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INTERNATIONAL REGULATORY UPDATE 20 – 24 JANUARY 2025

- **MiFIR Review: EU Commission adopts Delegated Regulation on OTC derivatives identifying reference data**
- **ESMA, ECB and EU Commission launch new governance structure for T+1 settlement cycle transition**
- **DORA: ESAs publish feasibility study on centralising ICT incident reporting**
- **CRD4: EBA publishes opinion on interaction between Pillar 2 requirements and output floor**
- **EBA launches 2025 EU-wide stress test**
- **EBA publishes Q&As on PSD2, EMD and MiCA**
- **ESMA publishes statement and Q&A on non-MiCA compliant ARTs and EMTs**
- **MiCA: ESMA resubmits draft conflicts of interest RTS**
- **FSB publishes work programme for 2025**
- **FSB reports on effects of regulatory reforms on securitisation market**
- **SRB updates operational guidance on operational continuity in resolution**
- **House of Lords Committee publishes FCA letter on motor finance commission**
- **FCA publishes report on reducing money laundering through the markets**
- **PRA publishes Dear CEO letter on 2025 supervisory priorities for UK deposit takers**
- **PRA publishes Dear CEO letter on 2025 supervisory priorities for international banks and designated investment firms**
- **PRA publishes letter on enhancing economic growth**
- **HKMA shares good industry practices for implementing operational resilience frameworks**
- **MAS launches Global-Asia Digital Bond Grant Scheme to boost issuance and market adoption of digital bonds in Singapore**

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MiFIR Review: EU Commission adopts Delegated Regulation on OTC derivatives identifying reference data

The EU Commission has adopted a Delegated Regulation regarding OTC derivatives identifying reference data under the Markets in Financial Instruments Regulation (MiFIR).

The Delegated Regulation sets out identifying reference data to be used with regard to OTC interest rate swaps and OTC credit default swaps for the purposes of the transparency requirements laid down in Article 8a(2), and Articles 10 and 21 MiFIR.

In the adopted text, the Commission has set out the feedback received to its June 2024 consultation. According to the Commission, it is of crucial importance that specific contractual dates, such as the expiry date or effective date of the swap, do not form part of identifying reference data. It is of equal importance that, where values indicate whether an OTC interest rate swap falls under one of the following, those values must form part of the identifying reference data:

- the swap applies the standard effective date associated with the relevant underlying reference rate;
- the swap applies one of the two standard roll conventions for interest rate swaps;
- the swap deviates from any other standard business terms associated with the relevant underlying reference rate; or
- the swap contains one or more other price impacting provisions not mentioned as part of the standard business terms.

The European Securities and Markets Authority (ESMA) will have discretion to implement the Delegated Regulation when developing draft regulatory technical standards (RTS) by means of choosing an appropriate unique identifier comprising all the identifying reference data set out in the Regulation, or by means of an appropriate unique identifier that comprises some of the identifying reference data accompanied with the other transparency-relevant identifying reference data.

The Delegated Regulation will enter into force on the twentieth day following its publication in the Official Journal and will apply from 1 September 2025.

ESMA, ECB and EU Commission launch new governance structure for T+1 settlement cycle transition

ESMA, the European Central Bank (ECB) and the EU Commission have launched a new governance structure to support the transition to the T+1 settlement cycle in the EU.

The key elements of the new governance model include:

- an industry committee comprising senior leaders and representatives from market players;
- technical workstreams operating under the industry committee focusing on the technological operational adaptations needed in the areas concerned by the transition to T+1, and two general workstreams reviewing the scope and legal and regulatory aspects of these adaptations; and

- a coordination committee to ensure coordination between the three authorities and the industry, advising on challenges that may arise during the transitions.

The technical workstreams will focus on areas such as trading, matching, clearing, settlement, securities financing, funding and FX, asset management, corporate events and settlement efficiency. The first meeting of the coordination committee is scheduled to take place on 6 February 2025.

The EU Commission is currently considering the merits of a legislative change mandating a potential transition to a shorter settlement cycle.

DORA: ESAs publish feasibility study on centralising ICT incident reporting

The European Supervisory Authorities (ESAs) have published a report on the feasibility of centralising the reporting of major ICT-related incidents by financial entities, as mandated by the Digital Operational Resilience Act (DORA).

The report evaluates three models: the baseline model, a model with enhanced data sharing, and a fully centralised model. It considers the potential burden, cost reductions, and efficiency gains each model could offer for cross-sector supervisory practices.

The report has been submitted to the EU Parliament, the EU Council, and the EU Commission for consideration in future developments.

CRD4: EBA publishes opinion on interaction between Pillar 2 requirements and output floor

The European Banking Authority (EBA) has published an opinion on the interaction between the output floor and Pillar 2 Requirements (P2R) under the Capital Requirements Directive (CRD4).

The opinion sets out how P2R is to be calculated temporarily based on the unfloored, instead of floored, total risk exposure amount (TREA) when an institution first becomes bound by the output floor, applying the P2R percentage previously communicated following the last supervisory review and evaluation process (SREP) cycle. It emphasises the importance of institutions informing their competent authority (CA) of the potential impact at an early stage to facilitate the review process.

The EBA expects CAs, in their review on double counting of risks, to consider only offsets regarding P2R add-ons in relation to regulatory model deficiencies. The EBA has also advised CAs using a methodology that calculates P2R amount based on a multiplication by TREA to consider how they could ward off undue arithmetic effects from the output floor in the review on double counting.

EBA launches 2025 EU-wide stress test

The EBA has launched the 2025 EU-wide stress test and released the macroeconomic scenarios.

The stress test is designed to assess the resilience of the European banking sector in the current uncertain and changing macroeconomic environment. The adverse scenario assumes a hypothetical aggravation of geopolitical tensions leading to a severe decline in GDP by 6.3% cumulatively. It is designed to ensure a significant severity of various macro-economic and financial shocks across all EU countries and depicts a breakdown of the shocks (on real gross value added) by economic sectors.

The objectives of the stress tests are to:

- assess and compare the overall resilience of EU banks to relevant severe economic shocks;
- assess if bank capital levels are sufficient to ensure banks can support the economy in periods of stress;
- foster market discipline through transparent publication of consistent, granular and comparable data at a bank-by-bank level; and
- provide input to the SREP for competent supervisory authorities.

The EBA's stress test will be conducted on a sample of 64 EU banks – 51 of which are from countries which are members of the Single Supervisory Mechanism (SSM) – covering roughly 75% of total banking sector assets in the EU and Norway.

The EBA expects to publish the results of the exercise in August 2025.

EBA publishes Q&As on PSD2, EMD and MiCA

The EBA has published Q&As relating to the Payment Services Directive (PSD2), the Electronic Money Directive (EMD) and the Markets in Cryptoassets Regulation (MiCA).

The PSD2 Q&As cover:

- safeguarding with a credit institution in a third country;
- Payment Initiative Service Provider (PISP) payment order cancellation due to fraud prevention reasons;
- capital requirements for an entity holding authorisation as both a payment institution and crowdfunding service provider;
- disclosure of exchange rate mark-ups;
- consideration of own funds requirements as a comparable guarantee to professional indemnity insurance (PII);
- information provided to the payee on individual payment transactions; and
- provision of the acquiring of payment transactions service by a third country provider.

The EMD Q&As cover:

- the definition of electronic money; and
- the application of negative interest rates by electronic money institutions (EMIs) to electronic money holders.

The MiCA Q&A covers the scope of public offering in relation to asset-referenced tokens (ARTs) and electronic money tokens (EMTs).

ESMA publishes statement and Q&A on non-MiCA compliant ARTs and EMTs

ESMA has published a statement and EU Commission Q&A on the provision of certain services relating to unauthorised ARTs and EMTs under the MiCA.

Both the statement and Q&A note the requirement for ARTs and EMTs to be issued by authorised issuers in order to be compliant with MiCA, and remind cryptoasset service providers (CASPs) to not provide EU services relating to the offering to the public or seeking admission to trading of non-MiCA compliant ARTs and EMTs, such as:

- reception and transmission of orders;
- execution of orders for cryptoassets on behalf of clients; and
- exchange of cryptoassets for funds or other cryptoassets.

Among other things, CASPs are expected to implement procedures and initiatives to allow EU investors to liquidate or convert their positions, and may maintain services for non-MiCA compliant ARTs and EMTs on a "sell only" basis until the end of Q1 2025.

The restrictions on existing services are expected to be completed by the end of January 2025. National competent authorities (NCAs) are expected to ensure CASPs comply as soon as possible and no later than the end of Q1 2025.

MiCA: ESMA resubmits draft conflicts of interest RTS

ESMA has published an opinion setting out amended draft RTS specifying certain requirements in relation to conflicts of interest for CASPs under the MiCA.

The opinion sets out recommended changes to amendments proposed by the EU Commission in November 2024 to the original draft RTS ESMA submitted in May 2024, and cover provisions relating to:

- personal transactions;
- policies and procedures in the context of remuneration;
- conflicts of interest potentially detrimental to a CASP;
- adequate resources; and
- multifunction cryptoasset intermediaries (MCIs).

The proposed modifications are shown as tracked changes in the Annex to the opinion.

FSB publishes work programme for 2025

The Financial Stability Board (FSB) has released its 2025 work programme, addressing challenges including digitalisation, climate change, and macroeconomic shifts.

Priority areas of work for 2025 include:

- supporting global cooperation on financial stability;
- enhancing the resilience of non-bank financial intermediation (NBFI);
- harnessing the benefits of digital innovation while containing its risks;
- implementing the systemically important financial institution (SIFI) framework;
- addressing financial risks from climate change;
- enhancing cross-border payments;

- completing resolution reforms; and
- monitoring and evaluating implementation of agreed reforms.

The FSB intends to publish its annual report on promoting global financial stability before the G20 Leaders Summit in November 2025.

FSB reports on effects of regulatory reforms on securitisation market

The FSB has published its final report on the evaluation of the effects of the G20 financial regulatory reforms on securitisation.

The report focuses on the International Organization of Securities Commissions (IOSCO) minimum retention recommendations and the Basel Committee on Banking Supervision (BCBS) revisions to prudential requirements for bank securitisation-related exposures in residential mortgage-backed securities (RMBS) and collateralised loan obligation (CLO) markets.

The report finds that the post-global financial crisis reforms have contributed to the resilience of the securitisation market without strong evidence of material negative side-effects on financing to the economy, but also notes that the market has not yet been tested through a full credit cycle to confirm this evidence.

The FSB has highlighted key issues for national authorities and international bodies to consider including:

- the need to monitor risks in securitisation markets in light of developments such as the growth of synthetic risk transfers and private credit in securitisation structures;
- the effectiveness of risk retention requirements for risk alignment in CLOs, given the fact that a large part of the global CLO market does not currently operate under such requirements and given the use of third-party risk financing for CLO structures; and
- differences in reform implementation across FSB member jurisdictions, whose impact needs to be considered as authorities explore opportunities for framework adjustments.

SRB updates operational guidance on operational continuity in resolution

The Single Resolution Board (SRB) has published revisions to its operational guidance on operational continuity in resolution (OCIR).

The guidance is intended to assist banks in implementing SRB expectations for resolvability related to service identification and mapping, assessment of operational continuity risk, and mitigating measures. The revisions follow the introduction of new frameworks such as the DORA and new provisions such as the EBA guidelines on improving resolvability.

The SRB has also made revisions to make further clarifications stemming from its expectations for banks (EfB) document, though these are not significant. The SRB notes that the application of some revisions will, in practice, depend on pending measures including the EBA's overhaul of the resolution planning reporting framework and the SRB's operational guidance for banks on resolvability self-assessment. Those additions will apply from the 2026 resolution planning cycle.

House of Lords Committee publishes FCA letter on motor finance commission

The House of Lords (HoL) Financial Services Regulation Committee has published a letter from the Financial Conduct Authority (FCA) on motor finance commission.

The letter provides an overview of the FCA's regulation of discretionary and fixed commission in response to Committee questions on:

- relevant FCA rules and principles, both prior to and following 2021 amendments prohibiting discretionary commission arrangements (DCA) in motor finance and requiring the disclosure of the nature of commission arrangements; and
- the FCA's decision to not seek legal advice on the relevance of disinterested or fiduciary duties in relation to the DCA ban and commission disclosure.

The correspondence concerns the Committee's consideration of the implications of the Court of Appeal's recent judgments 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*). The Court of Appeal held that credit brokers could not lawfully receive a commission from a car finance lender without obtaining the fully informed consent of the customer.

The UK Supreme Court (UKSC) has granted permission to appeal the judgments and is scheduled to hear the appeals 1 to 3 April 2025.

FCA publishes report on reducing money laundering through the markets

The FCA has published a report on assessing and reducing the risk of money laundering through the markets.

The report, which reviews and updates the FCA's 2019 thematic review of money laundering risks (TR19/4), focuses on brokers and other firms operating in the capital markets and covers:

- examples of good and poor practice on enhancing systems, controls and training;
- practical case studies; and
- a detailed review of wholesale broker firms' financial crime systems and controls.

The FCA expects firms to continue to review their systems, controls and money laundering awareness and training to ensure they meet the required standards.

The FCA has also published a multi-firm review of payment services and account providers' use of the National Fraud Database (NFD) and money mule account detection.

PRA publishes letter on enhancing economic growth

The Prudential Regulation Authority (PRA) has published a letter from its Deputy Governor and CEO, Sam Woods, to the Government on the PRA's work intended to facilitate the competitiveness and growth of the UK economy.

The letter, dated 15 January 2025, notes that the PRA has adopted a framework to guide its activities to support growth focused on the allocation of capital in the UK economy, the competitiveness of UK banks and insurers, and the attractiveness of the UK for foreign banks and insurers.

The activities the PRA intends to take in 2025 guided by that framework include:

- simplifying the prudential regime for small banks;
- increasing the ability of the insurance sector to invest in the UK economy;
- improving the UK framework for Insurance Special Purpose Vehicles (ISPVs), including simplifying and accelerating the authorisation process;
- making further amendments to remuneration requirements; and
- simplifying regulatory data reporting from banks.

The PRA also intends to discuss potential wider changes with the Government, such as:

- a 'concierge service' for new inbound foreign firms;
- rationalising regulators' 'have regards' when making or amending regulation; and
- reducing overlap between PRA governance and disclosure requirements and those of legislation and other regulators.

PRA publishes Dear CEO letter on 2025 supervisory priorities for UK deposit takers

The PRA has published a Dear CEO letter setting out its 2025 priorities for the supervision of UK deposit takers.

The PRA's priorities cover the following themes:

- risk management, governance and controls, with the PRA's assessment of firms' credit risk management practices focusing on strategic growth areas, vulnerable and higher-risk portfolios and key international portfolios, and firms expected to continue to implement and embed changes to model risk management (MRM) to align with PRA principles;
- data risk, including an intention to place increasing reliance on data tools and analytics, and to assess firms' data accuracy;
- funding and liquidity, with firms expected to prepare for the Bank of England's (BoE's) transition to a repo-led operating framework, including in relation to their operational readiness and how they source and manage liquidity;
- operational resilience, including firms showing by March 2025 that they can remain within impact tolerances for all important business services through severe but plausible disruptions, and an intention for the PRA and FCA to consult in H2 2025 on policy relating to the management of Information and Communication Technology (ICT) and cyber risks; and

- the delay to the implementation of Basel 3.1, with the PRA considering the impact on the proposed strong and simple capital framework for small domestic deposit takers (SDDTs).

An annex to the letter provides a summary of PRA-led cross-form priority work for 2025, including an intention to consult on changes to the senior manager regime.

PRA publishes Dear CEO letter on 2025 supervisory priorities for international banks and designated investment firms

The PRA has published a Dear CEO letter setting out its 2025 priorities for the supervision of international banks and designated investment firms active in the UK.

The PRA's priorities cover the following themes:

- risk management, governance and controls, with firms expected to continue to invest in robust credit risk management and measurement practices, and the PRA intending to closely monitor credit risk management with a focus on commercial real estate exposures;
- data risk, including an intention to place increasing reliance on data tools and analytics, and to assess firms' data accuracy;
- financial resilience, with firms expected to ensure liquidity resilience and to be prepared for the Band of England's (BoE's) transition to a repo-led operating framework;
- operational resilience, particularly in regard to firms' important business services and in their response to cyber threats; and
- Basel 3.1, with firms expected to continue to work through the potential impact and implications of the package despite the 12 month delay to its implementation from 1 January 2026 to 1 January 2027.

An annex to the letter provides a summary of PRA-led cross-form priority work for 2025, including intentions to consult on changes to the senior manager regime and to finalise updates to its approach to branch and subsidiary supervision.

HKMA shares good industry practices for implementing operational resilience frameworks

The Hong Kong Monetary Authority (HKMA) has issued a circular to share good industry practices for the implementation of operational resilience frameworks in accordance with supervisory policy manual (SPM) module OR-2 on operational resilience, which was issued on 31 May 2022.

Through its ongoing engagement with the industry to track implementation progress, the HKMA has found that all authorised institutions (AIs) have developed operational resilience frameworks and are on track to meet the SPM module OR-2 requirements by May 2026.

According to the HKMA, most AIs are currently in the second critical stage of their operational resilience implementation, namely the mapping and scenario testing exercises. The HKMA acknowledges the challenges posed by the increasing complexity of banking operations, which were discussed at an industry sharing session with the Hong Kong Association of Banks in

December 2024. Insights from the sharing session and good industry practices observed through various engagements have been summarised in the Annex to the circular.

The HKMA is encouraging AIs to consider applying the good practices for mapping, testing and remediation of relevant vulnerabilities, in a manner commensurate with the scale and scope of their operations and risk profiles. Going forward, AIs are required to prioritise the remaining tasks for becoming operationally resilient and track progress through self-assessments, and achieve full compliance with the SPM module OR-2 requirements by May 2026.

MAS launches Global-Asia Digital Bond Grant Scheme to boost issuance and market adoption of digital bonds in Singapore

The Monetary Authority of Singapore (MAS) has launched the Global-Asia Digital Bond Grant Scheme, which is intended to catalyse the issuance and broader market adoption of digital bonds in Singapore.

Under the scheme, the MAS is offering the grant to companies and non-bank financial institutions with an Asian nexus (qualifying issuers). Digital bonds issued by qualifying issuers will be eligible for the scheme provided the following conditions are met:

- the issue declares itself to be a ‘qualifying debt security’ under the relevant Singapore legislation, i.e. under the Income Tax Act 1947 and the Income Tax (Qualifying Debt Securities) Regulations;
- bonds must be: issued on a designated digital asset platform in Singapore; listed on the Singapore Exchange or a designated digital asset platform; substantially arranged by licensed entities in Singapore; aligned with internationally-recognised digital bond standards; and denominated in Asian local or G3 currencies (US dollar, Euro, and Japanese Yen);
- the minimum issuance size should be SGD 100 million. Where the issuance size is at least SGD 200 million, the bond must be digitally native; and
- where the tenure is at least one year, the issue must be joint-led by at least two specified licensed entities in Singapore.

Under the scheme, qualifying issuers can apply for up to 30% of the total eligible expenses per issuance, subject to a cap of:

- SGD 450,000 where the initial principal amount issued is SGD 200 million (or its equivalent in another currency); or
- SGD 250,000 where the initial principal amount issued is SGD 100 million (or its equivalent in another currency).

Eligible expenses include arranger fees, audit fees, credit rating fees, legal fees, listing fees, and platform fees.

Funding under the scheme will be provided for up to two qualifying digital bond issuances. The scheme is valid until 31 December 2029. Applicants to the scheme are required to submit their applications no later than three months after the issue date.

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