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### ESAs consult on ESG disclosure rules

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), have published a [consultation paper](#) seeking input on proposed environmental, social and governance (ESG) disclosure standards for financial market participants, advisers and products.

Under the EU Regulation on sustainability-related disclosures in the financial services sector (SFDR), the ESAs are permitted to develop Regulatory

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Technical Standards (RTS) on the content, methodology and presentation of ESG disclosures both at entity level and product level. The consultation also contains proposals under the Taxonomy Regulation on the do not significantly harm (DNSH) principle.

At entity level, the ESAs propose that the main adverse impacts that investment decisions have on sustainability factors should be disclosed on the entity's website. It is recommended that disclosure should take the form of a statement on due diligence policies, showing how investments adversely impact indicators in relation to climate and the environment, and social and employee matters, respect for human rights, anti-corruption and anti-bribery matters. Indicators for adverse impacts have been drafted based on consultations with the Joint Research Centre of the European Commission and the European Environment Agency.

At product level, the sustainability characteristics or objectives of financial products should be disclosed on their website and in pre-contractual and periodic documentation. The draft RTS proposes rules for carrying out this disclosure to ensure transparency to investors, as well as proposing additional disclosures that should be provided by products that have designated an index as a reference benchmark. The proposals also suggest provisions for disclosing how a product based on sustainable investments complies with the DNSH principle.

Comments on the consultation are due by 1 September 2020.

## **EBA updates IMF-FSI mapping and risk indicators guidance**

The EBA has published an [updated guide](#) on how to report the International Monetary Fund (IMF) Financial Soundness Indicators (FSIs) and a revised [methodological guide](#) on how to compile risk indicators and detailed risk analysis tools.

These updates follow the publication of the 2019 IMF FSI Guide, as well as the review of the EBA reporting framework, which included changes in securitisations information and in non-performing and forborne exposures.

The updated IMF FSI guidance note provides a mapping of the IMF FSI indicators to the EBA's Implementing Technical Standards (ITS) on Supervisory Reporting, with the aim of ensuring a harmonised methodology in reporting.

The methodological guide provides a comprehensive list of risk indicators and discusses methodological issues that may arise when compiling or using them. The guide shows how risk indicators are computed in EBA publications, with the aim of enabling competent authorities and users of EBA data to interpret key bank figures and to have a consistent approach in their risk assessments.

## **Capital Markets Union: EU Council Presidency publishes final compromise text of crowdfunding framework**

The EU Council Presidency has published the final compromise texts of the EU Commission's proposed crowdfunding framework, namely the:

- proposal for a [Regulation](#) of the European Parliament and of the Council on European Crowdfunding Service Providers (ECSP) for Business and amending Regulation (EU) No 2017/1129 (2018/0048 (COD)); and
- proposal for a [Directive](#) of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments (2018/0047 (COD)).

The proposed framework sets out common prudential, information and transparency requirements for ECSPs, common authorisation and supervision rules for national competent authorities and empowers ESMA to facilitate coordination, mediate disputes and develop relevant technical standards.

The EU Council Presidency has asked the Permanent Representatives Committee (COREPER) to approve the two finalised texts with a view to reaching an agreement in the form of a Council position at first reading. The EU Parliament and Council will then be called on to adopt the proposed regulation.

## **FSB consults on cyber incident toolkit**

The Financial Stability Board (FSB) has published a [consultation report](#) on a toolkit of effective practices for cyber incident response and recovery.

The toolkit aims to help financial institutions and national authorities enhance cyber resilience and lists 46 effective practices structured across seven components:

- governance, which seeks to frame how cyber incident and recovery is organised and managed;
- preparation for establishing and maintaining capabilities to respond to cyber incidents and restore critical functions;
- analysis for determining the severity of the incident to drive appropriate response and recovery activities;
- mitigation for preventing the aggravation of the situation and to eradicate cyber threats in a timely manner;
- restoration of systems or assets affected by a cyber incident to safely resume delivery of impacted services;
- improving response and recovery capabilities through lessons learnt and proactive tools; and
- coordination and communication with stakeholders to maintain good cyber situational awareness and enhance the cyber resilience of the ecosystem.

Comments on the consultation are due by 20 July 2020. The FSB will send the final toolkit to the October G20 Finance Ministers and Central Bank Governors meeting.

## **Amendments to the French foreign investment control regime enter into force**

A French [decree](#) (No. 2019-1590) and [Ministerial Order](#), both dated 31 December 2019, have entered into force, bringing about amendments to France's foreign investment regime. The key changes introduced include:

- the ownership threshold that triggers an approval requirement for non-EU/EEA investors has been lowered from 33.33% to 25%;
- all entities and persons in a chain of control are now considered a 'foreign investor', meaning that the foreign investment filing application could be done by any entity or person within the chain of control on behalf of the entire chain of control, but also that a foreign investor in a chain of control controlling a target legal entity governed by French law will be subject to a filing request as long as it is active in a strategic sector;
- the scope of strategic sectors has been extended to include the following activities: (i) agricultural products contributing to national food security objectives, (ii) political and general information press services, (iii) quantum technologies and (iv) energy storage; and
- the review process timeframe has been amended.

## **Issuer information obligations: BaFin publishes new module of its issuer guidelines**

The German Federal Financial Supervisory Authority (BaFin) has published the third part ([Module C](#)) (Regulations based on the Market Abuse Regulation (MAR)) of the fifth edition of its issuer guidelines. The new module has been added to reflect changes brought about by MAR and recent case law. In particular, BaFin has adjusted the current administrative practices for classifying intermediate stages in insider information and for assessing whether price fluctuations in forecasts and business figures could be considered insider information. Module C also covers how issuers should handle rumours in the context of insider information, as well as guidance on the prohibition of insider trading, market manipulation and directors' dealings.

## **BMF consults on draft law implementing EU banking package**

The German Federal Ministry of Finance (BMF) has published for consultation a [draft law](#) which is intended to reduce risks in the financial sector and strengthen proportionality (Risikoreduzierungs-gesetz). The draft law is intended to implement the EU banking package in Germany.

In order to reduce risks, enhance bank resolvability and protect taxpayers, capital and liquidity requirements for banks will be strengthened in accordance with international standards. To this end, a mandatory leverage ratio and a net stable funding ratio will be introduced, as well as an international standard on loss buffers (total loss absorbing capacity). Further provisions are intended to strengthen the principle of proportionality and ensure the suitable and targeted regulation of small and medium-sized banks with non-complex business models. These legal requirements are designed to allow these banks to concentrate on their core task of providing medium-sized companies with credit.

## **Amendments to Bank of Italy supervisory provisions for banks published**

The Bank of Italy has approved [amendment No. 32](#) to its Circular No. 285 of 17 December 2013, 'Disposizioni di vigilanza per le banche', which amends the chapters related to:

- the provisions on prudential control process (processo di controllo prudenziale);
- the provisions on the internal controls system (sistema dei controlli interni); and
- only with respect to the stress tests of institutions, the provisions on the Government and liquidity risk management (governo e gestione del rischio di liquidità).

The amendments are intended to implement the European Banking Authority (EBA) guidelines related to the interest rate risk arising from the banking book (EBA/GL/2018/02) and related to the stress tests of institutions (EBA/GL/2018/04).

The amendments came into force on 22 April 2020. Banks must adopt the risk management systems within 60 days from the publication of the amendments and, at a later time, fully align with the new guidelines outlined in the 2011 Internal Capital Adequacy Assessment Process (ICAAP) report.

## **CSSF communiqué on virtual assets**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a [communiqué](#) on virtual assets, virtual asset service providers (VASPs) and the related registration process.

With the adoption of two bills in March 2020 amending the law of 12 November 2004 on the fight against money laundering and terrorist financing (AML Law), the different types of VASP have become subject to the AML Law and the CSSF has become the AML/CFT supervisory authority for VASPs. However, the CSSF's role for VASPs registered in Luxembourg is limited to registration, supervision and enforcement for AML/CFT purposes only.

The CSSF informs VASPs that they need to comply since 30 March 2020 with the professional obligations under the AML Law, as well as those under the EU Funds Transfer Regulation (also known as the Wire Transfer Regulation).

Entities who are established or provide services in Luxembourg, must register with the CSSF in case they are providing one or more of the following services on behalf of their clients or for their own accounts:

- exchange between virtual assets and fiat currencies, including the exchange between virtual currencies and fiat currencies;
- exchange between one or more forms of virtual assets;
- transfer of virtual assets;
- safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets, including custodian wallet services; and/or
- participation in and provision of financial services related to an issuer's offer and/or sale of virtual assets.



Furthermore, the CSSF informs any entity (including any entity already licensed/registered by a competent authority and in particular licensed financial institutions), which already offers any of the virtual asset services described above as of 30 March 2020, that it has to (i) promptly notify the CSSF thereof if the relevant entity already offers such services, (ii) submit a registration file to the CSSF to be registered as VASP as soon as possible and at the latest 30 May 2020, and (iii) comply with the professional obligations and the conditions described in the AML Law as amended from 30 March 2020.

Any entity which offers or intends to offer any of the virtual asset services described above as from 30 March 2020 has to:

- register beforehand as a VASP; and
- comply with the professional obligations and the conditions described in the AML Law.

The communiqué refers to forms and contains further practical details on the registration processes.

### **CSSF issues circular regarding survey of amount of covered deposits as of 31 March 2020**

The CSSF, acting in its function as Depositor and Investor Protection Council (Conseil de Protection des Déposants et des Investisseurs) (CPDI), has issued [Circular](#) CSSF-CPDI 20/20 dated 20 April 2020 regarding a survey of the amount of covered deposits held as of 31 March 2020.

The Circular is addressed to all members of the Luxembourg deposit protection scheme, the Fonds de garantie des dépôts Luxembourg (FGDL) (in particular to all credit institutions incorporated under Luxembourg law, to the POST Luxembourg, and to Luxembourg branches of non-EU/EEA credit institutions), and reminds them that the CPDI collects the amount of covered deposits on a quarterly basis in order to identify the trends and changes in the relevant indicators of deposit guarantee throughout the year.

The Circular further draws members' attention to the provisions of Circular CSSF-CPDI 16/02, notably as regards the exclusion of structures assimilated to financial institutions and the treatment of omnibus and fiduciary accounts. The volume of eligible and covered deposits in omnibus and fiduciary accounts and the number of beneficiaries (ayants droit) are to be reported where credit institutions wish to ensure deposit protection for relevant beneficiaries and in order to allow the CPDI to prepare the FGDL for the reimbursements of such deposits.

In addition, FGDL members are requested to provide the data at the level of their legal entity, comprising branches located within other Member States, by 29 May 2020 at the latest. In the context of COVID-19, FGDL members may choose to delay this reporting and submit the requested data together with the 2020 second quarter-end data.

In order to transmit the data, institutions are required to complete the table attached to the Circular. The filename of the completed document should comply with the file naming convention for special surveys, as defined by Circular CSSF 08/344, and should be submitted over secured channels (E-File/SOFiE).

A member of the authorised management, i.e. the member in charge of the FGDL membership, must review and approve the file prior to its transmission to the CSSF.

## **HKEX announces first phase enhancements of volatility control mechanism**

The Hong Kong Exchanges and Clearing Limited (HKEX) has [announced](#) that it intends to implement the first phase enhancements of the volatility control mechanism (VCM) on 11 May 2020. The VCM enhancements are intended to further contain risks caused by extreme price volatility in individual stocks, in line with international practices and regulatory guidance. The first phase of VCM enhancements includes:

- expanding VCM stock coverage from constituent stocks of the Hang Seng Index and Hang Seng China Enterprises Index to constituent stocks of Hang Seng Composite LargeCap, MidCap and SmallCap Indexes; and
- applying a tiered structure of triggering thresholds at  $\pm 10\%$ ,  $\pm 15\%$  and  $\pm 20\%$  to the last traded price five minutes before for the constituent stocks of the three Hang Seng Composite Indexes respectively.

The HKEX has indicated that, six months after the implementation of the first phase enhancements, it will conduct a review on market operations before implementing the second phase, which will allow multiple triggers per stock per trading session.

## **Revised capital rules under Banking Ordinance gazetted**

The Hong Kong Government has gazetted the [Banking \(Capital\) \(Amendment\) Rules 2020](#) (BCAR 2020) to implement the latest international standards on banking regulation promulgated by the Basel Committee on Banking Supervision, in order to further enhance the resilience of banks and contribute to the overall stability of the banking system in Hong Kong.

The BCAR 2020 seeks to implement two sets of capital standards for the treatment of banks' counterparty credit risk exposures to derivatives trades, as set out in the two documents entitled 'The standardised approach for measuring counterparty credit risk exposures' and 'Capital requirements for bank exposures to central counterparties' published by the Basel Committee in March 2014 and April 2014 respectively. They form part of the Basel III reform package introduced in the aftermath of the global financial crisis to enhance the resilience of banks against future shocks.

The BCAR 2020 will be tabled before the Legislative Council at its sitting on 29 April 2020 for negative vetting, and will come into operation on 30 June 2021.

## **HKMA issues circular on reform of interest rate benchmarks**

The Hong Kong Monetary Authority (HKMA) has published a [circular](#) setting out the results of a survey on the reform of interest rate benchmarks, which it conducted in November 2019 as part of its efforts to monitor the banking sector's progress in preparing for the transition to alternative reference rates (ARRs). The circular also provides [updates](#) on the latest developments relating to the reform of interest rate benchmarks.

The survey results indicate that there were HKD 4.5 trillion of assets and HKD 1.6 trillion of liabilities in the Hong Kong banking system referencing the London Interbank Offered Rate (LIBOR) at the end of September 2019, representing about 30% and 11% respectively of the banking system's total assets and total liabilities denominated in foreign currencies. Additionally, there were derivatives contracts involving an aggregate amount of HKD 35 trillion in notional value referencing LIBOR. Moreover, around one third of these LIBOR-linked assets and liabilities, and almost half of these derivatives contracts would mature after end-2021 and did not have adequate fall-back provisions.

Regarding the authorised institutions' (AIs) preparation for transition to ARR, the survey found that many AIs had established a committee or appointed a senior executive to oversee the preparatory work, and were in the process of developing a firm-wide transition plan. Major barriers to preparing for transition cited by AIs included:

- the lack of standard and consistent fall-back languages for adoption by the industry;
- insufficient liquidity for products referencing ARR; and
- the lack of well-established term structures for ARR.

The HKMA has advised AIs to continue to closely monitor international and local developments relating to benchmark reform, leveraging the resources available on the Treasury Markets Association's web page and other sources, as well as to take these developments into account when updating their own transition plans. Specifically, AIs are advised to prepare to confirm their adherence to the International Swaps and Derivatives Association Protocol that incorporates fall-back provisions for LIBOR once it is published. The HKMA has indicated that it will continue to use the survey to monitor the banking sector's preparation for the transition.

## **MAS revises lodgment practice notes for collective investment schemes and securities and securities-based derivatives contracts**

The Monetary Authority of Singapore (MAS) has revised its practice notes on the lodgment of:

- prospectuses and other documents for an offer of [collective investment schemes](#); and
- prospectuses and other documents for an offer of [securities or securities-based derivatives contracts](#).

The practice notes have been amended to include the procedure that should be followed when a document is signed electronically, namely that:

- the signatory should electronically sign the document via Adobe Acrobat's 'Fill & Sign' feature or other commercially available electronic signing software;
- the signatory should electronically sign the document using their own computer account, username and password;
- documents should not be electronically signed on the signatory's behalf, regardless of whether the signatory has granted their approval;



- the signatory should submit to the issuer, from their own email account with their email sign off, the electronically signed document with a written confirmation that where applicable, the signatory is authorised by the issuer to provide the document, the electronic signature in the document is executed by the signatory, and that the signatory approves of the contents of the document; and
- where the document is to be submitted to the MAS by an advocate and solicitor acting on behalf of the issuer, the signatory should submit the electronically signed document and written confirmation to the advocate and solicitor, instead of the issuer, in accordance with the procedure above.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **Unprecedented drop in price of WTI crude oil futures contract – what to expect from CME and CFTC in response**

In an event that is unprecedented in recent memory, on Monday 20 April 2020, the price of a soon-to-expire crude oil futures contract fell over USD 50 in a single day of trading, settling at a deeply negative price. Traders should be prepared for the possibility that the exchange or the US government will invoke seldom-used emergency powers to affect trading, conditions of delivery, or even settlement price. And in the longer term, both the exchange and the US government can be expected to closely scrutinize trading in the contract, increasing the risk that penalties will be levied against traders found to have violated exchange rules or the law.

This briefing discusses potential short-term responses by the CME and CFTC as well as medium-term responses by the CME, CFTC and the United States Department of Justice.

<https://www.cliffordchance.com/briefings/2020/04/unprecedented-drop-in-price-of-wti-crude-oil-futures-contract---.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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