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BCBS consults on counterparty credit risk management guidelines

The Basel Committee on Banking Supervision (BCBS) has published a consultation paper on guidelines for counterparty credit risk (CCR) management.

The proposed guidelines will replace the guidelines on sound practices for banks' interactions with highly leveraged institutions from January 1999. According to the Committee, they are intended to provide a supervisory response to the shortcomings that have been identified in banks' management of CCR, including lessons learned from recent episodes of non-bank financial

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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

intermediary (NBFI) distress. They include key practices for banks and supervisors, including the need to:

- conduct comprehensive due diligence of counterparties both at initial onboarding and on an ongoing basis;
- develop a comprehensive credit risk mitigation strategy to effectively manage counterparty exposures;
- measure, control and limit CCR using a wide variety of complementary metrics; and
- build a strong CCR governance framework.

Comments are due by 28 August 2024.

Cross-border payments: CPMI publishes recommendations for service level agreements

The Committee on Payments and Market Infrastructures (CPMI) has published a report on service level agreements for cross-border payment arrangements. The agreements, which typically set out the minimum service levels for correspondent banking relationships, links between payment systems, and payment instrument rulebooks, have been identified by the G20 as a key component of its initiative to improve cross-border payments.

In its report, the CPMI:

- makes high-level recommendations for the scope and design of service level agreements;
- sets out key features of agreements, highlighting the relevant recommendations; and
- provides a set of questions that can be used when analysing existing payment arrangements.

The recommendations relate to:

- the enforceability of service levels;
- performance and adherence;
- geographic scope;
- risk management and safety measures;
- interoperability;
- transparency and efficiency; and
- timeliness and finality of settlement.

The CPMI notes that the recommendations are not binding but calls on payment service providers, correspondent banks and/or payment system operators to consider them when establishing new agreements or reviewing existing ones.

FCA and PRA publish new UK securitisation rules

The Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) have published policy statements containing rules for the UK securitisation markets.

As part of the repeal and replacement of retained EU law under the Smarter Regulatory Framework, most firm-facing provisions of the UK Securitisation Regulation will be set out in the FCA and the PRA rulebooks, while other provisions are restated in domestic legislation HMT, such as the Securitisation Regulations 2024 (SI 2024/102) and the draft Securitisation (Amendment) Regulations 2024.

The FCA's policy statement (PS24/2) contains the feedback received to its consultation (CP23/17) and sets out the final rules relating to, among other things:

- due diligence requirements for institutional investors;
- risk retention;
- geographical scope;
- criteria for homogeneity in STS securitisations; and
- credit granting criteria.

The PRA's policy statement (PS7/24) contains the feedback received to its consultation (CP15/23) and sets out the PRA's final policy, including:

- a new Securitisation Part of the PRA Rulebook (together with consequential amendments to the Liquidity Coverage Ratio (CRR) Part and the Non-Performing Exposures Securitisation (CRR) Part of the PRA Rulebook); and
- an updated PRA supervisory statement (SS10/18) 'Securitisation: General requirements and capital framework'.

The FCA and PRA rules come into force on 1 November 2024, subject to the revocation of the Securitisation Regulation and related technical standards. HM Treasury anticipates making the commencement order that will bring into force the revocation later in 2024 once the Securitisation (Amendment) Regulations 2024 come into force. The FCA or PRA may delay or revoke the rules if the commencement order is not made.

The FCA and PRA plan to consult on further changes to the securitisation rules in Q4 2024/Q1 2025. They plan to review the definition of public and private securitisations and the associated reporting regime, amongst other areas for policy consideration, including enhancing ESG reporting.

UK EMIR: BoE and FCA publish Q&As on revised derivatives reporting

The Bank of England (BoE) has published a first set of Q&As on the revised reporting requirements under Article 9 of the UK European Market Infrastructure Regulation (UK EMIR), developed in conjunction with the FCA.

The Q&As relate to transitional arrangements, reconciliations, errors and omissions, derivative identifiers, and actions and events.

The BoE and FCA have also launched a consultation seeking feedback on:

- a second set of Q&As relating primarily to venues, exchange traded derivatives (ETDs), margin and collateral, clearing, position level reporting, and asset class and product specific issues; and
- proposed revisions to the UK EMIR validation rules that correspond to some of the proposed Q&As.

Comments are due by 12 June 2024. The BoE and FCA intend to publish the final Q&As in summer 2024. Both sets of Q&As and the validation rules will apply from 30 September 2024.

Consumer credit: FCA sets out policy on product sales data reporting

The FCA has published a policy statement setting out its final rules and guidance on product sales data (PSD) reporting in consumer credit firms.

The FCA is introducing three new PSD returns to collect more detailed data about the consumer credit market from providers of consumer credit products. According to the FCA, the final policy has been informed by feedback received to its September 2023 consultation and reflects changes to make the rules clearer and more effective, including:

- raising the threshold for firms to report PSD to the FCA from GBP 500,000 in outstanding balances and/or new advances to GBP 2 million;
- extending the implementation period so large firms, with GBP 20 million or above in outstanding balances and/or new advances, have fourteen months to prepare and small firms, with GBP 2 million to GBP 20 million in outstanding balances and/or new advances, have 20 months;
- clarifying data definitions, removing some data elements from the returns and providing additional guidance to support understanding; and
- increasing the overall number of data elements across the returns to better align with the range of practice across industry and the different types of products offered.

The final rules and guidance came into force on 1 May 2024.

FCA and HMT publish roadmap on implementing Overseas Funds Regime

The FCA and HM Treasury (HMT) have published a joint roadmap explaining how the Overseas Funds Regime (OFR) is intended to be opened to European Economic Area (EEA) funds authorised under the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive, following the Government's decision to grant equivalence in relation to those funds (excluding money-market funds). The roadmap sets out the key stages of the process, so that operators of EEA UCITS that wish to use the OFR as a gateway to the UK market can prepare. The timelines are subject to change.

The FCA intends to publish further information alongside this document, including the 'landing slots' for funds that will be transitioning from the Temporary Marketing Permissions Regime.

FCA publishes Primary Market Bulletin 48

The FCA has published the latest edition of its Primary Market Bulletin (No. 48), which consults on proposed changes to the FCA Knowledge Base in relation to the listing regime.

The proposed changes are in conjunction with the FCA's December 2023 consultation (CP23/31) which detailed proposals for listing rules reforms and changes to the sponsor competence requirements. The Primary Market Bulletin sets out:

- the final form of the three technical notes relating to sponsor competence rules;
- proposed changes to existing technical notes in the Knowledge Base to reflect proposed changes to the listing regime;
- the proposed introduction of a new technical note relating to the role of a sponsor when an issuer, in certain circumstances, is able to transfer its listing using a modified process;
- proposals to ask listing applicants to submit a new Procedures, Systems and Controls Confirmation Form with their formal listing application; and
- information on the timing of notification to issuers of their expected new listing category should the changes proposed in CP23/31 go ahead.

The FCA notes that the materials remain subject to the wider outcome of its consultation process on the new UK listing rules and are subject to the Board's final decision on whether to proceed with changes. It expects to seek board approval of the final rules in June or July 2024.

Comments on the proposals are due by 26 May 2024.

PRA publishes occasional consultation paper

The PRA has published an occasional consultation paper (CP6/24) on proposals to make minor amendments to PRA rules and binding technical standards (BTS) under the UK EMIR.

In particular, CP6/24 proposes to:

- amend references to Article 92b of the UK Capital Requirements Regulation (UK CRR) in the Reporting (CRR) and Disclosure (CRR) Parts of the PRA Rulebook;
- amend the Regulatory Reporting (CRR Firms) Part of the PRA Rulebook and corresponding changes to the Glossary;
- add a new Rule 9.5A to the Policyholder Protection Part of the PRA Rulebook to clarify that individuals who become members of occupational pension schemes (OPS) while they are resident in the UK would benefit from Financial Services Compensation Scheme (FSCS) protection even if they move outside the UK before a linked annuity is purchased following a buy-out; and
- under a joint consultation with the FCA, amend the PRA and FCA BTS 2016/2251 which supplement Article 11(15) of UK EMIR as regards risk mitigation for uncleared derivatives.

Comments are due by 30 May 2024.

PSR consults on draft guidance on extensions and exemptions from specific directions and requirements

The Payment Systems Regulator (PSR) has published a consultation paper (CP24/6) on draft guidance setting out how it proposes to make decisions on whether to grant an extension or exemption to a specific direction or requirement.

The PSR has emphasised the importance of specific directions and requirements and it expects to grant extensions and exemptions only in very limited circumstances.

The guidance proposes four key factors for the PSR to use as a starting point when considering an extension or exemption request. These include:

- whether granting an exemption or extension would adversely impact payment systems users, undermine any of the PSR's statutory objectives, undermine the priorities set out in its five -year strategy, or adversely impact the improvements the PSR seeks;
- the context in which the specific direction arose, including the underlying policy aims and the key factors set by the specific direction or requirement;
- the burden that not granting the request would place on the regulated party, as well as any impact of granting the request on businesses and consumers more widely; and
- in relation to extension requests, the steps the regulated party has taken to ensure that it will comply with the rules in a timely manner and that any risks to service users and/or markets have been mitigated.

Comments are due by 3 June 2024.

Decree on conservation and transfers of cryptoassets by Caisse des Dépôts et Consignations published

A decree on the conservation and transfer of cryptoassets by the Caisse des Dépôts et Consignations (CDC) on behalf of the Agence de gestion et de recouvrement des avoirs saisis et confisqués (AGRASC), the agency for the management and recovery of seized and confiscated assets, has been published. The decree modifies article R. 54-8 of the French Criminal Procedure Code in order to allow the CDC to provide a service enabling the AGRASC to hold cryptoassets in a secure manner.

The decree entered into force on 28 April 2024.

BaFin publishes circular on reporting of risks in payments

The German Federal Financial Supervisory Authority (BaFin) has published a circular on the reporting of risks in payments (05/2024 (BA)).

Pursuant to section 53 para 2 of the German Payment Services Supervision Act (Zahlungsdiensteaufsichtsgesetz – ZAG), which implements provisions of the second Payment Services Directive (PSD 2), a payment service provider must provide BaFin with an updated and comprehensive assessment of the operational and security risks relating to the payment services it provides and on the adequacy of the mitigation measures and control mechanisms implemented in response to those risks on an annual basis.

To support payment service providers in fulfilling their respective reporting obligations, BaFin has published the circular along with a form set out in an annex.

The form is to be used by payment service providers for the first time for the reference date of 31 December 2024, with submission to BaFin by 28 February 2025 at the latest, and then annually for submission of the information.

Within an association or group of institutions, BaFin will allow, until further notice, a single report to be submitted by an entity instructed by the obliged institutions for several/all affiliated payment service providers (collective

report). This requires that the information provided in the report applies to all included payment service providers without exception.

Polish Financial Supervision Authority consults on WDF Recommendation concerning long-term financing ratio

The Polish Financial Supervision Authority (PFSA) has launched consultations on the draft WFD (Long-Term Financing Ratio) Recommendation.

The draft assumes, among other things, that the WFD requirement will apply to banks that satisfy both of the following conditions:

- their assets are worth over PLN 2 billion; and
- the share of the net carrying amount of the portfolio of loans to households secured by residential real estate in assets is above 10%.

The draft has been sent for consultation to the Minister for Finance, President of the National Bank of Poland, President of the Bank Guarantee Fund, President of the Polish Bank Association, President of the Polish Association of Cooperative Banks and certain audit firms.

The public consultation closed on 7 May 2024.

SFC announces extension of Government's grant scheme for OFCs and REITs

The Securities and Futures Commission (SFC) has announced a three-year extension of the Government's grant scheme to subsidise the setting up of open-ended fund companies (OFCs) and real estate investment trusts (REITs) in Hong Kong.

For OFCs incorporated in or re-domiciled to Hong Kong and SFC-authorised REITs listed on the Stock Exchange of Hong Kong Limited, the extended scheme covers 70% of eligible expenses paid to Hong Kong-based service providers, subject to a cap of HKD 1 million per publicly offered OFC, HKD 500,000 per privately offered OFC and HKD 8 million per REIT.

The extended scheme will open for applications starting from 10 May 2024 to 9 May 2027 on a first-come-first-served basis. Detailed eligibility criteria of the scheme are set out in the attachment to the press release. The SFC intends to update the relevant frequently asked questions and the grant application form in light of the extension.

RECENT CLIFFORD CHANCE BRIEFINGS

CRD6 – New EU rules for bank M&A and reorganisations

The new EU Capital Requirements Directive (CRD6) will impose additional requirements on EU banks and their holding companies to pre-notify and, in some cases, pre-clear certain M&A transactions and reorganisations with their own supervisor. These new rules will apply to acquisitions and disposals of material holdings in both financial and non-financial sector entities, material transfers of assets or liabilities, and mergers and divisions.

The text of CRD6 has now been adopted by a resolution of the European Parliament and the new rules on bank M&A and reorganisations are expected to take effect by end-2025.

This briefing paper discusses the new rules.

https://www.cliffordchance.com/briefings/2024/05/crd6--new-eu-rules-for-bank-m-a-and-reorganisations.html

CRD6 – New EU rules for EU branches of non-EU banks

The CRD6 will require Member States to apply minimum authorisation, reporting and supervisory requirements to local branches of non-EU banks (third-country branches or TCBs). It will also oblige Member States to give their supervisors powers to require the restructuring or subsidiarisation of systemically important TCBs.

The new reporting rules for TCBs are expected to take effect by end-2025 with the other new rules for TCBs taking effect by end-2026.

This briefing paper discusses the new rules.

https://www.cliffordchance.com/briefings/2024/04/crd6--new-eu-rules-for-eu-branches-of-non-eu-banks.html

CRD6 – New EU rules for non-EU entities conducting cross-border banking business in the EU

The new EU Capital Requirements Directive (CRD6) will require non-EU entities intending to provide 'core banking services' in an EU Member State to establish an authorised local branch in that Member State unless one of the limited exemptions applies. A new Article 21c of the Capital Requirements Directive (CRD) will restrict the cross-border provision of loans or credit and guarantees or commitments by non-EU banks and the taking of deposits or other borrowing in the EU by any non-EU entity.

The new rules are expected to take effect by end-2026.

This briefing paper discusses the new rules.

https://www.cliffordchance.com/briefings/2024/04/crd6--new-eu-rules-for-non-eu-entities-conducting-cross-border-b0.html

New EU directive seeks to harmonise criminal enforcement of EU sanctions regimes

In the more than two years since the Russian invasion of Ukraine in February 2022, the European Union has significantly expanded the volume and variety of restrictive measures (i.e. sanctions measures) it has imposed in response, including a broad range of new asset freezes, travel bans, import and export restrictions, other trade controls, investment restrictions and services bans.

As individual Member States are responsible for the enforcement of EU sanctions, the types and severity of penalties that apply for violating these restrictive measures can differ across countries.

In an effort to enhance and harmonise enforcement, as well as to limit circumvention, the European Commission proposed a Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures on 5 December 2022.

In mid-April 2024, the Council of the EU gave its final approval on the directive and it was published in the Official Journal of the EU on 29 April 2024. The directive will enter into force on the twentieth day following publication. Member States will then have 12 months to implement the EU Directive by incorporating its provisions into their national legislation.

This briefing paper discusses the directive.

https://www.cliffordchance.com/briefings/2024/04/new-eu-directive-seeks-to-harmonise-criminal-enforcement-of-eu-sanctions-regimes.html

New UK securitisation rules – It's (mostly) good news

Following consultations last year, the UK's financial regulators have now published new rules for securitisation to apply from 1 November 2024.

This briefing paper highlights the key points of the new rules and what's changed since the consultations.

https://www.cliffordchance.com/briefings/2024/04/new-uk-securitisation-rules---it-s--mostly--good-news.html

Hong Kong Court of Appeal lays down the test for insolvency petitions where there is an arbitration agreement confirming applicability of Re Guy Lam

The Court of Appeal (CA) handed down two landmark decisions on the same day, confirming that the court will give effect to arbitration agreements covering debts and cross-claims in the context of winding up and bankruptcy petitions (collectively, 'insolvency petitions').

The CA's ruling echoes the strong public policy requiring parties to abide by their contracts, in particular, the parties' agreement on the dispute resolution mechanism. In situations where the underlying dispute surrounding the petition debt or a cross-claim is subject to an arbitration agreement, the court will not hesitate to dismiss an insolvency petition and have the dispute determined by way of arbitration save in wholly exceptional circumstances.

This briefing paper discusses the decisions.

https://www.cliffordchance.com/briefings/2024/04/hong-kong-court-of-appeal-lays-down-the-test-for-insolvency-peti.html