (CDSC), have [signed](#) a memorandum of understanding (MoU) to collaborate on strengthening access by stakeholders around the world to key climate transition-related data.



The CDSC-MAS-SGX collaboration aims to synergise across the MAS Project Greenprint's ESGenome (a disclosure portal for sustainability reporting currently available to SGX-listed entities and which may be extended to small and medium enterprises) and the CDSC's Net-Zero Data Public Utility (NZDPU) (a global repository of verifiable climate transition-related data) to allow companies that report into ESGenome to transmit their data on Scope 1, 2 and 3 greenhouse gas (GHG) emissions to the NZDPU. This is intended to help enhance the tracking of these companies' climate commitments and allow the companies to benefit from access to the NZDPU's global database to inform their own decarbonisation efforts.

The NZDPU plans to allow public access to the above data at no charge. In the future, ESGenome plans to work towards enabling its users to access NZDPU data via the ESGenome interface, transmit more varied information to the NZDPU, and benchmark their firms' progress against global and regional data.

Work on the CDSC-MAS-SGX collaboration will commence in the first quarter of 2024.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **Reg Talk: UK Retained EU Law (Revocation and Reform) Act 2023 – Key changes on the way to Royal Assent**

The Retained EU Law (Revocation and Reform) Bill gained Royal Assent on 29 June 2023, becoming the Retained EU Law (Revocation and Reform) Act 2023. The 'REUL Act' as adopted retains many key features of the original 'Brexit Freedoms Bill', including the provisions that apply to retained EU law relating to financial services and markets, with limited changes. But the scope of the controversial 'sunset' provisions set out in the original Bill has been significantly limited.

This RegTalk blog post outlines the key changes that have been made to the REUL Act as it passed through the legislative process.

RegTalk is a Clifford Chance blog housed on the Financial Markets Toolkit providing insights and updates from our Global Financial Regulation Group on the latest regulatory trends and developments.

<https://financialmarketstoolkit.cliffordchance.com/en/financial-markets-resources/resources-by-type/blogs/reg-radar/uk-retained-e-law--revocation-and-reform--act-2023---key-changes-on-the-way-to-royal-assent---june-2023.html>

### **Reg Talk: FCA moves forward with plans for a UK consolidated tape**

The Financial Conduct Authority (FCA) has published a consultation (CP23/15) on its proposals for the development of a consolidated tape in the UK, as well as other significant changes in the financial industry. The consultation runs until 15 September 2023, and the FCA expects to finalise its policy by the end of the year, with a view to the introduction of the tape in 2024.

This RegTalk blog post provides an overview of the key points discussed in the consultation paper and sheds light on what these proposals will mean for UK market participants.

[https://financialmarketstoolkit.cliffordchance.com/en/financial-markets-resources/resources-by-type/blogs/reg-radar/Consolidated\\_Tape---june-2023.html](https://financialmarketstoolkit.cliffordchance.com/en/financial-markets-resources/resources-by-type/blogs/reg-radar/Consolidated_Tape---june-2023.html)

# CLIFFORD CHANCE

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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