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Banking package: EU Council adopts CRR3 and CRD6

The EU Council has adopted the EU Commission's proposed banking package.

The package comprises:

- a directive amending the Capital Requirements Directive (CRD) as regards supervisory powers, sanctions, third-country branches and ESG risk (CRD6); and

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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

- a regulation amending the Capital Requirements Regulation (CRR) as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor (CRR3).

The proposals implement the international Basel III standards while taking into account specificities of the EU economy. They also set out a transitional prudential regime for cryptoassets and introduce provisions on the management, reporting, disclosure, governance and supervisory review of the environmental, social and governance (ESG) risks of EU banks.

The EU Parliament and Council reached a provisional agreement on the texts in June 2023.

The legislation will enter into force on the twentieth day following its publication in the Official Journal. CRR3 will apply from 1 January 2025 and Member States will have 18 months to transpose CRD6 into national law.

EU Council adopts AML/CFT package

The EU Council has adopted a series of legislative proposals that form the EU Commission's July 2021 anti-money laundering and counter terrorist financing (AML/CTF) package. The package includes:

- the EU 'Single Rulebook' Regulation or Anti-Money Laundering Regulation (AMLR1);
- the sixth Anti-Money Laundering Directive (AMLD6);
- the European Anti-Money Laundering Authority (AMLA) Regulation; and
- the Directive as regards access to centralised bank account registries.

The key aims of the package are to establish a directly applicable single rulebook to harmonise AML/CTF rules across the EU, expand the scope of the rules to address new technologies, such as cryptoassets, and establish a centralised authority (AMLA) with supervisory and investigative powers to ensure compliance with the rules. The AMLA will be based in Frankfurt and start operations in mid-2025.

The AMLR1 will apply three years after its entry into force. Member States will have two years to transpose some parts of the AMLD6 and three years for others.

DORA: Delegated Regulations on critical ICT third-party service providers and payment of oversight fees published in Official Journal

The following two Delegated Regulations supplementing provisions relating to ICT third-party service providers under the Digital Operational Resilience Act (DORA) have been published in the Official Journal:

- Commission Delegated Regulation (EU) 2024/1502 specifying the criteria for the designation of ICT third-party service providers as critical for financial entities; and
- Commission Delegated Regulation (EU) 2024/1505 determining the amount of the oversight fees to be charged by the lead overseer to critical ICT third-party service providers and the way in which those fees are to be paid.

Both Delegated Regulations will enter into force on 19 June 2024.

MiCA: Delegated Regulations on significance criteria, intervention powers, fines and penalty payments, and fees relating to ARTs and e-money tokens published in Official Journal

The following four Delegated Regulations under the Markets in Cryptoassets Regulation (MiCA) have been published in the Official Journal:

- Commission Delegated Regulation (EU) 2024/1506 specifying certain criteria for classifying asset-referenced tokens and e-money tokens as significant;
- Commission Delegated Regulation (EU) 2024/1507 specifying the criteria and factors to be taken into account by the European Securities Markets Authority (ESMA), the European Banking Authority (EBA) and competent authorities in relation to their intervention powers;
- Commission Delegated Regulation (EU) 2024/1504 specifying the procedural rules for the exercise of the power to impose fines or periodic penalty payments by the EBA on issuers of significant asset-referenced tokens and issuers of significant e-money tokens; and
- Commission Delegated Regulation (EU) 2024/1503 specifying the fees charged by the EBA to issuers of significant asset-referenced tokens and issuers of significant e-money tokens.

The four Delegated Regulations will enter into force on 19 June 2024.

MiCA: ESMA publishes final draft RTS on conflicts of interest for cryptoasset service providers

ESMA has published its final report setting out draft RTS in relation to conflicts of interest for cryptoasset service providers (CASPs) under the MiCA.

This follows a consultation launched in July 2023. The draft RTS are intended to clarify elements relating to the vertical integration of CASPs, as well as to further align with the draft EBA rules applicable to issuers of asset-referenced tokens (ARTs).

The draft RTS also contain updates on:

- requirements for the policies and procedures for the identification, prevention, management, and disclosure of conflicts of interest, considering the scale, the nature and the range of cryptoasset services provided; and
- details and methodology for the content of the disclosures of conflicts of interest.

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

ESMA deprioritises certain 2024 deliverables

The European Securities and Markets Authority (ESMA) has written a letter to the EU Commission on the prioritisation of its 2024 deliverables.

Following an assessment of the commitments previously outlined in its 2024 Annual Work Programme (AWP) in September 2023, and in light of external factors affecting its workload since the publication of the AWP, in particular the coincidence of a large number of reviewed legislative files with the need to

prepare for the implementation of new responsibilities, ESMA has identified several deliverables which could be deprioritised or postponed.

In the letter, ESMA outlines the deprioritised deliverables which relate to its commitments to the EU Commission, and specifies the reasons for the delay or deprioritisation of each of these deliverables. The deliverables include:

- an annual report on accepted market practices under MAR;
- a webpage with links to national authorities' publication of administrative penalties and a review report on central counterparty (CCP) sanctions under the CCP Recovery and Resolution Regulation;
- a regulatory technical standard (RTS) on public data and a report on interoperability under EMIR;
- a review of RTS 2 on transparency requirements, derivatives pre- and post-trade, and data for the consolidated tape providers concerning derivatives, and reports on transparency waivers and deferred publication under MiFIR;
- a credit rating agencies report under the revised CRR;
- a review of RTS on settlement discipline and the mandatory buy-in process, and a report on regulatory tools to improve settlement efficiency under CSDR;
- technical advice on the UCITS Eligible Assets Directive; and
- a revision of securitisation disclosure RTS.

Market abuse: ESMA issues statement on rules for sharing information during pre-close calls

ESMA has issued a statement reminding issuers about the legislative framework applicable to 'pre-close calls' and encouraging them to follow good practices when engaging in such calls, with the goal of contributing to maintaining fair, orderly, and effective markets.

In response to media reports linking share price volatility to 'pre-close calls', ESMA advises issuers to disclose only non-inside information during these calls. To address potential concerns related to pre-close calls, ESMA recommends several good practices, including:

- prior to a 'pre-close call', carrying out an assessment of the information intended to be disclosed, ensuring that it is not inside information;
- informing the public about the upcoming 'pre-close calls' on the issuer's website, highlighting relevant details; and
- making the material and documents used simultaneously available on the issuer's website.

ESMA also notes that the analysis of specific episodes and identification of potential breaches of the Market Abuse Regulation (MAR) is for national competent authorities.

EBA publishes final guidelines on STS criteria for on-balance-sheet securitisations

The EBA has published its final report on guidelines on the criteria related to simplicity, standardisation and transparency and additional specific criteria for on-balance-sheet securitisations (STS criteria).

The guidelines have been developed according to Article 26e(2) of the Securitisation Regulation (Regulation (EU) 2017/2402) as amended by Regulation (EU) 2021/557, as part of the Capital Markets Recovery Package.

The guidelines are intended to ensure a harmonised interpretation of STS criteria, in alignment with the EBA guidelines for asset-backed commercial paper (ABCP) and non-asset-backed commercial paper (non-ABCP) securitisation. The guidelines include a limited set of targeted amendments to the guidelines for non-ABCP securitisation and ABCP securitisation to ensure that the interpretation provided by the EBA is consistent across all three sets of guidelines.

The guidelines will be applied on a cross-sectoral basis throughout the EU with the aim of facilitating the adoption of the STS criteria for on-balance-sheet securitisation, which is one of the prerequisites for the preferential risk weight treatment under the Capital Requirements Regulation (CRR).

Financial Services and Markets Act 2000 (Commodity Derivatives and Emission Allowances) (Amendment) Order 2024 made

The Financial Services and Markets Act 2000 (Commodity Derivatives and Emission Allowances) (Amendment) Order 2024 (SI 2024/719) has been made and published, together with an explanatory memorandum.

The Financial Services and Markets Act 2000 (Commodity Derivatives and Emission Allowances) Order 2023 (SI 2023/548) relates to the ancillary activities exemption (AAE) that applies to firms trading commodity derivatives or emission allowances primarily for investment purposes or to support the firm's commercial business. Among other things, SI 2023/548 removes reference to UK Commission Delegated Regulation (EU) 2017/592, which contains provisions for determining whether a firm's activity is ancillary to its main commercial business, and deletes article 72J of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, which enables firms to carry on their business without obtaining authorisation if there is no data available to enable them to perform the test establishing when an activity is ancillary. The provisions of SI 2023/548 will come into force on 1 January 2025.

After concerns were raised around the Financial Conduct Authority's (FCA's) proposed principles-based approach to determining whether a firm requires authorisation for trading in commodity derivatives and emission allowances by respondents to its December 2023 consultation (CP23/27), HM Treasury has chosen to pause the implementation of changes relating to the new ancillary activities regime while it considers these concerns. SI 2024/719 therefore amends SI 2023/548 to omit articles 2(2), (3) and (4) to prevent the relevant provisions coming into force on 1 January 2025.

The FCA has announced that it will also delay the revocation of UK Commission Delegated Regulation (EU) 2017/592 and will not proceed with its proposals set out in CP23/27 relating to the AAE.

SI 2024/719 will come into force on 31 December 2024.

Securitisation (Amendment) Regulations 2024 published

The Securitisation (Amendment) Regulations 2024 (SI 2024/705) have been made.

SI 2024/705 forms part of HM Treasury's programme to deliver a Smarter Regulatory Framework (SRF) as part of which assimilated law relating to the financial services sector will be replaced by regulators' rules. The Securitisation Regulations 2024 (SI 2024/102) implement the SRF for the purpose of the UK's policy on general requirements for securitisation. SI 2024/705 makes further changes to the UK's securitisation regime to ensure the functioning of the regulation of securitisation, including for firms supervised by authorities other than the FCA or Prudential Regulation Authority (PRA).

In particular, SI 2024/705:

- restates due diligence requirements for occupational pension schemes, currently dealt with in the Securitisation Regulation;
- restates the prohibition on the establishment of securitisation special purpose entities (SSPEs) in high-risk jurisdictions, with a modification to specify its application to institutional investors, as well as originators or sponsors; and
- contains a range of consequential amendments of other enactments, resulting from SI 2024/102 or the revocation of the Securitisation Regulation.

Most of the provisions of SI 2024/705 will come into force on 1 November 2024.

The commencement of the repeal of relevant legislation will be dealt with in a separate commencement instrument to come into force concurrently with these regulations and the regulator rules.

CSSF publishes communiqué on creation of Pillar 3 publications corner for banks on its website

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has published a communiqué on the creation of a Pillar 3 publications corner for banks on the CSSF website.

The communiqué announces the launch of a new webpage dedicated to Pillar 3 disclosures for institutions in scope of Pillar 3 requirements, i.e. mainly certain credit institutions and class 1 ('systemic and bank-like') investment firms. The initiative is intended to enhance public disclosures by gathering all essential resources for drafting meaningful Pillar 3 reports in a single location. Specifically, within the Pillar 3 section, there is guidance available for disclosing ESG risks, encouraging institutions to enhance transparency regarding their dedication to transitioning to a greener economy.

The webpage will be updated regularly to ensure institutions have the most up-to-date information on Pillar 3 readily available.

CSSF publishes communiqué on cryptoasset ATMs

The CSSF has published a communiqué on cryptoasset ATMs.

The CSSF recommends that persons interested in conducting cryptoasset transactions on ATMs located in Luxembourg verify beforehand whether the providers operating these ATMs are registered as a virtual asset service provider (VASP) with the CSSF. The list of VASPs is available on the CSSF's website in the application 'Search Entities'.

The communiqué also reiterates that any provider wishing to operate such an ATM in Luxembourg must register with the CSSF as VASP beforehand. More information on the registration procedure is available on the CSSF website.

AFM publishes its annual legislative letter

The Netherlands Authority for the Financial Markets (AFM) has published its annual legislative letter, which includes the AFM's legislative requests that it has sent to the Dutch Cabinet. Amongst other things, the AFM favours abolishing a specific current exemption for market makers in financial instruments to report their gross short positions. The AFM has also asked the legislator to require pension advisors to ask their clients for their sustainability preferences, which it believes would stimulate the demand for sustainable investments.

The letter also highlights four outstanding requests from previous legislative letters, including requests to:

- give the AFM powers under administrative laws to enforce compliance by securities issuing companies with financial and sustainability reporting requirements;
- impose data reporting requirements on audit firms and pension providers;
- give the AFM responsibility and specific enforcement tools for the supervision of certain cryptoasset services; and
- provide for a reporting obligation for pension providers in respect of shortcomings in their communications with participants.

HKMA launches physical risk assessment platform beta version

The Hong Kong Monetary Authority (HKMA) has announced the launch of the beta version of its physical risk assessment platform.

The HKMA notes that banks face a number of challenges in climate risk management, including a lack of physical risk-related data and analytical tools for conducting climate risk assessments. The cloud-based platform comprises an analytical tool which allows users to assess the potential impact of physical risks on residential and commercial buildings in Hong Kong under different climate scenarios and a database of more than 40 public data or data sources related to physical risk.

The HKMA has developed the platform with the objective of providing an exploratory and capacity building tool to facilitate physical risk assessments. The HKMA does not mandate authorised institutions to use the platform or the relevant model, methodology or solution. If authorised institutions choose to use the platform, they are advised by the HKMA to understand the data and methodology behind it. The HKMA has also emphasised that authorised

institutions should assess whether the functionalities of the platform suit their circumstances and evaluate the corresponding results accordingly. A set of methodology documents, FAQs and user manual will be accessible via the platform.

The HKMA plans to release the final version of the platform in the first quarter of 2025.

SFC issues circular on treasury units of SFC-authorised REITs

The Securities and Futures Commission (SFC) has issued a circular on treasury units of SFC-authorised real estate investment trusts (REITs) in light of the Hong Kong Exchange and Clearing Limited (HKEX)'s recently announced amendments to the Listing Rules relating to treasury shares.

In accordance with the SFC's circular dated 31 January 2008, SFC-authorised REITs may repurchase their own units on HKEX subject to similar requirements applicable to listed companies under the Listing Rules.

The HKEX has recently announced various amendments to the Listing Rules relating to treasury shares following a public consultation. The amendments have been introduced mainly to remove the requirement to cancel repurchased shares and adopt a framework to govern the resale of treasury shares. The amendments will come into effect on 11 June 2024.

The SFC notes that it has been its long-established policy to regulate REITs in the same manner as listed issuers in view of their similarities in terms of economic nature and investors' interests. Accordingly, in line with the 2008 circular and the Listing Rules amendments, SFC-authorised REITs may hold repurchased units in treasury and resell them, subject to similar requirements as applicable to treasury shares of listed companies under the Listing Rules amendments. These include requirements on conducting resale on a pre-emptive basis or with a shareholders' mandate, disclosure and reporting requirements, imposition of a moratorium period after resale or repurchase, voting and dealing restrictions as well as lock-up requirements.

To provide more practical guidance on the application of the new requirements, the Frequently Asked Questions relating to Real Estate Investment Trusts have been updated. A revised Compliance Checklist for Unit Buy-back Circular has also been published.

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