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CRR3: EBA publishes final draft RTS on market risk

The European Banking Authority (EBA) has published its final amendments to its regulatory technical standards (RTS) on the Fundamental Review of the Trading Book (FRTB).

The RTS amend Delegated Regulations (EU) 2022/2059, 2022/2060, 2023/1577 as regards the technical details of back-testing and profit and loss attribution requirements, the criteria for assessing the modellability of risk factors, and the treatment of foreign-exchange (FX) risk and commodity risk in the non-trading book.

The amendments are intended to align the RTS with the Capital Requirements Regulation (CRR3) and ensure stability in the applicable regulatory framework. In particular, they:

- remove from the profit and loss attribution test the aggregation formula for computing the total own funds requirements for market risk for an institution using the alternative internal model approach, as this formula has now been introduced in CRR3;
- ensure that institutions are able to identify how far they rely on a third-party vendor for the purpose of assessing the modellability of a risk factor; and
- ensure that translation risk is duly captured by institutions in relation to the treatment of foreign exchange and commodity risk in the non-trading book.

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CRR3: EBA publishes no-action letter and considerations on postponed application of market risk framework

The EBA has published a no-action letter on the boundary between the banking book and trading book and its considerations on technical questions and issues arising from the postponement of the application of the FRTB.

This follows the EU Commission's adoption of a Delegated Regulation postponing the date of application of the provisions of the CRR3 relating to the FRTB by one year, until 1 January 2026.

In the no-action letter, the EBA recommends that competent authorities should not prioritise any supervisory or enforcement action in relation to the amendments to the provisions setting the boundary between the banking and trading books, or those defining internal risk transfers between books. The EBA has also clarified that the points it made in another no-action letter on the same topic issued in 2023 remain applicable.

The EBA is of the opinion that the front-loaded application of the revised provisions on the boundary and internal risk transfers, compared to the rest of the FRTB framework, would subject institutions to an operationally complex, fragmented and costly two-step implementation. In addition, the EBA notes that there are no jurisdictions at the global level that envisage such a two-step implementation of the FRTB framework, and that a front-loaded application of the boundary provisions would lead to global institutions being subject to very different regulatory requirements depending on where the risk management is performed, resulting in a fragmentation of the regulatory framework.

The EBA has also published its considerations on a set of technical questions and implementation issues arising from the postponement, that were deemed material and relevant with a view to achieving a harmonised implementation of the market risk framework across institutions during the postponement period.

EBA sets priorities for resolution authorities and banks for 2025

The EBA has published its European Resolution Examination Programme (EREP) report.

The report sets three priorities for resolution authorities and banks for 2025. The priorities mainly confirm the areas of focus set for 2024 while reflecting recent policy and market developments. The priorities include:

- the operationalisation of resolution authorities and banks' resolution tools;
- the operationalisation of liquidity strategies in resolution; and
- management information system for valuation.

The report also examines the progress achieved in 2023. The EBA believes that most banks and resolution authorities have met their targets for addressing shortfalls in the minimum requirements for own funds and eligible liabilities (MREL), therefore it has not been set as a separate priority for 2025.

ECB publishes guidelines on management of collateral in Eurosystem credit operations

The European Central Bank (ECB) has published new guidelines (ECB/2024/22) on the management of collateral in Eurosystem credit operations.

Alongside the guidelines, the ECB has published amendments to Guideline (EU) 2015/510 on the implementation of the Eurosystem monetary policy framework to reflect the new guidelines (ECB/2024/23) and an information document for Eurosystem counterparties on the harmonised processes, procedures and arrangements involved in the mobilisation and management of collateral.

The rules reflect recent developments including:

- the implementation of a Eurosystem policy establishing that assets mobilised as collateral will be held in accounts in TARGET2-Securities (T2S);
- the adoption of market standards set out in the Single Collateral Management Rulebook for Europe (SCoRE);
- updates to the eligibility criteria applicable to securities settlement systems (SSSs), links between SSSs and triparty agents (TPAs);
- the alignment of domestic and cross-border handling procedures;
- the implementation of pooling as a single operational method for maintaining collateral mobilised by Eurosystem counterparties; and
- the adoption of a harmonised approach for recovering external costs charged by central securities depositories (CSDs) and TPAs from counterparties.

The new rules and amendments will come into effect with the launch of the Eurosystem Collateral Management System (ECMS), which is scheduled for 18 November 2024.

FRC consults on digital reporting

The Financial Reporting Council (FRC) has launched a discussion paper on the future of digital reporting, on behalf of a cross-regulatory group also comprising the Financial Conduct Authority, Companies House, HMRC and the Charity Commission for England and Wales.

The discussion paper addresses changes in the regulatory landscape and considers the impact of the recently passed Economic Crime and Corporate Transparency Act 2023. In particular, the discussion paper covers:

- potential alternatives to the European Single Electronic Format (ESEF) taxonomy for UK regulated markets;
- proposed changes to structured digital reporting to support regulatory disclosure initiatives;
- considerations for mandatory assurance of digital tagging;
- the impact of 'full tagging' requirements on companies and charities; and
- strategies to support stakeholders in adapting to new digital reporting requirements.

Comments are due by 1 November 2024.

Anti-Money Laundering and Other Matters Bill passed in Singapore Parliament

The Anti-Money Laundering and Other Matters Bill has been passed in the Singapore Parliament. The Bill is intended to:

- align Singapore's anti-money laundering and countering the financing of terrorism framework for casino operators with the Financial Action Task Force standards;
- enhance the ability of Government agencies to detect and take enforcement action against money laundering through enhanced data sharing and strengthened prosecutorial levers; and
- clarify and improve processes to deal with seized or restrained properties linked to suspected criminal activities by allowing the Court to order the sale of seized or restrained properties, and deal with seized properties linked to suspects who have absconded.

The Bill includes amendments to:

- Casino Control Act 2006;
- Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (CDSA);
- Criminal Procedure Code 2010;
- Criminal Procedure (Miscellaneous Amendments) Act 2024;
- Free Trade Zones Act 1966;
- Goods And Services Tax Act 1993;
- Income Tax Act 1947;
- Regulation of Imports and Exports Act 1995; and
- Organised Crime Act 2015.

In its second reading, the Government emphasised that:

- the Bill does not introduce any additional regulatory requirements in the financial and real estate sectors. The Government stressed that the proposed amendments are targeted and seek to improve Singapore law enforcement agencies' abilities to detect and take action against illicit activities, and that they will also not impose undue friction or burdens for legitimate businesses;
- the amendments under the Bill are intended to enhance upstream detection of money laundering (ML), by allowing more regulators to access the suspicious transaction reports (STRs) filed by their regulated entities. The Government has stressed that the amendments do not change the existing process of how entities like the banks handle assets after filing an STR and that there is also no obligation for filers to withhold transactions, unless they assess the risk to be unacceptable; and
- with respect to the amendments to pursue and prosecute ML, the Prosecution would no longer need to prove, as a physical element of the offence, that the property is in fact, the benefit of criminal conduct.

The Government also provided clarification on the following during the second reading of the Bill:

- the processes involved in the early sale of seized property, including how law enforcement agencies assess whether a property is likely to depreciate, how the Court would determine whether the sale would be in the interests of justice, how the sale process would secure competitive prices, as well as the safeguards to ensure fairness; and
- the amendments to deal with seized properties linked to absconded persons, including their impact on foreign investors and the relevant safeguards.

When passed, the Anti-Money Laundering and Other Matters Act 2024 will come into operation on a date that the Minister appoints by notification in the Gazette.

Contributed by Clifford Chance Asia, a Formal Law Alliance in Singapore between Clifford Chance Pte Ltd and Cavenagh Law LLP.

MAS consults on proposed amendments to requirements for preparation of financial statements and reports under CIS Code

The Monetary Authority of Singapore (MAS) has launched a consultation on proposed amendments to the requirements for the preparation of financial statements and reports under the Code on Collective Investment Schemes (CIS Code).

In particular, the MAS is seeking views on proposals to:

- require authorised schemes (including real estate investment trusts (REITs)) to prepare their financial statements in accordance with the Singapore Financial Reporting Standards (International) (SFRS(I)) instead of the Statement of Recommended Accounting Practice 7: Reporting Framework for Investment Funds (RAP 7);
- amend the CIS Code to require semi-annual and annual reports to provide additional disclosures not required under SFRS(I) (including disclosures that are required under RAP 7 that the MAS considers to be information that is critical and useful to fund investors);
- allow REITs that have been preparing their financial statements in accordance with IFRS to continue to do so; and
- allow a REIT that is seeking to list on the Singapore Exchange (REIT-listing aspirant) to prepare its financial statements in accordance with IFRS if the REIT-listing aspirant's sponsor and/or subsidiaries had been preparing their financial statements in accordance with IFRS prior to its listing.

The MAS is also seeking views on whether there are other accounting standards that may be more appropriate for authorised collective investment schemes to prepare their financial statements in accordance with.

The MAS intends to provide managers of authorised schemes adequate time to prepare for the transition from RAP 7 to SFRS(I). In this regard, the MAS is proposing to require authorised schemes (including REITs) to comply with the proposed revisions with effect from the financial year ending on or after 31 December 2027. The MAS will also work with the Institute of Singapore

Chartered Accountants to introduce measures to ease the transition from RAP 7 to SFRS(I).

Comments on the consultation are due by 14 September 2024.

MAS consults on proposed legislative amendments to requirements for enhancing pre- and post- transaction safeguards for retail clients

The MAS has launched a consultation proposing legislative amendments to the following notices and guidelines to effect the proposed changes set out in its June 2021 consultation paper on requirements for enhancing pre- and post-transaction safeguards for retail clients:

- Notice on Recommendations on Investment Products (FAA-N16) – the MAS will be making the following amendments to FAA-N16: introducing requirements on pre-transaction checks (i.e. documentation reviews and call-backs) by financial advisory (FA) firms by moving paragraphs 25 to 33 of the Guidelines on the Remuneration Framework for Representatives and Supervisors (Balanced Scorecard Framework), Reference Checks and Pre-transaction Checks (FAA-G14) to the FAA-N16; introducing the requirements for representatives to check for and document a client's selected client (SC) status, and make a formal declaration that the assessment of whether a client is an SC has been duly performed; introducing the requirement for a trusted individual (TI) to be present when investment recommendations are made to SCs, and the criteria to qualify as a TI; mandating the types of information that should be covered during a client call-back; and introducing the requirements for FA firms to audio record pre-transaction call-backs to SCs and clients of selected representatives, and to provide a copy of the audio recording to clients upon clients' request;
- Notice on Requirements for the Remuneration Framework for Representatives and Supervisors (Balanced Scorecard Framework) and Independent Sales Audit Unit (FAA-N20) – the MAS is making amendments to FAA-N20 to update the scope of post-transaction checks performed by the Independent Sales Audit (ISA) unit. As pre-transaction call-backs must be recorded under the revised FAA-N16, the ISA unit will be required to perform a review of the recordings (or a summary document where the call-back is not recorded) under FAA-N20. The MAS has clarified that there is no change to the scope of transactions subject to the FAA-N20 and its corresponding guidelines, the FAA-G14. The FAA-N20 and the FAA-G14 will continue to apply when clients are provided with financial advice and transact in products in accordance with the recommendations of FA firms. Transactions for which no financial advice or recommendation is provided are not subject to the FAA-N20 or the FAA-G14; and
- Guidelines on the Remuneration Framework for Representatives and Supervisors (Balanced Scorecard Framework), Reference Checks and Pre-transaction Checks (FAA-G14) – the MAS is making amendments to FAA-G14 to remove the existing guidance on pre-transaction checks as these have been moved to FAA-N16; and update the guidance on documentation reviews which are performed as part of the post-transaction checks.

The MAS has indicated that it will provide a transitional period of 9 months from the effective date of the amended notices and guidelines as FA firms will need to make changes to their internal processes and systems. It is also encouraging the industry to start early preparations to implement the revised measures.

Comments on the consultation are due by 30 August 2024.

MAS revises guidelines on fit and proper criteria

The MAS has revised its guidelines on fit and proper criteria (FSG-G01). The guidelines set out the fit and proper criteria that apply to all relevant persons carrying out any activity regulated by the MAS.

Amongst other things, the guidelines have been revised to:

- incorporate references in connection with the new prohibition orders (POs) regime (which is effective from 31 July 2024) under the Financial Services and Markets Act 2022 (FSMA), particularly, by introducing a new paragraph 4A in the guidelines which provides that, as stated in section 7(1) of the FSMA, a PO may be issued if the MAS is satisfied that the person is not a fit and proper person in accordance with the guidelines to carry out any one or more of the roles, activities and functions mentioned in section 7 of the FSMA, and that the MAS will assess whether the person is not fit and proper in accordance with the fit and proper test set out in the guidelines;
- update the legislative references relating to various Acts;
- expand the scope of the definition of 'relevant person'; and
- expand the factors that are relevant to the assessment of the honesty, integrity and reputation of a relevant person.

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