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## **EBA reports on big data and advanced analytics**

The European Banking Authority (EBA) has published a [report](#) on recent trends in big data and advanced analytics (BD&AA) within the banking sector. The report, which focuses on the development, implementation and adoption of BD&AA, is intended to inform stakeholders and support technological neutrality in regulatory and supervisory approaches.

Amongst other things, the EBA notes that a 'data-driven' approach is emerging across the financial sector. Institutions' business strategies, risks and operations are being impacted by this approach, with most including BD&AA in their digital transformation programmes. Data analysis predominantly uses core banking data, rather than other data sources (such as social media) due to institutions' concern over the accuracy of external data. Most institutions are using simpler algorithms with a focus on predictive analytics. However, the EBA expects the use of BD&AA (including machine learning) to increase and become more advanced over the next few years.

The report also identifies four key pillars for the development, implementation and adoption of BD&AA, which institutions should review to ensure they can support roll-out. These four pillars are data management, technological infrastructure, analytics methodology and organisation and governance. Alongside these pillars, the report identifies twelve 'elements of trust' which should be respected and integrated when developing, implementing and adopting BD&AA solutions. These are: ethics; explainability and interpretability; fairness and avoidance of bias; traceability and auditability; data protection; data quality; security and consumer protection. The EBA notes that the emphasis on certain elements may change depending on the nature and impact of the individual BD&AA solution.

The EBA intends to continue observing the evolution of BD&AA in financial services and, where appropriate, publish opinions or proposed guidelines to encourage a coordinated approach to its regulatory and supervisory treatment.

## **EBA consults on treatment of non-trading book positions subject to foreign-exchange or commodity risk**

The EBA has launched a [consultation](#) on draft regulatory technical standards (RTS) on the calculation of institutions' own funds requirements for market risk for their non-trading book positions that are subject to foreign-exchange (FX) or commodity risk where using the fundamental review of the trading book (FRTB) standardised and internal model approaches.

The proposed RTS specify:

- that institutions should use the last available accounting value or last available fair value for positions subject to FX risk and perform a daily fair-valuation for positions subject to commodity risk;
- the prudential treatment of non-monetary items held at historical cost that may be impaired due to changes in the FX; and
- the treatment of actual and hypothetical changes associated to non-trading book positions for the purpose of the backtesting and the profit and loss attribution requirements.

Comments on the proposals are due by 10 April 2020

## **ESMA consults on guidelines on securitisation repository data completeness and consistency thresholds**

The European Securities and Markets Authority (ESMA) has launched a consultation on its [draft guidelines](#) on securitisation repository data completeness and consistency thresholds.

Under Article 4(2)(d) of the draft Commission Delegated Regulation supplementing Regulation (EU) 2017/2402, which was adopted by the Commission in December 2019, securitisation repositories must verify that the 'no data options' contained within a securitisation data submission to those repositories are only used where permitted and do not prevent the data submission from being sufficiently representative of the underlying exposures in the securitisation.

The draft guidelines are intended to assist market participants and securitisation repositories to understand ESMA's expected maximum use of no data options contained within a securitisation data submission, and set out the key elements of the disclosure obligations for securitisation transactions as well as the operational standards of securitisation repositories.

## **ESMA publishes statistical report on EU alternative investment funds**

ESMA has published its second [statistical report](#) on alternative investment funds (AIFs) in the EU. The report is based on data submitted by national competent authorities (NCAs) under the Alternative Investment Fund Managers Directive (AIFMD) covering authorised EU and sub-threshold AIFMs on behalf of AIFs they manage. This year's report covers more than 30,000 AIFs, almost 100% of the market.

The report comprises three chapters on:

- market monitoring – analysing structures and trends in the European AIFs sector;
- statistical methods – focusing on the classification of funds in the 'other AIFs' category and the exposure of AIFs to leveraged loans and collateralised loan obligations (CLOs); and
- AIF statistics – setting out a full list of indicators and metrics monitored by ESMA.

The report found that the EU AIF sector, as measured by net asset value (NAV), amounted to EUR 5.8 trillion at the end of 2018. Funds of funds accounted for 14% of the NAV, followed by real estate funds (12%), hedge funds (6%) and private equity funds (6%).

## **ESMA publishes questions received through its Q&A process**

ESMA has published a [list of questions](#) received through its questions and answers (Q&A) process.

Under the revised ESMA Regulation, ESMA is required to set up a web-based tool to facilitate the submission of questions and the publication of questions received as well as answers to admissible questions.

ESMA has begun to publish the following questions in a spreadsheet on its website:

- questions for which a Q&A will be added to the agenda of ESMA's relevant Standing Committee;
- rejected questions i.e. questions that were tabled for discussions and to which ESMA does not intend to provide an answer; and
- questions forwarded to the EU Commission.

While ESMA is working to implement the IT infrastructure necessary manage its Q&A process, stakeholders may continue to submit questions through the Q&A webpage on the ESMA site. ESMA will update the spreadsheet each Friday afternoon with new questions when necessary.

### **ICE Benchmark Administration consults on ICE Swap Rate based on SONIA**

ICE Benchmark Administration (IBA) has launched a [consultation](#) on the introduction of an ICE Swap Rate (ISR) based on SONIA.

This follows a feedback paper published in August 2019 on whether IBA should publish ISR GBP SONIA rates based upon growing volumes in SONIA swaps. The movement away from GBP LIBOR to SONIA is expected to lead over time to diminishing volume in the existing ISR GBP benchmark as the transition progresses and demand for SONIA-based swaps increases.

The consultation focuses on the introduction of a new suite of ISR tenors which will have SONIA as the floating leg. IBA plans to do this alongside the existing GBP LIBOR-based benchmark for as long as is necessary and possible. IBA proposes to use the same methodology, processes and governance as for the existing benchmark.

Comments are due by 20 March 2020. IBA intends to publish a feedback statement summarising the responses.

### **IOSCO publishes recommendation on synchronising clocks used for timestamping**

The International Organization of Securities Commissions (IOSCO) has published a [report](#) recommending that trading venues and their participants synchronise the clocks they use for timestamping a reportable event with coordinated universal time (UTC).

In April 2013 IOSCO published a final report on technological challenges to effective market surveillance which included a recommendation that market authorities should consider requiring trading venues and their participants to synchronise the business clocks used to record the date and time of a reportable event. IOSCO has built on this recommendation by stipulating that where jurisdictions have introduced a synchronisation requirement for business clocks, they should be synchronised with UTC.

### **BoE, FCA and Working Group on Sterling Risk-Free Rates set out 2020 priorities for LIBOR transition**

The Bank of England (BoE), Financial Conduct Authority (FCA) and the Working Group on Sterling Risk-Free Reference Rates have published a set of documents outlining priorities for LIBOR transition in 2020.

The Working Group has published an updated [roadmap](#) for 2020 with important events and actions market participants should take to reduce LIBOR exposure and transition to alternative rates, including:

- ceasing issuance of cash products linked to sterling LIBOR by end-Q3 2020;
- taking steps that demonstrate that compounded SONIA is easily accessible and usable;
- taking steps to enable a further shift of volumes from LIBOR to SONIA in derivative markets;
- establishing a framework for the transition of legacy LIBOR products, in order to reduce the stock of LIBOR referencing contracts by Q1 2021; and
- considering how best to address issues through legacy contracts.

The BoE and FCA have jointly published:

- a [letter](#) that has been sent to major banks and insurers supervised in the UK, which sets out the FCA and PRA's initial expectations of firms' transition progress during 2020, including in relation to the targets set by the Working Group, and highlights the FPC's close monitoring of the steps being taken; and
- a [statement](#) encouraging market makers to switch the convention for sterling interest rate swaps from LIBOR to SONIA on 2 March 2020. This is designed to help progress transition in the derivatives market.

In addition, the Working Group has published:

- a [paper](#) setting out its views on which types of business and client should use overnight SONIA, relative to alternatives including forward-looking term rates. The paper concludes that use of SONIA compounded in arrears is appropriate and operationally achievable for 90% of new loans by value, which is consistent with the Working Group's existing expectation that the use of forward-looking term rates will be more limited than the current use of LIBOR;
- a statement considering '[lessons learned](#)' from recent conversions of legacy LIBOR contracts; and
- a [factsheet](#) that sets out why all market participants need to act now.

The BoE, FCA and Working Group hope that with the publication of these tools and the support of the official sector domestically and internationally, market participants are able to transition away from LIBOR.

## **Financial Services Compensation Scheme: PRA and FCA consult on Management Expenses Levy Limit for 2020/21**

The PRA and FCA have jointly published a [consultation paper](#) (CP1/20) on their proposed Financial Services Compensation Scheme (FSCS) Management Expenses Levy Limit (MELL) for 2020/21.

The proposed 2020/21 MELL is GBP 83.2 million, consisting of a management expenses budget of GBP 78.2 million and an unlevied contingency reserve of GBP 5 million. The proposed MELL would apply from 1 April 2020, the start of the FSCS's financial year, to 31 March 2021.

Comments on the consultation are due by 17 February 2020.



## **FCA publishes review of asset management portfolio tools**

The FCA has published a [report](#) setting out the findings of its review into the selection and use of risk modelling and other portfolio management tools by asset management firms.

The review sought to assess how firms identify and manage relevant risks and their capability to respond to system failures or service interruptions. The FCA notes that portfolio management tools and risk models are central to asset management activities and any significant technological failure could cause significant consumer harm, and that a service interruption could pose a threat to market integrity if a provider who supported a large enough group of asset managers was affected.

The FCA visited 10 asset management firms and found that some relied on tools from a single provider, others used tools from different providers, with the remaining firms using their own in-house technology.

The review analyses the advantages and disadvantages of the differing approaches as they relate to vendor management, model governance, managing change, resilience and recovery, software testing and customer expectations.

The FCA has forwarded feedback to firms where improvements could be made. The FCA will continue to monitor operational resilience arrangements in place at firms, including those not included in the review.

## **AFM and DNB publish amended policy rule on suitability of policymakers**

The Netherlands Authority for the Financial Markets (AFM) and the Dutch Central Bank (DNB) have published their amended [policy rule](#) on suitability (Beleidsregel geschiktheid 2012). The policy rule explains what criteria are applied by the financial regulators to persons within financial institutions that, according to a variety of financial regulatory laws, have to (or may) be tested on suitability (geschiktheid) by the financial regulator.

The amendments were triggered not only by new legislation, including the new Trust Offices Supervision Act and the amendments to the AML Act (Wet ter voorkoming van witwassen en financieren van terrorisme), but also by the entry into force of the ESMA guidelines on the management body of market operators and data reporting services providers as well as the ESMA/EBA guidelines on the assessment of the suitability of members of the management body and key function holders. The AFM and DNB apply these guidelines in their supervision.

Apart from the changes that result from these new (European) rules and regulations, the policy rule and its explanatory notes have also been updated and clarified at several points, and certain omissions have been corrected.

A consolidated version of the policy rule and the explanatory notes has been published in the State Gazette. A feedback statement reflecting how responses to the 2019 consultation on the (draft) new policy rule have been taken into account has been announced but has not yet been published on the AFM or DNB websites.

## **SAFE facilitates foreign exchange risk management by overseas institutional investors in China interbank bond market**

The State Administration of Foreign Exchange (SAFE) has issued the '[Circular on Relevant Issues on Improving Foreign Exchange Risk Management by Overseas Institutional Investors in the China Interbank Bond Market](#)', to facilitate FX risk management by overseas institutional investors (OIs) in the China interbank bond market (CIBM). The circular will come into force on 1 February 2020.

Amongst other things, the following points are worth noting:

- an OI may trade FX derivatives by trading directly with up to three domestic financial institutions, by applying to become a member of the China Foreign Exchange Trade System (CFETS) and enter the China interbank FX market (the CIFXM) through a prime broker, or, if a banking OI, by applying to become a CFETS member to directly trade in the CIFXM;
- where a change to an OI's portfolio leads to a change to its FX risk exposure, the OI should adjust its FX derivative exposure within five working days (or five working days after the relevant month);
- based on the actual demand for FX risk management, an OI may choose to roll over, close out, settle on a gross or netting basis its positions and may settle its profit and loss in Renminbi or a foreign currency; and
- where an OI chooses to trade FX derivatives with a domestic financial institution as a client, it may open a special FX account with a domestic financial institution that is not its settlement agent. Such account must be used only for the relevant FX receipts and payments involved in FX derivatives trading.

## **FSA promotes expansion of overseas investment managers' business in Japan by publishing guidebook for registration as investment manager and creating exemption from licensing registration requirement**

The Financial Services Agency of Japan (Japan FSA) has published a [guidebook](#) to provide information regarding the procedures for registration of investment management business and other financial instruments businesses.

Amongst other things, the guidebook:

- explains the types of registration required for each of the major business schemes related to asset management business;
- provides an overview of the procedure for registration screening and explanations on the requirements for registration; and
- provides supplementary explanations on the Financial Instruments and Exchange Act, particularly on classification of financial instruments businesses, major exemptions from application, classification of investors.

In addition to the guidebook, the Japan FSA has published a [draft of the amendment](#) to the definition of investment management business that requires the licensing registration so that overseas investment managers who have faced difficulty to continue operations in the overseas jurisdiction can conduct

the businesses in Japan without registration. The same will apply to overseas investment banks. This draft is subject to public comments until 10 February 2020.

### **National Assembly passes revision Bill on Credit Information Use and Protection Act**

The Financial Services Commission (FSC) has [announced](#) that the National Assembly has passed the revision Bill on the Credit Information Use and Protection Act. The revision Bill is intended to provide a legal basis for the use of big data and the commercialisation of new innovative services such as MyData businesses, as well as include measures to bolster information security.

The FSC has indicated that, in order to continue to promote data economy, it will work on a seamless implementation of the follow-up measures, which include the following:

- working on successful launch of MyData businesses by operating working groups to establish standards for the scope of data usage, security and authentication and authorisation measures;
- establishing specific measures for information security by improving the current information usage and management evaluation system for financial institutions and upgrading the information use consent form;
- setting up big data infrastructures to support the creation of data ecosystem in financial sectors;
- introduce a score-based credit rating system within 2020 to address problems arising from the current standardised credit evaluation system; and
- developing measures to support small merchant financing using big data platform in the first quarter of 2020.

The FSC has also indicated that the effective date for the revision is six months from the promulgation. If the announcement is made in January 2020, the revision Bill will go into effect after July 2020.

Further, the FSC plans to revise relevant regulations prior to the effective date. In the process, the FSC intends to closely communicate with experts and stakeholders to listen to their opinions.

### **Variable Capital Companies Act 2018 comes into operation**

The Ministry of Finance (MOF) has announced the [commencement](#) of the Variable Capital Companies Act 2018 (VCC Act) with effect from 14 January 2020 by notification in the gazette. The VCC Act was passed by the Singapore Parliament on 1 October 2018 to provide the legislative framework for the incorporation, operation, and regulation of the proposed new VCC structure in Singapore. The VCC structure aims to complement the existing suite of fund structures in Singapore, and encourage more fund managers to co-locate the domicile of their investment funds with their fund management activities in Singapore.

Along with the commencement of the VCC Act, the Singapore Government has also announced the [part commencement](#) of the Variable Capital



Companies (Miscellaneous Amendments) Act 2019 (Miscellaneous Amendments Act). All the provisions of the Miscellaneous Amendments Act take effect on 15 January 2020 except sections 17(b) to (i), 18 to 21, 25, 29, 30, 32 to 35, 40, 43 to 48, 50 to 53, 55 to 62, 63(b) and (e), 64(1) and (2)(a) and (d), 65 and 66(1), (2) and (3), which will be implemented in due course.

[Subsidiary legislation](#) has also been gazetted to provide for the operational framework of the VCCs and amendments to various existing legislation and regulations to reflect the changes arising out of the VCC framework.

The Monetary Authority of Singapore (MAS) [Notice VCC-N01](#) Prevention of Money Laundering and Countering the Financing of Terrorism – Variable Capital Companies was also issued on 14 January 2020.

On 15 January 2020, the MAS released responses to [Part 2](#) and [Part 3](#) of its consultation paper on the proposed framework for VCCs, in which the MAS clarified various operational aspects of the VCC framework and the winding up of VCCs.

## RECENT CLIFFORD CHANCE BRIEFINGS

### **AML5 – expanded trust registration requirement – delayed but in the pipeline for the UK**

10 January 2020, the deadline for EU Member States implementing the Fifth EU Anti-Money Laundering Directive (AML5), has passed. A key feature of AML5 is the requirement for all express trusts to be registered in a central national register; a significant expansion of the current trust registration requirement which is limited to taxable trusts. The UK published the Money Laundering and Terrorist Financing Regulations 2019 on 20 December 2019. These regulations implement AML5, with the exception of the expanded trust registration requirement.

This briefing paper discusses what is next for the trust registration requirement.

<https://www.cliffordchance.com/briefings/2020/01/amld5--expanded-trust-registration-requirement---delayed-but-in-.html>

### **Decree of the Plenum of the Supreme Court on Arbitration**

On 13 December 2019, Decree of the Plenum of the Russian Supreme Court No. 53 on fulfilment by courts of the Russian Federation of the functions of assistance and oversight in respect of arbitral proceedings and international commercial arbitration was published.

The clarifications set out in the Decree unfortunately do not address many of the unresolved issues that stem from the recent changes to the legislation on arbitration. While many of the clarifications are relatively self-evident, the very fact that they are included in the Decree should be seen as a positive development. The Decree is binding on the Russian courts, and one hopes that it will facilitate greater predictability in how arbitration-related issues are decided.

This briefing paper discusses the Decree.

<https://www.cliffordchance.com/briefings/2020/01/insolvency-law-amended-to-further-protect-collateral-arrangement.html>

## **Insolvency law amended to further protect collateral arrangements and close-out netting in Russia**

On 27 December 2019 the Russian President signed into law the latest set of amendments to Federal Law No. 127-FZ on Insolvency of 26 October 2002.

The amendments are intended to give greater protection, in the context of insolvency of a Russian counterparty, to collateral arrangements and close-out netting in respect of over-the-counter derivative, repurchase and certain other 'financial' transactions documented under eligible master agreements. The amendments took effect on 8 January 2020.

This briefing paper discusses the amendments.

<https://www.cliffordchance.com/briefings/2020/01/decreed-of-plenum-of-the-supreme-court-on-arbitration--eng-.html>

## **SEC outlines investment manager examination priorities for 2020**

On 7 January 2020, the Office of Compliance Inspections and Examinations of the US Securities and Exchange Commission released its 2020 annual examination priorities. Like in prior years, OCIE is prioritizing 'perennial risk areas', including (1) the protection of retail investors, (2) market infrastructure, (3) information security, and (4) anti-money laundering programs, but has also signalled its intention to examine firms in emerging risk areas, such as robo-advice, digital assets, cybersecurity, and new rules under the Investment Advisers Act of 1940, as amended and interpretations on standards of care.

This briefing paper discusses the 2020 annual examination priorities.

<https://www.cliffordchance.com/briefings/2020/01/sec-outlines-investment-manager-examination-priorities-for-2020.html>

# CLIFFORD CHANCE

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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