

## INTERNATIONAL REGULATORY UPDATE 18 – 31 DECEMBER 2023

- **CSRD:** European Sustainability Reporting Standards published in Official Journal
- **European single access point legislation** published in Official Journal
- **Benchmarks:** EU Council agrees negotiating mandate on proposed amendments
- **Sustainable finance:** EU Council agrees negotiating mandate on ESG ratings
- **Open Finance:** ECON Committee publishes draft report on proposed regulation on financial data access
- **UCITS/AIFMs:** EU Commission adopts technical standards on cross-border marketing and management notifications
- **EMIR:** ESAs publish draft RTS extending equity option exemption
- **ESMA** publishes guidelines on position calculation under EMIR
- **CSDR:** ESMA consults on changes to penalty mechanism
- **ESMA** consults on revisions to securitisation disclosure templates
- **ESMA** finalises RTS under revised ELTIF Regulation
- **ESMA** updates Brexit statement on EU Benchmark Regulation
- **NPLs:** EBA publishes final guidelines on assessing knowledge and experience of management under Directive on credit servicers and purchasers
- **CRD/IFD:** EBA publishes final guidelines on benchmarking diversity practices
- **CRR2/BRRD2:** EBA publishes final draft ITS on disclosure and reporting of MREL and TLAC
- **EBA** proposes voluntary EU green loan label
- **ECB and ESRB** report on impact of climate change on EU financial system
- **IOSCO** finalises its policy recommendations for decentralised finance
- **FSB and IOSCO** publish policies to address vulnerabilities from liquidity mismatch in open-ended funds
- **FSB** publishes global monitoring report on non-bank financial intermediation for 2023
- **UK and Switzerland** sign agreement on mutual recognition in financial services

*Clifford Chance's International Regulatory Update is a weekly digest of significant regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.*

To request a subscription to our Alerter: Finance Industry service, please [subscribe to our Client Portal](#), where you can also request access to the Financial Markets Toolkit and subscribe to publications, insights and events.

If you would like to know more about the subjects covered in this publication or our services, please contact:

### International Regulatory Group Contacts

[Marc Benzler](#) +49 69 7199 3304

[Caroline Dawson](#) +44 207006 4355

[Steven Gatti](#) +1 202 912 5095

[Rocky Mui](#) +852 2826 3481

[Lena Ng](#) +65 6410 2215

[Gareth Old](#) +1 212 878 8539

[Donna Wacker](#) +852 2826 3478

### International Regulatory Update Editor

[Joachim Richter](#) +44 (0)20 7006 2503

To email one of the above, please use `firstname.lastname@cliffordchance.com`

Clifford Chance LLP,  
10 Upper Bank Street,  
London, E14 5JJ, UK  
[www.cliffordchance.com](http://www.cliffordchance.com)

- **Primary Markets Effectiveness Review: FCA consults on detailed proposals for listing rules reforms**
- **FCA consults on improving transparency for bond and derivatives markets**
- **FCA sets out final policy on UK consolidated tape and consults on payments to data providers and DRSP forms**
- **FCA publishes policy statement on transfer of REUL relating to Insurance Distribution Directive to sourcebooks**
- **PRA consults on leverage ratio treatment of omnibus account reserves**
- **PRA publishes policy statement on proposed minor amendments to rules and statement of policy**
- **UK EMIR: PRA and FCA publish policy on margin requirements for non-centrally cleared derivatives**
- **Financial Services and Markets Act 2023 (Digital Securities Sandbox) Regulations made**
- **Financial Services and Markets Act 2023 (Benchmarks and Capital Requirements) (Amendment) Regulations 2023 published**
- **Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2023 published**
- **Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (No 2) Order 2023 published**
- **Draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2024 laid before Parliament**
- **BaFin extends decree on permission to call, redeem, repay or repurchase eligible liabilities instruments until 27 December 2024**
- **CSSF issues regulation on systemically important institutions authorised in Luxembourg**
- **CSSF publishes press release on national reporting modalities of credit institutions**
- **DNB consults payment services sector on good practices regarding sub-merchants**
- **FINMA further extends transitional period for duty to exchange collateral for equity options**
- **FINMA publishes guidance on staking services**
- **HKEX concludes consultation on GEM listing reforms**
- **Singapore regulations amending restrictions on personal payment accounts that contain e-money gazetted**
- **Recent Clifford Chance briefings: The EU's AI Act, the German Future Financing Act, and more. Follow [this link](#) to the briefings section.**

## **CSRD: European Sustainability Reporting Standards published in Official Journal**

[Commission Delegated Regulation \(EU\) 2023/2772](#), which sets out the first set of European Sustainability Reporting Standards (ESRS) specifying the information that undertakings are required to report in accordance with the Accounting Directive (2013/34/EU) as amended by the Corporate Sustainability Directive ((EU) 2022/2464), has been published in the Official Journal.

Annex I to the Delegated Regulation sets out the following ESRS applicable to all in-scope undertakings, namely large undertakings, small and medium-sized undertakings with securities admitted to trading on EU regulated markets, and parent undertaking of large groups:

- cross-cutting standards covering general requirements (ESRS 1) and general disclosures (ESRS 2);
- specific standards on environmental disclosures covering climate change (ESRS E1), pollution (ESRS E2), water and marine resources (ESRS E3), biodiversity and ecosystems (ESRS E4) and resource use and circular economy (ESRS E5);
- specific standards on social disclosures covering own workforce (ESRS S1), workers in the value chain (ESRS S2), affected communities (ESRS S3) and consumers and end-users (ESRS S4); and
- specific standards on governance (ESRS G1).

Annex II sets out acronyms and a glossary of terms.

The information required for sustainability reporting is intended to include at least the information financial market participants require in order to comply with the disclosure obligations under the Sustainable Finance Disclosures Regulation ((EU) 2019/2088) (SFDR).

Delegated Regulation (EU) 2023/2772 entered into force on 25 December 2023 and applies from 1 January 2024 for financial years beginning on or after 1 January 2024.

## **European single access point legislation published in Official Journal**

[Regulation \(EU\) 2023/2859](#), [Regulation \(EU\) 2023/2869](#), and [Directive \(EU\) 2023/2864](#), which establish the European single access point (ESAP) and amend certain existing regulations and directives accordingly, have been published in the Official Journal.

The ESAP is intended to offer EU-wide access to information on activities or products provided by entities when this information relates to capital markets, financial services, or sustainable finance. The ESAP will create a single location where all this data will be accessible.

The European Securities and Markets Authority (ESMA) has been tasked with setting up the ESAP by 10 July 2027.

## **Benchmarks: EU Council agrees negotiating mandate on proposed amendments**

The EU Council has [agreed its negotiating position](#) on the EU Commission's proposal to amend the Benchmarks Regulation (BMR) as regards the scope of

the rules for benchmarks, the use in the EU of benchmarks provided by an administrator located in a third country, and certain reporting requirements.

The proposal is intended significantly to reduce the number of benchmarks in scope of EU law and to reduce the regulatory burden for the majority of benchmark administrators and users. Under the proposal, only administrators of critical benchmarks, significant benchmarks, EU Climate Transition Benchmarks and EU Paris-Aligned Benchmarks would continue to be subject to the requirement of registration or authorisation and to the majority of the substantive requirements of the BMR.

The approval of the Council's negotiating mandate allows the Council Presidency to launch trilogue negotiations with the EU Parliament with a view to agreeing on a final text.

### **Sustainable finance: EU Council agrees negotiating mandate on ESG ratings**

The EU Council has [agreed its negotiating position](#) on the EU Commission's proposed regulation on the transparency and integrity of ESG rating activities.

The proposal is intended to enable investors to make better informed decisions regarding sustainable investments and will require ESG rating providers offering services to investors and companies in the EU to be authorised and supervised by ESMA.

The regulation is intended to complement existing legislation such as the Sustainable Finance Disclosure Regulation (SFDR), the Taxonomy Regulation, the Corporate Sustainability Reporting Directive (CSRD) and the Green Bonds Regulation.

The Council's negotiating mandate clarifies the circumstances under which ESG ratings fall under the scope of the regulation, providing further details on the applicable exemptions, as well as the territorial scope of the regulation. It also introduces a lighter, temporary and optional registration regime of three years for existing small ESG rating providers and new small markets entrants.

The approval of the mandate allows the Council Presidency to launch trilogue negotiations with the EU Parliament with a view to agreeing on a final text.

### **Open Finance: ECON Committee publishes draft report on proposed regulation on financial data access**

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has published its [draft report](#) on the EU Commission's proposed regulation on a framework for financial data access (FiDA).

The EU Commission proposed the FiDA package in June 2023. The framework is intended to establish clear rights and obligations to manage customer data sharing in the financial sector beyond payment accounts, namely:

- the possibility but no obligation for customers to share their data with data users;
- an obligation for customer data holders (e.g. financial institutions) to make this data available to data users;
- full control by customers over who accesses their data and for what purpose;
- standardisation of customer data and the required technical interfaces;

- clear liability regimes for data breaches and dispute resolution mechanisms; and
- additional incentives for data holders to put in place high-quality interfaces for data users.

In the draft report, the ECON Committee suggests changes relating to:

- enhancing customer trust;
- promoting innovation; and
- improving interoperability and supervision.

### **UCITS/AIFMs: EU Commission adopts technical standards on cross-border marketing and management notifications**

The EU Commission has adopted regulatory technical standards (RTS) and implementing regulatory standards (ITS) in relation to the cross-border marketing and management of funds in the EU under the Undertakings for the Collective Investment in Transferable Securities (UCITS) Directive and Alternative Investment Fund Managers Directive (AIFMD).

In particular, the Commission has adopted:

- [RTS](#) specifying the information to be notified in relation to the cross-border activities of managers of alternative investment funds (AIFMs);
- [RTS](#) specifying the information to be notified in relation to the cross-border activities of UCITS management companies and UCITS;
- [ITS](#) with regard to the form and content of the information to be notified in respect of the cross-border activities of AIFMs and the exchange of information between competent authorities on cross-border notification letters; and
- [ITS](#) with regard to the form and content of the information to be notified in respect of the cross-border activities of UCITS, UCITS management companies, and the exchange of information between competent authorities on cross-border notification letters.

### **EMIR: ESAs publish draft RTS extending equity option exemption**

The European Supervisory Authorities (ESAs) have published joint [draft RTS](#) under the European Market Infrastructure Regulation (EMIR) providing a two-year extension to the equity option exemption from bilateral margining.

The draft RTS extend the temporary equity option exemption, which is currently set to expire on 4 January 2024, until 4 January 2026.

As the draft RTS still need to be adopted by the EU Commission and will be subject to a scrutiny period by the EU Council and Parliament, the ESAs have also issued a [no-action opinion](#) stating that, from 4 January 2024 until the entry into force or rejection of the proposed extension, or the adoption of any long-term solution in the context of the revision of EMIR, whichever occurs first, competent authorities should not prioritise any supervisory or enforcement action in relation to bilateral margining requirements.

## **ESMA publishes guidelines on position calculation under EMIR**

ESMA has published its [final report](#) on amendments to its guidelines on position calculation under EMIR.

The amendments are intended to ensure that trade repositories calculate positions in derivatives in a harmonised and consistent manner with regard to the time of calculations, the scope of the data to be used in calculations and the calculation methodologies under EMIR, as amended by the EMIR Refit technical standards. They provide specific information on the aggregation of certain data fields and how these should be calculated by trade repositories before providing data to relevant authorities.

The final report sets out a high-level summary of the most relevant feedback received to ESMA's May 2023 consultation on the guidelines and describes the way forward proposed by ESMA, which includes:

- delaying the go-live date of the new guidelines until the EMIR Refit transition period has concluded;
- defining a consistent methodology to determine the 'buyer' and 'seller' of a transaction;
- decommissioning old metrics that referred to negative notional values; and
- including a new set of EMIR Refit fields in position reports.

The guidelines will apply from 28 October 2024, that is six months after the repeal of the existing guidelines on 29 April 2024.

## **CSDR: ESMA consults on changes to penalty mechanism**

ESMA has published for [consultation](#) proposed changes to the Central Securities Depositories Regulation (CSDR) penalty mechanism.

The proposals are intended to enhance the effectiveness of the mechanism in discouraging settlement fails and incentivising their rapid resolution. Specifically, ESMA is seeking feedback on proposals relating to:

- alternative parameters which could be used when the official interest rate for overnight credit charged by the central bank issuing the settlement currency is not available;
- the treatment of historical reference data for the calculation of late matching fail penalties; and
- alternative methods for calculating cash penalties, including progressive penalty rates.

Comments are due by 29 February 2024.

## **ESMA consults on revisions to securitisation disclosure templates**

ESMA has launched a [consultation](#) on its approach to reviewing the securitisation disclosure templates framework under Article 7 of the Securitisation Regulation.

The EU Commission invited ESMA to review the technical standards setting out the disclosure templates in order to improve the functioning of the transparency requirements under the Securitisation Regulation. The requirements include the disclosure of information related to the structure of



the securitisation transaction, the underlying exposures, and the performance of the transaction.

The consultation seeks stakeholders' views on four proposed approaches for the review of the securitisation disclosure framework including:

- postponing the template review until further changes are made to the Securitisation Regulation;
- maintaining the current framework while introducing certain amendments;
- completing a targeted review of the templates aimed at streamlining the templates and developing a dedicated template for private securitisation; or
- undertaking a thorough review of and proposing a fundamental simplification of the framework.

Comments are due by 15 March 2024.

### **ESMA finalises RTS under revised ELTIF Regulation**

ESMA has published its [final report](#) setting out the draft RTS under the revised European Long-Term Investment Fund (ELTIF) Regulation.

The RTS cover the compatibility of the ELTIF's life with the life cycles of its individual assets, the use of the matching mechanism, and cost disclosure. They provide a framework for aspects such as the minimum holding period, maximum redemption frequency, choice of liquidity management tools, notice period, and the maximum percentage of liquid assets that can be redeemed. ESMA considered consultation feedback from 23 stakeholders and agreed on amendments to the final draft RTS as a result.

ESMA has submitted the draft RTS to the EU Commission for approval.

### **ESMA updates Brexit statement on EU Benchmark Regulation**

ESMA has updated its [Brexit statement](#) on the application of key provisions of the EU Benchmark Regulation (BMR).

This follows statements previously issued by ESMA in March and October 2019, October 2020 and March 2021. The latest update reflects the recent extension of the BMR transitional period to 31 December 2025 and states that, in the absence of equivalence decisions by the EU Commission, UK-based administrators and third country benchmarks previously endorsed or recognised in the UK have until 31 December 2025 to apply for recognition or endorsement in the EU.

### **NPLs: EBA publishes final guidelines on assessing knowledge and experience of management under Directive on credit servicers and purchasers**

The EBA has published a [final report](#) on guidelines on the assessment of adequate knowledge and experience of the management or administrative organ of credit servicers under the Non-Performing Loans (NPL) Directive.

The guidelines are intended to ensure that the management or administrative organs are suitable to conduct the business of the credit services in a competent and responsible manner and set out, among other things:

- the common criteria to assess the collective adequate knowledge and experience of the management or administrative organ based on the individual knowledge and experience of the members of the organ;
- the requirements of the assessment process and specify when an assessment should be performed; and
- the requirement for credit servicers to take appropriate corrective measures where shortcomings are identified.

The guidelines apply to credit servicers and competent authorities across the EU and do not apply to credit institutions or other entities listed in Article 2(5)(a) of the NPL Directive.

The guidelines will apply three months after their publication on the EBA's website in the official languages of the EU.

### **CRD/IFD: EBA publishes final guidelines on benchmarking diversity practices**

The EBA has published [final guidelines](#) on the benchmarking of diversity practices, including diversity policies and gender pay gap, under the Capital Requirements Directive (CRD) and the Investment Firms Directive (IFD).

The diversity information collected and analysed will relate to the diversity policies and the composition of the management bodies in terms of the gender, age, educational and professional background, as well as the geographical provenance of their members. The EBA will produce a benchmarking report based on the diversity practices of a representative sample of institutions and investment firms every three years.

The guidelines include templates for data collection and competent authorities are expected to inform participants of the data collection exercise. The first data collection under the guidelines will be conducted in 2025 with a reference date of 31 December 2024.

### **CRR2/BRRD2: EBA publishes final draft ITS on disclosure and reporting of MREL and TLAC**

The EBA has published [final draft ITS](#) amending Commission Implementing Regulation (EU) 2021/763 under the Capital Requirements Regulation (CRR2) and Bank Recovery and Resolution Directive (BRRD2).

Commission Implementing Regulation (EU) 2021/763 contains ITS on supervisory reporting and public disclosure of the minimum requirement for own funds and eligible liabilities (MREL) and the total loss absorbency capacity (TLAC) requirement.

The amending ITS, among other things, reflect changes made to the CRR, including:

- the requirement to deduct investments in eligible liabilities instruments of entities belonging to the same resolution group ('the daisy chain framework');
- the prior permission regime for buying back eligible liabilities instruments issued by the reporting entities and groups; and



- the breakdown by insolvency ranking.

The ITS will enter into force 20 days after publication in the Official Journal and will apply from the later of 16 June 2024 or six months after the entry into force date.

The EBA intends to develop a technical package, consisting of the data point model (DPM), validation rules and XBRL taxonomy which will reflect the amendments introduced through the amending ITS and will become part of release v3.4 of the EBA reporting framework.

### **EBA proposes voluntary EU green loan label**

The EBA has published its [response](#) to the EU Commission's call for advice on green loans and mortgages. The EBA is proposing the introduction of a voluntary EU label for green loans based on a common EU definition and the integration of the concept of green mortgage and its key sustainability features in the Mortgage Credit Directive. In particular, the EBA proposes that:

- the EU definition and labelling framework for green loans, while based on the Taxonomy, should incorporate a degree of flexibility to facilitate market participants' credible efforts in contributing to environmental objectives;
- the labelling framework for green loans should provide the necessary information and transparency for prospective borrowers, including information on the long-term benefits of investing in energy-efficient solutions, documentation requirements and availability of financial support schemes; and
- when reviewing the Mortgage Credit Directive, the Commission should consider integrating the concept of green mortgages as well as the expected features of these loans.

### **ECB and ESRB report on impact of climate change on EU financial system**

The European Central Bank (ECB) and the European Systemic Risk Board (ESRB) have published a joint [report](#) on the impact of climate change on the EU financial system. The report sets out frameworks for addressing risk to the financial system by:

- gathering evidence on the most important financial stability indicators via a surveillance framework and accompanying [Chartbook](#);
- leveraging this evidence to develop a macroprudential strategy for addressing climate risk; and
- extending the scope from climate-related risks to broader nature-related risks.

The report argues that banks have a key role to play within the financial system when it comes to managing and reducing risks to financial stability that arise from emissions of the EU economy, because banks lend disproportionately to sectors with high exposure to climate-related risk.

The report follows three previous ECB/ESRB reports on climate risk and is part of the ECB's broader response to climate change.

## **IOSCO finalises its policy recommendations for decentralised finance**

The International Organization of Securities Commissions (IOSCO) has published its [final report](#) on policy recommendations for decentralised finance (DeFi).

The nine policy recommendations are intended to address market integrity and investor protection concerns arising from DeFi by supporting greater consistency of regulatory frameworks and oversight in member jurisdictions.

They cover the following six areas:

- understanding DeFi arrangements and structures;
- achieving common standards of regulatory outcomes;
- identification and management of key risks;
- clear, accurate and comprehensive disclosures;
- enforcement of applicable laws; and
- cross-border cooperation.

## **FSB and IOSCO publish policies to address vulnerabilities from liquidity mismatch in open-ended funds**

The Financial Stability Board (FSB) has published [revised policy recommendations](#) to address structural vulnerabilities from liquidity mismatch in open-ended funds (OEFs). At the same time, IOSCO has published its final [guidance](#) on anti-dilution liquidity management tools (LMTs) for the effective implementation of the recommendations for liquidity risk management for collective investment schemes.

The measures are intended to provide greater clarity on the redemption terms that OEFs could offer to investors, based on the liquidity of their asset holdings, and to ensure greater use and consistency in the use of anti-dilution LMTs.

The FSB and IOSCO intend to review implementation progress and, by 2028, assess whether the implemented reforms have sufficiently addressed financial stability risks.

## **FSB publishes global monitoring report on non-bank financial intermediation for 2023**

The FSB has published its [global monitoring report](#) on non-bank financial intermediation (NBFi) for 2023, which presents the results of the FSB's annual monitoring exercise assessing global trends and vulnerabilities in NBFi.

Amongst other things, the exercise found that:

- the size of the NBFi sector decreased in 2022, largely as a result of higher interest rates, with the total financial assets of the sector declining by 5.5% compared to 2021 to USD 217.9 trillion, mainly reflecting valuation losses in mark-to-market asset portfolios, particularly in investment funds;
- the narrow measure of the NBFi sector - comprising entities that authorities have assessed as being involved in credit intermediation activities that may pose bank-like financial stability risks - decreased 2.9% to USD 63.1 trillion in 2022, representing 28.9% of total NBFi assets. The FSB attributes this

decline almost entirely to collective investment vehicles susceptible to runs, such as fixed income, mixed, and credit hedge funds. Money market funds were the only investment fund type to grow in 2022;

- banks continued to be net recipients of funding from NBFIs, although this funding has been gradually decreasing as a proportion of bank assets since 2013; and
- most vulnerability metrics of NBFIs - measuring credit intermediation, maturity transformation, liquidity transformation, and leverage - remained stable. Metrics for maturity transformation in fixed income funds were high overall, while metrics for liquidity transformation were also high across most funds.

## **UK and Switzerland sign agreement on mutual recognition in financial services**

The UK Chancellor of the Exchequer, Jeremy Hunt, and Swiss Federal Councillor Karin Keller-Sutter have signed an agreement on mutual recognition in financial services, the [Berne Financial Services Agreement](#).

The agreement covers the recognition of equivalence in the areas of banking, investment services, insurance, asset management and financial market infrastructures for sophisticated clients.

In particular:

- for investment and banking services, including wealth management, the agreement enables Swiss financial service providers to supply certain cross-border activities into the UK and confirms the current framework for UK firms to supply such activities into Switzerland;
- in the insurance sector, the agreement covers selected lines of the non-life insurance business for large corporate clients, where UK insurance companies will be allowed to engage in cross-border activities, while the UK is confirming its current framework enabling Swiss firms to provide cross-border insurance services to large corporate clients. Certain UK insurance intermediaries will also be relieved from the localisation requirement under the revised Swiss Insurance Oversight Act, which enters into force on 1 January 2024;
- in the area of asset management, the agreement confirms the existing access for the advertising and offering of collective investment schemes as well as the delegation of portfolio management and risk management; and
- with respect to financial market infrastructures, the agreement recognises the equivalence of the relevant framework for central counterparties, confirms the existing framework with regard to trading venues and facilitates compliance with certain obligations in cross-border over-the-counter (OTC) derivatives transactions.

The agreement still needs to be approved by the parliaments of both parties before it can enter into force.

## **Primary Markets Effectiveness Review: FCA consults on detailed proposals for listing rules reforms**

The Financial Conduct Authority (FCA) has published a consultation paper ([CP23/31](#)) providing feedback to its May 2023 consultation (CP23/10) on its proposals to make the UK's listing regime more accessible, effective, and competitive, and setting out its detailed proposals for listing rules reforms.

The FCA has kept the suggested change to a simplified listing regime with a single listing category, with streamlined eligibility and ongoing requirements, aimed at encouraging a greater range of companies to list in the UK. The FCA has also retained the idea, set out in CP23/10, of moving to a disclosure-based regime that puts sufficient information in the hands of investors, so that they can influence company behaviour and decide how they want to invest. The FCA is suggesting disclosures for significant transactions while keeping sponsor scrutiny of related party transactions, rather than the current mandatory votes. Shareholder approval for key events such as reverse takeovers and de-listing would, however, remain.

Further to the publication of CP23/31 and a first tranche of the initial draft UK Listing Rules (UKLR) sourcebook provisions contained within it, the FCA intends to publish a second tranche of draft rules later in Q1 2024 as part of the consultation process.

The consultation period for LR 8 proposals regarding sponsor competence closes on 16 February 2024.

The consultation period for UKLR proposals regarding the replacement to the current LR sourcebook closes on 22 March 2024.

## **FCA consults on improving transparency for bond and derivatives markets**

The FCA has published a consultation paper ([CP23/32](#)) on proposed changes to the bond and derivative transparency regime in the UK.

CP23/32 sets out the FCA's proposals to:

- revise the transparency framework for the bond and derivative markets in the UK;
- define the scope and calibration of the new framework;
- clarify exemptions from post-trade transparency;
- improve the content of post-trade information (fields and flags); and
- refine the definition of a systematic internaliser.

The proposals are intended to improve the operation of the existing transparency regime by striking a different balance between the need to support the ability of market participants to offer liquidity and the need for better and more timely transparency for the market as a whole.

Comments are due by 6 March 2024.

## **FCA sets out final policy on UK consolidated tape and consults on payments to data providers and DRSP forms**

The FCA has published a consultation paper ([CP23/33](#)) setting out its final policy on the UK consolidated tape (CT) framework for bonds and its response to discussion paper questions on a CT for equities, as set out in the FCA's July consultation (CP23/15) on the UK CT.

In light of the responses received to CP23/15, the FCA is also consulting on payments to data providers and authorisation and supervisory forms for data reporting service providers (DRSPs).

Comments are due by 9 February 2024.

## **FCA publishes policy statement on transfer of REUL relating to Insurance Distribution Directive to sourcebooks**

The FCA has published a policy statement ([PS23/18](#)) which sets out feedback and final policy following its consultation (CP23/19) on proposed amendments to its sourcebooks to replace retained EU law (REUL) relating to the UK Insurance Distribution Directive (UK IDD), which is due to be repealed as part of the UK Government's implementation of the Smarter Regulatory Framework.

In CP23/19, the FCA sought feedback on its proposal to transfer the requirements which currently apply to firms under the IDD delegated acts to its own rules and guidance through amendments to the:

- Senior Management Arrangements, Systems and Controls sourcebook (SYSC);
- Conduct of Business sourcebook (COBS);
- Insurance: Conduct of Business sourcebook (ICOBS); and
- Product Intervention and Product Governance sourcebook (PROD).

The FCA received thirteen responses to CP23/19, the majority of which were broadly supportive of the proposals. It is therefore publishing the final policy without any material changes from the version consulted upon.

The final policy comes into force on 5 April 2024.

## **PRA consults on leverage ratio treatment of omnibus account reserves**

The Prudential Regulation Authority (PRA) has published a consultation paper ([CP28/23](#)) on proposed rules to exclude reserves held on omnibus accounts for the leverage ratio, subject to certain conditions.

Omnibus accounts are an emerging type of account at central banks where the central bank reserves of several participants are co-mingled in a single account. The PRA currently excludes eligible liability-matched claims on central banks, including reserves, from the calculation of the leverage ratio.

In CP28/23, the PRA is proposing to extend this exclusion to omnibus account reserves with the intention of ensuring all asset types which are claims on central banks are excluded in the same way, as required by the direction on leverage ratio issued by the Financial Policy Committee in September 2022. The PRA also believes that the proposal would remove a disincentive to the adoption of omnibus accounts, thereby facilitating competition in wholesale payment systems.

The proposals would result in amendments to:

- the Glossary, Leverage Ratio (CRR), Disclosure (CRR) and Reporting (CRR) Parts of the PRA Rulebook;
- the supervisory statement 'The UK leverage ratio framework' (SS45/15);
- the 'Instructions for leverage ratio disclosures'; and
- the 'Instructions for leverage ratio reporting'.

Responses are due by 8 April 2024. The PRA intends to implement the changes proposed in the consultation paper in the second quarter of 2024.

## **PRA publishes policy statement on proposed minor amendments to rules and statement of policy**

The PRA has published a policy statement ([PS19/23](#)) setting out feedback and final policy following three consultations published in 2023 on proposed minor amendments to its rules.

In CP8/23, the PRA proposed to:

- amend its approach to fulfilling its obligation to publish technical information necessary for the valuation of insurance liabilities for each relevant currency;
- insert the definition of ‘participating Solvency II undertaking’ in the Group Supervision Part of the PRA Rulebook;
- update the definition of ‘accounting principles’ in the Glossary of the PRA Rulebook; and
- correct the reference number of the form used to notify the PRA of an auditor appointment in the Auditors Part of the PRA Rulebook.

In Chapter 11 of CP12/23, the PRA proposed to make minor consequential changes to its Rulebook to update definitions that encompass, or refer directly to, the Solvency II Commission Delegated Regulation (SII CDR).

In CP22/23, the PRA proposed to:

- amend the Depositor Protection Part of the PRA Rulebook (DPP) to facilitate the ability of the Financial Services Compensation Scheme (FSCS) to pay compensation to eligible depositors of insolvent deposit takers via electronic transfer; and
- amend the Senior Managers and Certification Regime (SM&CR) Forms C and D related to the Financial Conduct Authority’s (FCA’s) new consumer duty rules.

PS19/23 outlines the feedback the PRA received to these proposals and the actions the PRA intends to take in response to them. In all instances, it has decided to proceed with the proposals as set out in the consultation papers.

The implementation date for the policy changes set out in CP8/23 and CP22/23 is 22 December 2023. The implementation date for the policy changes set out in Chapter 11 of CP12/23 is 31 December 2023.

## **UK EMIR: PRA and FCA publish policy on margin requirements for non-centrally cleared derivatives**

The PRA and FCA have published a [policy statement](#) providing feedback to responses to their consultation (CP13/23) on amendments to the UK version of the RTS for risk-mitigation techniques for over-the-counter (OTC) derivative contracts not cleared by a central counterparty (BTS 2016/2251) which supplement the retained EU Regulation on OTC derivative transactions, central counterparties and trade repositories (UK EMIR).

CP13/23 proposed to extend the temporary exemptions for single-stock equity options and index options from the UK bilateral margining requirements from 4 January 2024 to 4 January 2026 and set out the proposed approach to model pre-approval in relation to bilateral initial margin models.

Respondents welcomed the exemption proposals and three of four recommended that the final UK bilateral margin requirements for single-stock



equity options and index options should result in the exemption being permanent. The PRA and FCA have decided to maintain the draft policy as consulted and intend to gather information on current market practices in order to create a permanent UK regime. All respondents supported the proposals not to implement a supervisory pre-approval requirement for using initial margin models.

The statement also sets out responses that fell outside the scope of CP13/23 and the PRA and FCA intend to consider these issues in the future.

The policy is effective from 18 December 2023.

### **Financial Services and Markets Act 2023 (Digital Securities Sandbox) Regulations made**

The Financial Services and Markets Act 2023 (Digital Securities Sandbox) Regulations ([SI 2023/1398](#)) have been made and laid before Parliament.

The Regulations create a financial market infrastructure sandbox, the 'Digital Securities Sandbox' (DSS), which will allow firms and regulators to test the use of new technology across financial markets. In particular, the DSS is intended to facilitate the trialling of developing technology, such as distributed ledger technology and technology associated with the issuance and trade of digital assets, to perform the activities of central securities depositories and trading venues. This will be done by subjecting participating firms to a schedule of disapplied and modified legislation that would otherwise act as a barrier to the use of the trialled technology.

The Regulations set out:

- the activities, financial instruments and regulators covered by the DSS;
- the eligibility criteria for applying to, and participating in, the DSS;
- the arrangements in place to ensure that regulators are able to effectively supervise the DSS;
- the termination and wind-down arrangements for DSS activities; and
- the relevant legislation being modified, disapplied or applied to new entities participating in the DSS.

The Regulations will come into force on 8 January 2024.

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

The Financial Services and Markets Act 2023 (Benchmarks and Capital Requirements) (Amendment) Regulations 2023 ([SI 2023/1409](#)) have been made and published.

Regulation 2 amends the definition of the total counterparty credit risk exposure value (EAD<sub>i</sub> total) for the purposes of the formula set out in Article 384 of the UK Capital Requirements Regulation (UK CRR) that certain financial institutions are required to use to calculate a particular type of capital requirements. The amendment to the definition includes the insertion of a discount factor that reduces the amount of capital that small and medium-sized firms are required to hold for their derivative activities under the UK CRR.

Regulation 3 amends the UK Benchmarks Regulation (UK BMR) to extend:

- the expiry date of the transitional period allowing for continued access by UK markets to third country benchmarks from 31 December 2025 to 31 December 2030; and
- the provision permitting continued use of a legacy third country benchmark by UK markets so that, where a benchmark is used on 31 December 2030, it may continue to be used on and after 1 January 2031.

The Regulations came into force on 20 December 2023, with the exception of Regulation 3, which came into force on 1 January 2024.

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

The Financial Services and Markets Act 2023 (Consequential Amendments) Regulations 2023 ([SI 2023/1410](#)) have been made and published.

The Regulations make consequential amendments arising out of provision in, or made under, the Financial Services and Markets Act 2023 (FSMA 2023). FSMA 2023 repeals retained EU law relating to financial services.

The amendments are 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 Regulations also amend:

- section 50(12) of FSMA 2023 in consequence of section 21(4)(b), to provide that the required content of the Bank of England'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.

The Regulations came into force on 1 January 2024.

### **Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (No 2) Order 2023 published**

The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (No 2) Order 2023 ([SI 2023/1411](#)) has been made and published.

The Order amends the exemptions for high net worth individuals (HNW) and sophisticated investors under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (FPO).

The Order updates 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.

The Order will come into force on 31 January 2024.

### **Draft Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2024 laid before Parliament**

A [draft](#) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2024 has been laid before Parliament, together with a draft explanatory memorandum.

The draft Order amends the regulatory framework to make operating a pension dashboard service which connects to the Money and Pensions Service (MaPS) dashboards digital architecture a regulated activity. Dashboards will be provided by commercial bodies and when developed, will allow individuals to view all of their pensions data, including their state pension, in one place and online.

The draft Order provides the Financial Conduct Authority (FCA) with the power to regulate the operators of dashboards and aims to ensure greater protection for consumers.

Subject to Parliamentary approval, the Order will come into force on 11 March 2024.

### **BaFin extends decree on permission to call, redeem, repay or repurchase eligible liabilities instruments until 27 December 2024**

The German Federal Financial Supervisory Authority (BaFin) has issued a [general decree](#) (Allgemeinverfügung) extending the applicability of its previous general decrees of 27 December 2021 and 20 December 2023 on the permission to call, redeem, repay or repurchase eligible liabilities instruments until 27 December 2024.

According to BaFin, this is because amendments to BRRD 2 and SRMR 3 are expected in the course of 2024, according to which the resolution authority does not have to set minimum requirements for own funds and eligible liabilities (MREL) for institutions that fall within the scope of application of the general decree. This also removes the requirement for these institutions to obtain the approval of the resolution authority prior to the cancellation, redemption, repayment or repurchase of eligible liabilities before their contractual maturity.

On the basis that it can be assumed that the amendments to the above regulations will enter into force in the course of 2024, the general decree is

extended until 27 December 2024 as a precautionary measure. The general decree can be amended and revoked by BaFin at any time.

### **CSSF issues regulation on systemically important institutions authorised in Luxembourg**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a [regulation](#) (23-05) concerning systemically important institutions (SSIs) authorised in Luxembourg.

The regulation identifies the following SIIs authorised in Luxembourg: Banque et Caisse d'Épargne de l'État Luxembourg, Banque Internationale à Luxembourg, BGL BNP Paribas, Clearstream Banking S.A., and Société Générale Luxembourg, all qualifying as other systemically important institutions (O-SIIs). There is no global systemically important institution (G-SII) authorised in Luxembourg.

Four of these institutions qualify as O-SIIs based on the score obtained by application of the European Banking Authority (EBA) standard methodology (i.e., exceeding the threshold laid down in accordance with the relevant EBA guidelines (EBA/GL/2014/10)).

Another institution qualifies as O-SIIs by application of the prudential judgement and due to its score, which falls below the relevant threshold but remains very close thereto. The identification of this institution is justified by its role as market infrastructure.

The regulation increases the capital buffer rates for BGL BNP Paribas from 0.50 % to 1.00 % and maintains the capital buffer rates for the other O-SIIs.

The regulation entered into force on 1 January 2024 and as of this date replaced the currently applicable CSSF regulation 22-07 concerning SSIs authorised in Luxembourg.

### **CSSF publishes press release on national reporting modalities of credit institutions**

The CSSF has published a [press release](#) on new transmission methods for certain national reporting of credit institutions.

In particular, from 2 January 2024, the CSSF will allow credit institutions to transmit their national B4.5 (Analysis of shareholdings) and B4.6 (Persons responsible for certain functions and activities) reports by using two new methods:

- a dedicated eDesk approach accessible via the eDesk Portal; and
- an API solution based on the submission of a structured exchange file (json format) via the S3 protocol ('simple storage service').

The corresponding user guide will be available on eDesk, detailing the procedures for completing, validating and submitting these B4.5 and B4.6 national reports. The former transmission channels will no longer be available.

The CSSF has indicated that it will gradually allow entities to submit all other European and national banking reports through these eDesk/s3 transmission methods.

## **DNB consults payment services sector on good practices regarding sub-merchants**

The Dutch Central Bank (DNB) has issued a [consultation document](#) entitled ‘Good practices on sub-merchants’, which is intended to provide payment institutions and electronic money institutions with guidance on how to manage risks related to the provision of services (directly or indirectly) to sub-merchants.

DNB notes that institutions have increasingly been setting up different constructions with their clients (merchants) in order to provide services to the merchants’ clients (sub-merchants). Therefore, in 2022, DNB conducted a thematic examination into selected payment institutions and electronic money institutions that used different partnership constructions to offer payment services to sub-merchants to gain insight into the integrity risks associated with this practice. In addition, DNB investigated which control measures the selected institutions had implemented in order to mitigate the associated integrity risks.

The good practices document contains guidance on the mandatory Systematic Integrity Risk Analysis (SIRA) as well as policy and procedures regarding customer due diligence and transaction monitoring in relation to sub-merchants.

Comments are due by 25 January 2024.

## **FINMA further extends transitional period for duty to exchange collateral for equity options**

The Swiss Financial Market Supervisory Authority (FINMA) has issued [guidance](#) relating to the Financial Market Infrastructure Ordinance. The guidance extends the transitional period for the duty to exchange collateral for non-centrally cleared OTC derivatives transactions that are options on individual equities or index options.

Due to legal developments in the EU and UK, the transitional periods for exchanging collateral in the case of equity options is being extended by at least two years. Against this background, FINMA is also granting a corresponding deadline extension until 1 January 2026 in order to prevent disadvantages for Swiss derivatives traders.

## **FINMA publishes guidance on staking services**

FINMA has published [guidance](#) on staking services, which is intended to enhance transparency about the treatment of staking services under financial market law. The focus is on protecting customers from the risk of the staking service provider falling into bankruptcy.

Among other things, the guidance states that:

- until such time as there is further clarification of the issue of segregating assets in legislation or case law, in the event of a supervised entity’s bankruptcy, the staked cryptoassets are to be segregated from a bankrupt estate and returned to custody account customers; and
- staking will not attract capital requirements for the supervised institution, provided it has implemented risk-mitigating measures and informed customers of the risks in an appropriate manner.

The guidance also provides a summary of the different forms of staking cryptoassets, describes the risks and sets out the risk-mitigating steps that need to be implemented by the supervised institution.

## **HKEX concludes consultation on GEM listing reforms**

The Stock Exchange of Hong Kong Limited (SEHK), a wholly owned subsidiary of the Hong Kong Exchanges and Clearing Limited (HKEX), has published the [conclusions](#) to its September 2023 consultation on GEM reforms.

According to the SEHK, all the proposals received majority support. The SEHK will adopt its proposals with minor modifications and clarifications as set out in the consultation conclusions. The key proposals adopted include the following:

- the introduction of a new streamlined transfer mechanism to enable eligible GEM issuers to transfer to the Main Board without the need to appoint a sponsor to carry out due diligence or produce a 'prospectus-standard' listing document;
- the introduction of a new 'alternative market capitalisation/ revenue/ R&D test' for an initial listing on GEM that targets high growth enterprises heavily engaged in research and development (R&D) activities;
- the reduction of the post-IPO lock-up period imposed on GEM issuers' controlling shareholders to 12 months; and
- the removal of the mandatory quarterly reporting requirements, and aligning the other continuing obligations of GEM with those of the Main Board.

The revised GEM Listing Rules and Main Board Listing Rules to implement the GEM Reforms came into effect on 1 January 2024.

## **Singapore regulations amending restrictions on personal payment accounts that contain e-money gazetted**

The Singapore Government has gazetted the [Payment Services \(Amendment No. 2\) Regulations 2023](#). The Amendment Regulations follow the consultation on proposed amendments to restrictions on personal payment accounts containing e-money published by the Monetary Authority of Singapore (MAS) on 18 October 2022 and response to feedback published by the MAS on 7 July 2023.

The Amendment Regulations have been gazetted to amend regulation 18 of the Payment Services Regulations 2019 in order to increase the personal e-wallet 'stock cap' (i.e. maximum amount of funds that can be held at any given time) from SGD 5,000 to SGD 20,000, and 'flow cap' (i.e. maximum total outflow over a rolling 12-month period) from SGD 30,000 to SGD 100,000.

The Amendment Regulations are effective from 15 December 2023.



## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **The EU's AI Act – what do we know about the critical political deal?**

The EU institutions have finally reached a political agreement on the EU's landmark Artificial Intelligence Act (AI Act), following the conclusion of their fifth and final round of negotiations late on 8 December.

This is a crucial milestone and a decisive step for the regulation of AI worldwide. The significance of this achievement should not be underestimated, no matter the work and efforts remaining to reach adoption of the AI Act. As the key stakeholders work to finalise a complete, consolidated final text for approval, this briefing paper shares some initial thoughts and takeaways on some key aspects of the political agreement.

<https://www.cliffordchance.com/briefings/2023/12/the-eu-s-ai-act--what-do-we-know-about-the-critical-political-de.html>

### **Streamlining foreign investment and CFIUS processes – what you need to know**

Navigating foreign investment regimes can be critical to the success of a transaction. Foreign investment scrutiny is increasingly being applied to global M&A transactions.

The global trend towards protectionism has led to more restrictive government measures. This requires a more strategic and co-ordinated approach towards foreign investment rules.

Clifford Chance has prepared an updated guide on foreign investment and CFIUS processes.

<https://www.cliffordchance.com/briefings/2022/04/streamlining-foreign-investment-and-cfius-processes--what-you-need-to-know.html>

### **German Future Financing Act modernises German Financial Market**

The German Financing of the Future Act (Zukunftsförderungsgesetz, ZuFinG) has, in large parts, just entered into force. The act removes language barriers and form requirements by strengthening digital and English language communication with BaFin. Standardised documentation used between certain financial enterprises is exempted from some mandatory content review. These are in addition to a variety of further measures under the ZuFinG aiming at modernising the German financial market, such as the implementation of the DLT Pilot Regime.

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

<https://www.cliffordchance.com/briefings/2023/12/german-future-financing-act-modernises-german-financial-market.html>

### **Developments relating to sufficient or adequate security requirement under amended UAE banking laws**

On 2 January 2023 a series of new laws came into force in the UAE, including Federal Law No. 23 of 2022 which amended certain provisions of Federal Law No. 14 of 2018 and Federal Law No. 50 of 2022 which repealed and replaced Federal Law No. 18 of 1993.

The UAE banking law (as amended) and the new commercial transactions law both introduced a requirement obliging financial institutions and/or banks to obtain ‘sufficient’ or ‘adequate’ security for credit facilities granted by them. Despite a number of recent developments, including explanatory guidance by way of official circulars from the Abu Dhabi Judicial Department and a string of caselaw on the subject, there remains considerable uncertainty surrounding the scope of the requirement for sufficient or adequate security.

This briefing paper discusses these developments.

<https://www.cliffordchance.com/briefings/2023/12/developments-relating-to-sufficient-or-adequate-security-require.html>

### **The FTC And DOJ issue final merger guidelines**

On 18 December 2023, the Antitrust Division of the US Department of Justice and the Federal Trade Commission published the final version of the 2023 merger guidelines which replace all earlier merger guidelines.

After several months and numerous constructive comments from the antitrust bar, the final guidelines largely maintain the aggressive approach contained in the draft merger guidelines circulated in July 2023, with some notable exceptions. The final guidelines consist of 11 core guidelines (consolidated from 13 in the draft guidelines), which reinforce the Biden administration’s enforcement priorities and views on antitrust theories of harm.

This briefing paper discusses the final merger guidelines.

<https://www.cliffordchance.com/briefings/2023/12/the-ftc-and-doj-issue-final-merger-guidelines.html>

# C L I F F O R D C H A N C E

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.

[www.cliffordchance.com](http://www.cliffordchance.com)

Clifford Chance, 10 Upper Bank Street,  
London, E14 5JJ

© Clifford Chance 2022

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street,  
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to [nomorecontact@cliffordchance.com](mailto:nomorecontact@cliffordchance.com) or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.