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## **Sustainable finance: European Green Bond Regulation published in OJ**

[Regulation \(EU\) 2023/2631](#) on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds has been published in the Official Journal.

The regulation establishes uniform requirements for issuers of bonds that wish to use the designation 'EuGB' for their environmentally sustainable bonds that are aligned with the EU taxonomy. The disclosure requirements, which are set out in template formats, can also be used by companies issuing bonds which are not yet able to adhere to all the standards of the EuGB, but still wish to signal their green aspirations.

The regulation also establishes a registration system and supervisory framework for external reviewers of EuGBs. Until the taxonomy framework is fully up and running, issuers of an EuGB will need to ensure that at least 85% of the funds raised by the bond are allocated to economic activities that align with the EU's Taxonomy Regulation. The other 15% can be allocated to other economic activities provided the issuer complies with the requirements to clearly explain where this investment will go.

Regulation (EU) 2023/2631 will enter into force on 20 December 2023 and apply from 21 December 2024.

## **Directive on financial services contracts concluded at a distance published in OJ**

[Directive \(EU\) 2023/2673](#), which repeals the Distance Marketing Directive (2002/65/EC) and transfers the framework for consumer protections relating to financial services distance contracts to the Consumer Rights Directive (2011/83/EU), has been published in the Official Journal.

The new rules include:

- additional safeguards to allow consumers to withdraw from any distance contract via a withdrawal function, which is prominently displayed, easily accessible and continuously available during the entire 14-day withdrawal window;
- clear requirements for what information the trader needs to provide to the consumer before concluding a distance contract, providing consumers with sufficient time to read and understand pre-contractual information, compare offers and make an informed decision;
- the commercial purpose of the call needs to be disclosed at the start when traders contact consumers by phone;
- consumers will have a right to receive adequate explanations from traders before signing and to request human intervention when using fully automated online interfaces; and
- financial services providers will be prohibited from deceiving or ‘nudging’ consumers into making choices that may be against their interest via their website designs.

The Directive will enter into force on 18 December 2023. Member States will then have two years to transpose the Directive through national measures, which will be followed by another period of six months before those national measures apply.

## **EU Council adopts CSDR Refit**

The EU Council has formally [adopted](#) the regulation amending the Central Securities Depositories Regulation (CSDR Refit).

The updates made by the regulation are intended to reduce the financial and regulatory burden on central securities depositories (CSDs) and improve their ability to operate across borders while strengthening financial stability. They focus on five key areas, including:

- the passporting regime;
- cooperation between supervisory authorities;
- banking-type ancillary services;
- settlement discipline; and
- the oversight of third country CSDs.

Political agreement was reached on the proposed regulation in June 2023 and it was adopted by the EU Parliament on 9 November 2023. Following the Council’s adoption, the regulation will be published in the Official Journal and will enter into force twenty days after its publication.

## **Capital Markets Union: EU Council adopts legislation on European single access point**

The EU Council has formally [adopted](#) the legislation establishing a European single access point (ESAP).

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).

Political agreement was reached on the proposed regulation in May 2023 and it was adopted by the EU Parliament on 10 November 2023. Following the Council's adoption, the regulation will be published in the Official Journal and will enter into force twenty days after its publication.

## **EMIR 3.0: ECON Committee adopts draft reports on proposals for EU clearing systems**

The EU Parliament's Committee on Economic and Monetary Affairs (ECON Committee) has [adopted](#) two draft reports on the EU Commission's legislative proposals to mitigate risks in and improve the efficiency of EU clearing markets.

The Commission's proposals include a review of the European Market Infrastructure Regulation (EMIR 3.0) and a Directive on the treatment of concentration risk towards central counterparties (CCPs) and the counterparty risk on centrally cleared derivative transactions.

The ECON Committee has proposed changes including:

- creating a bigger role for the European Securities and Markets Authority (ESMA) which includes directly supervising CCPs;
- requiring financial counterparties or non-financial counterparties (NFCs) that are subject to the clearing obligation to hold at least one active account at an EU CCP;
- reducing the regulatory burden for CCPs by streamlining procedures for those that provide additional services or changing risk models; and
- increasing transparency by informing clients of EU CCPs and third country CCPs (TC-CCPs) about an option to clear a derivative contract in an EU CCP.

The EU Parliament intends to start negotiations on the legislative proposals with the Council before 25 December 2023.

## **EMIR: EU Commission adopts Delegated Regulation extending temporary CCP emergency measures**

The EU Commission has adopted a [Delegated Regulation](#) amending the regulatory technical standards (RTS) relating to temporary emergency measures on collateral requirements under the European Market Infrastructure Regulation (EMIR).

The Delegated Regulation extends the emergency measures to temporarily expand the pool of eligible collateral for all types of counterparties by six months.

The temporary measures were originally adopted in October 2022 to alleviate liquidity pressures on NFCs active on gas and electricity regulated markets that clear in EU CCPs. In its final report published in October 2023, ESMA concluded that the measures should be extended for a period of six months, until the colder season impacting energy markets has ended and the EU co-legislators have finalised their review of EMIR.

The Delegated Regulation will enter into force on the day following its publication in the Official Journal and will expire six months after its entry into force.

## **CRD4: EU Commission adopts RTS on interest risk arising from non-trading book activities**

The EU Commission has adopted a [Delegated Regulation](#) containing RTS specifying standardised and simplified standardised methodologies to evaluate the risks arising from potential changes in interest rates that affect both the economic value of equity and the net interest income of an institution's non-trading book activities.

The RTS are intended to facilitate the implementation of the relevant international standards by institutions, in particular those developed by the Basel Committee on Banking Supervision (BCBS). As both the economic value of equity and the net-interest-income estimations can be based on repricing cash flows, both methodologies have been based on the same rules regarding slotting in time buckets, with the exception of some cases in which the calculation of net interest income requires additional slotting.

The simplified methodology is intended to ensure proportionality and includes certain simplifications and conservative measures including:

- a prescriptive, linear slotting of non-maturity deposit cash flows applying scenario-dependent scalars to the core component;
- a simplified calculation of automatic optionality based on pay-outs; and
- for the purpose of net interest income, a calculation of interest rates based on an average reference term per product type, an average commercial margin per product type, and an interest rate up to the repricing date of the instruments calculated with estimates of average interest rates.

## **CRR: EBA consults on draft RTS on assessing materiality of extensions and changes to new market risk internal models under FRTB**

The European Banking Authority (EBA) has launched a [consultation](#) on its draft RTS on the conditions for assessing the materiality of extensions and

changes to the use of internal models as well as to the subset of the modellable risk factors applicable under the Fundamental Review of the Trading Book (FRTB).

The RTS follow the CRR by distinguishing between material and non-material extensions and changes, with the former requiring approval by and the latter notification to authorities. The latter is further divided into two sub-categories. The EBA is proposing a mix of qualitative and quantitative conditions for categorising model extensions and changes, with the quantitative conditions assessing the impact on the internal model approach (IMA) own funds requirements and each FRTB IMA component.

Comments are due by 29 February 2023.

### **MiFIR Review: EU Commission consults on OTC derivatives identifier**

The EU Commission has launched a [targeted consultation](#) on replacing the public identifier for over-the-counter (OTC) derivatives in the EU.

The consultation follows the review of the MiFIR. To assist trading venues with new public transparency obligations under the MiFIR Review, the Commission is required to adopt a delegated act specifying identifying reference data within three months of the proposed amending regulation entering into force, which is expected in Q1 2024.

The consultation is intended to establish the most suitable unique product identifier to use to comply with the transparency requirements applicable to in-scope OTC derivatives, as well as to consider whether there are any additional identifying reference data to consider in addition to the unique product identifier.

Comments are due by 9 January 2024.

### **EBA publishes final report on amendments to guidelines on AML/CFT supervision to cover cryptoassets**

The EBA has published a [final report](#) on amendments to its guidelines on risk-based anti-money laundering and countering the financing of terrorism (AML/CFT) supervision, which will extend the scope of the guidelines to cover AML/CFT supervisors of cryptoasset service providers (CASPs).

Amongst other things, the amended guidelines are intended to:

- emphasise the importance of cooperation among competent authorities, prudential supervisors and other stakeholders;
- highlight the importance of a consistent approach to setting supervisory expectations in instances when multiple competent authorities are responsible for supervising the same institution;
- provide guidance on the sources of information competent authorities should consider when supervising CASPs;
- explain how competent authorities should determine the type of guidance needed within the sector, and how best to communicate this guidance; and
- stress the importance of training to ensure that staff from competent authorities have the technical skills and expertise necessary for the execution of their functions.

The amendments will shortly be translated into the official EU languages and published on the EBA website, alongside a consolidated version of the guidelines. Competent authorities must report within two months of the publication of the translations whether they intend to comply with the guidelines. The amending guidelines will apply from 30 December 2024.

### **BCBS consults on Pillar 3 disclosure framework**

The BCBS has published its [consultation](#) on a Pillar 3 disclosure framework for climate-related financial risks.

According to the BCBS, it is analysing how a Pillar 3 disclosure framework for climate-related financial risks would further its mandate to strengthen the regulation, supervision and practices of banks worldwide with the purpose of enhancing financial stability and the potential design of such a framework.

It seeks feedback on its preliminary proposal for qualitative and quantitative Pillar 3 disclosure requirements that are intended to complement the work of other standard setters, including the International Sustainability Standards Board (ISSB), and provide a common disclosure baseline for internationally active banks.

Comments are due by 29 February 2024.

### **FSB publishes 2023 G-SIBs list**

The Financial Stability Board (FSB), in consultation with the BCBS and national authorities, has published the [2023 list](#) of global systemically important banks (G-SIBs).

One bank (Bank of Communications) has been added to the list of G-SIBs that were identified in 2022, and two banks (Credit Suisse and UniCredit) have been removed. The overall number of G-SIBs has therefore decreased from 30 to 29.

Alongside the list, the FSB has published details of the requirements that apply to the identified G-SIBs. These include a higher capital buffer from 1 January 2025, the total loss-absorbing capacity (TLAC) standard, group-wide resolution planning and regular resolvability assessments, and higher supervisory expectations around risk management functions, risk data aggregation capabilities, risk governance and internal controls.

The BCBS has also published further information related to its 2023 assessment of G-SIBs, with additional details to help understand the scoring methodology.

A new list of G-SIBs will be published in November 2024.

### **FSB publishes report on risks of multi-function cryptoasset intermediaries**

The FSB has published a [report](#) on the financial stability implications of multi-function cryptoasset intermediaries (MCIs). MCIs are defined as firms, or groups of affiliated firms, that combine a broad range of cryptoasset services, products and functions, typically centred around the operation of a trading platform.

The key findings of the report are that:

- MCI vulnerabilities are similar to those observed in traditional finance, including leverage risks, liquidity mismatch, technology and operational vulnerabilities, and interconnectedness with the traditional financial system;
- the combination of functions and the potential lack of effective controls may exacerbate these vulnerabilities;
- there are also additional unique vulnerabilities, resulting from the centrality, concentration and market power of MCIs in the cryptoasset ecosystem; and
- while the threat posed by the failure of an MCI to global financial stability and the real economy remains limited at present, significant information gaps remain.

Going forward, the FSB, in collaboration with standard-setting bodies, intends to:

- assess whether the amplification risks for combinations of MCI functions, the lack of proper governance and the potential for conflicts of interest are adequately covered by existing recommendations by the FSB and other standard-setting bodies, or if they require additional mitigating policy measures;
- consider how to enhance cross-border cooperation and information sharing to help local authorities effectively regulate MCIs operating globally; and
- consider ways to address the information gaps identified in the report.

## **Draft Data Reporting Services Regulations 2023 laid**

The draft Data Reporting Services Regulations 2023 have been [laid before Parliament](#) according to the affirmative procedure.

The draft Regulations create a new regulatory framework that will replace retained EU Law (REUL) in relation to data reporting services providers (DRSPs). Among other things, the draft Regulations:

- define the scope of the DRSP regime;
- restate the Financial Conduct Authority's (FCA) authority over DRSPs, requiring authorisation or verification for data reporting services;
- affirm the FCA's existing supervisory and regulatory powers, including registration, investigation, and enforcement; and
- introduce measures for a consolidated tape, allowing the FCA to select DRSPs through a tender process.

The draft Regulations follow HM Treasury (HMT)'s consultation on the near-final draft version in July 2023 and reflect some changes which aim to clarify the legal drafting to meet the policy intent.

## **Draft Public Offers and Admissions to Trading Regulations 2023 laid**

The draft Public Offers and Admissions to Trading Regulations 2023 have been [laid before Parliament](#) according to the affirmative procedure.

The draft statutory instrument (SI) creates a new framework for the offering of securities to the public in the UK that will replace REUL relating to



prospectuses, namely the UK Prospectus Regulation, which is to be revoked by the Financial Services and Markets Act 2023 (FSMA 2023). Among other things, it:

- creates a general prohibition on public offers of securities, followed by a series of exceptions from this prohibition;
- establishes a new regime for securities ‘admitted to trading’ on a regulated market or multilateral trading facility (MTF); and
- creates a new regulated activity of operating an electronic system for public offers of certain securities.

It is intended that the SI will come fully into force alongside the commencement of the revocation of REUL relating to prospectuses.

### **Draft Securitisation Regulations 2023 laid**

The draft Securitisation Regulations 2023 have been [laid before Parliament](#) according to the affirmative procedure.

The draft statutory instrument (SI) creates a new regulatory framework that will replace REUL in relation to securitisation. Among other things, it:

- specifies certain securitisation activities as designated activities for the purposes of the Financial Services and Markets Act 2000 (FSMA 2000);
- confers powers on the regulators to make rules in relation to these activities; and
- restates into domestic legislation certain provisions of REUL that are to be revoked under the FSMA 2023.

It is intended that the SI will come fully into force alongside new regulators’ rules and the commencement of the revocation of REUL in relation to securitisation.

### **Financial Services and Markets Act 2023: SI on panel remuneration and reports published**

The Financial Services and Markets Act 2023 (Panel Remuneration and Reports) Regulations 2023 (SI 2023/1273) have been [made and laid before Parliament](#).

The Regulations introduce:

- a limited exception to the disqualifications under section 46 of the FSMA 2023 to enable the FCA, Prudential Regulation Authority (PRA), and Payment Systems Regulator (PSR) to remunerate members of certain statutory panels for their work on the panel; and
- a requirement of the FCA and PRA cost benefit analysis panels and the FCA consumer panel to produce and publish annual reports on their work, the first of which must be made within one year of the Regulations coming into force.

The Regulations come into force on 26 December 2023.

## **Short Selling (Notification Threshold) Regulations 2023 made**

The Short Selling (Notification Threshold) Regulations 2023 (SI 2023/1258) have been [made and laid before Parliament](#).

SI 2023/1258 amends the UK Short Selling Regulation (UK SSR) to increase the notification threshold for the reporting of net short positions to the FCA from 0.1% to 0.2% of total issued share capital.

SI 2023/1258 comes into force on 5 February 2024.

In an explanatory memorandum to SI 2023/1258, HMT notes that the change is intended reduce regulatory burdens while ensuring the FCA has sufficient data to carry out its functions.

## **UK regulators publish seventh edition of Regulatory Initiatives Grid**

The Financial Services Regulatory Initiatives Forum has published the [seventh edition of the Regulatory Initiatives Grid](#), which sets out the planned timetable for key initiatives in the regulatory landscape with the aim of supporting greater regulatory coordination.

The latest version provides further detail on timelines arising from ongoing initiatives as well as those being undertaken as a result of the FSMA 2023. It also contains a new section on the Smarter Regulatory Framework (SRF) providing an overview of the next steps for the repeal and replacement of REUL relating to financial services.

The Forum includes representatives from the Bank of England (BoE), Competition and Markets Authority (CMA), FCA, Financial Reporting Council (FRC), Information Commissioner's Office (ICO), PRA, PSR, and the Pensions Regulator (TPR). HMT is an observer member.

## **Green finance: FCA confirms sustainability disclosure and labelling regime**

The FCA has issued a [policy statement](#) (PS23/16) setting out its final rules and guidance on Sustainability Disclosure Requirements (SDR) and investment labels. This follows a consultation paper (CP22/20) published in October 2022.

The package of measures set out in PS23/16 is intended to improve trust and transparency in the market for sustainable investment products and minimise greenwashing.

In particular, the FCA will introduce:

- an anti-greenwashing rule for all authorised firms to make sure sustainability-related claims are fair, clear and not misleading;
- product labels to help investors understand what their money is being used for, based on objective sustainability goals and criteria; and
- naming and marketing requirements so that products cannot be described as having a positive impact on sustainability when they do not.

The anti-greenwashing rule will come into effect from 31 May 2024. Firms can use the investment labels from 31 July 2024. The naming and marketing rules for asset managers come into effect from 2 December 2024.

## **FCA consults on anti-greenwashing rule**

The FCA has published its [consultation](#) on expectations for FCA-authorised firms making claims about the sustainability of a product or a service.

The proposed guidance is designed to help firms better understand the FCA's expectations under the anti-greenwashing rule and other associated requirements. The consultation will be of interest to:

- all FCA-authorised firms;
- industry groups and trade bodies;
- consumer groups and consumers;
- policymakers and other regulatory bodies;
- industry experts and commentators;
- academics and think tanks; and
- stakeholder advocacy groups.

Comments are due by 26 January 2024. The FCA intends to publish the finalised guidance in early 2024.

## **FCA publishes Quarterly Consultation No. 42**

The FCA has published its latest [quarterly consultation paper](#) (CP23/25) on proposed amendments to the FCA Handbook.

It is seeking feedback on proposals to make:

- amendments to the Training and Competence sourcebook (TC) to, among other things, add the International Capital Market Association (ICMA) as a qualifications provider;
- minor consequential amendments to the Credit Unions sourcebook (CREDS) to reflect legislative changes to the Credit Unions Act 1979;
- minor clarifications and corrections to the Collective Investment Schemes sourcebook (COLL);
- changes to clarify the scope and application of certain aspects of Chapter 19 of the Conduct of Business sourcebook (COBS);
- clarifications and corrections to the Prudential sourcebook for MiFID Investment Firms (MIFIDPRU) and the Interim Prudential sourcebook for Investment Businesses (IPRU-INV); and
- amendments to make references to enactments in the Handbook 'ambulatory' (i.e. references to enactments will be to the relevant provisions as they currently stand, rather than to the provision as they stood when the reference was added to the Handbook, unless there is a contrary indication).

Comments are due by 8 January 2024.

## **FCA launches call for input on potential competition impacts from data asymmetry between Big Tech and firms in financial services**

The FCA has published a [call for input](#) to gather information and evidence on whether the data asymmetry between Big Tech and financial services firms

could lead to Big Tech firms gaining entrenched market power in financial services.

The FCA is also seeking to better understand the potential benefits that could arise from greater use of Big Tech firms' customer data in financial services.

Comments are due by 22 January 2024.

## **FCA issues statement on costs and charges disclosure in relation to PRIIPs and UCITS**

The FCA has issued a [statement](#) to address concerns about costs and charges disclosure in the Packaged Retail and Insurance-based Investment Products (PRIIPs) Key Information Document (KID), the Undertakings for Collective Investment in Transferable Securities (UCITS) Key Investor Information Document (KIID), and MiFID2 requirements.

The statement sets out an interim measure, pending broader reform through possible through legislative change, to allow for some disaggregation of costs and charges disclosure, which is intended to enable investment companies to better explain their costs and charges to consumers.

## **Crowdfunding: Bank of Italy consults on service providers' obligations**

The Bank of Italy has launched a [public consultation](#) on a set of proposed measures intended to implement Article 4-sexies.1 of the Italian Financial Act (Legislative Decree 24 February 1998, no. 58) in relation to crowdfunding service providers and their reporting obligations to the competent authorities.

The consultation is mainly addressed to banks, financial institutions, payment institutions, electronic money institutions, investment firms and specialised providers of crowdfunding services.

Comments are due within 60 days of the publication of the consultation document on 22 November 2023.

## **Swiss Federal Council adopts amendment to Capital Adequacy Ordinance implementing final Basel III standards**

The Federal Council has [adopted](#) an amendment to the Capital Adequacy Ordinance (CAO) for banks, which transposes the final Basel III standards adopted by the BCBS into Swiss law. The amended CAO will enter into force on 1 January 2025.

The national implementation of the final Basel III standards centres on the premise that higher-risk areas of the banking business must be backed by more capital, and lower-risk areas by less capital. In addition, the amendment to the CAO is intended to limit the scope for internal models to determine capital requirements and to achieve a transparent and internationally comparable calculation of capital.

The amendments were prepared by the Federal Department of Finance (FDF) in collaboration with the Swiss Financial Market Supervisory Authority (FINMA) and the Swiss National Bank (SNB), in dialogue with the banking sector. The FDF will inform the Federal Council on the status of international implementation of the final Basel III standards by the end of July 2024 at the latest.

## Swiss Federal Council enacts statutory anchoring of stock exchange protective measure

The Federal Council has [enacted](#) the statutory anchoring of a measure to protect the Swiss stock exchange.

In 2019, the EU Commission decided not to extend its recognition of the equivalence of Switzerland's stock exchange regulations. In response, Switzerland activated the protective measure in relation to the EU. The measure is aimed at protecting and maintaining a properly functioning Swiss stock exchange infrastructure, by creating a framework enabling EU securities firms to continue trading the equities of Swiss companies on Swiss stock exchanges.

As the EU continues not to recognise the equivalence of Swiss stock exchange regulation, the Federal Council submitted a proposal to incorporate the protective measures into ordinary law, specifically into the Financial Market Infrastructure Act (FinMIA), to Parliament. Parliament approved the legislative amendment on 17 March 2023. The Federal Council has now decided to put the statutory anchoring into force with effect from 1 January 2024.

Even after its incorporation into the FinMIA, the measure will remain temporary and will initially apply for five years. The Federal Council can deactivate the measure in relation to the EU before the end of this period.

## HKEX and China Beijing Green Exchange sign MoU to promote green finance and sustainable development

The Hong Kong Exchanges and Clearing Limited (HKEX) has [signed](#) a memorandum of understanding (MoU) with the China Beijing Green Exchange (CBGEX) to explore cooperation in a number of areas including promoting green and sustainable finance and contributing to the green development of the Belt and Road Initiative.

Under the MoU, the HKEX and the CBGEX intend to work together to explore cross-border sustainable development, in particular addressing the demand generated from China's increased focus on green infrastructure investments and its shift to a low-carbon economy. The two exchanges will also conduct research related to green and transition finance, collaborate on capabilities building for environment, social and governance standards and information disclosure, as well as explore opportunities in the carbon market.

## HKMA issues circular regarding sale and distribution of green and sustainable investment products

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) to share with the industry the good practices observed in its recent review regarding the sale and distribution of green and sustainable investment products by registered institutions (RIs) and set out its expected standards.

The HKMA acknowledges the increasing demand for green and sustainable investment products and it conducted a thematic review on all RIs (covering retail, private and corporate banks) with respect to their sale and distribution of green and sustainable investment products. The review focused on the types of green and sustainable investment products offered, the relevant classification framework, the selling process as well as controls and monitoring conducted by these RIs.

The HKMA expects RIs, where applicable, to review and make any necessary enhancements to their policies and procedures, having regard to the expected standards set out in the circular, so that adequate control measures are in place to manage potential risks arising from the sale and distribution of green and sustainable investment products to customers. The relevant standards should be complied with as soon as practicable and in any case no later than 12 months from the date of the circular.

## **HKEX publishes guide for new listing applicants**

The Stock Exchange of Hong Kong Limited (SEHK), a wholly-owned subsidiary of HKEX, has published a [guide](#) for new listing applicants that consolidates and enhances all previously published and currently effective guidance letters and listing decisions relating to new listings.

By consolidating all relevant guidance materials into a single guide, the SEHK aims to assist applicants and their advisors to better understand their interpretation of certain Listing Rules and related requirements, as well as the SEHK's expectations regarding the standards and quality of listing document disclosure.

The SEHK notes that there are no major changes to existing new listing guidance. Going forward, the SEHK intends to issue new guidance by way of updating the guide instead of publishing separate/ standalone guidance letters and listing decisions.

The guide will come into effect on 1 January 2024, upon which the corresponding guidance letters and listing decisions will be archived.

## **SEC adopts rule prohibiting conflicts of interest in certain securitizations**

The US Securities and Exchange Commission (SEC) has [adopted](#) new Rule 192 under the Securities Act to implement the prohibition in Section 27B of the Securities Act (which was added by Section 621 of the Dodd-Frank Act) on certain conflicts of interest related to asset-backed security (ABS) transactions.

Rule 192 will generally prohibit an underwriter, placement agent, initial purchaser or sponsor of an ABS (including a synthetic ABS), or affiliates or subsidiaries acting in certain capacities in relation to the ABS ('securitization participants') from engaging in any transaction that would involve or result in any material conflict of interest between the securitization participant and an investor in the relevant ABS. ABS 'sponsors' include persons with 'contractual rights' to direct or cause the direction of the structure, design, or assembly of an ABS (or the composition of the pool of assets underlying or referenced by the ABS) but not those persons that only perform administrative, legal, due diligence, custodial or ministerial activities related thereto or that act on such rights solely due to being a holder of a long position in the ABS.

Specifically, a securitization participant will be prohibited from entering into a 'conflicted transaction' for a period beginning on the date on which such person has reached an agreement to become a securitization participant with respect to an ABS and ending one year after the date of the first closing of the ABS's sale. A 'conflicted transaction' is a short sale of the relevant ABS, the purchase of a credit default swap (or other credit derivative) pursuant to which the securitization participant would be entitled to receive payments upon the occurrence of specified credit events in respect of the relevant ABS or the

purchase or sale of any financial instrument (other than the relevant ABS) or entry into a transaction that is substantially the economic equivalent of the transactions described in prongs and (but not if the transaction is only for the purpose of hedging general interest rate or currency exchange risk). This third prong reflects a narrowing from the SEC's original proposal which would have included, among other things, transactions through which the securitization participant would benefit from the adverse performance of the asset pool supporting or referenced by the relevant ABS. In each case, to be a 'conflicted transaction' subject to the rule there must also be a substantial likelihood that a reasonable investor would consider the relevant transaction important to the investor's investment decision (including whether to retain the ABS).

The rule provides exceptions (subject to the satisfaction of certain conditions) for risk-mitigating hedging activities, *bona fide* market-making activities and liquidity commitments. In another change from the proposal, the exception for hedging activities was expanded to cover a wider range of hedging activities, as opposed to only those arising out of securitization activities.

Securitization participants will be required to comply with Rule 192 with respect to any ABS that closes on a date more than 18 months after the rule's publication in the Federal Register.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **Changes to the EU Benchmarks Regulation - new rules for benchmark providers and users**

The EU Commission has published a legislative proposal for a new regulation removing most 'non-significant benchmarks' from the scope of the EU Benchmarks Regulation. However, the new regulation would also impose new obligations on non-EU administrators of benchmarks which are widely used in the EU and would prohibit non-EU administrators providing certain EU-labelled low-carbon benchmarks. If adopted, the new regulation would apply from 1 January 2026, immediately after the end of the current transitional period for non-EU benchmarks.

This briefing paper discusses the changes.

<https://www.cliffordchance.com/briefings/2023/11/changes-to-the-eu-benchmarks-regulation--new-rules-for-benchmark.html>

### **Navigating funded reinsurance in the UK - insights from the PRA's CP24/23 consultation paper**

On 16 November 2023, the PRA published a consultation paper (CP24/23) on funded reinsurance (Funded Re), outlining proposed expectations for life insurers entering into or holding Funded Re arrangements as cedants, particularly in the context of bulk purchase annuity (BPA) business. The consultation paper is relevant to UK Solvency II firms and UK branches and therefore their reinsurers as well.

This briefing paper discusses the consultation paper.

<https://www.cliffordchance.com/briefings/2023/11/navigating-funded-reinsurance-in-the-uk--insights-from-the-pra-s.html>

## **Funding the energy transition - mobilising private finance for net zero**

As world leaders gather at COP28 in Dubai, there is widespread acknowledgment of the scale of action required to address climate change by accelerating the development of low-carbon energy sources, while also decarbonising industry and transportation.

This global energy transition will require largescale construction of renewables and other low-carbon energy infrastructure worldwide (particularly challenging in developing economies) as well as the development and implementation of new technologies and the scaling-up of existing technologies. Investments in batteries for energy storage and electric vehicles, carbon capture and storage (CCS), sustainable aviation fuels (SAF), and green hydrogen, among others, are needed to reduce greenhouse gas emissions in hard-to-abate sectors in addition to power generation.

This briefing paper discusses the role of private capital in funding the global energy transition and the roles that key stakeholders can each play in contributing to successful projects.

<https://www.cliffordchance.com/briefings/2023/12/funding-the-energy-transition--mobilizing-private-finance-for-ne.html>



# CLIFFORD CHANCE

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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