INTERNATIONAL REGULATORY UPDATE 22 – 26 JULY 2024

- **CRR3: EU Commission adopts Delegated Regulation delaying application of own funds requirements for market risk**
- **DORA: ESAs publish final draft RTS on assessment requirements when financial entities subcontract ICT services**
- **EBA extends existing Joint Committee guidelines on complaints handling to credit servicers**
- **ESMA sets out long-term vision on functioning of Sustainable Finance Framework**
- **MiFIR Review: ESMA publishes statement on new DPE regime for OTC transaction transparency**
- **ECB consults on draft guide on governance and risk culture**
- **FSB Chair writes to G20 finance ministers and central bank governors and publishes progress report on non-bank financial intermediation**
- **FCA consults on UK wholesale markets and finalises policy on payment option for investment research**
- **FCA publishes final rules on access to cash regime**
- **FSMA 2000: PRA publishes final approach to rule permissions and waivers**
- **Bank of Italy consults on new provisions transposing EU Directive on credit servicers and credit purchasers**
- **BaFin consults on updated interpretation and application guidance for Money Laundering Act**
- **BaFin publishes implementation note on DORA**
- **Luxembourg law implementing NPL Directive published**
- **APRA completes programme to modernise prudential architecture**
- **HKMA issues circular on cryptoasset disclosure requirements and standard amendments**
- **HKEX announces addition of Abu Dhabi Securities Exchange and Dubai Financial Market as recognised stock exchanges**
- **Recent Clifford Chance briefing: What does MiCA mean for issuing and offering stablecoins and other cryptoassets in the EU?. Follow this link to the briefings section.**

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CRR3: EU Commission adopts Delegated Regulation delaying application of own funds requirements for market risk

The EU Commission has adopted a Delegated Regulation postponing the date of application of the provisions of the Capital Requirements Regulation (CRR3) relating to the Fundamental Review of the Trading Book (FRTB) by one year, until 1 January 2026.

The EU Commission believes that aligned implementation of the standards across jurisdictions is essential. It has therefore decided to postpone the entry into force of this part of the Basel III standards as other major jurisdictions are yet to finalise their rules or communicate on their timelines for implementation. The Basel III standards will apply to all EU banks from 1 January 2025, except for the market risk framework.

DORA: ESAs publish final draft RTS on assessment requirements when financial entities subcontract ICT services

The European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), have published a final report on draft regulatory technical standards (RTS) to specify the elements which a financial entity needs to determine and assess when subcontracting ICT services supporting critical or important functions under the Digital Operational Resilience Act (DORA).

The draft RTS set out requirements for when the use of subcontracted ICT services supporting critical or important functions or material parts is permitted by financial entities and sets out the conditions applying to such subcontracting.

In particular, the draft RTS:

- require financial entities to assess the risks associated with subcontracting during the precontractual phase, including the due diligence process; and
- set out requirements regarding the implementation, monitoring and management of contractual arrangements, with the aim of ensuring that financial entities are able to monitor the entire ICT subcontracting chain of ICT services supporting critical or important functions.

The RTS have been submitted to the EU Commission for adoption.

EBA extends existing Joint Committee guidelines on complaints handling to credit servicers

The EBA has published final guidelines that extend the existing Joint Committee guidelines on complaints handling for the securities and banking sectors to credit services under the Non-performing Loans (NPL) Directive.

The guidelines cover the:

- complaints management policy;
- complaints management function;
- registration of complaints;

- reporting to the competent authorities or ombudsman;
- internal follow-up;
- provision of information to the complainant; and
- procedures for responding to complaints.

In addition to the extension of the scope of the guidelines to credit servicers, the EBA has introduced some non-substantive changes so as to align the guidelines with the amendments made to the EBA Regulation in 2020. The latter changes allow the EBA to delete procedural requirements addressed to national authorities and which are now no longer required.

ESMA sets out long-term vision on functioning of Sustainable Finance Framework

ESMA has published an opinion on the Sustainable Finance Regulatory Framework, setting out possible long-term improvements.

The main recommendations for the EU Commission's consideration are that:

- the EU Taxonomy should become the sole, common reference point for the assessment of sustainability and should be embedded in all sustainable finance legislation;
- the EU Taxonomy should be completed for all activities that can substantially contribute to environmental sustainability and a social taxonomy developed;
- a definition of transition investments should be incorporated into the framework to provide legal clarity and support the creation of transition-related products;
- all financial products should disclose some minimum basis sustainability information, covering environmental and social characteristics;
- a product categorisation system should be introduced catering to sustainability and transition, based on a set of clear eligibility criteria and binding transparency obligations;
- ESG data products should be brought into the regulatory perimeter, the consistency of ESG metrics continue to be improved, reliability of estimates ensured; and
- consumer and industry testing should be carried out before implementing policy solutions to ensure their feasibility and appropriateness for retail investors.

MiFIR Review: ESMA publishes statement on new DPE regime for OTC transaction transparency

ESMA has published a statement on the transition to the new regime for the publication of over-the-counter (OTC) transactions for post-trade transparency purposes under the review of the Markets in Financial Instruments Regulation (MiFIR review).

The MiFIR review introduced provisions permitting national competent authorities (NCAs) the power to grant the status of designated publishing entity (DPE) to investment firms. DPEs who are party to a transaction are responsible for making the transaction public through an approved publication

arrangement (APA). The statement sets out a two-step approach comprising ESMA publishing a DPE register by 29 September 2024 and the new DPE regime for post-trade transparency becoming fully operational on 3 February 2025, at which point DPEs will be expected to make transactions public through an APA.

ESMA has encouraged investment firms intending to become DPEs to register with their NCA, who will transmit the information to ESMA for inclusion in the future DPE register. ESMA intends to publish the list of DPEs at the end of September 2024 based on the information received from NCAs.

ECB consults on draft guide on governance and risk culture

The European Central Bank (ECB) has launched a consultation on its new draft guide on governance and risk culture. The guide highlights the importance of diverse and effective management bodies, aligning with the supervisory priorities of the Single Supervisory Mechanism (SSM).

The guide outlines the ECB's expectations for the governance and risk culture of supervised banks, replacing the 2016 SSM supervisory statement on governance and risk appetite. It provides a roadmap for banks to enhance their internal governance and risk culture, detailing the roles and responsibilities of management bodies, internal control functions, and the importance of risk culture and risk appetite frameworks. The guide incorporates recent updates from the European Banking Authority (EBA) and examples of good practices collected by the ECB. It is intended to address deficiencies in internal governance and risk culture that have historically led to financial difficulties for banks.

Comments are due by 16 October 2024, with a stakeholder meeting scheduled for 26 September 2024 to gather further input from relevant experts and interested parties.

FSB Chair writes to G20 finance ministers and central bank governors and publishes progress report on non-bank financial intermediation

The Financial Stability Board (FSB) has published a progress report on the resilience of non-bank financial intermediation and the FSB Chair's letter to G20 finance ministers and central bank governors.

The progress report provides an overview of the FSB's medium-term non-bank financial intermediation work programme, which covers key policy areas such as:

- enhancing money market fund resilience;
- addressing liquidity mismatch in open-ended funds;
- enhancing margining practices and the liquidity preparedness of non-bank market participants for margin and collateral calls; and
- enhancing the monitoring of, and addressing financial stability risks from, leverage in non-bank financial intermediation.

The FSB intends to publish a consultation with proposed policy solutions for addressing leverage-related vulnerabilities in non-bank financial intermediation by the end of 2024.

The FSB has also published a letter from its Chair, Klaas Knot, to G20 finance ministers and central bank governors, ahead of the G20 meeting on 25-26 July.

The Chair highlights several areas that require continued attention, including historically high debt levels of both government and private sector borrowers, vulnerabilities in real estate markets and non-bank financial intermediation.

The letter also provides an overview of two reports the FSB is delivering to the G20:

- the progress report on the FSB's non-bank financial intermediation work programme; and
- a stocktake of regulatory and supervisory initiatives on the identification and assessment of nature-related financial risks.

The Chair notes that many of the underlying vulnerabilities in non-bank financial intermediation are still in place and flags the uneven progress in implementation of agreed policies across jurisdictions. The Chair calls for the G20's support in promoting the full implementation of agreed regulatory reforms.

FCA consults on UK wholesale markets and finalises policy on payment option for investment research

The Financial Conduct Authority (FCA) has published a policy statement (PS24/9) and three consultations aimed at strengthening the UK wholesale markets.

PS24/9 sets out the FCA's final policy on payment optionality for investment research, which introduces an additional payment option for investment research allowing for the bundling of payments for research and trade execution. Following its consultation (CP24/7), the FCA has made some changes to the rules relating to budgeting, research provider disclosures, price benchmarking, cost allocation and disclosure, and separately identifiable research charges. Existing rules relating to other payment options will not change, but the rule on investment research on small and medium enterprises (SMEs) has been deleted and a new rule on short-term trading commentary and advice linked to trade execution to the list of acceptable minor non-monetary benefits (MNMBs) for all payment options has been added. Payment Optionality (Investment Research) Instrument 2024 (FCA 2024/29) will come into force on 1 August 2024.

The FCA has also published proposals on:

- a new public offers and admissions to trading regulations regime (POATRs), which will replace the existing Prospectus Regulation (CP24/12);
- a new public offer platform regime, which would offer an alternative route for companies to raise capital outside public markets, including from retail investors (CP24/13); and
- the derivatives trading obligation and post-trade risk reduction services, which are intended to improve the regulation of secondary markets, reduce systemic risk and disruption to firms (CP24/14).

Comments on the two public offers consultations are due by 18 October 2024. Comments on the derivatives trading obligation consultation are due by 30 September 2024.

FCA publishes final rules on access to cash regime

The FCA has published a policy statement (PS24/8) setting out the final rules for the access to cash regulatory regime.

The new rules require banks and building societies designated by the Government to:

- identify gaps in cash provision;
- assess a wide range of local needs;
- provide additional cash access services promptly if assessments find a significant gap in provision.

The rules come into force on 18 September 2024. Where firms have already announced closures of cash access services taking place before the rules come into force, these will not be subject to the new regulatory regime.

As well as containing the final rules, PS24/8 also includes feedback received to the consultation (CP23/29) launched in December 2023. The FCA has made changes to the rules it consulted on, including extending the period for banks and building societies to carry out cash access assessments, giving local communities more time to make their case. Firms will also be able to review the provision of identified cash services after two years.

The FCA has also published a research note on who relies on cash. The FCA found that being in a low-income household and having low digital capability or access has the strongest association with reliance on cash.

FSMA 2000: PRA publishes final approach to rule permissions and waivers

The Prudential Regulation Authority (PRA) has published a policy statement (PS12/24) on its approach to rule permissions made under s138BA of the Financial Services and Markets Act 2000 (FSMA).

Section 138BA of FSMA allows the PRA to give a firm permission to disapply certain PRA rules or requirements, or to apply them with appropriate modifications that better fit the firm's circumstances. This can be achieved through permissions, modifications, or waivers.

PS12/24 contains the PRA's final statement of policy, setting out how the PRA intends to generally exercise this power, as well as feedback received to its consultation (CP3/24) on the draft statement of policy in January 2024.

Following the feedback received, the PRA has made two amendments to the draft statement of policy, clarifying:

- what the PRA generally expects to include in a subject specific statement of policy; and
- that there may be exceptional circumstances where it may be appropriate to grant a s138BA permission for which it has not set out criteria despite the s138A statutory tests not being met.

The PRA's statement of policy took effect on 25 July 2024.

Bank of Italy consults on new provisions transposing EU Directive on credit servicers and credit purchasers

The Bank of Italy has launched a consultation on a new set of proposed provisions intended to implement EU Directive 2021/2167 on credit servicers and credit purchasers (the Non-performing Loans or NPL Directive). The public consultation concerns, amongst other things, provisions governing the role of servicers of non-performing loans, information and documents to be submitted to the Bank of Italy in related regulatory applications, measures on transparency of banking and financial transactions and services, extrajudicial settlement systems for disputes concerning banking and financial transactions and services.

The consultation is addressed, amongst others, to providers who intend to apply for authorisation to manage non-performing loans pursuant to Article 114.6 of the Consolidated Law on Banking (TUB), to banks and intermediaries listed in the register pursuant to Article 106 TUB as well as to anyone who may be interested in submitting observations and comments on the consultation document.

Comments are due by 23 September 2024.

BaFin consults on updated interpretation and application guidance for Money Laundering Act

The German Federal Financial Supervisory Authority (BaFin) has launched a consultation on a draft update of its Interpretation and Application Guidance for the Money Laundering Act (Geldwäschegesetz, GwG).

The updated version will replace the previous guidance and pertains to the draft amendments to the GwG, which are based on the Financial Market Digitisation Act and the Financial Crime Prevention Act, both currently undergoing the legislative process. The guidance applies to all obliged entities under the GwG supervised by BaFin.

Comments are due by 9 August 2024.

BaFin publishes implementation note on DORA

The BaFin has issued a note regarding the implementation of the DORA, which will apply to most supervised banks and insurers from 17 January 2025. The note is intended to assist these entities in complying with the requirements for information and communication technology (ICT) risk management and ICT third-party risk management as outlined in DORA. BaFin's non-binding implementation guidelines are designed to provide guidance on the minimum contract content requirements with ICT third-party service providers, taking technical regulatory standards into consideration.

DORA is a cross-sectoral EU regulation addressing digital operational resilience, ICT risks, and cybersecurity within the financial sector. Many of the requirements under DORA align with the BaFin circulars on the supervisory requirements for IT in the banking, insurance, investment and payment industry (BAIT, VAIT, ZAIT, and KAIT). Consequently, BaFin intends to repeal these circulars.

Luxembourg law implementing NPL Directive published

The law of 15 July 2024 implementing, among others, Directive (EU) 2021/2167 of 24 November 2021 on credit servicers and credit purchasers

and amending Directives 2008/48/EC and 2014/17/EU (Non-performing Loans or NPL Directive) has been published in the Luxembourg official journal (Mémorial A).

In particular, the law is intended to:

- transpose the NPL Directive, establishing a European framework for the transfer or assignment of non-performing loans, thus enabling credit institutions to be able to sell non-performing loans on the secondary markets to other operators with the necessary risk appetite and expertise to manage them; and
- operationalise Article 2(1) and (3) of Regulation (EU) 2022/2036, relating to certain amendments to the Bank Recovery and Resolution Directive (2014/59/EU) as regards the determination of the minimum requirement for own funds and eligible liabilities for resolution entities of global systemically important institution (G-SII) entities.

The law transposes the provisions relating to the transfer or assignment of non-performing loans initially granted by a credit institution, the obligations incumbent on credit purchasers, and the provisions applicable to supervision and sanctions, among others. The law also introduces, in the law of 5 April 1993 on the financial sector (as amended), credit servicers in Luxembourg law as a new type of professional of the financial sector subject to authorisation and supervision by the CSSF.

Targeted amendments are also made to the Consumer Code, to the law of 23 December 1998 establishing a financial sector supervisory commission (as amended), to the law of 22 March 2004 on securitisation (as amended), the law of 18 December 2015 on the failure of credit institutions and certain investment firms (as amended) as well as certain other laws.

The law entered into force on 22 July 2024.

APRA completes programme to modernise prudential architecture

The Australian Prudential Regulation Authority (APRA) has delivered its multi-year project to modernise the prudential architecture (MPA), with the publication of the final version of its new digital prudential handbook.

The MPA initiative was launched in 2021 with the goal of making APRA's regulatory framework for banks, insurers, and superannuation trustees clearer to understand, simpler to navigate, and more adaptable to ongoing changes in the operating environment.

The new prudential handbook brings together all of APRA's prudential standards, prudential practice guides and relevant supporting information in one place. The digital format is intended to ensure that the prudential handbook can be easily navigated and cater to a range of different users across regulated industries and in the broader community.

The handbook is organised into pillars or categories. Each pillar focuses on one aspect of an entity's legal responsibilities, including the risks they must manage. There are four pillars that apply to all entities: governance, risk management, recovery and resolution, and reporting. The fifth pillar depends on the industry: for banking and insurance, it is financial resilience; for superannuation, it is business operations. Sub-pillars within each pillar further group similar standards and guidance together.

The prudential handbook does not replace the Federal Register of Legislation, which contains the authorised versions of all prudential standards and other legislative instruments made by the APRA. Instead, it offers a way to search for and within standards and guidance. It also shows how the standards fit within the framework.

HKMA issues circular on cryptoasset disclosure requirements and standard amendments

The Hong Kong Monetary Authority (HKMA) has issued a circular to notify authorised institutions of its plan to align the proposed regulatory framework introduced in its consultation paper CP 24.01 'Cryptoasset Exposures' with the latest updates from the Basel Committee on Banking Supervision (BCBS). The HKMA notes that the BCBS issued the following documents on 17 July 2024:

- 'Disclosure of cryptoasset exposures', setting out the final disclosure framework for banks' cryptoasset exposures; and
- 'Cryptoasset standard amendments', setting out a set of targeted amendments to the BCBS's cryptoasset standard.

The final disclosure framework includes a standardised table and a set of standardised templates for banks' cryptoasset exposures. These require banks to disclose qualitative information on their cryptoasset-related activities, quantitative information on the capital and liquidity requirements for their cryptoasset exposures, as well as details of the respective accounting classifications.

The targeted amendments to the cryptoasset standard primarily aim to further specify the criteria for stablecoins to be eligible for a preferential regulatory treatment. Other revisions include various technical amendments in order to promote a consistent understanding of the cryptoasset standard.

The HKMA plans to consult the industry again on any major additional changes to local requirements in due course.

HKEX announces addition of Abu Dhabi Securities Exchange and Dubai Financial Market as recognised stock exchanges

The Stock Exchange of Hong Kong Limited (SEHK), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), has announced that it has added the Abu Dhabi Securities Exchange (ADX) and the Dubai Financial Market (DFM) as recognised stock exchanges (RSEs). This RSE status will allow public joint stock companies with a primary listing on the main market of these two exchanges in the United Arab Emirates to apply for a secondary listing in Hong Kong.

The addition of ADX and DFM brings the total number of RSEs in the Middle East to three, after Saudi Exchange (Tadawul), which was added in 2023.

RECENT CLIFFORD CHANCE BRIEFINGS

What does MiCA mean for issuing and offering stablecoins and other cryptoassets in the EU?

The new EU Markets in Cryptoassets Regulation (MiCA) creates an EU regulatory framework for the issuance of, intermediating and dealing in, cryptoassets. Parts of MiCA impacting the issuance, offering and admission to trading of stablecoins entered into force at the end of June 2024, while equivalent provisions for other cryptoassets, new licensing and conduct of business requirements for cryptoasset service providers, and a market abuse regime with respect to cryptoassets will apply from the end of the year.

This briefing paper looks in detail at what issuers of stablecoins and other cryptoassets, and wider market participants, need to know about the new requirements for issuing, offering and seeking admission to trading. It covers when authorisation will be required, stablecoin reserve requirements and the key form and content requirements for white papers and who may be liable for them.

If you would like a more general overview of MiCA, including the wider obligations in relation to cryptoasset service providers that will come into effect from 30 December 2024, you may also be interested in our briefing EU crypto regulation: MiCA overview for issuers and crypto-asset service providers.

https://www.cliffordchance.com/briefings/2024/07/what-does-micar-mean-for-issuing-and-offering-stablecoins-and-ot.html

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