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Capital Markets Union: EU Council and Parliament reach provisional agreement on instant payments in euros

The EU Council and Parliament have reached a political agreement on the instant payments proposal.

The proposal for a regulation on instant credit transfers in euro, originally put forward by the EU Commission in October 2022, is part of the Capital Markets Union. It amends and modernises the Single Euro Payments Area (SEPA) Regulation on standard credit transfers in euro by adding to it specific provisions for instant credit transfers in euro.

Among other things, the instant payments proposal is intended to:

- improve the strategic autonomy of the European economic and financial sector by reducing any excessive reliance on third-country financial institutions and infrastructures;
- allow people to transfer money within ten seconds at any time of the day, including outside business hours, not only within the same country but also to another EU Member State;

- require payment service providers such as banks, which provide standard credit transfers in euro, to offer the service of sending and receiving instant payments in euro;
- grant access for payment and e-money institutions (PIEMIs) to payment systems, by changing the Settlement Finality Directive (SFD); and
- require instant payment providers to verify that the beneficiary's IBAN and name match in order to alert the payer to possible mistakes or fraud before a transaction is made.

The EU Council and Parliament have agreed that the new rules will come into force after a transition period that will be faster in the euro area and longer in the non-euro area, who need more time to adjust.

The EU Council and Parliament have also included a review clause with a requirement for the Commission to present a report containing an evaluation of the development of charges for credit charges.

Capital Markets Union: EU Parliament adopts legislation on European single access point

The EU Parliament has adopted the legislation establishing a European single access point (ESAP).

The EU Council and EU Parliament reached political agreement on the proposed regulations and directive on 24 May 2023.

ESAP is intended to provide centralised access to publicly available information of relevance to financial services, capital markets and sustainability, and is expected to be implemented in the following three phases once the platform is made available in 2027:

- phase one to include information under the Short Selling Regulation, Prospectus Regulation and Transparency Directive;
- phase two to include information under, among other things, the Sustainable Finance Disclosure Regulation (SFDR), the Credit Rating Agencies Regulation (CRAR) and the Benchmark Regulation (BMR); and
- phase three to include information under, among others, the Capital Requirements Regulation (CRR), the Markets in Financial Instruments Regulation (MiFIR) and the EU Green Bonds Regulation (EUGBR).

Banking Union: ECON Committee adopts proposed directive amending BRRD and SRMR

The EU Parliament's Committee on Economic and Monetary Affairs (ECON Committee) has adopted a report on the EU Commission's proposed directive making targeted amendments regarding daisy chains under the Bank Recovery and Resolution Directive (BRRD) and the Single Resolution Mechanism Regulation (SRMR).

The amendments form part of the Commission's crisis management and deposit insurance (CMDI) legislative package and concern certain aspects of the minimum requirement for own funds and eligible liabilities (MREL) that are intended to improve the resolution framework for EU banks.

Negotiations with the Council are expected to start once the EU Parliament mandate is announced in November II plenary.

EU Commission adopts RTS on AML/CFT central database

The EU Commission has adopted a Delegated Regulation supplementing Regulation (EU) No 1093/2010, which established the European Banking Authority (EBA), with regard to regulatory technical standards (RTS) specifying the materiality of weaknesses, the type of information collected, the practical implementation of the information collection and the analysis and dissemination of the information contained in the anti-money laundering and counter terrorist financing (AML/CFT) central database.

The EBA is required to set up and maintain a central AML/CFT database. The database will contain information on material weaknesses in individual financial sector operators that make them vulnerable to money laundering or terrorist financing. Competent authorities are required to report material weaknesses that they have identified, as well as the measures they have taken to address those material weaknesses.

The draft RTS specify when weaknesses are material. They also set out which information competent authorities have to report, how they have to report it, and how the EBA will analyse this information and make it available to competent authorities. They also set out the rules that will apply to ensure confidentiality and the protection of personal data contained in the database.

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

Securitisation Regulation: EU Commission adopts RTS regarding homogeneity of underlying exposures in STS securitisations

The EU Commission has adopted a Delegated Regulation amending the RTS laid down in Delegated Regulation (EU) 2019/1851 as regards the homogeneity of the underlying exposures in simple, transparent and standardised (STS) securitisations.

The final draft RTS specify the conditions for the assessment of the homogeneity of the underlying exposures in a pool of an STS on-balance-sheet securitisation, in accordance with Article 26b(8) of the Securitisation Regulation. The draft RTS amend Delegated Regulation (EU) 2019/1851 on the homogeneity of the underlying exposures in ABCP and non-ABCP securitisation to extend the scope to on-balance-sheet securitisations. They establish the same conditions for the homogeneity of the assets for all types of securitisations (ABCP, non-ABCP and on-balance-sheet securitisations). The draft RTS carry over a significant part of the provisions on homogeneity set out in Delegated Regulation (EU) 2019/1851 with minor modifications. The modifications aim at ensuring consistency with the new enlarged scope and providing further clarity on specific requirements.

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

MiCA: EU Commission consults on draft Delegated Regulations on criteria, procedures and fees

The EU Commission has published for consultation four Delegated Regulations setting out additional criteria on the supervision of cryptoassets under the Markets in Cryptoassets Regulation (MiCA).

The draft Delegated Regulations cover:

- the procedural rules for the exercise by the EBA of its power to impose fines or periodic penalty payments on issuers of significant asset-referenced tokens (ARTs) and e-money tokens (EMTs);
- the criteria and factors to be taken into account by the EBA, the European Securities Markets Authority (ESMA) and competent authorities when exercising their product intervention powers under MiCA (i.e. their powers to restrict or ban the sale of cryptoassets or related activities);
- the criteria for classifying ARTs and EMTs as significant; and
- the supervisory fees that can be charged by the EBA to issuers of significant ARTs and EMTs.

Comments are due by 6 December 2023.

MiCA: EBA consults on further package of technical standards and guidelines

The EBA has launched a set of consultations on various draft RTS, implementing technical standards (ITS), and guidelines under MiCA.

In particular, the EBA is consulting on:

- draft RTS to specify the highly liquid financial instruments with minimal market risk, credit risk and concentration risk under Article 38(5) of MiCA (EBA/CP/2023/24);
- draft RTS to further specify the liquidity requirements of the reserve of assets under Article 36(4) of MiCA (EBA/CP/2023/25);
- draft RTS to specify the minimum contents of the liquidity management policy and procedures under Article 45(7)(b) of MiCA (EBA/CP/2023/26);
- draft guidelines establishing the common reference parameters of the stress test scenarios for the liquidity stress tests referred in Article 45(4) of MiCA (EBA/CP/2023/27);
- draft RTS to specify the adjustment of own funds requirements and stress testing of issuers of ARTs and of e-money tokens subject to the requirements in Article 35 of MiCA (EBA/CP/2023/28);
- draft RTS to specify the procedure and timeframe to adjust its own funds requirements for issuers of significant ARTs or of e-money tokens subject to the requirements set out in Article 45(5) of MiCA (EBA/CP/2023/29);
- draft guidelines on recovery plans under Articles 46 and 55 of MiCA (EBA/CP/2023/30);
- draft RTS on the methodology to estimate the number and value of transactions associated to uses of ARTs as a means of exchange under Article 22(6) of MiCA and of e-money tokens denominated in a currency

that is not an official currency of a Member State pursuant to Article 58(3) of MiCA (EBA/CP/2023/31);

- draft ITS on the reporting on ARTs under Article 22(7) and on e-money tokens denominated in a currency that is not an official currency of a Member State pursuant to Article 58(3) of MiCA (EBA/CP/2023/32); and
- draft RTS on supervisory colleges under Article 119(8) of MiCA (EBA/CP/2023/33).

Comments on all these consultations are due by 8 February 2024.

NPLs: EBA consults on draft guidelines for complaints handling by credit servicers

The EBA has launched a consultation on its draft guidelines on complaints handling by credit servicers under Directive (EU) 2021/2167.

The draft guidelines are addressed to competent authorities and specify the requirements credit servicers should comply with when establishing and maintaining effective and transparent procedures for complaints handling from borrowers.

The proposed guidelines suggest applying to credit servicers the requirements of the existing Joint Committee guidelines on complaints-handling. Those requirements include complaints management policy, complaints management function, registration, reporting, internal follow-up, provision of information and procedures for responding to complaints.

Comments are due by 9 February 2024.

BCBS publishes technical amendment to Basel framework

The Basel Committee on Banking Supervision (BCBS) has published a technical amendment document to the Basel framework.

The document sets out various technical amendments to the Basel Framework. The amendments relate to:

- the standardised approach to operational risk;
- the disclosure standards for credit valuation adjustment (CVA) risk;
- the description of the calculation of indicator scores for global systemically important banks (G-SIBs); and
- the terminology used in the countercyclical capital buffer.

The amendments were published for consultation in March 2023 and have been finalised as originally proposed. Basel Committee members have agreed to implement the technical amendments set out in the document as soon as practical and within three years at the latest.

Countries issue joint statement committing to implement OECD's Crypto-Asset Reporting Framework

HM Treasury (HMT) has published a joint statement issued by the UK and 48 other jurisdictions in which they announce their commitment to implementing the Crypto-Asset Reporting Framework (CARF) developed by the Organisation for Economic Co-operation and Development (OECD).

CARF, which was finalised in March 2023, establishes a framework for the automatic exchange of information between tax authorities on crypto-exchanges for the purpose of combating offshore tax avoidance and evasion. In their joint statement, the signatory jurisdictions commit to implementing the framework in time to commence information exchange by 2027. The statement also commits applicable jurisdictions, including the UK, to implement amendments to the OECD's Common Reporting Standard (CRS), an existing tax transparency standard for the exchange of financial account information, to the same timeline.

Along with the UK, the statement is signed by Armenia, Australia, Austria, Barbados, Belgium, Belize, Brazil, Bulgaria, Canada, the Cayman Islands, Chile, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hungary, Iceland, Ireland, Italy, Japan, Jersey, the Isle of Man, Korea, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Netherlands, Norway, Portugal, Romania, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, and the US.

NGFS publishes fourth version of long-term climate macro-financial scenarios for climate risks assessment

The Network for Greening the Financial System (NGFS) has published the fourth iteration of its long-term climate macro-financial scenarios for forward-looking climate risks assessments. The scenarios are intended to allow central banks and their supervisors to explore the transition and physical impacts of climate change, over a long-term horizon and under varying assumptions.

The scenarios have been updated to reflect the latest GDP and population pathways and the most recent country-level climate commitments as of March 2023. Key changes include:

- updates to reflect the policy delays and energy crisis following the war in Ukraine;
- enhancements to the modelling of acute physical risks, including the addition of two new hazards (droughts and heatwaves) and increased geographical granularity;
- the addition of two new scenarios, one that illustrates the consequences of a 'too little too late' approach to global climate policy ambitions, and one that explores a Paris-aligned transition driven by substantial behavioural changes in which global warming is limited to 1.5°C; and
- the removal of the divergent net zero scenario.

The NGFS has also published three guidance documents intended to assist central banks and their supervisors in the use of the scenarios. These comprise:

- revised technical documentation, which contains updated technical information, high-level overviews and summaries intended to help users better understand the assumptions and limitations of the scenarios;
- a data user guide, which provides guidance on how to access, download and work with the scenarios; and

- a technical note, which explores the materiality of compound shocks and provides initial thoughts on a framework for incorporating compound risks in climate physical risk scenario analysis.

Financial Services and Markets Act 2023: SIs on resolution of CCPs published

Two statutory instruments (SIs) setting out details on the resolution of central counterparties (CCPs) under the Financial Services and Markets Act 2023 (FSMA 2023) have been made and laid before Parliament.

The Financial Services and Markets Act 2023 (Resolution of Central Counterparties: Calculation of Maximum Amounts for Cash Calls and Use of Specified Funds) Regulations 2023 (SI 2023/1195) set out the maximum amounts of cash that may be specified in cash call instruments made by the BoE. Under FSMA 2023, the BoE can require clearing members of a CCP which has been placed into resolution to pay a set amount of cash to the CCP in order to generate additional loss absorbing capacity and replenish the CCP's resources. SI 2023/1195 is intended to give clearing members greater certainty regarding the maximum amount they may be required to contribute under the BoE's cash call power if a CCP is placed into resolution.

The Financial Services and Markets Act 2023 (Resolution of Central Counterparties: Deferment of Provisions in Resolution Instruments) Regulations 2023 (SI 2023/1190) set out the process by which the BoE may suspend or waive, and where suspended, enforce, a provision under a resolution instrument. It is intended to ensure that the BoE has the necessary flexibility to respond to the specific circumstances of a resolution under the new special resolution regime for CCPs introduced by Schedule 11 of FSMA 2023.

Both SIs come into force on 31 December 2023.

Draft Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2023 published

HMT has laid The Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2023 before Parliament.

The draft SI is intended to make consequential amendments arising out of provision in, or made under, the FSMA 2023. FSMA 2023 repeals retained EU law relating to financial services.

The draft SI makes consequential amendments in connection with the revocations and repeals of:

- Article 92b of Regulation (EU) No 575/2013 (CRR) and amending Regulation (EU) No 648/2012 (EMIR);
- legislation relating to long-term investment funds (LTIFs);
- Part 2, Schedule 1 and Schedule 2 to the Payment Accounts Regulations 2015 (SI 2015/2038); and
- legislation containing certain restrictions on powers of the Financial Conduct Authority (FCA) to make rules that modify, amend or revoke retained direct EU legislation.

Among other things, the SI also amends:

- section 50(12) of FSMA 2023 in consequence of section 21(4)(b), to provide that the required content of the BoE's annual report on its regulation of financial market infrastructure is consistent with its regulatory obligations;
- the Payment Card Interchange Fee Regulations 2015 (SI 2015/1911), in consequence of the amendments made by regulation 3 of the Electronic Money, Payment Card Interchange and Payment Services (Amendment) Regulations 2023 (SI 2023/790); and
- Regulation (EU) No 600/2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (MiFIR) to remove the volume cap mechanism that applies to the trading of equity instruments.

Subject to parliamentary approval, the SI is expected to come into force on 1 January 2024.

The policy paper explains the Government's rationale for extending the transitional period from 31 December 2025 to 31 December 2030. The Government intends to use the time provided by the extension to consider where reforms are needed to the third country benchmarks regime, and to make these changes as part of the implementation of the Smarter Regulatory Framework programme.

Draft Financial Services and Markets Act 2023 (Benchmarks and Capital Requirements) (Amendment) Regulations 2023 published

HMT has laid The Financial Services and Markets Act 2023 (Benchmarks and Capital Requirements) (Amendment) Regulations 2023 before Parliament.

The draft SI, which is subject to the affirmative procedure, contains amendments to:

- Article 384 of the CRR and amending the EMIR, which requires certain financial institutions to calculate a particular type of capital requirements in accordance with a specific formula; and
- Article 51(5) of Regulation (EU) 2016/1011 (Benchmarks Regulation).

Regulation 2 of the draft SI would amend the definition of total counterparty credit risk exposure value (EADi total) by inserting a discount factor which reduces the amount of capital that small and medium-sized firms are required to hold for their derivative activities under the CRR.

Regulation 3 would extend the expiry date of the transitional period to allow for continued access by UK markets to third country benchmarks from 31 December 2025 to 31 December 2030. It would also extend the provision which permits continued use of a legacy third country benchmark by UK markets so that, where a benchmark is used in an existing contract, financial instrument or for measuring the performance of that investment fund on 31 December 2030, it may continue to be used on and after 1 January 2031. HMT has also published an accompanying policy paper on the extension of the transitional period.

Subject to parliamentary approval, the SI is expected to come into force on the day after the day on which it is made, except for Regulation 3, which is expected to come into force on 1 January 2024.

HM Treasury publishes response to consultation on financial promotion exemptions for high net worth individuals and sophisticated investors

HMT has published its response to its December 2021 consultation on proposed reforms to the exemptions for high net worth individuals and sophisticated investors under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (FPO).

HMT's response sets out a summary of the responses to the consultation and the Government's approach to reforming the exemptions.

In the consultation, HMT considered three specific exemptions relating to:

- certified high net worth individuals (Article 48 of the FPO);
- sophisticated investors (Article 50); and
- self-certified sophisticated investors (Article 50A).

The UK Government intends to update the exemptions by:

- raising the financial thresholds to qualify for the exemptions to account for inflation;
- tightening other eligibility criteria to reduce the risk of capturing ordinary consumers; and
- strengthening the statements that investors are required to complete when using the exemptions.

Bank of England and HM Treasury consult on implementing new Bank of England Levy

The Bank of England (BoE) has published a consultation paper setting out its Framework Document for the Bank of England Levy and explaining how the annual Levy will be charged and how it will operate. It is intended that the Levy will replace the Cash Ratio Deposit (CRD) scheme on 1 March 2024, but the exact timing for commencement of the Levy will be decided after responses to the consultation have been received and considered, and thereafter will be subject to Parliamentary approval of the draft regulations in respect of the Levy, made by HMT.

To illustrate how the Levy will operate, the BoE has drafted the Framework Document on the basis of a Levy Year running for the 12-month period from 1 March until the end of February.

The consultation paper explains the Bank's approach to levying the amounts required in connection with its policy functions, which are the functions exercised by the Bank in pursuit of its Financial Stability and Monetary Policy objectives.

HMT has launched a parallel consultation on the draft regulations in respect of the Levy, the Bank of England Levy (Amount of Levy Payable) Regulations 2024, which set out which institutions are required to pay the levy and how the levy is apportioned.

Comments on the consultation paper and the draft regulations are due by 15 December 2023.

FCA and BoE publish proposals for regulating stablecoins

The FCA, BoE and Prudential Regulation Authority (PRA) have issued a number of publications relating to stablecoins, digital money and innovation in payments and money.

The FCA has published a discussion paper (DP23/4) on its proposed regulation around the issuing and holding of fiat-backed stablecoins, which aim to maintain a stable value of the cryptoasset by reference to, and which may include the holding of, one or more specified fiat currencies.

The BoE has published a discussion paper on its proposed approach to how it would regulate operators of systemic payment systems using stablecoins. The discussion paper also covers how the BoE would regulate entities providing services to these payment systems, such as stablecoin issuers and wallet providers, where they could pose financial stability risks.

Comments on both discussion papers are due by 6 February 2024.

The PRA has published a Dear CEO letter on how it expects deposit-takers to address the risks that arise from issuing multiple forms of digital money. The letter also sets out the PRA's broader expectations for banks regarding their use of digital money for retail or wholesale innovations, in areas such as operational resilience, anti-money laundering, counter-terrorist financing, and liquidity and funding risks.

The FCA, BoE and PRA have also published a cross-authority roadmap paper on innovation in payments and money, which explains how UK authorities' current and proposed regulatory regimes for issuers of different forms of digital money or money-like instruments will interact.

The BoE and FCA expect to consult on more detailed policy proposals and enforceable rules over the course of 2024.

BoE launches latest phase of system-wide exploratory scenario

The BoE has published the latest phase of the System-wide Exploratory Scenario (SWES), which provides bank and non-bank participants with a hypothetical stress scenario.

The BoE launched the SWES in June 2023 with the aim to:

- enhance understanding of the risks to and from non-bank financial institutions, and the behaviour of non-bank financial institutions and banks in stress, including what drives those behaviours; and
- investigate how these behaviours and market dynamics can amplify shocks in markets and potentially pose risks to UK financial stability.

The BoE has asked SWES participants to consider the impact of this hypothetical stress scenario, including how it would impact their business, and what actions they would take in response. SWES participants are expected to submit their responses to the BoE in January 2024. The second round of the scenario phase, which will reflect the actions that the participants take in the first round, will be launched in Q2 2024. The BoE anticipates publishing a final report on the SWES by the end of 2024.

PSR consults on draft review framework for generally applicable requirements

The Payment Systems Regulator (PSR) has published a consultation paper (CP 23/11) on how it reviews its general directions and generally imposed requirements.

The FSMA 2023 added new requirements to the Financial Services (Banking Reform) Act 2013 (FSBRA), including for the PSR:

- to keep under review generally any general directions to participants in payment systems and generally imposed requirements relating to system rules (generally applicable requirements); and
- to publish a statement of its policy with respect to its review of requirements under section 104B.

The PSR has powers under Part 5 of the Financial Services (Banking Reform) Act 2013 (FSBRA) to regulate payment systems designated by the Treasury, including the power to issue generally applicable requirements. The PSR uses these powers to advance its statutory objectives and currently has four general directions in place under FSBRA, and no generally imposed requirements.

To meet the requirement in section 104C, the PSR proposes to publish a review framework explaining:

- how the PSR will identify when it should review generally applicable requirements;
- the methods the PSR may use;
- how stakeholders can request a review or respond to the PSR's relevant consultations; and
- how the PSR would prioritise a review.

Comments are due by 22 December 2023.

French DASPs: AMF publishes form to declare changes of situation

The Autorité des marchés financiers (AMF) has published a form to be used to declare a change in the situation of registered or approved digital asset service providers (DASPs). DASPs are required to use the form to report changes, in particular to their governance, reference shareholders or programme of operations.

Spanish Council of Ministers approves Royal Decrees completing development of Spanish Securities Market and Investment Services Law and transposition of various EU Directives

The Spanish Council of Ministers has approved four Royal Decrees that complete the development of Law 6/2023, of 17 March, on the Securities Market and Investment Services (LMV) and the transposition into Spanish legislation of various EU Directives.

The Royal Decrees, which have not yet been published in the Spanish Official Gazette, are:

- Royal Decree on the legal regime for investment services firms and other entities that provide investment services;
- Royal Decree on financial instruments, admission to trading, registration of negotiable securities and market infrastructures;
- Royal Decree developing LMV in relation to the official registers of the Spanish National Securities Market Commission (CNMV), cooperation with other authorities and the supervision of investment services firms; and
- Royal Decree amending Royal Decree 1082/2012, of 13 July, on the Regulation of Law 35/2003, of 4 November, on collective investment institutions.

Unfair contract terms reforms commence in Australia

With effect from 9 November 2023, unfair contract terms (UCTs) have become illegal and attract penalties under the Competition and Consumer Act 2010 and the Australian Securities and Investments Commission Act 2001 (ASIC Act) with each unfair term forming a separate contravention. The existing UCT law came into effect in 2010 and is contained within the Australian Consumer Law (ACL) and mirror provisions in the ASIC Act.

The UCT reforms expand the class of small business that can rely on UCT protections. From 9 November 2023, to meet the small business threshold, a business must either employ fewer than 100 people or have a turnover of less than AUD 10 million for the previous income year. Moreover, under the ASIC Act, the UCT regime will only apply to a small business contract if the upfront price payable (excluding interest) for the contract is AUD 5 million or less. Under the ACL, the monetary contract threshold has been entirely removed.

To assist industry and consumers understand the reforms, ASIC has updated its existing UCT guidance materials:

- Information Sheet 210 (INFO 210) on unfair contract term protections for consumers;
- Information Sheet 211 (INFO 211) on unfair contract term protections for small businesses; and
- Information Sheet 105 (INFO 105) on FAQs pertaining to dealing with consumers and credit.

ASIC has encouraged businesses to review their standard form contracts to ensure they do not include any unfair terms.

HKEX postpones implementation date of proposed climate disclosure enhancements under ESG framework

The Stock Exchange of Hong Kong Limited (SEHK), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), has announced that it will postpone the implementation date of its proposed climate disclosure enhancements under the environmental, social and governance (ESG) framework.

In April 2023, the SEHK launched a public consultation seeking market feedback on its proposals, and the implementation date was set to 1 January 2024. The proposals were informed by the IFRS S2 Climate-related

Disclosures (ISSB Climate Standard) exposure draft published by the International Sustainability Standards Board (ISSB) and their subsequent deliberations.

In June 2023, the ISSB published its final IFRS Sustainability Disclosure Standards, and further indicated that it will publish an adoption guide to support jurisdictional regulators to help them in their implementation considerations and to advise on scalability and phasing-in measures for the application of the ISSB standards. The guide is expected to be available before the end of 2023.

The HKEX intends to take into account the recommended approaches on the scaling and phasing-in of requirements available under the guide when finalising the Listing Rule amendments, and is postponing the implementation date of the Listing Rule amendments to 1 January 2025 to allow issuers more time to familiarise themselves with the new climate-related disclosure requirements.

HKEX announces plans to develop an integrated fund platform for retail fund distribution

HKEX has announced its plan to develop an integrated fund platform for the distribution of retail funds. The platform will cover the full distribution cycle and value chain for retail funds in Hong Kong, and is intended to lower the barriers of entry to the industry and allow market participants to better distribute fund products to their clients. Funds covered will be those authorised by the Securities and Futures Commission (SFC).

At the initial stage, the platform will be a business-to-business service model, and will consist of three main components:

- a communication hub, which will be a centralised network connecting different parties in the fund distribution ecosystem;
- a business platform, which will cover functionalities such as fund order routing, subscription and redemptions, payments and settlements, and various optional nominee services; and
- an information portal, to help the investing public access more information and provide greater transparency on fund investment options.

Working with the Hong Kong Government, the SFC, and other stakeholders on this development, the HKEX intends to finalise the platform design and development framework over the coming months. The SFC has issued a press release welcoming the announcement and announcing its intention to extend its cooperation in implementing the platform.

SFC issues circular to licensed corporations on prudent risk management in providing IPO subscription services

The SFC has issued a circular reminding licensed corporations prudently to manage their risks in providing initial public offering (IPO) subscription services and financing to clients with the launch of the Fast Interface for New Issuance (FINI). FINI will be launched by the Hong Kong Exchanges and Clearing Limited on 22 November 2023 to streamline and digitalise the IPO settlement process in Hong Kong.

The SFC has advised licensed corporations that, notwithstanding the modification of the pre-funding mechanism under FINI, they should exercise

prudent risk management and controls, having regard to the areas set out in the circular, when providing IPO subscription and financing services to clients. Licensed corporations should put effective measures in place to guard against any improper risk-taking activities, such as accepting large subscription orders without collecting sufficient subscription deposits from clients upfront or providing excessive IPO financing to clients.

The SFC has also reminded licensed corporations that their senior management bear primary responsibility for ensuring proper risk management for their firms.

SFC issues circulars relating to intermediaries involved in tokenisation and investment products involving tokenisation

The SFC has published two new circulars in relation to tokenisation.

The new circular on tokenisation of SFC-authorised investment products sets out the requirements under which the SFC would consider allowing tokenisation of investment products authorised by the SFC under Part IV of the Securities and Futures Ordinance for offering to the public in Hong Kong.

To help clarify regulatory expectations for intermediaries engaged in tokenised securities-related activities and provide regulatory certainty to support continued innovation with appropriate safeguards from an investor protection perspective, the SFC has also published a new circular on intermediaries engaging in tokenised securities-related activities. The circular focuses on providing guidance to intermediaries on addressing and managing the risks arising from the use of new tokenisation technology, including distributed ledger technology, so that the tokenisation marketplace can be developed in a healthy, responsible and sustainable manner. For SFC-authorised investment products, intermediaries should be reading both circulars in conjunction with each other.

MAS publishes circular on modification to acceptable index requirements and benchmark limits under CIS Code

The Monetary Authority of Singapore (MAS) has published a circular to all capital markets services (CMS) licensees announcing a modified threshold for a reference benchmark to qualify as sufficiently diversified under Appendix 5 of the Code on Collective Investment Schemes (CIS Code).

Under the CIS Code, managers of schemes authorised by the MAS are required to adhere to a single entity limit and a group limit. Where the scheme and its reference benchmark comply with paragraphs 4 and 5 of Appendix 5 of the CIS Code (acceptable index), higher single entity and group limits would be applicable under paragraph 2.3 of Appendix 1 of the CIS Code, and the scheme may invest in a transferable security that is a constituent of the reference benchmark, up to the higher of the 10% single entity limit or two percentage points above its benchmark weight, if the weighting of such constituent in the benchmark does not exceed 20%. The group limit of 20% would also be raised to 25% of NAV. The acceptable index requirements include the requirement for the maximum weighting per constituent not to exceed 20%.

The MAS circular announces that, following industry feedback, the maximum weighting threshold for one exceptional constituent will be raised from 20% to 35%, although the remaining constituents' weights will still be capped at 20% each. However, this higher threshold will only be applicable: under exceptional conditions in markets where certain securities are highly dominant, and the prospectus of the scheme should contain disclosures on the manager's justification of the exceptional conditions in the relevant market; and to schemes that fall within the scope of an Index Fund as defined in paragraph 1 of Appendix 5 of the CIS Code.

MAS responds to consultation on proposed changes to complex products regime

The MAS has published its preliminary responses to the feedback it received to its November 2021 consultation on proposed changes to enhance and update the complex products regime in Singapore.

Amongst other things, the proposals are intended to:

- review the classifications of certain debentures and hybrid securities, namely perpetual securities and preference shares (consulted products), as Excluded Investment Products (EIP) or Specified Investment Products (SIP);
- revise the complexity criteria for CIS; and
- streamline the SIP safeguard requiring intermediaries to assess customers' investment knowledge and experience, for transactions where the intermediary has already committed to provide advice to the customer (i.e. advised transaction).

In its response, the MAS announces that it intends to issue a new consultation paper in the first half of 2024 to consult on a holistic review of the safeguards under the complex products regime, in particular on enhancements to the Product Highlights Sheets requirements. In the meantime, the MAS will maintain the current product classification for all the consulted products. The MAS has thus held back on responding to its earlier proposals on the consulted EIP/SIP classification changes (apart from the ones discussed below) and plans to take them into consideration in the broader review.

The MAS has also announced, amongst other things, that it will amend the Schedule to the Securities and Futures (Capital Markets Products) Regulations 2018 to implement the following changes that are expected to come into effect in the first half of 2024, subject to consultation on the draft amendments and the legislative process:

- it will remove the restrictions in relation to securities lending and securities repurchase for schemes to be classified as EIP to streamline the complexity criteria to focus on the use of SIPs; and
- it will expand the EIP criteria to allow funds that invest in SIPs for the purpose of directly replicating the performance of an index that qualifies as an 'acceptable index' under the CIS Code (for example, S&P 500, FTSE 100, Hang Seng Index and STI) to be classified as EIP. However, funds which invest in SIPs and seek to outperform or provide inverse returns in relation an acceptable index would continue to be classified as SIPs.

Significant Investments Review Bill moved for first reading in Singapore Parliament

The Significant Investments Review Bill has been moved for its first reading in the Singapore Parliament. The Bill is intended to complement existing sectorial legislation by regulating the ownership and control of entities which are not adequately covered under sectoral legislation.

The Bill sets out a new investment management regime to manage significant investments by local or foreign investors in entities that are designated to be critical to Singapore's national security interests.

Amongst other things, the Bill proposes to:

- impose notification or approval obligations on buyers, sellers and designated entities, for specified changes in ownership or change of control of designated entities;
- require approval for the appointment of key officers;
- introduce provisions to ensure the security and reliability of designated entities; and
- empower the Minister to review ownership and control transactions involving an entity that has acted against Singapore's national security interests, even if the entity has not been designated.

In addition, an Office of Significant Investments Review will be set up under the Ministry of Trade and Industry as a dedicated one-stop touchpoint for stakeholders. There will also be a Reviewing Tribunal set up for parties who wish to further appeal after seeking reconsideration for decisions by the Minister.

When passed, the Significant Investments Review Bill will come into operation on a date that the Minister appoints by notification in the Government's Gazette.

RECENT CLIFFORD CHANCE BRIEFINGS

ICMA green bond principles and the EU green bond regulation – a comparison

On 24 October 2023, the EU Council adopted the regulation on European green bonds (the 'Regulation', although frequently referred to as the Green Bond Standard or GBS) relating to a 'gold standard' label for green bonds that are aligned with the EU Taxonomy Regulation. The Regulation is expected to be published in the Official Journal during Q4 2023 and come into effect 12 months later.

This high-level briefing paper in table form, which provides a comparison of the requirements in connection with an issuance of 'use of proceeds' green bonds under the ICMA Green Bond Principles and the Regulation, can be read in conjunction with our earlier detailed briefing – *The EU's Gold Standard – the Final EU Green Bond Standard has landed but what does it mean for the green bond market?*

https://www.cliffordchance.com/briefings/2023/11/icma-green-bond-principles-and-the-eu-green-bond-regulation--a-c.html

Debt-for-nature swaps – a new generation

Urgency around climate change, and the growing number of countries with high levels of debt vulnerability, in part as a consequence of the COVID-19 pandemic and monetary tightening, are driving renewed interest in debt-for-nature and debt-for-climate swaps. These factors, coupled with the general growth and mainstream acceptance of ESG investments, are reflected in investors' increased appetite for climate and conservation linked debt instruments.

Ahead of COP28, this briefing paper sets out our thoughts on the new generation of debt-for-nature swaps which have recently come to market and looking forward to their full potential being unlocked at COP28 and beyond.

https://www.cliffordchance.com/briefings/2023/11/debt-for-nature-swaps--a-new-generation.html

The UK online safety regime

After being in the works for half a decade, the UK's Online Safety Act 2023 received Royal Assent last week. It will join the EU's Digital Services Act as one of the newest and boldest tech regulations in Europe and is aimed at making the UK 'the safest place to be online'.

The Act will deploy a diverse set of rules, obligations, and regulatory powers designed to protect users, particularly children, from online harms. Whether the Act, and its regulator, Ofcom, will be successful in striking the balance between freedom of speech and other rights, and the need for online safety, will remain in contention for years to come.

In this first of a series of three planned articles on the online safety regime in the UK, we provide an overview of the OSA and what it entails for the 100,000 services estimated to be in scope. Following articles in this series will unpack compliance obligations and practical guidance for businesses in more detail.

https://www.cliffordchance.com/briefings/2023/11/the-uk-online-safety-regime.html

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