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INTERNATIONAL REGULATORY UPDATE 28 OCTOBER – 1 NOVEMBER 2024

- **CRR3: Delegated Regulation delaying application of own funds requirements for market risk published in Official Journal**
- **ESAs finalise rules to facilitate access to information on ESAP**
- **ESAs publish annual joint report on principal adverse impacts disclosures under SFDR**
- **EMIR 3.0: ESAs launch survey on initial margin model authorisation regime**
- **ESMA consults on content and scrutiny of prospectuses and launches call for evidence on prospectus liability**
- **MiFID2: ESMA consults on Listing Act amendments to research regime**
- **FATF announces outcomes of plenary meeting and consults on proposed revisions to standards on financial inclusion**
- **Draft FSMA 2023 (Addition of Relevant Enactments) Regulations 2024 laid**
- **Draft Financial Services and Markets Act 2023 (Addition of Relevant Enactments) Regulations 2024 laid**
- **PRA and FCA publish policy on prudential assessment of acquisitions and increases in control**
- **PRA publishes final policy following occasional consultation paper CP6/24**
- **Consob and Bank of Italy confirm intention to comply with ESMA guidelines on funds' names using ESG or sustainability-related terms**
- **Council of Ministers adopts draft law on credit servicers and credit purchasers**
- **HKMA issues revised SPM module on risk management of e-banking**
- **SFC concludes consultation on market sounding guidelines**
- **MAS issues circular on anti-scam measures by major payment institutions providing personal payment accounts that contain e-money**
- **Recent Clifford Chance briefing: Motor finance commissions – taking stock. Follow this link to the briefings section.**

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CRR3: Delegated Regulation delaying application of own funds requirements for market risk published in Official Journal

[Delegated Regulation \(EU\) 2024/2795](#), which postpones 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, has been published in the Official Journal.

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.

The Delegated Regulation will enter into force on 1 November 2024 and apply from 1 January 2025.

ESAs finalise rules to facilitate access to information on ESAP

The European Supervisory Authorities (ESAs) have [published](#) their final report on draft implementing technical standards (ITS) regarding certain tasks of the collection bodies and functionalities of the European Single Access Point (ESAP).

The ESAP is designed as a two-tier system where entities submit information to collection bodies which then make this information available to the ESAP.

The ITS set out requirements for collection bodies, including data format, validation checks, and metadata. They also specify how the ESAP will categorise entities, the identifiers used, and the characteristics of the public application programming interface (API). The ESAP will start collecting information in July 2026, with publication beginning by July 2027.

The ITS have been sent to the EU Commission for adoption.

ESAs publish annual joint report on principal adverse impacts disclosures under SFDR

The ESAs have published their [third annual report](#) on disclosures of principal adverse impacts (PAIs) under the Sustainable Finance Disclosure Regulation (SFDR). The report assesses both entity and product-level PAI disclosures under the SFDR. The disclosures aim to show the negative impact of financial institutions' investments on the environment and people and the actions taken by asset managers, insurers, investment firms, banks and pension funds to mitigate them. The findings of the report show that:

- financial institutions have improved accessibility of their PAI disclosures;
- there has been positive progress regarding the quality of the information disclosed by financial products; and
- a few national competent authorities (NCAs) reported slight improvements in compliance with SFDR disclosures in their national markets.

The report includes recommendations to the NCAs to ensure convergent supervision of financial market participants' practices, and to the EU Commission for its comprehensive assessment of the SFDR.

EMIR 3.0: ESAs launch survey on initial margin model authorisation regime

The ESAs have launched a [survey](#) for entities within the scope of the initial margin (IM) model authorisation regime introduced by the upcoming revised European Market Infrastructure Regulation (EMIR 3.0).

The ESAs expect entities subject to the requirement to exchange IM under the regulatory technical standards (RTS) on uncleared OTC derivatives to respond to the survey, that is, all entities which have an aggregate average notional amount (AANA) exceeding EUR 8 billion and which use at least one IM model to comply with the requirements to exchange IM, including all entities of any group which meets those requirements.

The EBA intends to use the responses to guide the setup of its central validation function, inform its response to the EU Commission's call for advice on a possible Delegated Act on fees, and to develop proportionate requirements for entities as part of upcoming mandates under EMIR 3.0.

Responses are due by 29 November 2024.

ESMA consults on content and scrutiny of prospectuses and launches call for evidence on prospectus liability

The European Securities and Markets Authority (ESMA) has published a [consultation paper](#) and a [call for evidence](#) on prospectuses and prospectus liability following the changes introduced to the Prospectus Regulation by the Listing Act. The Listing Act package is intended to make capital markets in the EU more attractive by alleviating the administrative burden for companies. It was adopted by the EU Parliament in April 2024 and by the EU Council in October 2024, and is expected to be published in the Official Journal shortly.

In June 2024, ESMA received a request for technical advice from the EU Commission on a range of topics including the content and format of prospectuses and the procedures for their scrutiny and approval. The consultation paper sets out the proposed draft advice, including on:

- the standardised format and sequence of the prospectus, the base prospectus and final terms, with disclosure requirements based on the existing requirements in the Delegated Regulation on scrutiny and disclosure;
- the disclosure requirements for non-equity securities advertised as taking into account ESG factors or pursuing ESG objectives;
- the content of the universal registration document;
- the criteria for the scrutiny of the information contained in prospectuses, particularly the application of additional criteria in accordance with Article 40 of the Delegated Regulation on scrutiny and disclosure;
- the deadlines applied by competent authorities during the scrutiny and approval process; and

- updating the reporting requirements in the Delegated Regulation on metadata to reflect changes introduced by the Listing Act into ESMA's prospectus register.

The Commission has also sought technical advice from ESMA on liability for information provided in securities prospectuses in light of the changes being introduced by the Listing Act. ESMA has therefore published a call for evidence to gather market participants' feedback and experience on this issue.

Comments on both the consultation and call for evidence are due by 31 December 2024.

MiFID2: ESMA consults on Listing Act amendments to research regime

ESMA has launched a [consultation](#) on amendments to the research provisions in the MiFID2 Delegated Directive ((EU) 2017/593) in the context of the Listing Act.

Views are sought on draft technical advice to the EU Commission intended to ensure that:

- the remuneration methodology for joint payments for execution services and research does not prevent firms from complying with best execution requirements; and
- the annual assessment of research quality is based on robust criteria.

Comments are due by 28 January 2025. ESMA intends to submit a final report in Q2 2025.

FATF announces outcomes of plenary meeting and consults on proposed revisions to standards on financial inclusion

The Financial Action Task Force (FATF) has announced the [outcomes](#) of its plenary meeting in Paris on 23-25 October 2024. Among other things, the plenary:

- approved the last two assessment reports (Argentina and Oman) in the FATF's fourth cycle of assessments;
- removed Senegal from its increased monitoring following a successful on-site visit and updated its statements on 'high-risk and other monitored jurisdictions' to reflect this;
- welcomed, for the first time, two jurisdictions (the Cayman Islands and Senegal) to participate in the plenary and FATF Working Groups as guests. This is intended to support the FATF's efforts to increase its inclusivity and broaden the diversity of its perspectives;
- approved new guidance on national risk assessments to support countries in understanding their illicit finance risks;
- discussed changes to their standards related to cross-border payments systems and the progress made on work to identify the latest terrorist financing and proliferation financing risks;
- launched a project to review its processes to ensure countries do not misuse the FATF requirement to restrict the activities of non-profit organisations;

- reported on the value of the horizontal review of designated non-financial businesses and professions' compliance related to corruption to support necessary reforms; and
- discussed proposals to strengthen diversity and inclusiveness throughout the Global Network.

The plenary also agreed to release for public consultation proposed revisions to the standards related to its ongoing focus on financial inclusion. The revisions, which predominantly affect FATF's Recommendation 1 and its interpretive note, are intended to address the unintended negative impact of anti-money laundering and counter terrorism financing (AML/CTF) measures. Specifically, the FATF is seeking feedback on proposals regarding proportionality, the simplification of measures in the risk-based approach, and changes intended to give countries, supervisors, and financial institutions greater confidence when implementing simplified measures.

Comments are due by 6 December 2024.

Draft FSMA 2023 (Addition of Relevant Enactments) Regulations 2024 laid

[The Financial Services and Markets Act 2023 \(Commencement No. 8\) Regulations](#) (SI 2024/1071) have been made.

Among other things, SI 2024/1071:

- gives the Financial Conduct Authority (FCA) the power to make rules relating to pre- and post-trade transparency requirements under UK MiFIR;
- gives the FCA the power to make rules relating to position limits;
- gives the FCA the power to suspend waivers under UK MiFIR;
- gives HM Treasury the power to make regulations on unauthorised co-ownership alternative investment funds (AIFs); and
- removes LIBOR as a critical benchmark for the purposes of the UK Benchmarks Regulation.

Draft Financial Services and Markets Act 2023 (Addition of Relevant Enactments) Regulations 2024 laid

[The draft Financial Services and Markets Act 2023 \(Addition of Relevant Enactments\) Regulations 2024](#) have been laid in Parliament according to the affirmative procedure.

The draft statutory instrument (SI) brings the following enactments within the scope of HM Treasury's power to make amendments by way of negative SI when establishing or modifying financial markets infrastructure (FMI) sandboxes under the Financial Services and Markets Act 2023 (FSMA 2023):

- the Stock Transfer (Gilt-edged Securities) (CGO Service) Regulations 1985 (STR);
- the Government Stock Regulations 2004 (GSRs);
- the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs); and
- the UK Prospectus Regulation.

The STRs, GSRs and MLTs are being brought into scope for the purposes of the Digital Securities Sandbox (DSS). The UK Prospectus Regulation is being brought into scope to facilitate the creation of a Private Intermittent Securities and Capital Exchange System (PISCES) Sandbox.

Negative SIs detailing the specific changes and secondary legislation establishing the PISCES Sandbox are expected in due course.

PRA and FCA publish policy on prudential assessment of acquisitions and increases in control

The Prudential Regulation Authority (PRA) and FCA have published a [joint policy statement](#) (PS18/24) providing feedback on responses to the consultation on the prudential assessment of acquisitions and increases in control.

The final policy includes a new PRA supervisory statement (SS10/24) and new FCA non-Handbook Guidance on the prudential assessment of acquisitions and increases in control, as well as an updated PRA statement of policy (SoP) on the interpretation of EU guidelines and recommendations after the UK's withdrawal from the EU.

The PRA and FCA received three responses to the consultation which have resulted in minor changes including:

- new paragraphs on limited partnership structures, aimed at helping with the identification of controllers within such structures;
- clarification on what constitutes 'significant influence' to make it clearer that, when determining if there is significant influence, it is not just a case of being on the board of an authorised firm or its parent, but the ability to direct or influence decisions made by the authorised firm's board; and
- a new paragraph in SS10/24 and the FCA guidance on contacting relevant UK authorities and non-UK regulators as part of the PRA and FCA's assessment and due diligence process.

SS10/24 and the FCA guidance took effect on 1 November 2024.

PRA publishes final policy following occasional consultation paper CP6/24

The PRA has published a [policy statement](#) (PS17/24) providing feedback on responses to its occasional consultation paper (CP6/24).

The statement sets out details of minor amendments that the PRA has made to its proposals following responses, and contains its final policy including:

- amendments to references to Article 92b of the UK Capital Requirements Regulation (UK CRR) in the Reporting (CRR) and Disclosure (CRR) Parts of the PRA Rulebook;
- amendments to the Regulatory Reporting (CRR Firms) Part of the PRA Rulebook and corresponding amendments to the Glossary;
- the addition of a new Rule 9.5A to the Policyholder Protection Part of the PRA Rulebook; and
- amendments to the PRA and FCA BTS 2016/2251 to reflect expected changes to UK EMIR under the draft Securitisation (Amendment) Regulations 2024.

The implementation date of the amended rules is 4 November 2024 and the amendments to BTS2016/2251 took effect on 1 November 2024.

Consob and Bank of Italy confirm intention to comply with ESMA guidelines on funds' names using ESG or sustainability-related terms

The Commissione Nazionale per le Società e la Borsa (Consob) and the Bank of Italy have [informed](#) ESMA of their intention to adopt its guidelines on funds' names using ESG or sustainability-related terms. The guidelines, which ESMA adopted on 14 May 2024, establish criteria for the use of sustainability, environmental, economic transition, social, or governance-related terms in funds' names.

The guidelines will apply from 21 November 2024 to funds established on or after that date, with a transitional period of six months (ending on 21 May 2025) for funds established before that date.

Council of Ministers adopts draft law on credit servicers and credit purchasers

The Council of Ministers has adopted a [draft law](#) on credit servicers and credit purchasers, which implements the Non-performing Loans (NPL) Directive (EU) 2021/2167 into Polish law.

The new regulations are intended to create a legal framework for the activities of entities that service credit (i.e. domestic banks, credit institutions, branches of credit institutions and credit purchasers), in order to facilitate the handling of non-performing loans (i.e. those that the borrower has not been repaying for 90 days or more).

Among other things, the draft introduces:

- regulations on the rules for granting permits to credit servicers to conduct activity, including cross-border activity;
- supervision by the Polish Financial Supervision Authority over the activities of credit servicers, credit service providers and credit purchasers or their representatives (the PFSA will keep a register of credit servicers); and
- the obligation to have appropriate internal policies in place, such as a complaints-handling system and an anti-money laundering policy.

The draft will now go to the Sejm.

HKMA issues revised SPM module on risk management of e-banking

The Hong Kong Monetary Authority (HKMA) has [issued](#) an updated version of the supervisory policy manual (SPM) module entitled 'TM-E-1 - Risk Management of E-banking' as a statutory guideline under section 7(3) of the Banking Ordinance.

The HKMA has revised the SPM module as part of its efforts to ensure effective supervision of the e-banking services and payment card services of authorised institutions (AIs). The revised SPM module integrates relevant requirements outlined in various supervisory documents (e.g. circulars and operational and IT incidents watch), with a view to providing AIs with a more

comprehensive overview of supervisory guidance on these services. The key changes are summarised as follows:

- expanding the scope of the revised SPM module to cover controls over payment card transactions;
- consolidating relevant security measures outlined in various supervisory documents into the revised SPM module; and
- providing more principle-based guidance to strengthen Als' risk management controls for e-banking and payment card services.

The revised SPM module is effective from 25 October 2024.

SFC concludes consultation on market sounding guidelines

The Securities and Futures Commission (SFC) has published the [consultation conclusions](#) on its proposed guidelines for market soundings. The proposed guidelines set out the principles and requirements applicable to licensed or registered persons when they conduct market soundings, which are most commonly seen in block trades. These requirements include implementing protocols to protect confidential information they are entrusted with during market soundings.

The SFC has considered the comments received and the marked-up texts of the final form of the guidelines for market soundings are set out in Appendix B of the conclusions paper. The guidelines will become effective on 2 May 2025, allowing a six-month transition period for intermediaries to update their internal procedures and controls.

Having considered respondents' comments and the pattern of relevant cases, the SFC will no longer require coverage of all securities transactions. Specifically, the guidelines will apply to market soundings conducted in connection with a possible transaction in shares that are listed on an exchange; and any other securities which is likely to materially affect the price of shares that are listed on an exchange. The SFC will continue its supervision of intermediaries' trading activities and will keep in view the need for the guidelines to cover more transactions in the future.

To facilitate intermediaries' implementation of the guidelines, the SFC has provided examples by way of frequently asked questions, covering practical guidance concerning topics on scope and applicability, core principles, and specific requirements for disclosing persons and recipient persons.

MAS issues circular on anti-scam measures by major payment institutions providing personal payment accounts that contain e-money

The Monetary Authority of Singapore (MAS) has issued a [circular](#) setting out its expectations of major payment institutions (MPIs) that are licensed under the Payment Services Act 2019 (PS Act) to carry on a business of providing an account issuance service and that issue personal payment accounts containing e-money (e-wallets).

On 15 December 2023, the Payment Services Regulations 2019 were amended to raise the regulatory limit on the 'stock cap' and 'flow cap' for e-wallets. Under the amendments, MPIs that issue e-wallets (MPI e-wallet providers) can now provide individual customers with a stock cap of up to

SGD 20,000 (previously SGD 5,000), and a flow cap of up to SGD 100,000 (previously SGD 30,000).

The MAS expects MPI e-wallet providers to implement anti-scams measures (set out in Annex A to the circular) first, prior to raising the stock and/or flow caps for their customers' e-wallets beyond the previous regulatory limits of SGD 5,000 and SGD 30,000 respectively.

The MAS expects MPI e-wallet providers that do not wish to adopt the higher e-wallet caps to consider the anti-scams measures and look to progressively implement these measures over time.

The MAS also expects the board and senior management of every MPI e-wallet provider that adopts the higher e-wallet caps to be responsible for ensuring that adequate anti-scams measures are implemented. This includes establishing a robust governance framework for the oversight of consumer scam risk and fair treatment of customers. The governance framework should include an incident management process to enable a prompt and coordinated response to targeted and severe scam attacks against customers. Disputes over losses arising from scams should be assessed by an independent unit that is separate from the business functions of the MPI e-wallet provider.

The MAS has advised MPI e-wallet providers to read the circular in conjunction with the E-Payments User Protection Guidelines, as well as other relevant regulations and notices. The E-payments User Protection Guidelines have recently been revised, with amendments taking effect on 16 December 2024.

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

RECENT CLIFFORD CHANCE BRIEFINGS

Motor finance commissions - taking stock

The investigation by the FCA into potential mis-selling of motor finance on the basis of discretionary commission arrangements will potentially have a wide-reaching impact.

This briefing paper sets out a stocktake of the ongoing FCA investigation, the position of the financial ombudsman and the outcome of recent court challenges in relation to broker commission which may impact a wider range of commission models. Finally the briefing highlights implications and action points for firms.

<https://www.cliffordchance.com/briefings/2024/10/motor-finance-commissions--taking-stock.html>

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

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