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- **MAS updates frequently asked questions on Financial Advisers Act, Financial Advisers Regulations, Notices and Guidelines**
- **Recent Clifford Chance briefings: Central bank digital currencies, and issuance of Additional Tier 1 instruments possible under Polish law. Follow this link to the briefings section.**

## **CRR: ITS ON DIVERSIFIED INDICES PUBLISHED IN OJ**

Commission Implementing Regulation (EU) 2023/2056 amending the [implementing technical standards](#) (ITS) set out in Implementing Regulation (EU) 945/2014 under the Capital Requirements Regulation (CRR) has been published in the Official Journal of the European Union.

The amending Regulation replaces the annex to the ITS which lists the diversified indices required under the CRR.

## **NPLs: ITS on data templates for transactions published in OJ**

[Commission Implementing Regulation \(EU\) 2023/2083](#) containing ITS specifying the templates to be used by credit institutions for the provision of information under the Non-performing Loans Directive (NPL Directive) has been published in the Official Journal.

The ITS include three annexes containing data templates to be used in NPL transactions to provide detailed information on credit institutions' credit exposures in the banking book, a data glossary and instructions for the use of the data templates and data glossary.

The ITS are intended to provide a common standard for NPL transactions across the EU enabling cross-country comparison and reducing information asymmetries between the sellers and the buyers of NPLs.

The Implementing Regulation will enter into force on 19 October 2023.

## **DORA: ESAs report on landscape of ICT third-party providers in the EU**

The European Supervisory Authorities (ESAs) have published an [indicative overview](#) of information and communication technology (ICT) third-party providers (TPPs) as part of their preparations for the Digital Operational Resilience Act (DORA). The analysis is intended to map the provision of ICT services by TPPs to financial entities in the EU and to support the ESAs' policy making process in light of the EU Commission's call for advice to further specify the criteria for critical ICT TPPs and to determine oversight fees.

## **DORA: ESAs publish criteria and oversight fees for critical ICT third-party providers**

The ESAs have [published](#) a response to the EU Commission's call for advice on two delegated acts under the DORA, in which they set out further criteria for identifying critical ICT third-party service providers (CTPPs) and determine the oversight fees they must pay.

In their advice, the ESAs propose a two-part process for the assessment of CTPPs. Under the first step, providers will be assessed against six quantitative indicators, alongside respective minimum relevance thresholds. The indicators include considerations around the number of financial entities

reliant on the ICT services of the provider, whether the provider offers ICT services which support critical and important functions, and the complexity of migrating ICT services from the provider. Providers that have met the criteria and thresholds from the first step will then progress to step two. Step two indicators include consideration of whether the discontinuation of the provider's services would have a high impact on the activities and operations of their financial entity users, the provider's market share and their use of sub-contractors.

The ESAs also note that they intend to publish details on the CTPP designation procedure and the related methodology within six months of the adoption of the relevant delegated act.

In their advice on CTPP oversight fees, the ESAs set out their proposals for:

- the types of estimated expenditures that shall be covered by fees;
- the basis for the calculation of that expenditure;
- the information available for determining the applicable turnover of the CTPPs (which is used as the basis of fee calculation);
- the method of fee calculation; and
- other practical issues regarding the collection of fees.

The ESAs intend to specify other practical aspects on the estimation of oversight expenditures and operational aspects in the context of the implementation of the oversight framework.

## **MiCA: EBA publishes advice on significance criteria and supervisory fees**

The European Banking Authority (EBA) has [published](#) its response to the EU Commission's call for advice on two delegated acts under the Markets in Cryptoassets Regulation (MiCA), in which it sets out its proposals for the criteria for determining the significance of asset-referenced tokens (ARTs) and electronic money tokens (EMTs), and for the fees that may be charged by the EBA to significant ART and EMT issuers.

In its advice, the EBA proposes a set of core and ancillary indicators for classifying ARTs and EMTs as significant. These include assessments of the tokens' and their issuers' financial sector interconnectedness, as well as whether the activities of the issuer are considered to be significant on an international scale.

Regarding the supervisory fees, the EBA sets out its proposals for:

- the types of estimated expenditures that shall be covered by fees;
- the methods used to calculate fees and to allocate costs between issuers of significant ARTs and EMTs; and
- other practical issues regarding the collection of fees.

## **ESMA publishes 2024 work programme**

The European Securities and Markets Authority (ESMA) has published its [work programme for 2024](#).

ESMA's work will focus on the following legislative files on digital change and the green transition for 2024:

- developing rules for sustainable finance as part of the new European Green Bond Regulation;
- delivering its final report on greenwashing, proposing actions to combat this practice;
- finalising technical standards for the European Single Access Point (ESAP) and continuing preparatory work on the necessary IT infrastructure that will support it;
- concluding the work on technical standards and guidelines in relation to the Markets in the MiCA regulation and the DORA;
- beginning the process of selecting and authorising Consolidated Tape Providers (CTPs) in the EU, in addition to developing technical standards and guidelines;
- undertaking several tasks mandated under the recently concluded reviews of the Alternative Investment Fund Managers (AIFMD) and Undertakings for Collective Investment in Transferable Securities (UCITS) Directives, the Central Securities Depositories Regulation (CSDR), and under the new Retail Investment Strategy; and

the ongoing reviews of the European Market Infrastructure Regulation (EMIR) as well as the new Listing Act, which may also lead to new mandates for ESMA in 2024.

### **FSB publishes stocktake of international data standards relevant to cross-border payments**

The Financial Stability Board (FSB) has published a [stocktake](#) of international data standards relevant to cross-border payments. The stocktake forms part of a wider initiative, under the G20 Cross-border Payments Roadmap, to assess and address the cost, speed, access and transparency challenges prevalent in cross-border payments.

The stocktake identified the following key issues:

- inconsistency and divergence in the implementation of data framework requirements across jurisdictions, in particular with regard to the data needed to accompany a cross-border payment transaction;
- uncertainty among payment providers as to how to balance the various obligations under different data frameworks; and
- requirements that data be stored or processed in-country, which could potentially result in higher costs for firms, difficulties in meeting other regulatory obligations, and a reduction in security and system resilience.

The FSB has listed five focus areas intended to help address these issues and promote a competitive and innovative cross-border payment system. These are:

- the alignment of AML/CFT related data requirements across jurisdictions;
- the promotion of greater cooperation in approaches to data privacy;
- the promotion of alignment and interoperability of technical standards;

- the exploration of how current data frameworks enable or impede future developments, such as open banking and digital identity; and
- the increase of interoperability across data frameworks applicable to cross-border payments.

The FSB intends to build on the stocktake and develop recommendations for promoting alignment and interoperability across data frameworks applicable to cross-border payments for public consultation by early 2024.

### **Basel 3.1: BoE updates implementation timetable**

The Bank of England (BoE) has [updated](#) its intended timetable to complete the implementation of the Basel 3.1 standards in the UK.

Following feedback received from the Prudential Regulation Authority's (PRA's) consultation paper 16/22 on the implementation of the Basel 3.1 standards, the BoE has made two updates to its intended timetable.

*Firstly*, the BoE intends to move the implementation date of the final Basel 3.1 policies by six months to 1 July 2025 and reduce the transitional period to four and a half years to ensure full implementation by 1 January 2030.

*Secondly*, it intends to split publication of its near-final policy statements to allow appropriate time to fully consider the responses to the credit risk and output floor proposals in the PRA's consultation paper without delaying publication of rules on other parts of the package. The BoE therefore intends to publish:

- the near-final policies on market risk, credit valuation adjustment risk, counterparty credit risk and operational risk in Q4 2023; and
- the near-final policies on credit risk, the output floor, and reporting and disclosure requirements in Q2 2024.

### **HMT publishes response to ring-fencing consultation and consults on near-term reforms**

HM Treasury (HMT) has published the Government's initial [response](#) to its March 2023 [call for evidence](#) on aligning the ring-fencing and resolution regimes, and a separate consultation on near-term reforms intended to improve the functionality of the existing ring-fencing regime.

The Government intends to continue working with the BoE and PRA to consider the financial stability benefits of ring-fencing that should be retained in the context of other regulatory regimes, taking into account recent bank failures as well as related domestic and international policy programmes. A policy response and any proposals for further reform, which would be subject to consultation, are expected in H1 2024.

Separately, the Government is [seeking views](#) on [draft legislation](#) to implement near-term reforms to the ring-fencing regime. The proposed changes, which broadly seek to take forward Skeoch Review recommendations, relate to:

- the deposit, secondary and *de minimis* thresholds;
- the removal of geographical restrictions to allow ring-fenced bodies (RFBs) to establish operations outside of the UK or EEA;
- the introduction of a four-year transition period following a merger or acquisition;

- updating the exceptions to excluded activities for RFBs to permit certain products and services; and
- definitions and technical amendments.

The Government is also seeking further evidence on, among other things:

- the notice of determination requirement for onboarding;
- the status of trustees and insolvency practitioners;
- various definitions; and
- restrictions preventing RFBs from providing structured FX derivative products.

Comments are due by 26 November 2023. The Government intends to lay secondary legislation before Parliament in early 2024.

### **PRA consults on ring-fenced bodies and managing risks from third-country subsidiaries and branches**

The PRA has published a consultation paper ([CP20/23](#)) setting out its proposed rule and policy updates in respect of the establishment and maintenance of third-country branches and subsidiaries within RFBs sub-consolidation groups.

HMT is currently consulting on legislative changes that, amongst other things, would allow RFBs to establish entities in third countries.

The PRA's proposals would result in changes to the RFBs Part of the PRA Rulebook ([Appendix 1](#)) and supervisory statement SS8/16 – RFBs ([Appendix 2](#)).

The policy proposals included in CP20/23 would:

- introduce a rule whereby RFBs must ensure that any third-country branch or third-country subsidiary within the RFB sub-consolidation group does not present a material risk to the provision of core services in the UK by the RFB; and
- set out a non-exhaustive set of supervisory expectations that the PRA will consider when determining if a third-country branch or third-country subsidiary of an RFB or ring-fenced affiliate poses a material risk to the provision of core services in the UK by the RFB.

Comments are due by 27 November 2023.

### **PRA consults on capitalisation of foreign exchange positions for market risk**

The PRA has launched a consultation ([CP17/23](#)) on capitalisation of foreign exchange (FX) exposures under the market risk capital framework. The consultation also sets out the process for seeking permission to exclude Structural Foreign Exchange (SFX) positions from this capital calculation.

In its November 2022 consultation on the implementation of the Basel 3.1 standards (CP16/22), the PRA set out that the existing regulation from the onshored CRR Article 352 would be moved with amendments to Article 325 in the proposed Market Risk: General Provisions (CRR) Part of the PRA Rulebook.

The proposals in CP17/23 relate to the post-Basel 3.1 PRA proposed implementation described in CP16/22, and would result in changes to:

- the proposed Article 325 of the PRA Rulebook ([Appendix 1](#));
- the proposed supervisory statement (SS) 13/13 – Market Risk from CP16/22 ([Appendix 2](#)); and
- the CRR Permission 352(2) supplementary application form ([Appendix 3](#)).

The consultation also:

- clarifies that items held on the balance sheet at historical exchange rates are not to be included as a risk position for the purposes of calculating Pillar 1 capital requirements;
- sets out the types of positions eligible for the SFX;
- sets out expectations on the calculation of the maximum net FX risk position and the overall net FX position for the own funds calculation in SS13/13; and
- updates the supplementary application form.

Comments are due by 31 January 2024. The PRA proposes that the implementation date for the changes resulting from this consultation would coincide with its implementation of the Basel 3.1 standards, currently set for 1 January 2025.

## **FCA and PRA consult on diversity and inclusion rules**

The PRA has launched a consultation ([CP18/23](#)) setting out its proposed rules and expectations aimed at improving diversity and inclusion in PRA-regulated firms. The proposals have been developed in parallel with the Financial Conduct Authority (FCA), which is also launching a consultation in relation to FCA-regulated firms ([CP23/20](#)). The proposals build on suggestions made by respondents to the regulators' joint discussion paper (DP2/21), published in July 2021.

The proposals include:

- requiring firms to publish a firm-wide diversity and inclusion strategy;
- requiring the largest firms to set their own diversity targets where they identify underrepresentation subject to a minimum of targets for women and ethnicity;
- requiring firms to publish a strategy specifically promoting diversity and inclusion on the board and clarifying expectations on succession planning and board/board sub-committee responsibilities for diversity and inclusion;
- an expectation that responsibility for diversity and inclusion be allocated to the relevant senior management functions and measures for accountability to be put into place,
- requiring firms to monitor diversity and inclusion internally and to take appropriate actions where necessary;
- requiring the largest firms to report certain diversity and inclusion data alongside information on the targets they have set for themselves; and

- requiring the largest firms to disclose information on the targets they have set for themselves, the demographic diversity of their organisation, and the outcome of inclusion surveys.

Comments on both consultation papers are due by 18 December 2023. The feedback will be used to develop final rules planned for publication in 2024 and the regulators propose that the new rules and expectations would come into effect one year after publication of the final policy.

### **FCA publishes Dear CEO letter on supervision strategy for corporate finance firms**

The FCA has written a [letter](#) to the chief executives of corporate finance firms (CFFs), setting out its views on the consumer harms most likely to arise from CFFs' business models, and its expectations of firms regarding the mitigation of these harms.

The letter details potential drivers of harm in the areas of unsuitable products, market abuse, financial crime and financial resilience. It then sets out the FCA's supervisory priorities for CFFs, which include:

- ensuring firms comply with the client categorisation requirements in COBS 3, particularly those regarding the categorisation of a client as a *per se* professional or elective professional;
- assessing firms' consideration of the extent to which the Consumer Duty applies to their activities;
- ensuring that firms are using their regulatory permissions appropriately and that incorrect or outdated permissions on the Financial Services Register are addressed; and
- continuing its reviews of firms' systems and controls to ensure they comply with certain aspects of the UK Market Abuse Regulation, their Personal Account Dealing policies, and conflicts of interest obligations.

CEOs are expected to discuss the expectations set out in the letter with their directors and board, and to have agreed appropriate actions and next steps by the end of November 2023.

### **BaFin consults on draft minimum requirements for risk management of payment services and e-money-institutions.**

The German Federal Financial Supervisory Authority (BaFin) has [launched](#) a consultation on a draft circular on minimum requirements for the risk management of payment services institutions and e-money institutions (ZAG-MaRisk) within the meaning of the German Payment Services Supervision Act (ZAG).

Based on section 27 para 1 ZAG, the draft ZAG-MaRisk provides a flexible and practical framework for setting up a proper business organisation of these institutions.

In addition, the requirements of sections 17 and 18 ZAG (security requirements for customer funds) and section 26 ZAG (outsourcing) are specified.

BaFin will accept comments until 6 December 2023.



## HKEX consults on GEM listing reforms

The Stock Exchange of Hong Kong Limited (SEHK), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), has launched a [consultation](#) seeking market feedback on GEM listing reform. The proposals set out under the consultation paper are intended to enhance GEM's attractiveness, whilst maintaining high standards of investor protection. The proposals include the following:

- to implement a new streamlined transfer mechanism with modified eligibility requirements, enabling qualified GEM issuers to transfer to the Main Board without the need to: appoint a sponsor to carry out due diligence, or produce a prospectus-standard listing document;
- to introduce a new financial eligibility test (market capitalisation/revenue/R&D test) targeting high growth enterprises that are heavily engaged in research and development activities; and
- to remove the mandatory quarterly reporting requirements for GEM issuers and to align other ongoing obligations with those of the Main Board.

Comments on the consultation are due by 6 November 2023.

## SFC announces measures to step up information dissemination and investor education on virtual asset trading platforms

The Securities and Futures Commission (SFC) has [announced](#) a series of measures to reinforce information dissemination and investor education in light of public concerns about unregulated virtual asset trading platforms (VATPs). Amongst others, the SFC intends to put in place the following measures:

- to publish VATP lists to ensure that information is disseminated in a clear, transparent and timely manner. These include: a list of licensed VATPs; a list of closing-down VATPs setting out the names of VATPs required by law to close down within a specified period; a list of deemed licensed VATPs consisting of the names of VATPs which are deemed to be licensed as of 1 June 2024; and a list of VATP applicants;
- to enhance and issue a dedicated list of suspicious VATPs which is easily accessible and with prominence on the SFC's website;
- to launch a public campaign together with the Investor and Financial Education Council to raise awareness in guarding against fraud, and to enhance investor education by various means such as mass media, social media and education talks, facilitating the public's understanding of the risks associated with virtual assets and potential fraud; and
- to continue to strengthen the SFC's intelligence gathering process towards different businesses related to virtual assets. The SFC will continue to take follow-up and enforcement actions against suspicious VATPs that may have violated the law, and refer cases to the Police when necessary.

The SFC has encouraged members of the public to come forward and file complaints via its Online Complaint Form regarding any suspicious activities they may encounter. Adhering to the 'same business, same risks, same rules' principle, the SFC intends to work with the Hong Kong Government to

regularly review the regulatory regime in Hong Kong and consider timely measures in light of new market developments.

### **Singapore Government gazettes regulations on exemptions for cross-border arrangements for foreign offices and foreign related corporations**

The Singapore Government has [gazetted](#) amendments to regulations (the Amendment Regulations) pertaining to the exemption frameworks for cross-border arrangements for foreign offices and foreign related corporations of financial institutions (FIs) regulated under the Securities and Futures Act (SFA) and the Financial Advisers Act (FAA).

The MAS announced the implementation of the exemption frameworks on 8 October 2021 when it released its response to the original consultation paper dated 15 March 2021 proposing the implementation of the exemption frameworks. In paragraphs 5.8 and 5.9 of the response, the MAS reiterated that the opt-in requirements for accredited investors (AI) under the Securities and Futures (Classes of Investors) Regulations 2018 (SF(COI)R) will apply to customers under the exemption frameworks for all in-scope activities under both the SFA and FAA, and customers who have not opted to be treated as an AI by the Singapore FI or the foreign related corporation of Singapore financial institution (FRC) would have to do so for them to be served under the exemption frameworks. However, a two-year implementation timeline was afforded for FIs and FRCs to obtain the required opt-in.

The changes set out in the Amendment Regulations come into effect on 8 October 2023, and from this effective date, FIs and FRCs will be required to complete the opt-in process before they can treat their respective customers in Singapore as AI under the exemption frameworks.

### **MAS publishes circular on ensuring effective detection of sanctions-related risks**

The Monetary Authority of Singapore (MAS) has published a [circular](#) to all FIs setting out additional guidance for them to consider to ensure that they have robust processes in place to effectively detect and manage sanctions-related risks.

In the circular, the MAS highlights that while it does not implement unilateral sanctions imposed by other jurisdictions, it does expect FIs to consider the reputational, legal, and operational risks arising from any actions they might take following these unilateral sanctions, and to take appropriate measures to manage these risks.

Specifically, the MAS expects FIs to:

- have established a governance process to ensure strong Board and Senior Management (BSM) oversight over sanctions-related risks. A sound governance process should include a clear risk appetite in relation to the FI's sanctions-related risks, including on indirect exposure to sanctioned persons, activities, or jurisdictions; clear roles and responsibilities within the FI with regard to detecting, monitoring, and managing sanctions-related risks; established risk metrics to help BSM regularly monitor for significant sanction-related risks exposures, and to manage the risk on an ongoing basis; and a clearly defined escalation process for the first- and second-

line functions to surface material sanctions-related risk events to the BSM expediently;

- continue to strengthen sanction-risk detection capabilities by using data analytics and lookback mechanisms, where an effective lookback mechanisms should: clearly define trigger events, scope of transactions and period of lookback; and be initiated soon after the trigger event; and
- review their anti-money laundering and countering the financing of terrorism frameworks and controls against the additional guidance set out in the circular and take steps to enhance their controls as appropriate in case of gaps.

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

## **MAS updates frequently asked questions on Financial Advisers Act, Financial Advisers Regulations, Notices and Guidelines**

The MAS has updated its set of [frequently asked questions](#) (FAQs) on the Financial Advisers Act, Financial Advisers Regulations, Notices and Guidelines by adding Question 15 pertaining to the licensing requirements for financial advisers.

Question 15 provides guidance on procedures when licensed financial advisers wish to establish a subsidiary or an overseas branch. The MAS has clarified that licensed financial advisers are required to seek the MAS' approval before establishing a subsidiary or an overseas branch, and that the MAS will not approve such set-ups unless there are exceptional reasons. Such subsidiary or branch should be established to primarily support the business of the licensed financial adviser. In addition, the MAS mandates licensed financial advisers to also, among others, demonstrate their ability to effectively oversee and take responsibility for the subsidiary's or branch activities.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **Central bank digital currencies – a new type of intermediary**

As the global thinking in respect of central bank digital currencies (CBDCs) evolves, models for public-private collaboration for distributing CBDCs are becoming clearer. This includes proposals by the BoE as well as the recent ground-breaking [Project Sela](#) from the Bank for International Settlements (BIS) Innovation Hub, the Bank of Israel and the Hong Kong Monetary Authority (HKMA), which aimed to reduce financial exposure for retail CBDC intermediaries by developing a model where they are not required to hold client assets.

This has the effect that CBDCs are treated as closely as possible to physical cash and potentially paves the way for a more accessible CBDC system. Clifford Chance was delighted to advise the BIS Innovation Hub on this significant project.

This briefing paper explores these developments, and analyses the legal architecture and regulatory framework that may be required to facilitate

structures when intermediaries do not hold CBDC (or other assets) belonging to their clients.

<https://www.cliffordchance.com/briefings/2023/09/central-bank-digital-currencies---a-new-type-of-intermediary.html>

## **Issuance of Additional Tier 1 instruments possible under Polish law**

Poland has created Additional Tier 1 (AT1) instruments within the meaning of the CRR through the Act of 14 April 2023 (the Amendment Act) which amends, among others, the Act of 15 January 2015 on Bonds and the Banking Law of 29 August 1997.

As of 1 October 2023 (which is the date on which the Amendment Act came into force), it is possible to issue contingent convertible bonds (so called obligacje kapitałowe) and to incur subordinated loans (pożyczki podporządkowane) that can be qualified as AT1 instruments which are governed by Polish law. To be treated as Additional Tier 1 capital under the CRR the relevant instruments need to obtain permission from the Polish Financial Supervision Authority (Komisja Nadzoru Finansowego).

This briefing paper discusses the instruments.

<https://www.cliffordchance.com/briefings/2023/09/issuance-of-additional-tier-1-at1-instruments-possible-under-p.html>

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