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## **Implementing Regulation amending ITS on disclosure of own funds information by small and non-interconnected investment firms published in OJ**

[Commission Implementing Regulation \(EU\) 2023/2526](#), which amends the implementing technical standards (ITS) laid down in Implementing Regulation (EU) 2022/389 has been published in the Official Journal.

The ITS set out templates to be used by competent authorities for the disclosure of information on the composition of own funds and the own funds requirements of certain investment firms, as required by the Investment Firms Directive (IFD). Investment firms that qualified as small and non-interconnected were exempt from the disclosure requirements of the ITS.

As certain Member States have numerous small and non-interconnected investment firms, the lack of publicly available information on those firms' own funds may hinder the ability to perform meaningful comparisons across different Member States. Implementing Regulation (EU) 2023/2526 therefore amends the ITS to bring small and non-interconnected investment firms under the same requirements as other investment firms.

The Implementing Regulation will enter into force on 10 December 2023.

## **Sustainable finance: Taxonomy Environmental Delegated Act and Delegated Act on additional economic activities that qualify as making a substantial contribution to climate environmental objectives published in OJ**

Two Delegated Regulations relating to the criteria for meeting the environmental objectives under the EU Taxonomy Regulation have been published in the Official Journal.

[Commission Delegated Regulation \(EU\) 2023/2486](#), the Taxonomy Environmental Delegated Act, sets technical screening criteria (TSC) for economic activities making a substantial contribution to one or more of the non-climate environmental objectives. It supplements the Taxonomy Regulation and amends the Taxonomy Disclosures Delegated Act ((EU) 2021/2178) regarding specific public disclosures for those economic activities.

[Commission Delegated Regulation \(EU\) 2023/2485](#) amends the Taxonomy Climate Delegated Act ((EU) 2021/2139) to include additional economic activities that qualify as making a substantial contribution to the climate environmental objectives, that is climate change mitigation and climate change adaptation.

The two Delegated Regulations will enter into force on 11 December 2023 and will apply from 1 January 2024, with the exception of certain provisions of Delegated Regulation (EU) 2023/2485 relating to generic TSC for 'do no significant harm' to pollution prevention and control applicable to different activities, which will apply from 1 January 2025.

## **CRR: EBA publishes draft RTS on assessing new market risk internal models**

The European Banking Authority (EBA) has published its [final draft regulatory technical standards](#) (RTS) under the Capital Requirements Regulation (CRR) on the assessment methodology under which competent authorities verify

institutions' compliance with the requirements applicable to their internal models under the Fundamental Review of the Trading Book (FRTB) rules.

The draft RTS set out a framework for competent authorities to assess the FRTB requirements focusing on governance, the internal risk-measurement model and the internal default risk model. Some assessment techniques are mandatory, while others are optional depending on the situation of the institution, such as, on the basis of proportionality considerations. The RTS are intended to provide clarity on the nature of requests institutions can expect to receive from competent authorities during the investigation phase.

The final draft RTS form part of the phase four deliverables of the EBA roadmap on market risk and counterparty credit risk approaches.

### **EBA consults on guidelines on preventing abuse of funds and certain cryptoassets transfers for money laundering and terrorist financing**

The EBA has launched a [consultation](#) on its draft 'travel rule' guidelines on preventing the abuse of funds and certain cryptoassets transfers for money laundering and terrorist financing (ML/TF) purposes under Regulation (EU) 2023/1113 on information accompanying transfers of funds and certain cryptoassets.

The travel rule guidelines specify the steps that payment service providers (PSPs), intermediary PSPs (IPSPs), cryptoasset service providers (CASPs) and intermediary CASPs (ICASPs) should take to detect missing or incomplete information that accompanies a transfer of funds or cryptoassets. They also detail the procedures all these providers should put in place to manage a transfer of funds or a transfer of cryptoassets that lacks the required information. The travel rule guidelines are intended to create a common understanding to ensure the consistent application of EU law as well as a stronger anti-money laundering and countering the financing of terrorism (AML/CFT) regime.

Comments are due by 26 February 2024.

### **Chancellor delivers Autumn Statement and provides update on reforms**

The Chancellor of the Exchequer, Jeremy Hunt, has [delivered](#) his Autumn Statement and provided an update on various aspects of the Edinburgh and Mansion House reforms.

Alongside the Autumn Statement, the UK Government has published:

- a near-final version of the statutory instrument to replace the EU Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation and create a new UK retail disclosure framework;
- a summary of the responses to its July 2023 consultation on aspects of the Short Selling Regulation related to sovereign debt and credit default swaps and its final policy position under the UK's new short selling regime;
- a summary of the consultation feedback and the Government's final approach to implementing the Digital Securities Sandbox (DSS), which is intended to facilitate the use of digital assets in financial markets. Legislation implementing the DSS will be laid before Parliament in due course;

- the Future of Payments Review report, which considers how payments are likely to be made in the future and makes recommendations on the steps needed to deliver world leading retail payments and boost UK fintech competitiveness;
- a new package of pension reforms intended to provide better outcomes for savers, drive a more consolidated pensions market and enable pension funds to invest in a diverse portfolio, following on from reforms set out at Mansion House in July 2023;
- a letter from the Chancellor and Secretary of State for Work and Pensions to the Chief Executives of the FCA and the Pensions Regulator providing further information on the pensions investment measures;
- a letter from the Secretary of State for Business and Trade to the CEO of the Financial Reporting Council (FRC) providing an update on the FRC's remit; and a letter from the Capital Markets Industry Taskforce on corporate governance reform.

## **PRA and FCA consult on prudential assessment of acquisitions and increases in control**

The Prudential Regulation Authority (PRA) has published a [consultation paper](#) (CP25/23) setting out its and the Financial Conduct Authority (FCA)'s proposals to replace the EU guidelines on the prudential assessment of acquisitions and increases of qualified holdings in the financial sector (3L3 Guidelines).

The policy proposals included in CP25/23 are:

- a new supervisory statement – Prudential assessment of acquisitions and increases in control (Appendix 1);
- new FCA guidance (Appendix 2);
- the deletion of SS33/15 – Aggregation of holdings for the purpose of prudential assessment of controllers, and the removal of the equivalent section from the FCA Handbook (Appendix 3); and
- the removal of 3L3 Guidelines references in SoP – Interpretation of EU Guidelines and Recommendations: Bank of England and PRA approach after the UK's withdrawal from the EU (Appendix 4), and equivalent from the FCA Handbook and website.

The PRA's proposed supervisory statement and FCA's guidance would set guidance and expectations on:

- identifying qualified holdings, including the concepts of significant influence, aggregated holdings and indirect controllers;
- submitting the change in control notification, the additional information the PRA and the FCA may require, and the approach to completeness;
- the assessment criteria (in accordance with section 186 of FSMA) used to assess notifications to acquire or increase control in PRA and FCA authorised firms operating in the UK; and
- how the PRA and the FCA would use their statutory powers to impose conditions on an approval when it advances their objectives.

Comments are due by 23 February 2024.

## **FCA consults on regulated fees and levies for 2024/25**

The FCA has published a [consultation paper](#) (CP23/22) with policy proposals for its regulatory fees and levies for 2024/25.

CP23/22 sets out the FCA's proposed policy changes on how it will recover the costs of carrying out work set out in its business plan. CP23/22 also outlines some adjustments to the rules affecting the Financial Ombudsman Service and Financial Services Compensation Scheme levies.

Comments are due by 16 January 2024.

## **BaFin publishes guidance note on operation of crypto securities register**

The German Federal Financial Supervisory Authority (BaFin) has published its [guidance note 03/2023](#) on the operation of a crypto securities register pursuant to section 1 para 1a sentence 2 no 8 of the German Banking Act (KWG).

The note is addressed to all market participants and provides guidance on the interpretation of the legal definition of, and license requirement for, the operation of a register. It also distinguishes the operation of a crypto securities register from other activities regulated under the KWG.

The operation of crypto securities registers was added to the catalogue of financial services in section 1 para 1a sentence 2 KWG in 2021 by way of the Law on Electronic Securities (eWpG) and is defined as 'the operation of a crypto securities register pursuant to section 16 eWpG (crypto securities register operation)'. This inclusion and license requirement for the operation of a crypto securities register is intended to take into account investor protection, in particular the protection of ownership and market integrity as well as the transparency and functioning of capital markets in the case of electronic securities and crypto fund units issued by using distributed ledger technology (DLT).

In light of the increasing digitalisation of financial markets, the German legislator has, with the eWpG, for the first time opened up German securities law outside the state sector to the issue of electronic securities, i.e. securities without a physical certificate. BaFin notes that due to the high practical relevance of this form of refinancing, the introduction of electronic securities is initially limited to electronic bearer bonds (section 1 eWpG) and electronic unit certificates pursuant to section 1 of the Ordinance on Crypto Fund Units.

## **AML: Bank of Italy publishes new FAQs on beneficial owners**

The Bank of Italy, together with the Ministry of Economy and the Financial Intelligence Unit, has developed a new set of [frequently asked questions](#) (FAQs) on the identification of beneficial owners and the register of beneficial owners.

In particular, the FAQs address issues relating to:

- the identification of the beneficial owner in the case of a customer that is a public administration;
- the hierarchical order of criteria in identifying the beneficial owner of corporations; and

- the identification in the case of indirect ownership where there are subsidiaries in the chain of ownership.

## **CSSF announces details of 2023 financial crime survey**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has [announced](#) the details of its 2023 survey on financial crime.

The CSSF will launch the annual online survey for the year 2023 on 19 February 2024.

The objective is to collect standardised key information concerning ML/TF risks to which professionals under CSSF supervision are exposed and the implementation of measures to mitigate these risks. This cross-sector survey contributes to the CSSF's ongoing assessment of ML/TF risks present in the financial sectors under its supervision and forms part of the anti-money laundering and countering terrorism financing (AML/CTF) risk-based supervision approach put in place by the CSSF.

The CSSF has indicated that the 2023 survey remains mostly unchanged compared to the previous year, but some questions have been removed, added or amended. The new and amended questions have been highlighted in the survey. In particular, the CSSF has modified the country list with the addition of Palestine (ISO code PS).

Final submissions to the survey questions will have to be submitted through the CSSF eDesk portal by 1 April 2024 (at the latest).

The CSSF has also highlighted that for the purposes of the survey it will make available a new Application Programming Interface (API) solution to allow pre-population of the survey. However, the manual input of the responses directly in the eDesk online form remains possible.

The survey must still be completed within the CSSF eDesk portal by:

- the compliance officer in charge of the control of compliance with the professional obligations ('responsable du contrôle du respect des obligations professionnelles' (RC)); or
- the person responsible for compliance with the professional obligations ('responsable du respect des obligations professionnelles' (RR)).

The completion of the survey may however be assigned within the CSSF eDesk portal to another employee of the entity or third party, while bearing in mind that the ultimate responsibility for the adequate completion of the survey shall remain with the RC or the RR.

In terms of logistics, this implies that the aforementioned persons and their potential delegates must have an eDesk account, which requires a LuxTrust authentication.

In order to avoid connection problems when the survey is launched, the CSSF has invited all entities it supervises for AML/CTF purposes to ensure that they have an account and referred them to the 'Authentication and user account management' user guide in the dedicated section of the CSSF eDesk portal homepage for further details.

## **Polish Financial Supervision Authority reviews adequacy of buffer index of other institutions of systemic importance**

On the basis of the Act on Macroprudential Supervision over the Financial System and on Crisis Management in the Financial System of 5 August 2015, and after taking into account the opinion of the Financial Stability Committee, the Polish Financial Supervision Authority (PFSA) has [confirmed](#) the identification of ten banks as other institutions of systemic importance. On that basis, the PFSA has also decided to change or uphold appropriate capital buffers.

The PFSA has named the following banks as institutions of systemic importance:

- Powszechna Kasa Oszczędności Bank Polski SA;
- Santander Bank Polska SA;
- Bank Polska Kasa Opieki SA;
- mBank SA;
- ING Bank Śląski SA;
- Bank Millennium SA;
- Bank Handlowy w Warszawie SA;
- BNP Paribas Bank Polska SA;
- Bank Polskiej Spółdzielczości SA; and
- SGB-BANK SA.

## **Warsaw Stock Exchange amends rules of Alternative Trading System**

The Warsaw Stock Exchange has [announced](#) changes to the rules of the Alternative Trading System (ATS), which will come into force from 1 June 2024.

According to the announcement, the changes concern the criteria and requirements for the introduction of shares or bonds to the ATS. The most important changes include:

- raising the value of the required equity capital of an issuer applying to get listed on NewConnect to PLN 2 million;
- increasing the minimum number of unrelated minority shareholders to 25; and
- introducing restrictions on the listing of founders' shares on NewConnect.

## **HKEX announces enhancements to derivatives market position limits**

The Hong Kong Exchanges and Clearing Limited (HKEX) has [announced](#) that it will introduce a suite of position limit enhancements to Hong Kong's derivatives market.

The changes follow the HKEX's consultation conclusions published in July 2022 and the Securities and Futures Commission (SFC)'s adjustments to the

statutory position limit requirements, as announced in its consultation conclusions published in November 2022 and June 2023. Based on the HKEX's consultation conclusions, the adjustments will be implemented as follows:

- HKEX will increase Single Stock Option position limits to 250,000 contracts. Two additional tiers (200,000 and 250,000 contracts) will be added to the existing three-tier Single Stock Options position limit model (currently, 50,000, 100,000, 150,000 contracts);
- the existing 5,000 contracts per expiry month Single Stock Futures position limit model will be revised to a five-tier model, with net position limits of 5,000, 10,000, 15,000, 20,000, and 25,000 contracts; and
- the additional position limits that apply to Hang Seng Index and Hang Seng China Enterprise Index mini derivatives contracts will be removed.

Separately, to observe the SFC's updated statutory position limit requirements, the HKEX will also make the following enhancements:

- increasing the combined position limit for USD/CNH futures and options, Mini USD/CNH futures and CNH/USD futures from 8,000 to 30,000 long or short position delta for all contract months; and
- increasing the spot month combined position limit for USD/CNH futures and options, from 2,000 to 15,000 long or short position delta.

Subject to regulatory approval, the enhancements will take effect on 22 December 2023.

## **MAS announces initiatives on safe and innovative use of digital money in Singapore**

The Monetary Authority of Singapore (MAS) has [announced](#) a set of initiatives intended to ensure the safe and innovative use of digital money in Singapore, which include Orchid Blueprint, the expansion of digital money trials, and a plan to issue a 'live' central bank digital currency (CBDC) for wholesale settlement. The three forms of digital money that the MAS is promoting are wholesale CBDCs, tokenised bank liabilities, and regulated stablecoins.

The MAS has published an information paper on Orchid Blueprint, which sets out the technology infrastructure that would be required to facilitate digital money transactions in the future. The blueprint builds on learnings from the Project Orchid industry trials, and identifies the following infrastructure building blocks for the sound use of digital money in Singapore:

- settlement ledger, to record digital money transfers, with supporting features such as native programmability and atomic settlement of digital tokens;
- tokenisation bridge, to connect existing account-based settlement systems with ledgers compatible with tokenised forms of digital money;
- programmability protocol, to use Purpose Bound Money (PBM) as a common protocol to specify the conditions for the use of digital money; and
- name service, to translate between unwieldy wallet addresses and alternative name identifiers that are readable and meaningful for verification.



To test the broad applicability of PBM and digital money in Singapore, the MAS plans to expand Project Orchid's digital money trials, wherein four new trials will be undertaken with industry players to examine relevant infrastructure components and commercial models. The trials will include tokenised bank liabilities, wallet interoperability, supplier financing, and institutional payment controls.

To complement the digital money trials by the financial industry involving retail and corporate users, the MAS has announced that it will commence the development of CBDC for wholesale interbank settlement in 2024. The first pilot will involve the use of 'live' wholesale CBDC to settle retail payments between commercial banks, while future pilots could include settlement of cross-border securities trade as well.

### **MAS consults on notice relating to information sharing on COSMIC platform**

The MAS has launched a [consultation](#) seeking comments on a proposed notice that sets out the MAS' further requirements relating to the sharing of information through the Collaborative Sharing of Money Laundering/Terrorism Financing (ML/TF) Information & Cases (COSMIC) platform (COSMIC Notice).

The COSMIC Notice sets out the requirements that a prescribed financial institution (FI) must comply with relating to the three modes of risk information sharing through COSMIC, which includes a 'Request', a 'Disclosure', and a 'Listing'.

Amongst other things, the proposals include the following:

- prescribed FIs to establish and implement policies, procedures and controls to facilitate the systemic sharing of the risk information via the three modes;
- prescribed FIs to undertake a documented risk assessment of money laundering / terrorism financing / proliferation financing (ML/TF/PF) risks presented by the relevant party to whom a Request or Disclosure relates, and to take appropriate risk mitigation measures;
- prescribed FIs to screen a relevant party that is a customer or prospective customer, individuals appointed to act on the relevant party's behalf, as well as its connected parties and beneficial owners, and where there is a positive hit against the platform screening list, to undertake a documented risk assessment and take appropriate risk mitigation measures;
- prior to a Listing, to engage the relevant party that is the subject of its Listing to clarify any ML/TF/PF concerns unless it is not practicable to do so;
- to perform a holistic assessment of risks and not solely rely on information from COSMIC before deciding to terminate or decline business relations with a relevant party;
- prescribed FIs that are banks in Singapore must take into account information received from COSMIC when fulfilling their obligations under MAS Notice 626 (MAS 626); and
- requirements to maintain the security and integrity of the platform information, retain records for at least five years, and on outsourcing.

MAS has also proposed amendments to MAS 626 to clarify the relationship and interaction between certain requirements in the COSMIC Notice and MAS 626. These amendments to MAS 626 are not intended to modify any requirement that applies to an FI that is not a prescribed FI. Where necessary, the MAS will provide further guidance in guidelines to the COSMIC Notice and guidelines to MAS 626.

Comments on the consultation are due by 15 December 2023.

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

## **MAS publishes final response to consultation on proposed regulatory measures for digital payment token services**

The MAS [published](#) the final tranche of responses to feedback received on its October 2022 consultation on proposed regulatory measures for digital payment token (DPT) services. The proposals are aimed at licensed and exempt PSPs that carry on a business of providing a DPT service under the Payment Services Act 2019 (PS Act) (DPTSPs).

In July 2023, the MAS published Part 1 of the consultation response, which focused on the requirements for segregation and custody of customers' assets, as well as draft legislative amendments to the Payment Services Regulations 2019 to safeguard customer assets under a statutory trust. Part 2 of the consultation response covers business conduct, consumer access measures, and technology and cyber risk management requirements.

In its response, the MAS has indicated the following regarding business conduct:

- DPTSPs will be required to implement policies to identify, address, mitigate and clearly disclose potential and actual conflicts of interest;
- DPTSPs and their related entities should not trade on markets that they operate, unless for the purposes of matched principal trading;
- certain measures should be put in place when the DPTSP operates a market and acts as a broker or acts as a broker and transacts on its own account;
- DPTSPs will be required to publish their listing and governance policies for tokens listed and offered on their markets and trading platforms; and
- DPTSPs should establish effective policies and procedures to handle customer complaints and resolve disputes.

In its response, the MAS has also indicated the following regarding consumer access measures:

- the MAS will proceed to apply consumer access measures to all retail customers (i.e., customers who are not Accredited Investors (AIs) or Institutional Investors), whether based locally or overseas;
- the MAS will adopt an 'opt-in' regime for AIs, similar to that under the Securities and Future Act (SFA), for the application of consumer access measures for DPT services;

- DPTs can be taken into account in determining AI eligibility under the PS Act and SFA. However, an initial haircut of at least 50% to their valuations or SGD 200,000 (whichever is lower) will be applied;
- MAS-regulated stablecoins will be treated in the same manner as fiat when assessing a customer's AI eligibility;
- DPTSPs will be required to assess if a retail customer has sufficient knowledge of the risks of DPT services before providing DPT services to that customer, and the industry is encouraged to develop a common template or question bank;
- DPTSPs should not offer any incentives to trade in DPTs;
- DPTSPs will be restricted from providing to a retail customer any credit facility to facilitate the purchase or continued holding of DPTs; and entering into any leveraged DPT transaction with a retail customer or facilitating a retail customer's entry into any leveraged DPT transaction; and
- DPTSPs will not be allowed to accept locally-issued credit card or charge card payments; and
- with respect to technology and cyber risk, the MAS will require DPTSPs to maintain high availability and recoverability of their critical systems as per the current requirements imposed on financial institutions. These requirements will be imposed on DPTSPs through MAS Notice PSN05 on Technology Risk Management (Notice PSN05).

In relation to the earlier proposed legislative amendments on asset segregation and custody measures that were published in July 2023, the MAS aims to publish the final subsidiary legislation in due course and allow a 6-month transition period for implementation.

The measures announced in the latest response paper will initially be provided in the form of guidelines to be published in mid-2024 with a 9-month transition period for implementation. The MAS will also mandate the requirements in the Notice PSN05 in early 2024 with a 9-month transition period for implementation.

The MAS also launched a separate consultation paper in July 2023, proposing regulatory measures on market integrity in DPT services. The MAS has indicated that it will respond to this consultation feedback separately in due course.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **Germany's new Financial Market Digitalisation Act**

On 23 October 2023, the German Ministry of Finance (BMF) published a draft Act on the Digitalisation of the Financial Markets (FinmadiG).

FinmadiG is intended to align the German financial regulation regime with key parts of the EU's new Digital Finance Package, which includes comprehensive new regulations on markets in crypto-assets (MiCA) and digital operational resilience (DORA). Amongst others, FinmadiG introduces a new Act on the Supervision of Crypto Markets (KMAG), which will be applicable from 1 July 2024. It also amends numerous German financial market laws such as the German Banking Act (KWG), the German Securities Trading Act (WpHG), the

German Investment Institutions Act (WpIG) and the German Capital Investment Code (KAGB).

This briefing paper discusses the changes the new law will bring.

<https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2023/10/germany's-new-financial-market-digitalisation-act.pdf>

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