CLIFFORD
CHANCE

INTERNATIONAL REGULATORY UPDATE 8 – 12 APRIL 2024

- **EU Parliament adopts directive to delay sustainability reporting for certain sectors and certain third-country undertakings by two years**
- **DORA: ESAs to run voluntary exercise for collection of registers of information on use of ICT third-party providers**
- **EBA publishes final guidelines on application of group capital test for investment firm groups**
- **EMIR: ESMA reports on data quality**
- **IOSCO publishes updated workplan for 2024**
- **BoE publishes independent review of economic forecasting**
- **BoE publishes policy statement and consults on mandating ISO 20022 enhanced data in CHAPS**
- **FCA publishes final rules and guidance on supporting consumer credit and mortgage customers in financial difficulty**
- **FCA consults on new payment option for investment research**
- **FCA consults on regulated fees and levies for 2024/25**
- **PSR publishes annual plan and budget for 2024/25**
- **PRA publishes business plan and consults on regulated fees and levies for 2024/25**
- **CSSF issues regulation on countercyclical buffer rate for second quarter of 2024**
- **CSSF publishes communiqué on direct transmission of procedures**
- **Swiss Federal Council aims to close gaps in too-big-to-fail regulation**

Clifford Chance's International Regulatory Update is a weekly digest of significant regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.

To request a subscription to our Alerter: Finance Industry service, please subscribe to our Client Portal, where you can also request access to the Financial Markets Toolkit and subscribe to publications, insights and events.

If you would like to know more about the subjects covered in this publication or our services, please contact:

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

EU Parliament adopts directive to delay sustainability reporting for certain sectors and certain third-country undertakings by two years

The EU Parliament has adopted the directive amending the Accounting Directive as regards the time limits for the adoption of sustainability reporting standards for certain sectors and for certain third-country undertakings. This follows a provisional agreement with the EU Council in February.

The directive is intended to give more time for companies to prepare for the sectoral European Sustainability Reporting Standards (ESRS) and for specific standards for large non-EU companies. It postpones the adoption of the new standards by two years from 30 June 2024 to 30 June 2026. The date of application for third country companies will remain the financial year 2028, as set out in the Corporate Sustainability Reporting Directive (CSRD).

EU companies will still have to report in line with general sustainability reporting standards but later adoption of sector-specific standards for EU companies affects the extent of reporting, as the sector-specific part about companies' particular impact on people and the planet in their area of activity will not be required before 2026. General reporting obligations for non-EU companies with turnover above EUR 150 million and their branches in the EU with turnover above EUR 40 million will only start to apply in 2028.

The EU Parliament and Council consider sector-specific reporting to be a key source of information for investors when comparing companies and have requested that the Commission endeavour to publish the eight sector-specific sustainability reporting standards as soon as they are ready before the new deadline. The Parliament and Council have provided the Commission and the European Financial Reporting Advisory Group (EFRAG) with flexibility to decide which sectors should be addressed first and have requested to be regularly consulted at least once yearly and receive detailed information on the plans, adopted prioritisation and timeline in the development of the sustainability reporting standards.

The directive still needs to be adopted by the EU Council before it can be published in the Official Journal. Member States will not need to transpose this directive since the targeted amendments concern the empowerment to adopt delegated acts granted to the Commission.

DORA: ESAs to run voluntary exercise for collection of registers of information on use of ICT third-party providers

The Joint Committee of the European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), has announced that the ESAs intend to launch a voluntary exercise for the collection of registers of information of contractual arrangements on the use of ICT third-party service providers by financial entities.

Under the Digital Operation Resilience Act (DORA), financial entities will be required to maintain registers of information regarding their use of ICT third-party providers. The ESAs and competent authorities are introducing this voluntary exercise to help financial entities prepare for the implementation of DORA.

Financial entities participating in the dry run will receive support from the ESAs to:

- build their register of information in the format as close as possible to the steady-state reporting from 2025;
- test the reporting process;
- address data quality issues; and
- improve internal processes and quality of their registers of information.

As part of the exercise, the ESAs will provide feedback on data quality to financial entities participating, return cleaned files with their register of information, organise workshops and respond to frequently asked questions.

The ad-hoc data collection is expected to be launched in May 2024 with financial entities expected to submit their registers of information to the ESAs through their competent authorities between 1 July and 30 August.

EBA publishes final guidelines on application of group capital test for investment firm groups

The EBA has published its final guidelines on the application of the group capital test for investment firm groups under Article 8 of the Investment Firms Regulation (IFR).

The guidelines are intended to set harmonised criteria to address the diversity in the application of the group capital test across the EU. They set qualitative and quantitative criteria to assist competent authorities when assessing whether the conditions set out in the IFR for receiving the permission to use the group capital test are met, including criteria relating to the simplicity of the group structure and the significance of the risk posed to clients and the market.

The guidelines apply from 1 January 2025 and competent authorities are required to ensure that all group capital test and lower amount permissions in force are compliant by that date.

EMIR: ESMA reports on data quality

ESMA has published a follow-up report to its peer review on supervisory actions intended to enhance the quality of data reported under the European Market Infrastructure Regulation (EMIR).

The follow-up report sets out the actions that national competent authorities (NCAs) and ESMA, in its role as supervisor of trade repositories, have taken to address the issues identified in the peer review final report, which was published in October 2019.

The follow-up report notes that the work undertaken has led to observable results and improvements in EMIR data quality but that data quality will continue to be a key area of attention for supervisors.

ESMA has also published a report on quality and use of data reported in 2023 under EMIR, the Securities Financing Transactions Regulation (SFTR), the Markets in Financial Instruments Regulation (MiFIR), the Securitisation Regulation, the Alternative Investment Fund Managers Directive (AIFMD) and the Money Market Funds Regulation (MMFR). The 2023 report is ESMA's fourth report on the quality and use of data and includes a new annex aimed at increasing transparency which sets out the methodology for calculating data quality indicators (DQIs) and shares codes to automatically download data files from approved publication arrangements (APAs) websites.

IOSCO publishes updated workplan for 2024

The International Organization for Securities Commissions (IOSCO) has published its updated workplan for 2024.

IOSCO's 2024 workplan aims to enhance investor protection, maintain fair, efficient and transparent markets, and reduce systemic risk. It includes new workstreams to reflect increased focus on AI, tokenisation and credit default swaps, as well as additional work on transition plans and green finance.

The revised workplan continues to set out its priorities under five themes:

- protecting investors;
- addressing new risks in sustainability and fintech;
- strengthening financial resilience;
- supporting market effectiveness; and
- promoting regulatory cooperation and effectiveness.

This workplan is an update to the overall IOSCO work program for 2023/24 published in April 2023. IOSCO publishes a new work program every two years.

BoE publishes independent review of economic forecasting

The Bank of England (BoE) has published an independent review into its approach to forecasting for monetary policy making.

The review sets out twelve recommendations relating to the following three objectives:

- improving and maintaining the BoE's forecasting infrastructure for forecasting and analysis;
- providing a forecast process intended to support decision-making by the Monetary Policy Committee (MPC); and
- using the forecast to communicate the MPC's outlook and policy rationale to the public.

In its response to the review, the BoE states a commitment to action all the recommendations, which it notes broadly relate to infrastructure investment and placing less weight on a central projection.

The BoE intends to initiate a substantial upgrade programme according to a phased approach and expects to provide an update on proposed changes by the end of the year.

BoE publishes policy statement and consults on mandating ISO 20022 enhanced data in CHAPS

The BoE has published a policy statement and consultation providing additional clarification on its previously published mandatory requirements for enhanced data coming into effect in 2025 and 2026 (Section 4 and Section 5).

The document reiterates the BoE's role in facilitating and working with the payments industry to realise the potential benefits of ISO 20022 enhanced data, such as improved efficiency, payment prioritisation, and prevention of financial crime (Section 2). It also signposts how the Change Management Framework for technical updates to the RTGS and CHAPS ISO 20022 schemas has been aligned to support global harmonisation (Section 3).

The consultation invites feedback on proposals for expanding the mandatory requirements for CHAPS payments from 2027 (Section 6).

Comments are due by 28 June 2024.

FCA publishes final rules and guidance on supporting consumer credit and mortgage customers in financial difficulty

The Financial Conduct Authority (FCA) has published a policy statement on strengthening protections for consumer credit and mortgage borrowers in financial difficulty (PS24/2) and finalised guidance for firms supporting existing mortgage borrowers impacted by rising living costs (FG24/2).

This follows a consultation (CP23/23) launched in May 2023 on incorporating aspects of the tailored support guidance (TSG) into the FCA Handbook and strengthening protections for mortgage, consumer credit and overdraft customers in financial difficulty. PS24/2 confirms the final rules and summarises feedback received to the consultation.

The rules come into force on 4 November 2024 and the TSG will be withdrawn at the same time.

The FCA has also updated the non-handbook guidance (FG23/2) to reflect these changes. The updated FG24/2 will replace FG23/2 with effect from 4 November 2024. FG24/2 does not impose new expectations or requirements on firms. The purpose of the guidance is to ensure firms are clear about the effect of the FCA's rules and the range of options to support their customers, including those who are facing higher interest rates alongside the higher overall cost of living.

FCA consults on new payment option for investment research

The FCA has published a consultation paper on a new way of paying for investment research, following HM Treasury's Investment Research Review (IRR) conducted under the Edinburgh Reforms.

The FCA's proposals are intended to give UK buy-side firms, including asset managers, greater flexibility in how they pay for investment research by allowing the bundling of payments for third-party research and trade execution alongside the existing options available to firms.

In order to exercise the new option, firms would be required to establish:

- a formal policy on use of the approach;
- a budget for the amount of third-party research to be purchased;
- ongoing assessments of research value and price;
- an approach to the allocation of costs across their clients;
- a structure for the allocation of payments across research providers;

- operational procedures for the administration of accounts to purchase research; and
- disclosures to clients on the firm's approach to bundled payments, their most significant research providers and costs incurred.

Comments are due by 5 June 2024. The FCA intends to produce final rules in the first half of 2024 but notes that the timetable will be determined by the information gathered from the consultation.

FCA consults on regulated fees and levies for 2024/25

The FCA has published a consultation paper (CP24/6) on the rates for its regulatory fees and levies for 2024/25.

CP23/22 sets out how the FCA proposes to recover the costs of carrying out the work set out in its business plan. The fees and levies will fund the FCA and the Financial Ombudsman Service, and the FCA will also collect certain levies on behalf of government departments.

Comments are due by 14 May 2024.

PRA publishes business plan and consults on regulated fees and levies for 2024/25

The Prudential Regulation Authority (PRA) has published its business plan for 2024/25. The business plan sets out the workplan for each of the PRA's strategic priorities with an overview of the PRA's budget for 2024/25, as well as a range of initiatives, including:

- the 'Strong and Simple' project, which is intended to simplify regulatory requirements for smaller banks, reducing compliance burdens without compromising on strong standards;
- the 'Solvency UK' reforms of insurance capital standards, which are intended to reduce bureaucracy in the regulatory regime, while also allowing insurers to invest in a wider range of productive assets;
- the Banking Data Review, which is intended to reduce burdens on firms by focusing the PRA's data collection on the most useful and relevant information;
- improvements to the PRAs authorisation processes; and
- reforms to ring-fencing, following the independent review led by Sir Keith Skeoch.

The PRA has also published a consultation paper (CP4/24) setting out proposals for its fees for 2024/25, including:

- the fee rates to meet the PRA's 2024/25 Annual Funding Requirement (AFR);
- changes to the internal model application fees, the model maintenance fee and the fee payable for insurance business transfers under Part VII FSMA;
- setting out how the PRA intends to allocate the surplus from the 2023/24 AFR (Chapter 3); and
- the retained penalties for 2023/24 (Chapter 4).

Comments are due by 10 May 2024.

PSR publishes annual plan and budget for 2024/25

The Payment Systems Regulator (PSR) has published its annual plan and budget, setting out its key aims, activities and costs for 2024/25.

The annual plan focuses on consolidating the delivery of the PSR's work to improve payments for people and businesses across the UK. The PSR's focus is now on ensuring its policies and requirements are implemented effectively.

The PSR work programme for 2023/24 focuses on the following projects:

- open banking;
- market reviews of card fees;
- reimbursement rules for authorised push payment (APP);
- fraud statistics; and
- confirmation of payee (CoP).

The PSR aims to work with stakeholders to review its progress, and revise or refine its priorities as necessary.

The PSR budget for 2024/25 is GBP 28.0 million. This is an increase on PSR's 2023/24 budget, reflecting its higher operating costs from 1 April 2024 to 31 March 2025, due to its expanded workforce.

CSSF issues regulation on countercyclical buffer rate for second quarter of 2024

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued Regulation No. 24-03 on the setting of the countercyclical buffer rate for the second quarter of 2024.

The Regulation provides that the countercyclical buffer rate applicable to the relevant exposures located in Luxembourg remains set at 0.50% for the second quarter of the year 2024.

The Regulation entered into force on the date of its publication in the Luxembourg official journal on 28 March 2024.

CSSF publishes communiqué on direct transmission of procedures

The CSSF has published a communiqué on direct transmission of procedures to the CSSF.

In 2023, the CSSF officially introduced new means of communication with professionals in the financial sector. The purpose of the communiqué is to inform the public of the ways in which they can submit their procedures to the CSSF:

- via the CSSF's eDesk portal by filling in a form or uploading a file; and
- by automating the transmission of information via a file exchanged through an API solution (S3).

The communiqué includes a table that specifies which procedures are covered by these transmission methods and indicates the procedures which will soon be able to be transmitted via such means of communication.

Swiss Federal Council aims to close gaps in too-big-to-fail regulation

Based on Article 52 of the Banking Act and mandates from Parliament, the Swiss Federal Council has carried out an in-depth assessment of the regulation of systemically important banks. The review of the Credit Suisse crisis has concluded that the existing too-big-to-fail regime must be developed further and strengthened in order to reduce the risks to the economy, the state and the taxpayer.

The Federal Council is proposing a package of 22 measures for direct implementation to strengthen and further develop the too-big-to-fail regime, with seven other measures to be examined in greater depth. The package is intended to reduce the likelihood that another systemically important bank in Switzerland will experience a severe crisis and that emergency measures by the state will be necessary.

As part of the further work on implementing the proposed measures, the Federal Council will also take account of the findings of the Parliamentary Investigation Committee (PInC). In a first step, amendments to ordinances are to be made; these can be approved by the Federal Council. In a second step, amendments at legislative level are to be drawn up and submitted to Parliament.

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.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street,
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.