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### DORA: ESAs accept Commission amendments to RTS on subcontracting

The European Supervisory Authorities (ESAs) have issued an [opinion](#) on the EU Commission's rejection of their draft regulatory technical standards (RTS) on subcontracting under the Digital Operational Resilience Act (DORA).

The Commission rejected the ESAs' original draft RTS, which specified further elements that financial entities must determine and assess when subcontracting ICT services that support critical or important functions, on the grounds that certain elements exceeded the powers given to the ESAs by DORA.

In their opinion, the ESAs acknowledge the assessment performed by the Commission and confirm that the amendments proposed ensure that the draft

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RTS are in line with the mandate set out under DORA. For this reason, the ESAs do not recommend further amendments to the RTS in addition to the ones proposed by the Commission.

The ESAs have encouraged the Commission to finalise the adoption of the RTS without further delay.

### **EBA consults on AML/CFT package rules**

The European Banking Authority (EBA) has launched a [consultation](#) on four RTS relating to the new anti-money laundering and countering the financing of terrorism (AML/CFT) regime.

The RTS will form part of the EBA's response to the EU Commission's call for advice on the new regime. They focus on:

- how the new EU Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA) will decide which institutions will be subject to direct supervision;
- the determination of the ML/TF risk associated with each institution;
- the extent and quality of information institutions will have to obtain as part of the customer due diligence process under the new regime; and
- the indicators and criteria to be taken into account when setting the level of pecuniary sanctions or taking administrative measures including developing a methodology on how to impose periodic penalty payments.

Comments are due by 6 June 2025. The EBA intends to submit its final technical standards to the Commission on 31 October 2025.

### **EMIR 3: EBA consults on fees for validating pro forma models**

The EBA has launched a public [consultation](#) on fees to be paid by financial and non-financial counterparties requiring the validation of pro forma models under the European Market Infrastructure Regulation (EMIR 3).

Under EMIR 3, the EBA is required to set up a central validation function for pro forma models used or to be used by financial and non-financial counterparties as part of the risk mitigation techniques used on their portfolios of non-centrally cleared OTC derivatives. The EBA will charge counterparties an annual fee per each validated pro forma model. The fees are expected to cover the EBA's costs including, but not limited to, the validation of aspects such as model calibration, design, risk factors, and coverage of instruments and asset classes.

The consultation sets out the EBA's budgeting model, the main estimated costs for the performance of the tasks as central validator, calculation methods for the fees to be charged to counterparties and practical aspects such as the fees modalities of payment.

Comments are due by 7 April 2025.

## **Taxonomy Regulation: EU Commission Notice setting out technical clarifications on Delegated Acts published in Official Journal**

An EU [Commission Notice](#) providing technical clarifications in response to frequently asked questions (FAQs) on the technical screening criteria (TSC) set out in the Taxonomy Climate Delegated Act (including the amendments to the Taxonomy Climate Delegated Act) and the Taxonomy Environmental Delegated Act, as well as the disclosure obligations for the non-climate environmental objectives laid down in the amendments to the Taxonomy Disclosures Delegated Act, has been published in the Official Journal.

The Notice complements previous Commission Notices that have been published on the EU Taxonomy and its Delegated Acts so far, including the:

- Commission Notice on the interpretation of certain legal provisions of the Disclosures Delegated Act under Article 8 of EU Taxonomy Regulation on the reporting of eligible economic activities and assets;
- Commission Notice on the interpretation and implementation of certain legal provisions of the Disclosures Delegated Act under Article 8 of EU Taxonomy Regulation on the reporting of Taxonomy-eligible and Taxonomy-aligned economic activities and assets;
- Commission Notice on the interpretation and implementation of certain legal provisions of the EU Taxonomy Climate Delegated Act establishing technical screening criteria for economic activities that contribute substantially to climate change mitigation or climate change adaptation and do no significant harm to other environmental objective;
- Commission Notice on the interpretation and implementation of certain legal provisions of the EU Taxonomy Regulation and links to the Sustainable Finance Disclosure Regulation; and
- Commission Notice on the interpretation and implementation of certain legal provisions of the Disclosures Delegated Act under Article 8 of the EU Taxonomy Regulation on the reporting of Taxonomy-eligible and Taxonomy-aligned economic activities and assets.

The aim of the notice is to help stakeholders comply with the regulatory requirements in a cost-effective way and to ensure that the reported information is comparable and useful in scaling up sustainable finance.

## **PRA consults on changes to retail deposit threshold for application of leverage ratio**

The Prudential Regulation Authority (PRA) has published a consultation paper ([CP2/25](#)) proposing to increase the threshold for the application of the leverage ratio from GBP 50 billion to GBP 70 billion in retail deposits for major UK banks, building societies, and investment firms. This change is intended to reflect the risk appetite behind the UK leverage ratio framework and address inadvertent regulatory tightening due to nominal UK GDP growth since 2016. Minor changes to supervisory statement (SS) 45/15 are also proposed.

The leverage ratio measures a firm's solvency by comparing capital resources to exposures without risk-weighting, acting as a backstop against errors in risk

weight assignments and limiting excessive balance sheet growth. The proposed changes are intended to ensure proportionality and support competition and growth by allowing firms more space to grow before becoming subject to the leverage ratio requirement.

The consultation paper is relevant to Capital Requirements Regulation (CRR) firms and CRR consolidation entities but not to credit unions. The PRA has assessed the costs and benefits, concluding that there are no material costs to firm-level resilience or financial stability. Feedback from the Cost Benefit Analysis (CBA) Panel and the PRA Practitioner Panel has been incorporated. The proposed implementation date is 1 January 2026.

Comments are due by 5 June 2025.

## **FCA reviews private market valuation processes**

The Financial Conduct Authority (FCA) has published its findings from a multi-firm [review](#) of private market valuation processes, identifying both good practices and areas for improvement. The review was conducted in response to the growth of private markets in recent years and examined valuation practices and governance for private equity, venture capital, private debt, and infrastructure assets. It found that firms generally exhibited good practices in investor reporting, process documentation, and the use of third-party valuation advisers, and were consistently applying valuation methodologies.

However, the FCA also identified areas requiring improvement, including the need for better identification and documentation of potential conflicts of interest and increased independence within firms' valuation processes. In addition, the FCA noted that some firms needed to enhance their processes for ad hoc valuations during market disruptions. The FCA has emphasised that these improvements are particularly important as retail investor exposure to private assets increases.

## **BaFin consults on circular on obligations of depositary and capital management company of investment funds investing in cryptoassets**

The German Federal Financial Supervisory Authority (BaFin) has launched a [consultation](#) (06/2025) on a [draft circular](#) regarding the obligations of depositaries and capital management companies of investment funds investing in cryptoassets.

In addition to special AIFs without fixed investment conditions and special AIFs with fixed investment conditions, other retail AIFs (section 221 German Capital Investment Code – Kapitalanlagegesetzbuch, KAGB) and closed-end retail AIFs (section 261 KAGB) have also been able to invest directly in cryptoassets since the Future Financing Act (Zukunftsförderungsgesetz) came into force. In addition, crypto securities or DLT financial instruments can also be purchased for the account of a retail investment fund if they meet the corresponding acquisition requirements of sections 193 et seqq. KAGB.

Investment funds investing directly in cryptoassets or crypto securities pose new technical and regulatory challenges for both the depositary and the capital management company. The draft circular aims to provide the

aforementioned stakeholders with minimum regulatory requirements related to investments for the account of investment funds in this new asset class.

Comments are due by 31 March 2025.

## **CSSF publishes communiqué on major incident reporting under DORA**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has published a [communiqué](#) on DORA and the postponement of the notification to financial entities of their obligation to report a major incident on weekends or bank holidays.

In a communiqué dated 15 January 2025, the CSSF indicated that it would notify financial entities identified as those which, in accordance with Article 5, paragraph 5, of the relevant RTS, cannot be exempted from reporting a major incident during weekends and bank holidays when the time limit for submitting a notification of that incident falls on a weekend day or a bank holiday. This notification by the CSSF to the concerned financial entities was to have taken place before the end of February.

However, considering that Article 5(5) of the RTS refers to Directive (EU) 2022/2555 of 14 December 2022 on measures for a high common level of cybersecurity across the Union (NIS 2 Directive), the CSSF has informed financial entities that the notification to the concerned financial entities of their obligation to report a major incident on weekends or bank holidays cannot take place until this Directive is transposed at national level and is therefore postponed.

## **HKMA shares results of second round sector-wide climate risk stress test**

The Hong Kong Monetary Authority (HKMA) has shared the [results](#) of its second round sector-wide climate risk stress test (CRST 2.0). Forty-six authorised institutions (AIs) accounting for over 90% of the banking sector's total lending participated in the exercise, and their climate risk exposures were assessed under two complementary sets of scenarios: (a) a short-term scenario featuring simultaneous climate-related shocks and an economic downturn, and (b) three long-term scenarios with different transition pathways.

The results indicate that the Hong Kong banking sector continues to demonstrate strong resilience against severe climate-related shocks under various scenarios. In addition to the quantitative assessment outcomes, the report shares insights about the advancements made by the participating AIs in enhancing their climate risk assessment capabilities. The report also shares a number of good industry practices observed from the exercise, including but not limited to model governance, data collection and processing, as well as granularity of assessment and methodologies. The report notes that some AIs have made good use of technologies, such as artificial intelligence, in their assessment processes. The HKMA encourages all AIs to review and consider further enhancement in climate-related risk management, making reference to the insights shared in the report.



## **ASIC consults on advancing Australia's regulatory roadmap for public and private capital markets**

The Australian Securities and Investments Commission (ASIC) has launched a [discussion paper](#) seeking feedback on the opportunities and risks emerging from shifts in public and private capital markets.

The discussion paper follows ASIC's 'Equity market cleanliness snapshot report' released in July 2024 and explores the changing dynamics in capital markets in Australia and abroad, including declining listings on public markets, the rapid growth in investment capital allocated to private markets and the influence of superannuation funds on markets. Amongst other things, ASIC is seeking comments on:

- the developments in public or private markets that require regulatory focus in Australia in the future;
- global market developments that have had key impacts on Australian capital markets, along with anticipated future impacts;
- how the public markets in Australia can be made more attractive to entities seeking to raise capital or access liquidity for investors, while maintaining appropriate investor protections;
- the potential negative impacts on the Australian economy from a sustained decline in the number, size or sectoral spread of listed entities, and measures to mitigate any adverse effects that may arise from such changes;
- the extent to which the greater expectations placed on public companies, compared to private companies, are due to Australian regulatory settings or are influenced by public scrutiny and community expectations of these companies;
- whether Australian regulatory settings and oversight are adequate to support efficient capital raising and confidence in private markets, and potential areas for improvement;
- identification of key risks for investors in private markets and the issues and risks that should be prioritised by ASIC;
- the role of incentives in risk management, and how these are managed in practice by private market participants;
- the size of current and likely future exposures of retail investors to private markets, as well as additional benefits and risks arising from retail investor participation in these markets;
- whether current financial services laws provide sufficient protections for retail investors investing in private assets (for example, general licensee obligations, design and distribution obligations, disclosure obligations, prohibitions against misleading or deceptive conduct, and superannuation trustee obligations);
- additional transparency measures relating to any aspect of public or private markets desirable to support market integrity and better inform investors and/or regulators; and
- alternative tools available to support market integrity and the fair treatment of investors in private markets in the absence of greater transparency.

Comments are due by 28 April 2025.

## **SEC extends compliance dates and provides temporary exemption for rule related to clearing of US Treasury securities**

The Securities and Exchange Commission (SEC) has [updated](#) the compliance dates for Rule 17ad-22(e)(18)(iv)(A) and (B) under the Securities Exchange Act. The compliance date has been extended to 31 December 2026 for eligible cash market transactions and 30 June 2027 for eligible repo market transactions. Under the rule, a covered clearing agency that provides CCP services for US Treasury securities must establish, implement, maintain, and enforce written policies and procedures designed to require every direct participant to submit all eligible secondary market transactions to which it is a counterparty for clearance and settlement. The rule also requires a covered clearing agency to identify and monitor its direct participants' submissions of transactions for clearing, including how the covered clearing agency would address a failure to submit transactions.

In addition, the SEC has temporarily exempted covered clearing agencies from Exchange Act Rule 17ad-22(e)(6)(i), which requires them to separate margin for a direct participant's proprietary US Treasury positions from margin for indirect participants using the direct participant's services. Under the temporary exemption, a US Treasury securities-covered clearing agency is not required to enforce its written policies and procedures regarding the rule until 30 September 2025.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **EU Omnibus Package – Streamlining the EU carbon border adjustment mechanism**

A proposal for reform of the EU's carbon border adjustment mechanism (CBAM) has been included as part of the European Commission's Omnibus 1 package of sustainability legislation reforms.

While many criticisms of the CBAM have been levelled at its impact on developing countries, these proposals primarily aim at reducing the complexity of CBAM obligations that heavily impact small companies, offering exemptions for importers of small quantities and streamlining compliance for others. Other proposals have been made to simplify some of the administrative aspects of the regime, and also reflect the fact that these changes have been proposed not long before the full regime comes into effect in 2026.

This briefing paper discusses the proposal.

<https://www.cliffordchance.com/briefings/2025/03/the-eu-omnibus-package---streamlining-the-eu-carbon-border-adjus.html>

### **FCA vs PRA securitisation rules – tackling the unnecessary burden of dual compliance**

Since the new 'Smarter regulatory framework' rules for securitisation came into force on 1 November 2024, there has been a fair bit of back and forth in the market about the right approach to compliance – and in particular whether

it is necessary to have contractual undertakings to comply with more than one set of UK rules.

In this briefing paper we review the situation and suggest what we think is the best approach to these undertakings, attempting to balance certainty with the ability to take advantage of the less prescriptive approach permitted by the new regime in the UK.

<https://www.cliffordchance.com/briefings/2025/03/fca-vs-pra-securitisation-rules--tackling-the-unnecessary-burden.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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