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EBA proposes STS framework for synthetic securitisations

The European Banking Authority (EBA) has published a [report](#) setting out its proposals for developing a simple, transparent and standardised (STS) framework for synthetic securitisation. The proposals are limited to balance-sheet securitisation and include a list of criteria to be considered when labelling a synthetic securitisation as 'STS'.

The report includes discussion of the following topics, amongst others:

- the proposed criteria, which the EBA notes include simplicity, standardisation and transparency requirements similar to those applied to traditional securitisations, as well as further relevant criteria such as those for mitigating counterparty credit risk or for addressing various structural features of synthetic securitisations;
- the prudential treatment of STS securitisation, including the pros and cons of a potentially differentiated capital treatment; and
- an assessment of the implications of the possible introduction of an STS synthetic product.

EBA includes IFRS 9 template as part of updated ITS package for 2021 benchmarking exercise

The EBA has published [updated](#) implementing technical standards (ITS) on benchmarking of internal approaches.

The EBA has included two annexes in its update intended to analyse potential sources of variability stemming from the implementation of the new accounting standard (IFRS 9). The collection of quantitative data on the IFRS 9 parameters is intended to contribute to a better understanding of the different methodologies, models, inputs and scenarios, which could lead to material inconsistencies in expected credit loss (ECL) outcomes, and affect own funds and regulatory ratios. The initial focus of the analysis is on the probability of default (PD) parameter.

The benchmarking exercise is a supervisory tool intended to enhance the quality of internal models. The updated ITS include all benchmarking portfolios to be used for the 2021 exercise.

Fundamental Review of the Trading Book: EBA issues final draft ITS on market risk reporting requirements

The EBA has published final [draft ITS](#) on specific reporting requirements for market risk as part of the Fundamental Review of the Trading Book (FRTB) under the revised Capital Requirements Regulation (CRR2). The draft ITS, which mark the first step in implementing the FRTB framework in the EU, introduce:

- a thresholds template, which gathers information on the size of institutions' trading books and the volume of their business subject to market risk; and
- a summary template, which gathers information on the own funds requirements that are to be calculated for reporting purposes under the alternative standardised approach for market risk.

The EBA envisages that both templates will be reported quarterly.

The draft ITS will be submitted to the EU Commission for endorsement and are expected to apply from 1 September 2020.

EBA launches additional EU-wide transparency exercise

The EBA has [launched](#) an additional EU-wide transparency exercise to provide market participants with updated information on the financial conditions of EU banks as of 31 December 2019, prior to the start of the COVID-19 pandemic. The EBA expects to publish the results of the exercise at the beginning of June 2020.

The exercise is based on supervisory reporting data and will cover banks' capital positions, financial assets, financial liabilities, risk exposure amounts, sovereign exposures and asset quality. The EBA believes that providing market participants with continuous information on banks' exposures and asset quality is crucial, particularly in moments of increased uncertainty. It has thanked banks for their participation in the exercise in light of the operational challenges they currently face and has stressed that it stands ready to provide banks with the necessary support throughout the process.

EBA publishes final guidance on credit risk mitigation for A-IRB approach

The EBA has published its [final guidelines](#) on credit risk mitigation (CRM) in the context of the advanced internal ratings-based (A-IRB) approach. The guidelines form part of the EBA's regulatory review of the IRB approach and aim to eliminate the remaining significant differences in CRM approaches.

The guidelines clarify the application of the CRM provisions currently laid down in the Capital Requirements Regulation (CRR) applicable to institutions using the A-IRB approach. In particular, the guidelines clarify:

- the eligibility requirements for different CRM techniques available to institutions;
- for funded credit protection, the eligibility requirements of legal certainty and collateral valuation application to institutions using the standardised approach (SA) and the foundation internal ratings-based (F-IRB) approach;
- specific guidance on physical collateral other than immovable property, for which the assessment of legal certainty is particularly challenging;
- how institutions recognise the effects of different CRM techniques for capital requirement purposes;
- for unfunded credit protection, a set of compliant approaches that are available to institutions to recognise the effects of credit protection by adjusting their risk parameter estimates; and
- how to recognise the effects of funded credit protection based on netting.

The guidelines are complementary to the EBA [report on CRM](#) and the [guidelines](#) on the PD estimation, LGD estimation and the treatment of defaulted exposures. The EBA has extended the final implementation date of these guidelines to 1 January 2022.

EBA publishes methodology guidelines for weighted average maturity of contractual payments under tranche of securitisation transactions

The EBA has published its final [guidelines](#) on the determination of the weighted average maturity (WAM) of contractual payments due under the tranche of a securitisation transaction, as laid out in the Capital Requirements Regulation (CRR).

The guidelines are intended to ensure that the applicable methodology for regulatory purposes is transparent and harmonised in order to increase consistency and comparability in the own funds held by institutions.

The revised Securitisation Regulation introduced tranche maturity as an additional parameter needed by institutions using either the internal or external rating based approach (SEC-IRBA and SEC-ERBA) for calculating securitisation positions' risk-weighted exposure. The guidelines are intended to help institutions opting to use the WAM approach when calculating their capital requirements.

MiFID2/MAR: ESMA consults on SME growth markets

The European Securities and Markets Authority (ESMA) has published a [consultation paper](#) on the SME growth markets regime under the Markets in Financial Instruments Directive (MiFID2) and draft technical standards for the promotion of their use under the Market Abuse Regulation (MAR).

In relation to MiFID2, ESMA seeks views aimed at informing its review report on whether adjustments should be introduced to further incentivise the emergence of multilateral trading facilities (MTFs) as SME growth markets, including:

- a review of the qualifying criteria threshold;
- making the admission to trading conditions more stringent;
- harmonising the accounting standards used by issuers;
- introducing homogeneous admission and disclosure requirements;
- creating a two-tier regime with additional alleviations for micro-SMEs; and
- creating an obligation for SME growth markets to ensure effective provision of liquidity through the mandatory presence of market makers.

In relation to MAR, ESMA seeks views on draft regulatory technical standards (RTS) on liquidity contracts and draft ITS on insider lists for SME growth market issuers following the amendments introduced to MAR by the SME Regulation ((EU) 2019/2115).

The consultation closes on 15 July 2020. ESMA intends to submit to the EU Commission the MiFID2 final review report by the end of the year and the MAR final report in the autumn.

Resolution of CCPs: FSB consults on guidance assessing adequacy of financial resources

The Financial Stability Board (FSB) has published [draft guidance](#) on financial resources to support CCP resolution and on the treatment of CCP equity in resolution for public consultation.

The draft guidance follows the FSB's November 2018 discussion paper which set out considerations that may be relevant for authorities and crisis management groups with regard to evaluating whether existing financial resources and tools are adequate to implement the resolution strategy for individual CCPs and considerations that could guide authorities in developing possible approaches to the treatment of CCP equity in resolution.

The draft guidance takes into account the comments received to the November 2018 paper and feedback from the resolution authorities of CCPs. It proposes:

- five steps to guide the authorities in assessing the adequacy of a CCP's financial resources and the potential financial stability implications of their use; and
- a framework for resolution authorities to evaluate the exposure of CCP equity to losses in recovery, liquidation and resolution and how, where possible, the treatment of CCP equity in resolution could be adjusted.

Comments to the consultation are due by 31 July 2020.

Brexit: Amended draft financial services SI laid

HM Treasury (HMT) has laid an [amended version](#) of the draft Financial Services (Miscellaneous Amendments) (EU Exit) Regulations 2020 before Parliament.

The draft statutory instrument (SI) revokes pieces of retained EU law and UK domestic law dealing with cross-border activity within the EU and the functioning of EU institutions, and makes minor clarifications and corrections to previous financial services EU exit SIs.

German Federal Constitutional Court upholds complaint against ECB Public Sector Purchase Programme

The Second Senate of the German Federal Constitutional Court has [granted](#) several constitutional complaints directed against the Public Sector Purchase Programme (PSPP) of the European Central Bank (ECB). The Court found that the German Federal Government and Bundestag violated the complainants' rights under the German Basic Law (Grundgesetz) by failing to take steps to challenge the ECB's decisions on the adoption and implementation of the PSPP, which the Court qualifies as ultra vires acts, on the basis that the ECB did not assess or substantiate that the measures provided for in those decisions satisfy the principle of proportionality.

The Federal Constitutional Court noted that the Court of Justice of the European Union (CJEU) had taken a different stance in response to the request for a preliminary ruling from the Federal Constitutional Court but concluded that this did not merit a different conclusion in the proceedings under consideration.

The Federal Constitutional Court held that the German Federal Government and Bundestag must take steps seeking to ensure that the ECB conducts a proportionality assessment and that, unless the ECB Governing Council adopts an appropriate decision within three months, the Bundesbank may no longer participate in the implementation of the relevant ECB decisions and must ensure the sale of bonds already purchased and held based on a strategy coordinated with the Eurosystem.

The Federal Constitutional Court did not find that the PSPP effectively circumvents the EU Treaty prohibition on the monetary financing of Member State budgets and noted that the decision does not concern any financial assistance measures taken by the European Union or the ECB in the context of the coronavirus crisis.

BaFin publishes circular specifying AML audit frequencies and reporting

The German Federal Financial Supervisory Authority (BaFin) has published a [circular](#) specifying provisions in four regulations regarding audit and reporting periods and audit frequency for reporting on the measures taken to prevent money laundering and terrorist financing and, if applicable, other criminal acts. The circular is addressed to annual auditors of credit institutions, financial services institutions, insurance companies, payment institutions, electronic money institutions and capital management companies.

The circular emphasises the following provisions:

- regardless of the frequency of audit and reporting, it must cover the entire period since the key date of the last audit and reporting, as there are to be no audit or report free periods;
- when making use of facilitations regarding the audit and reporting cycle, the formal approval of the relevant license must be considered and not the actual exercise of the license. If use is made of simplifications with regard to the audit and reporting cycle, the satisfaction of the requirements must be explained in the audit report; and
- the two-year audit and reporting cycle cannot be applied if the risk situation of the institution requires a shorter cycle, i.e. if the institution is prone to being exploited for money laundering and/or terrorist financing purposes. When assessing the risk situation, the findings of the National Risk Analysis shall be taken into particular account.

Bank of Italy and CONSOB consult on supervisory guidelines on simple investment companies

The Bank of Italy and CONSOB have launched a [consultation](#) on draft supervisory guidelines on simple investment companies (Società di investimento semplice – SIS). The guidelines are intended to set out the modalities according to which simple investment companies will have to comply with the new provisions established in the Legislative Decree n.58 of 24 February 1998 (Testo Unico sulla Finanza), introduced by article 27 of the Decree n.34 of 30 April 2019 (Decreto Crescita), as converted by the law n.58 of 28 June 2019.

In particular, the guidelines concern governance and control systems, the prudential regime (including professional civil liability insurance) and decision-making process, claims and conflicts of interest. They also consider the nature of target investors (professional investors or retail) with respect to the different levels of protection needed.

Comments are due by 29 July 2020.

Bank of Italy publishes instructions to UK intermediaries operating in Italy following EU Withdrawal Agreement

The Bank of Italy has published [instructions](#) to UK intermediaries operating in Italy following the EU Withdrawal Agreement.

From 1 February 2020 to 31 December 2020, EU legislation will continue to apply in the UK, unless by 30 June 2020 the EU and the UK agree to extend the transition by one or two years. After the end of the transition period, EU law will cease to apply to the UK and the Italian third-country regime will apply to all UK intermediaries operating in Italy. Accordingly, the Bank of Italy, as the competent authority, has listed the regulations applicable depending on the type of intermediary and the activities performed in Italy.

In order to avoid any discontinuity of services to customers and to ensure an orderly closure of activity where required, the Bank of Italy is recommending that all UK financial intermediaries fulfil their information duties towards their customers about their relationships and the effects of the new provisions.

FINMA consults on partial revision of ‘Liquidity risks – banks’ circular

In November 2019 the Swiss Federal Council decided to introduce a net stable funding ratio (NSFR) for banks by mid-2021 and to make the corresponding adjustments to the Liquidity Ordinance. This also necessitates changes to the practice of the Swiss Financial Market Supervisory Authority (FINMA) as set out in Circular 2015/2 ‘Liquidity risks – banks’. FINMA has now [launched a consultation](#) on the proposed changes, which will end on 13 July 2020.

As required in the Basel III minimum standards, banks must meet stricter liquidity requirements, as well as fulfilling internationally harmonised funding requirements. The Federal Council adapted the Liquidity Ordinance in 2017 in line with these international rules, but postponed the introduction of the NSFR to a later point in time. FINMA also adjusted its ‘Liquidity risks – banks’ circular at that time and ran a consultation exercise. The present consultation therefore only concerns a number of clarifications and editing changes. The amendments are due to enter into force on 1 July 2021, subject to the Federal Council’s timetable.

FINMA issues guidance on duty to report cyber attacks

The Swiss Financial Market Supervisory Authority (FINMA) has issued [Guidance 05/2020](#) setting out details on the duty of supervised institutions to report cyber attacks.

If a cyber attack on critical assets results in one or more of the protective goals of critical functions and their business processes being put at risk, this must be reported to FINMA immediately.

If an institution outsources key functions to other individuals or legal entities, the supervised institution is also responsible for reporting cyber incidents of its service providers, provided that there is a link to the outsourced key functions. Immediate reporting to FINMA means that the affected supervised institution informs FINMA through the responsible account manager within 24 hours of detecting such a cyber attack and conducting an initial assessment of its criticality. The actual report should be submitted within 72 hours via the FINMA web-based survey and application platform.

FINMA expects the detailed requirements from the guidance on reporting cyber attacks to be implemented by 1 September 2020 at the latest or earlier on a best effort basis.

ASIC updates guidance on internal market making

The Australian Securities and Investments Commission (ASIC) has [updated](#) 'Information Sheet 230 Exchange traded products: Admission guidelines', following its review of internal market making which took place over the second half of 2019.

The update outlines measures which firms, including licensed Australian exchanges, product issuers and market making execution agents, are required to take into account to manage market integrity risks associated with internal market making. In particular, firms are required to:

- use only a reference price or other information that is publicly available as the input for market making quotes;
- establish information barriers so that bids and offers are not submitted to the market by persons or systems with knowledge of the current portfolio holdings;
- have adequate arrangements for identifying and responding to instances of substantial information asymmetry in the market; and
- have appropriate compliance and supervision arrangements to support these measures.

The update also provides guidance on improving internal market making practices, which includes:

- the indicative net asset value being as accurate and frequently disseminated as practically possible;
- full portfolio holdings disclosure being delayed only to the extent necessary to protect the fund's intellectual property; and
- internal market making arrangements supporting incoming and exiting investors to transact at fair and orderly prices.

Moreover, under the updated Information Sheet 230, peripheral updates have also been made to reflect recent changes in the market.

HKMA and SFC initiate establishment of cross-agency steering group for green and sustainable finance

The Hong Kong Monetary Authority (HKMA) and the Securities and Futures Commission (SFC) have [initiated](#) the establishment of the Green and Sustainable Finance Cross-Agency Steering Group. The other members of the Steering Group are the Environment Bureau, the Financial Services and the Treasury Bureau (FSTB), the Hong Kong Exchanges and Clearing Limited (HKEX), the Insurance Authority (IA) and the Mandatory Provident Fund Schemes Authority (MPFA).

The Steering Group is intended to co-ordinate the management of climate and environmental risks to the financial sector, accelerate the growth of green and sustainable finance in Hong Kong and support the Government's climate strategies through:

- examining policy and regulatory issues in green and sustainable finance, particularly those which may have a cross-sectoral impact;
- facilitating policy direction and coordination to ensure Hong Kong has a cohesive and comprehensive green and sustainable finance strategy;
- addressing technical cross-sectoral issues by, for example, forming technical working groups and consulting with different experts and stakeholders;
- tracking international and regional trends, issues and developments in green and sustainable finance, and considering how Hong Kong should better position itself and provide leadership in the region and globally; and
- identifying areas where Hong Kong can promote its strengths and thought leadership on green and sustainable finance regionally and globally.

RECENT CLIFFORD CHANCE BRIEFINGS

Japan's new foreign direct investment (FDI) regulations enter into force

Last autumn Japan reported it would tighten its foreign direct investment (FDI) regulations and lower the threshold for pre-transaction approval for acquisitions by foreign investors of shares in Japanese listed companies from 10% to 1%. The Ministry of Finance (MOF) published the final version of the implementing ordinances on 30 April 2020. The new FDI regulations entered into force on 8 May 2020 and apply to investments which close or complete on or after 7 June 2020.

This briefing outlines the practical impact on the activities of foreign investors and shareholders in Japanese listed companies and the conditions for relying on exemptions from the pre-transaction approval requirement.

<https://www.cliffordchance.com/briefings/2020/05/japan-s-new-foreign-direct-investment--fdi--regulations-enter-int.html>

CFTC proposes reforms to bankruptcy rules for futures brokers and clearinghouses

On 14 April 2020, the Commodity Futures Trading Commission proposed amendments to part 190 of its regulations, which governs bankruptcy proceedings for commodity brokers such as futures commission merchants and derivatives clearing organizations. The proposed rule represents the first comprehensive revision of part 190 since it was finalized in 1983.

This briefing discusses the changes under the proposed rule.

<https://www.cliffordchance.com/briefings/2020/05/cftc-proposes-reforms-to-bankruptcy-rules-for-futures-brokers-an.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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