INTERNATIONAL REGULATORY UPDATE 16 DECEMBER 2024 – 3 JANUARY 2025

- **DORA: EU Commission adopts RTS on joint examination teams**
- **MiCA: EU Commission adopts RTS on assessments of proposed acquisitions of qualifying holdings in CASPs and ART issuers**
- **MiCA: EU Commission adopts RTS on cryptoasset white papers data and remuneration governance arrangements**
- **MiCA: EU Commission adopts RTS on procedure and timeframe for adjusting own funds**
- **MiCA: EU Commission adopts RTS on sustainability indicators**
- **MiCA: ESMA publishes last package of final RTS and guidelines**
- **MiCA: ESMA publishes statement on transitional measures**
- **MiCA: EBA publishes final guidelines on reporting requirements**
- **MiFIR Review: ESMA publishes final technical standards on bond transparency and reasonable commercial basis**
- **MiFIR Review: ESMA publishes final technical standards on CTPs and DRSPs**
- **MiFID3: ESMA publishes final technical standards for commodity derivatives**
- **ESMA consults on internal controls for benchmark administrators, credit rating agencies and market transparency infrastructures**
- **ESMA consults on open-ended loan-originating alternative investment funds**
- **Listing Act: ESMA consults on EU code of conduct for issuer-sponsored research**
- **CRR3: EBA publishes final draft RTS on exemption from residual risk add-on own funds requirements for certain type of hedges**
- **FSB consults on recommendations to address financial stability risks arising from leverage in non-bank financial intermediation**
- **UK regulators consult on operational incident and third party reporting**
- **BoE issues statement of policy on power to direct institutions to address impediments to resolvability**
- **FSMA 2023: BoE issues policy statement on addressing impediments to CCP resolvability**

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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

- **FSMA 2023: BoE issues policy statement on contracts subject to statutory tear up in CCP resolution**
- **FCA publishes policy statement on submission requirements for National Storage Mechanism**
- **FCA publishes discussion paper on regulating cryptoasset admissions and disclosures and market abuse**
- **FCA consults on new product information framework for Consumer Composite Investments**
- **FCA consults on sandbox arrangements for Private Intermittent Securities and Capital Exchange System**
- **FCA extends time limit for responding to motor finance complaints**
- **BaFin consults on PPP circular for insurance undertakings**
- **BaFin publishes letter to Pfandbrief banks**
- **BaFin publishes new general decree on Common Equity Tier 1 instruments of cooperative banks**
- **Bank of Italy consults on CRR3 and covered bonds**
- **Luxembourg law implementing Daisy Chains Directive enters into force**
- **Luxembourg's new Blockchain IV Law enters into force**
- **MiCA: Polish Financial Supervision Authority sets out position on application during transitional period**
- **National Working Group Steering Committee specifies new interest rate benchmark to replace WIBOR**
- **FINMA publishes circular on nature-related financial risks**
- **FINMA publishes guidance on governance and risk management when using artificial intelligence**
- **Hong Kong Government commits to implementing cryptoasset reporting framework**
- **HKMA shares key observations and good practices on transition planning**
- **SFC issues circular to management companies relating to money market funds**
- **SFC provides guidance to virtual asset trading platforms on licensing process and revamped second-phase assessment**
- **SFC welcomes revisions to Mainland-Hong Kong mutual recognition of funds enhancements**
- **Deposit Insurance and Policy Owners' Protection Schemes (Financial Penalty) Order 2024 gazetted**
- **MAS responds to feedback received on proposed amendments to Financial Services and Markets (Resolution of Financial Institutions) Regulations 2024**

DORA: EU Commission adopts RTS on joint examination teams

The EU Commission has adopted regulatory technical standards (RTS) specifying the criteria for determining the composition of joint examination teams, and their designation, tasks and working arrangements under the Digital Operational Resilience Act (DORA).

Joint examination teams form part of the oversight framework introduced by DORA and will comprise staff members from the European Supervisory Authorities (ESAs) and relevant competent authorities tasked with conducting oversight of critical third-party service providers (CTTPs).

MiCA: EU Commission adopts RTS on assessments of proposed acquisitions of qualifying holdings in CASPs and ART issuers

The EU Commission has adopted two sets of RTS under the Markets in Cryptoassets Regulation (MiCA) specifying the detailed content of information necessary to carry out the assessment of a proposed acquisition of a qualifying holding in:

- an issuer of an asset-referenced token (ART); and
- a cryptoasset service provider (CASP).

MiCA: EU Commission adopts RTS on cryptoasset white papers data and remuneration governance arrangements

The EU Commission has adopted two sets of RTS under MiCA.

The first set of RTS relate to the register of cryptoasset white papers, issuers of ARTs and e-money tokens (EMTs), and CASP, and specifies the data elements for the classification of cryptoasset white papers.

The second set specify the minimum content of the governance arrangements on the remuneration policy of issuers of significant ARTs and EMTs.

MiCA: EU Commission adopts RTS on procedure and timeframe for adjusting own funds

The EU Commission has adopted RTS under MiCA specifying the procedure and timeframe for an issuer of ARTs or of EMTs to adjust the amount of its own funds.

MiCA: EU Commission adopts RTS on sustainability indicators

The EU Commission has adopted RTS under MiCA specifying the content, methodologies and presentation of information in respect of sustainability indicators in relation to adverse impacts on the climate and other environment-related adverse impacts.

MiCA: ESMA publishes last package of final RTS and guidelines

The European Securities and Markets Authority (ESMA) has published the last package of final reports containing RTS and guidelines under MiCA.

In particular, the package contains:

- RTS on market abuse that specify systems and procedures to prevent and detect market abuse in cryptoassets, the template for reporting suspected market abuse in cryptoassets, as well as coordination procedures between competent authorities for the detection and sanctioning of cross-border market abuse situations;
- guidelines on reverse solicitation that confirm ESMA's previous message that the reverse solicitation exemption should be understood as very narrowly framed and should be regarded as the exception and not be used to circumvent MiCA requirements;
- guidelines on suitability that specify how CASPs providing advice on cryptoassets or portfolio management of cryptoassets have to give suitable recommendations to their clients or make suitable investment decisions on their behalf. These rules are aligned with the MiFID2 requirements so that CASPs providing advice under both MiFID2 and MiCA would be subject to similar requirements;
- guidelines on cryptoasset transfer services that are intended to ensure investor protection for clients transferring cryptoassets by specifying the policies and procedures that CASPs should have in place;
- guidelines on qualification of cryptoassets as financial instruments that provide conditions and criteria for the qualification of cryptoassets as financial instruments. The guidelines aim to provide more clarity about the delineation between the respective scopes of application of MiCA and other sectoral regulatory frameworks such as MiFID2; and
- guidelines on the maintenance of systems and security access protocols that apply to offerors and persons seeking admission to trading who are not subject to the same operational resilience standards under MiCA and the DORA as their CASP and issuer counterparts.

MiCA: ESMA publishes statement on transitional measures

ESMA has published a statement on the transitional regime for CASPs under MiCA, which grants CASPs that offered services prior to 30 December 2024 additional time to comply with MiCA.

The statement concerns the different transitional periods introduced by Member States exercising their discretion to disapply or reduce the duration of the regime, and includes a list of grandfathering periods CASPs should take into account if providing services in more than one Member State.

ESMA reminds CASPs to make adequate preparations to reduce the risk of disruption, including engaging with the national competent authorities (NCAs) of the jurisdictions in which they operate to inform them of their authorisation plans.

MiCA: EBA publishes final guidelines on reporting requirements

The European Banking Authority (EBA) has published its final guidelines on reporting requirements under MiCA to ensure that competent authorities receive sufficient comparable information to supervise the compliance of

issuers with MiCA requirements and provide the EBA with the information necessary to conduct the significance assessment under MiCA.

MiFIR Review: ESMA publishes final technical standards on bond transparency and reasonable commercial basis

ESMA has published a final report setting out amendments to RTS on transparency for bonds, structured finance products and emission allowances (RTS 2) and on reasonable commercial basis (RCB).

The amendments to RTS 2 cover, among other things:

- pre-trade transparency, in particular to the definition and characteristics of central limit order books (CLOB) and periodic auctions, and the pre-trade waiver regime;
- the deferral regime for bonds, structured finance products and emission allowances; and
- specific transparency fields and flags.

The amendments to the RCB RTS cover fees for market data, including transparency of costs and determination of a reasonable margin.

The final report has been submitted to the EU Commission for endorsement. ESMA intends to publish a consultation paper addressing derivatives transparency in early 2025.

MiFIR Review: ESMA publishes final technical standards on CTPs and DRSPs

ESMA has published a final report setting out technical standards related to consolidated tape providers (CTPs) and other data reporting service providers (DRSPs).

The technical standards covered in the report are:

- RTS on input and output data requirements for CTPs;
- RTS on the revenue redistribution scheme for the equity CTP;
- RTS on synchronisation requirements for business clocks; and
- new and amended RTS and implementing technical standards (ITS) on the authorisation and organisational requirements for DRSPs.

The final report has been submitted to the EU Commission for endorsement.

ESMA has also published a feedback statement summarising the feedback received on its proposed assessment criteria for CTP applicants, and intends to finalise and publish technical specifications at the launch of the first selection procedure for the CTP for bonds on 3 January 2025.

MiFID3: ESMA publishes final technical standards for commodity derivatives

ESMA has published a final report setting out amendments to certain technical standards for commodity derivatives.

The amendments relate to changes introduced by MiFID3, including:

- position management controls being extended to trading venues trading derivatives on emission allowances;

- emission allowances being excluded from position reporting; and
- a new obligation to report two weekly positions reports, one of which excluding options.

The technical standards to be amended are the RTS on position management controls, the ITS on the format of position reports (ITS 4) and Commission Delegated Regulation (EU) 2017/565 on organisational requirements and operating conditions (MiFID Org Reg).

The final draft technical standards have been submitted to the EU Commission for adoption.

ESMA consults on internal controls for benchmark administrators, credit rating agencies and market transparency infrastructures

ESMA has launched a consultation on draft guidelines relating to the internal control framework for some of its supervised entities.

The proposed draft guidelines build on the internal control guidelines currently in place for credit rating agencies and extend them to include benchmark administrators and market transparency infrastructures (trade repositories, DRSPs and securitisation repositories).

The draft guidelines outline ESMA's expectations for the components and characteristics of an effective internal control system, ensuring:

- a strong framework, detailing the internal control environment and informational aspects; and
- effective internal control functions, including compliance, risk management, and internal audit.

The draft guidelines also explain in greater detail how ESMA applies proportionality in its expectations regarding the internal controls for a supervised entity.

Comments are due by 18 March 2025.

ESMA consults on open-ended loan-originating alternative investment funds

ESMA has published a consultation paper on draft RTS on open-ended loan-originating alternative investment funds (AIFs) under the revised Alternative Investment Fund Managers Directive (AIFMD).

The consultation seeks feedback on the draft RTS, which outline the requirements that loan-originating AIFs must meet to maintain an open-ended structure. The revised AIFMD introduces harmonised rules to provide a common implementing framework for AIFMs and NCAs, which allows loan-originating AIFs to be open-ended if their liquidity risk management aligns with their investment strategy and redemption policy.

Comments are due by 12 March 2025. ESMA intends to finalise the draft RTS by Q3/Q4 2025.

Listing Act: ESMA consults on EU code of conduct for issuer-sponsored research

ESMA has launched a consultation on draft RTS to establish an EU code of conduct for issuer-sponsored research.

The EU code of conduct sets out standards of independence and objectivity for research providers and specifies procedures and measures for the identification, prevention, and disclosure of conflicts of interest, with a view to enhance the trust in and use of issuer-sponsored research.

In its proposals ESMA indicates that:

- issuers and research providers should only enter into an agreement where the minimal initial term of the contract is two years and where, at minimum, 50% of the annual remuneration is paid upfront;
- research providers should establish, implement and maintain an effective conflicts of interest policy; and
- research that is fully paid for by the issuer should be made public immediately.

Investment firms will also be expected to ensure that all issuer-sponsored research that they produce or intend to distribute to (potential) clients complies with the code of conduct.

Comments are due by 18 March 2025.

CRR3: EBA publishes final draft RTS on exemption from residual risk add-on own funds requirements for certain type of hedges

The EBA has published its final draft RTS on the conditions for determining whether an instrument attracting residual risk acts as a hedge under the Capital Requirements Regulation (CRR3). The RTS are part of the Phase 1 deliverables of the EBA roadmap on the implementation of the EU banking package in the area of market risk.

One of the pillars of the standardised approach/ sensitivity-based method (SA/SbM) under the new fundamental review of the trading book (FRTB) framework is the residual risk add-on (RRAO). The EU banking package introduces a provision in the RRAO framework allowing the exemption from the RRAO charge for those instruments bearing residual risks that are, in turn, used to hedge instruments bearing residual risks. The RTS specify when an instrument qualifies as a hedge for the purpose of this exemption.

FSB consults on recommendations to address financial stability risks arising from leverage in non-bank financial intermediation

The Financial Stability Board (FSB) has published a consultation report on leverage in non-bank financial intermediation (NBFI). The proposed policy recommendations are addressed to FSB member authorities and standard-setting bodies (SSBs). They are intended to enhance the ability of authorities and market participants to monitor vulnerabilities from NBFI leverage, contain NBFI leverage where it may create risks to financial stability, and mitigate the impact of these risks.

The recommendations build on the 2023 FSB report on the financial stability implications of leverage in NBFI, which found that NBFI leverage played a significant role in recent episodes of market stress.

The nine policy recommendations cover:

- risk identification and monitoring, supported by a suite of risk metrics, and work to assess and address data challenges;
- measures to address financial stability risks related to NBFI leverage in core financial markets, including measures that affect specific activities, types of entities, and concentration-related risks;
- counterparty credit risk management and private disclosure;
- addressing inconsistencies by adopting the principle of 'same risk, same regulatory treatment'; and
- enhancing cross-border cooperation and collaboration.

Comments are due by 28 February 2025. The FSB intends to publish its final report in mid-2025.

UK regulators consult on operational incident and third party reporting

The Bank of England (BoE), Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) have launched parallel consultations on operational incident and third party reporting intended to support the operational resilience of the UK financial sector.

The BoE consultation seeks views on proposed rules and a code of practice and expectations for UK financial market infrastructures (FMIs), including recognised UK central counterparties (CCPs), recognised UK central securities depositories (CSDs), UK recognised payments system operators (RPSOs) and UK specified service providers (SSPs).

The PRA consultation (CP17/24) seeks views on proposed rules and expectations for:

- UK banks, building societies, PRA-designated investment firms, branches of overseas banks and certain insurers in relation to operational incident reporting; and
- all PRA-regulated firms in relation to outsourcing and third-party reporting.

The FCA consultation (CP24/28) seeks views on proposals for:

- operational incident reporting, relevant to firms, payment service providers, UK recognised investment exchanges (RIEs), registered trade repositories and registered credit rating agencies; and
- third party reporting, relevant to enhanced scope Senior Managers & Certification Regime (SM&CR) firms, banks, PRA-designated investment firms, building societies, Solvency II firms, Client Assets Sourcebook (CASS) large firms, RIEs, authorised electronic money institutions or payment institutions and CTPs.

Comments on all the consultation papers are due by 13 March 2025. The FCA intends to publish final rules in H2 2025, and the BoE and PRA propose an implementation date of no earlier than H2 2026.

BoE issues statement of policy on power to direct institutions to address impediments to resolvability

The BoE has issued a statement of policy on its power to direct institutions to address impediments to their resolvability under section 3A of the Banking Act 2009.

This power relates to:

- institutions authorised for the purpose of the Financial Services and Markets Act (FSMA) 2000 by the PRA or FCA; and
- certain parents and subsidiaries of such institutions.

The statement of policy sets out:

- the statutory framework for the power, including the process leading up to the use of the power, use of the power following a resolvability assessment, use of the power in other circumstances, and the process for giving a direction;
- the BoE's approach to using the power;
- decision-making; and
- the right of appeal.

FSMA 2023: BoE issues policy statement on addressing impediments to CCP resolvability

The BoE has issued a policy statement providing feedback on its July 2024 consultation, as well as setting out its final statement of policy, on its power to direct UK-based CCP to address impediments to the effective exercise of resolvability powers under the FSMA 2023.

The final statement of policy sets out:

- the statutory framework of the power;
- the process for the giving of directions;
- the BoE's approach to the use of the power in the context of its statutory stabilisation objectives;
- the decision-making process that the Bank will follow to give directions; and
- the right of CCPs to appeal.

FSMA 2023: BoE issues policy statement on contracts subject to statutory tear up in CCP resolution

The BoE has issued a policy statement providing feedback on its July 2024 consultation, as well as setting out its final statement of policy, on its approach to determining commercially reasonable payments for contracts subject to a statutory tear up in CCP resolution, under its new powers granted by the FSMA 2023.

The regime introduced under FSMA 2023 allows the BoE and HM Treasury to terminate, or tear up, one or more contracts cleared by a failing CCP in the affected clearing service. The BoE has indicated that it would typically intend to conduct a partial tear up of contracts cleared by the clearing service to limit

the number of contracts affected. Depending on the value of each contract being torn up, the BoE would require either:

- the CCP to make a commercially reasonable payment representing the value of the terminated contract to the clearing member who is a party to the terminated contract; or
- the clearing member to make a commercially reasonable payment representing the value of the contract to the CCP.

The policy statement sets out how the BoE will determine what a commercially reasonable payment is and addresses the use of alternative pricing methods for generating a commercially reasonable price in a statutory tear up.

FCA publishes policy statement on submission requirements for National Storage Mechanism

The FCA has published a policy paper (PS 24/19), summarising responses and final rules following its consultation on proposed changes to the requirements for submitting regulated information to the National Storage Mechanism (NSM) (CP 24/17).

The NSM is a free-to-use online archive of company information. In CP 24/17, the FCA sought feedback on proposals to introduce more comprehensive metadata requirements for NSM submissions in order to make it easier for users to find information. Specifically, it proposed:

- changing the NSM's data requirements for 'regulated information', including by expanding the requirement for the filing of legal entity identifiers (LEIs) and updating the headline information that is used to categorise the information; and
- introducing a requirement that all primary information providers (PIPs) (i.e. firms approved by the FCA to disseminate regulated information on behalf of issuers) use the same standard schema and Application Programming Interface (API) for submitting information to the NSM.

Respondents were largely supportive of the FCA's proposals, although some had suggestions of changes or requests for clarification. PS 24/19 sets out the FCA's detailed response to these comments but notes that the final policy is the same as the version consulted upon.

The new rules will appear in the FCA Handbook on 3 November 2025, which is when they will come into force. The technical note guidance will take effect at the same time.

FCA publishes discussion paper on regulating cryptoasset admissions and disclosures and market abuse

The FCA has published a discussion paper on developing its rules for cryptoasset admissions and disclosures (A&D) and cryptoasset market abuse (MARC). The proposals are intended to:

- improve regulatory clarity;
- ensure consumers have necessary information before buying or selling cryptoassets;
- require controls and processes to ensure fair trading conditions; and

- reduce risks of money laundering and fraud.

In 2023, the Government announced plans to legislate for a future financial services regime for cryptoassets. In November 2024, the new Government confirmed that it would proceed with legislation to bring certain cryptoasset activities under the FCA's regulatory perimeter. This expanded remit will cover cryptoasset trading, regulation of stablecoins, intermediation, custody, and other core activities. The FCA will publish separate papers for other parts of the regime and has published a Crypto Roadmap to provide further clarity on the content and sequencing of future publications.

Comments are due by 14 March 2025.

FCA consults on new product information framework for Consumer Composite Investments

The FCA has published a consultation paper (CP24/30) on a new product information framework for Consumer Composite Investments (CCIs).

The consultation follows HM Treasury's action to replace the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation and the Undertakings for Collective Investment in Transferable Securities (UCITS) disclosure requirements with a new approach governed by the FCA. The Treasury laid the final statutory instrument (SI) to give effect to this on 22 November 2024. Products formerly under the PRIIPs regime and UCITS disclosure requirements, including funds in the Overseas Funds Regime (OFR), will now fall under the umbrella of CCIs. All CCI product information rules will be in the FCA Handbook.

CP24/30 sets out the FCA's proposals for consumers to:

- be presented with information that is accurate, understandable, and broadly comparable;
- engage with product information and use it in their decision-making process; and
- be able to compare investments more effectively, and more easily find the best product for their needs.

Comments are due by 20 March 2025. The FCA intends to publish a further consultation with draft rules for consequential amendments and transitional provisions in early 2025 and to issue a policy statement with final rules in 2025.

FCA consults on sandbox arrangements for Private Intermittent Securities and Capital Exchange System

The FCA has published a consultation paper (CP24/29) on the regulatory framework for the Private Intermittent Securities and Capital Exchange System (PISCES).

PISCES will be a new type of trading platform that will enable intermittent trading of private company shares using market infrastructure. The proposed regulatory framework for PISCES will be established under a financial market infrastructure (FMI) sandbox created by the Treasury. The Treasury intends to lay the relevant statutory instrument before Parliament by May 2025 and the FCA expects to publish its final rules shortly thereafter.

Comments are due by 17 February 2025.

FCA extends time limit for responding to motor finance complaints

The FCA has published a policy statement extending the time that firms have to respond to consumer complaints about motor finance (PS24/18).

Firms now have until 4 December 2025 to provide a final response to complaints received on or after 26 October 2024 about motor finance credit or leasing agreements not involving a discretionary commission arrangement (DCA).

Consumers seeking to refer a complaint to the Financial Ombudsman Service may do so either within 15 months of the final response being sent or by 29 July 2026, whichever is the later.

The extension follows the Court of Appeal's recent judgment in *Johnson v FirstRand Bank Limited* [2024] EWCA Civ 1282 and two other related motor finance cases (*Wrench v FirstRand Bank* and *Hopcraft & Anr v Close Brothers*), where the Court held that credit brokers could not lawfully receive a commission from a car finance lender without obtaining the fully informed consent from the customer.

The UK Supreme Court (UKSC) will hear an appeal against the judgment, which it intends to list in the 2025 Hilary Term running from 13 January to 16 April 2025.

The FCA has also published a summary of the judgment, its expectations of motor finance firms and examples of good and poor practice.

The new rules for non-DCA complaints, which broadly mirror the existing rules for DCA complaints, came into force on 20 December 2024. The FCA hopes to provide a further update in May 2025, depending on the progress of the UKSC appeal, and notes an intention to end the extension sooner than December 2025 if possible.

For more information about the judgment, please see our briefing *Motor Finance Commissions – Taking Stock*.

BaFin consults on PPP circular for insurance undertakings

The German Federal Financial Supervisory Authority (BaFin) has launched a consultation (13/2024) on a draft circular regarding the Prudent Person Principle (PPP) of insurance undertakings under Solvency II.

By way of the circular, BaFin is updating its supervisory practice regarding the interpretation of PPP related provisions in the Insurance Supervision Act (Versicherungsaufsichtsgesetz – VAG) and in Commission Delegated Regulation (EU) 2015/35.

The draft circular comprises several interpretative decisions regarding the PPP and certain provisions of BaFin's circular (2/2017 (VA)) on the minimum requirements for the business organisation of insurance undertakings (MaGo) (i.e. the sections on risk management guidelines for investment risk, liquidity risk management and asset/liability management). It also includes a separate section on sustainability in the PPP.

The circular is to apply as of the date of its publication.

Comments are due by 31 January 2025.

BaFin publishes letter to Pfandbrief banks

BaFin has published a letter to Pfandbrief banks to explain how it makes use of the option regarding the relevance of the write-up cover granted to it under the CRR3 in the version of Regulation (EU) 2024/1623 which is in force as of 2025.

In principle, write-ups of real estate are not permitted under Pfandbrief law if they serve as collateral to cover mortgage Pfandbriefe. In practice, however, there are two exceptions. BaFin comments on these in the letter.

BaFin publishes new general decree on Common Equity Tier 1 instruments of cooperative banks

BaFin has issued a new general decree (Allgemeinverfügung) on cooperative banks pursuant to Article 26 para 3 and Articles 77 para 1 lit. a), 78 para 1 lit. b) of the Capital Requirements Regulation (Regulation (EU) No 575/2013) and Article 32 para 2 of Commission Delegated Regulation (EU) No 241/2014.

The general decree specifies the extent to which newly issued shares can be categorised as Common Equity Tier 1 instruments and stipulates the conditions under which credit balances may be repaid based on terminated cooperative shares. It relates exclusively to CRR credit institutions in the legal form of a registered cooperative that are not subject to direct supervision by the ECB pursuant to the SSM Regulation (Regulation (EU) No 1024/2013).

The general decree applies from 1 January through 31 December 2025. The previous general decree on Common Equity Tier 1 instruments of cooperative banks was limited until 31 December 2024.

Bank of Italy consults on CRR3 and covered bonds

The Bank of Italy has launched a public consultation on the exercise of the discretion provided for in Article 129(3) of the CRR, as amended by CRR3.

The consultation concerns the supervision of covered bond issuance programmes and its aim is to collect qualitative and quantitative data from banks and other stakeholders to define how to exercise this discretion. It focuses on the impact on the cover pool, especially if discretion is not exercised and new valuation methods are applied to collateral properties.

Banks are invited to provide comments on the possibility of applying a transitional regime for residential exposures in the calculation of the output floor, as provided for in CRR3.

Although the discretion lies with the Member States, the Bank of Italy is seeking to collect information to enrich its information framework, pending the full implementation of the Regulation at national level.

Comments are due by 3 February 2025.

Luxembourg law implementing Daisy Chains Directive enters into force

The Luxembourg law of 20 December 2024 has been published in the Luxembourg official journal (Mémorial A).

The purpose of the law is threefold:

- first, it implements into Luxembourg law the EU Daisy Chains Directive, i.e. Directive (EU) 2024/1174 amending Directive 2014/59/EU (BRRD) and

Regulation (EU) No 806/2014 (SRMR) as regards certain aspects of the minimum requirement for own funds and eligible liabilities (MREL). The Daisy Chains Directive adapts the current European framework for bank resolution, implemented in Luxembourg by the law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended (Resolution Law). Introduced as a stand-alone limb of the EU Commission's crisis management and deposit insurance (CMDI) package on 18 April 2023, the Daisy Chains Directive was fast-tracked through the EU's legislative process and addresses issues specific to the treatment of internal MREL in bank resolution groups;

- second, the law implements Regulation (EU) 2024/1623 amending the CRR as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor (CRR3). CRR3 transposes the reform of the Basel III standards adopted by the Basel Committee on Banking Supervision in 2017 into EU law; and
- third, the law makes targeted adjustments to certain sectoral laws including the Luxembourg law of 5 April 1993 on the financial sector, as amended, the Resolution Law and the Luxembourg law of 8 December 2021 on the issuance of covered bonds. The objective is notably to perfect the implementation of Directive (EU) 2019/878 and Directive (EU) 2019/2162 into Luxembourg law. Targeted amendments are also being made to the aforementioned laws with a view to clarifying the existing regulatory framework, in particular as regards the extension of maturity of covered bonds, the shareholding structure in case of licensing of professionals of the financial sector, as well as the provisions on the governance of the motor vehicle insurance insolvency fund (fonds d'insolvabilité en assurance automobile) and the Luxembourg intergenerational sovereign fund (fonds souverain intergénérationnel).

The Law entered into force on 28 December 2024, subject to a few articles entering into force on 1 January 2025.

Luxembourg's new Blockchain IV Law enters into force

The Luxembourg law of 20 December 2024 (Blockchain IV Law) amending, amongst others, the Luxembourg law of 6 April 2013 on dematerialised securities has been published in the Luxembourg official journal (Mémorial A).

The Blockchain IV Law introduces the new role of monitoring agent (agent de contrôle) and includes equity securities in addition to debt securities in the scope of dematerialised securities which may be issued using secured electronic recording mechanisms (mécanismes d'enregistrement électroniques sécurisés), including distributed ledgers or databases (DLT). The latter amendment will allow issuances of dematerialised investment fund units with transfer agents taking on the role of settlement organisation, central account keeper or monitoring agent.

The new monitoring agent role, which is an alternative to the existing central account keeper and settlement organisation roles for the issuance of unlisted dematerialised securities, is open, among others, to EU credit institutions and investment firms. The monitoring agent holds the securities issuance account by means of DLT and provides a reconciliation function in respect of the dematerialised securities by monitoring the custody chain of the dematerialised securities held in securities accounts maintained within or by virtue of a DLT system and reconciling the issued securities. One of the

novelties is that the monitoring agent will, contrary to central account keepers or settlement organisations, not be required to also hold the first level securities accounts.

The Blockchain IV Law is a continuation of the law of 1 March 2019 (Blockchain I Law) amending the law of 1 August 2001 on the circulation of securities, which already explicitly recognised the possibility of holding and registering securities in securities accounts (comptes-titres) within or by virtue of a DLT system, the law of 22 January 2021 (Blockchain II Law) amending the 2013 law to explicitly introduce the possibility of using a DLT system for the issuance of dematerialised securities and the law of 15 March 2023 (Blockchain III Law) amending, among others, (i) the financial sector law of 5 April 1993 to include DLT financial instruments in its definition of 'financial instruments', and (ii) the financial collateral law of 5 August 2005, to allow DLT financial instruments to be used as financial collateral.

The Blockchain IV Law entered into force on 31 December 2024.

MiCA: Polish Financial Supervision Authority sets out position on application during transitional period

The Polish Financial Supervision Authority (PFSA) has presented its position on the application of MiCA during the transitional period. In its position, the PFSA notes that the draft law ensuring the application of MiCA in Polish law is still going through the legislative procedure.

In this context, the PFSA has indicated, among other things, that a transitional period will apply until 30 June 2025, during which entities providing cryptoasset services within the meaning of Article 3(1)(16) of MiCA Regulation on 29 December 2024 and entities entered in the register of virtual currency activities will be permitted to operate without the need to obtain an authorisation under MiCA.

After 30 June 2025, the provision of cryptoasset services will only be possible on the basis of an authorisation granted by the PFSA.

National Working Group Steering Committee specifies new interest rate benchmark to replace WIBOR

The Steering Committee of the National Working Group on Benchmark Reform has announced that WIRF is to become the key interest rate benchmark within the meaning of the Benchmarks Regulation (BMR), which can be used in financial contracts (e.g. loan agreements), financial instruments (e.g. debt securities and derivatives) and by investment funds (e.g. when setting management fees).

FINMA publishes circular on nature-related financial risks

The Swiss Financial Market Supervisory Authority (FINMA) has published a new circular on nature-related financial risks.

In the circular, FINMA sets out its expectations of banks and insurers with regard to the management of climate- and other nature-related financial risks. The aim of the circular is to strengthen the resilience of supervised institutions to these risks and thus also protect their clients and the Swiss financial centre.

The circular applies to banks and insurers and will enter into force in stages from 1 January 2026.

In line with its strategic goals for 2025 to 2028, FINMA intends to work to ensure that financial institutions take climate- and other nature-related financial risks into account and remain resilient to these risks. Implementation of the circular is an important basis for this and will be proactively monitored by FINMA.

FINMA publishes guidance on governance and risk management when using artificial intelligence

FINMA has published guidance on governance and risk management when using artificial intelligence (AI).

The guidance is intended to draw supervised institutions' attention to the need for appropriate identification, assessment, management and monitoring of the risks resulting from the adoption of AI. It also provides information on corresponding measures that FINMA has observed in the course of ongoing supervision.

Hong Kong Government commits to implementing cryptoasset reporting framework

The Hong Kong Government has informed the Global Forum on Transparency and Exchange of Information for Tax Purposes of the Organisation for Economic Co-operation and Development (OECD) of Hong Kong's commitment to implementing the Cryptoasset Reporting Framework (CARF) for enhancing international tax transparency and combating cross-border tax evasion.

The OECD published CARF in June 2023 with a view to ensuring that global tax transparency would be maintained in light of the rapid growth of the cryptoasset market. As an extension of the existing Common Reporting Standard for Automatic Exchange of Financial Account Information in Tax Matters, CARF provides for a similar mechanism for annual automatic exchange of tax-relevant cryptoasset account and transaction information among jurisdictions where cryptoasset users or controlling persons are tax residents.

The Hong Kong Government notes that it is committed to implementing CARF on a reciprocal basis with appropriate partners that meet the required standards for protecting data confidentiality and security. Based on the latest timetable set by the Global Forum, the Government plans to commence the first automatic exchanges with relevant jurisdictions under CARF from 2028, based on the initial plan that the necessary local legislative amendments can be put in place by 2026.

HKMA shares key observations and good practices on transition planning

The Hong Kong Monetary Authority (HKMA) has issued a circular to share with the industry some key observations and good practices on transition planning, based on a survey the HKMA conducted with authorised institutions in the fourth quarter of 2023.

The HKMA has indicated that it is preparing a new supervisory policy manual module 'GS-2 on Transition Planning' to set out its expectations on how authorised institutions should manage and address the risks associated with the net-zero transition, including its expectations on how authorised institutions should fulfill Goal #1 specified in the circular on the sustainable

finance action agenda dated 21 October 2024. Goal #1 provides for 'all banks to strive to achieve net zero in their own operations by 2030 and in their financed emissions by 2050'. The HKMA will consult the industry when the draft module is ready.

Authorised institutions are encouraged by the HKMA to make reference to the good practices in the Annex to the circular when conducting transition planning.

SFC issues circular to management companies relating to money market funds

The Securities and Futures Commission (SFC) has issued a circular to highlight its requirements and expectations for management companies of SFC-authorised money market funds (MMFs).

The SFC requires managers to maintain and implement effective liquidity risk management policies and procedures to monitor the liquidity risk of the MMFs under their management. In particular, the SFC reminds managers that they should refer to the SFC's guidance on liquidity risk management of SFC-authorised funds set out in the circular to management companies of SFC-authorised funds on liquidity risk management dated 4 July 2016.

Earlier in 2024, the SFC conducted a thematic review on Hong Kong domiciled MMFs, including their investment portfolios as at the end of 2023. The SFC also engaged with several managers recently to understand their liquidity risk management practices. In the circular, the SFC reminds managers of the following requirements:

- managers must take into account both the credit quality and liquidity profile in determining the quality of a money market instrument. Managers should have a prudent internal procedure for assessing whether or not a money market instrument invested by their MMFs is of high quality, having regard to multiple factors, including but without over-reliance on external credit ratings. MMFs are generally not expected to invest in unrated or low-investment-grade money market instruments;
- managers should exercise due care, skill and diligence in managing the liquidity of their MMFs at all times, taking into account prevailing market conditions, and to ensure fair treatment of both redeeming and remaining investors in meeting redemption requests;
- managers should have in place an effective liquidity risk management framework to provide for reasonable liquidity cost, mitigate material dilution and protect the interests of remaining investors upon others' redemption; and
- managers are required to review their current policies and procedures to assess the adequacy of their action plans and availability of liquidity risk management tools (LMTs) including the ability to use anti-dilution LMTs, and implement necessary enhancements such as revisions of the funds' offering documents to ensure such tools are available for use when needed.

Examples of good practices for managing the liquidity risk of MMFs are set out in the appendix to the circular.

SFC provides guidance to virtual asset trading platforms on licensing process and revamped second-phase assessment

The SFC has issued a circular to set out a roadmap for virtual asset trading platforms (VATPs) on the licensing process and provide more guidance on the second-phase assessment.

As part of its on-site inspection programme introduced in June 2024, the SFC has directly engaged and communicated with the senior management and ultimate controllers of deemed-to-be-licensed VATP applicants. The SFC has required deemed applicants to submit a plan for their rectification measures in light of the inspection feedback.

As a licensing condition, a VATP is required to complete the rectifications as planned, and perform a penetration test and vulnerability assessment with satisfactory results before it can operate on a restricted scope of business. The SFC intends to provide additional guidance on the licensing process of new corporations applying for a licence to operate a VATP in early 2025.

In the light of the effectiveness of directly engaging with the senior management and ultimate controllers of VATPs, the SFC will extend this approach when the VATPs engage an external assessor to conduct their second-phase assessment. Specifically, the SFC will supervise the whole second-phase assessment process through a tripartite engagement together with the VATPs and their external assessors, and will lift the restriction on business scope after the second-phase assessment is completed to the SFC's satisfaction.

The SFC has also revamped the second-phase assessment to focus on whether a VATP's revised policies, procedures, systems and controls are suitably designed and implemented, following completion of its rectification plan in response to its inspection feedback. The VATP will be required to notify the SFC and the external assessor of any subsequent material change to its policies, procedures, systems and controls as soon as practically possible. Additionally, the VATP must also promptly report to the SFC any material breaches or failures identified during the second-phase assessment.

SFC welcomes revisions to Mainland-Hong Kong mutual recognition of funds enhancements

The SFC has welcomed the publication of the revised provisions on the administration of recognised Hong Kong funds by the China Securities Regulatory Commission (CSRC) and the revised operating guidelines jointly published by the People's Bank of China (PBoC) and the State Administration of Foreign Exchange (SAFE), for the purpose of implementing the enhancements to the mutual recognition of funds (MRF) scheme.

The enhancement to the MRF scheme is one of five measures on capital market cooperation with Hong Kong announced by the CSRC on 19 April 2024. For Hong Kong funds approved by the CSRC for public offering in Mainland China, the relaxation of the sales limit will increase their maximum potential sales value in Mainland China by three times according to the SFC. Also, the relaxation of overseas delegation restriction will provide more opportunities for international asset managers to leverage their expertise and knowledge of global markets to offer more offshore solutions and products to Mainland China investors.

In connection with the enhancements to the MRF scheme, the SFC has updated the following documents:

- a circular on mutual recognition of funds between Mainland China and Hong Kong. This circular will supersede the previous version of the circular dated 22 May 2015 with effect from 1 January 2025;
- frequently asked questions (FAQs) on Mainland-Hong Kong mutual recognition of funds – questions A4, A9 and B1 have been updated, which are effective from 1 January 2025;
- an information checklist for application for authorisation of mainland funds under the MRF arrangement;
- a form for scheme change application(s) or filing of notice of scheme change(s) in relation to recognised Mainland funds;
- a filing form for revised offering documents that do not require SFC's prior approval in relation to recognised Mainland funds; and
- an application form for revised offering documents that require SFC's prior approval in relation to recognised Mainland funds.

Deposit Insurance and Policy Owners' Protection Schemes (Financial Penalty) Order 2024 gazetted

The Singapore Government has gazetted the Deposit Insurance and Policy Owners' Protection Schemes (Financial Penalty) Order 2024.

Amongst other things, the Financial Penalty Order 2024:

- provides, for the purposes of section 8(4) of the Deposit Insurance and Policy Owners' Protection Schemes Act 2011 (Act), the prescribed formula for the financial penalty that a deposit insurance (DI) scheme member is liable to pay for every day or part of a day if the DI Scheme member fails to comply with any asset maintenance requirement of the MAS under section 8(1) of the Act; and
- revokes the Deposit Insurance and Policy Owners' Protection Schemes (Financial Penalty) Order 2011.

The Financial Penalty Order 2024 is effective from 1 January 2025.

MAS responds to feedback received on proposed amendments to Financial Services and Markets (Resolution of Financial Institutions) Regulations 2024

The Monetary Authority of Singapore (MAS) has published its responses to the feedback it received on its September 2024 consultation on proposed amendments to the Financial Services and Markets (Resolution of Financial Institutions) Regulations 2024 (FSM RFI Regulations).

In its September 2024 consultation, the MAS proposed to:

- extend the statutory bail-in regime to the insurance sector, by scoping in Singapore-incorporated licensed insurers and designated insurance holding companies (referred to collectively as 'insurers') as financial institutions under Division 6 of the FSMA 2022 and expanding the scope of eligible instruments to cover instruments issued by insurers; and

- prescribe the maximum duration of two business days for temporary stays on the early termination rights in reinsurance contracts.

The MAS notes that there were no objections to the proposed amendments. The amendments will be effected via the Financial Services and Markets (Resolution of Financial Institutions) (Amendment) Regulations, which came into operation on 31 December 2024.

The MAS has reminded insurers that:

- a contract that governs an eligible instrument, as defined under regulation 28 of the FSM RFI Regulations, must contain provisions to the effect of that specified in regulations 30(1) and 30(2) of the FSM RFI Regulations; and
- they must also comply with the disclosure requirement for an eligible instrument as set out in regulation 31(1) of the FSM RFI Regulations.

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