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CRR: EBA consults on draft RTS on own funds and eligible liabilities

The European Banking Authority (EBA) has published a [consultation](#) on draft amended regulatory technical standards (RTS) on own funds and eligible liabilities.

Previously the Capital Requirements Regulation (CRR) mandated the EBA to specify some of the eligibility criteria for own funds, which resulted in the adoption of the RTS for own funds requirements for institutions. These RTS need to be amended to reflect changes made by the amended CRR (CRR2) to eligibility criteria and the own funds permission regime.

CRR2 has also updated the own funds framework with certain targeted

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adjustments, and to a larger extent with focus on the regime of supervisory prior permission for the reduction of own funds. CRR2 also includes new mandates for the EBA to specify some of the criteria for eligible liabilities instruments derived from the own funds regime.

To ensure consistency between the two regimes, the EBA has published draft amended RTS on own funds that extend to eligible liabilities.

Comments to the consultation are due by 31 August 2020.

EBA publishes guidelines on loan origination and monitoring

The EBA has published its [guidelines](#) on loan origination and monitoring, setting out its expectation that institutions develop robust and prudent standards to ensure the proper assessment of newly originated loans.

The guidelines unify the prudential and consumer protection perspectives and aim to ensure that institutions' practices are aligned with consumer protection rules and respect fair treatment of consumers. In order to maintain good credit risk management and monitoring standards, the guidelines contain additional transition periods for recently renegotiated loans to help institutions better focus on their immediate operational priorities during the COVID-19 pandemic.

In particular, the guidelines are intended to clarify the credit decision-making process, including the use of automated models, and set requirements for assessing borrowers' creditworthiness, together with the handling of information and data for the purposes of such assessments.

The guidelines will apply from 30 June 2021 with a series of transitional arrangements for the benefit of institutions. The application of the guidelines to already existing loans and advances that require renegotiation or contractual changes with borrowers will apply from 30 June 2022, and institutions will be allowed to address possible data gaps and adjust their monitoring frameworks and infrastructure until 30 June 2024.

IOSCO consults on proposed principles on outsourcing

The International Organization of Securities Commissions (IOSCO) has published a [consultation paper](#) on the proposed updates to its principles for regulated entities that outsource tasks to service providers. The report was prepared before the COVID-19 outbreak but has now been published as IOSCO believes the pandemic has highlighted the need to ensure resilience in operational activities and to maintain business continuity in situations where both external and unforeseen shocks impact firms and their service providers.

The proposed principles are based on IOSCO's 2005 outsourcing principles for market intermediaries and 2009 outsourcing principles for markets, however their application has been expanded to trading venues, market participants acting on a proprietary basis, credit rating agencies and financial market infrastructures. The revised principles comprise a set of fundamental precepts, including:

- the definition of outsourcing;
- the assessment of materiality and criticality;
- their application to affiliates;

- the treatment of sub-contracting; and
- outsourcing on a cross-border basis.

IOSCO has also established seven principles which are each supplemented with guidance on implementation. The principles cover:

- due diligence in the selection and monitoring of a service provider;
- the contract with a service provider;
- information security, business resilience, continuity and disaster recovery;
- confidentiality issues;
- concentration of outsourcing arrangements;
- access to data, premises, personnel and associated rights of inspection; and
- termination of outsourcing arrangements.

In light of the pandemic and the ongoing resource constraints for financial institutions, comments are due by 1 October 2020.

Green finance: NGFS issues climate-related and environmental risks recommendations

The Network for Greening the Financial System (NGFS), comprising 66 central banks and supervisors with the aim of meeting the goals of the Paris Agreement, has published a [guide for supervisors](#) setting out five recommendations to be considered by its members in order to integrate climate-related and environmental risks into their work.

In particular, the NGFS recommends that supervisors:

- determine how climate-related and environmental risks transmit to the economies and financial sectors in their jurisdictions and identify how these risks are likely to be material for supervised entities;
- develop a clear strategy to address climate-related and environmental risks;
- identify and assess climate related and environmental risks;
- set supervisory expectations; and
- ensure adequate management of climate-related and environmental risks by financial institutions and take mitigating action where appropriate.

Alongside the guide, the NGFS has published a [status report](#) on how financial institutions keep track of the specific risk profiles of green, non-green and brown financial assets.

PSD2: Legislative Decree published in Italian Gazette

[Legislative Decree no. 36](#) of 8 April 2020, which sets out corrective and supplementary provisions to the legislation implementing the revised Payment Services Directive (PSD2) and the Regulation on interbank fees on card-based payment transactions (IFR), has been published in the Italian Gazette (no. 134 of 26 May 2020).

The Decree also provides for, among other things:

- a compensation right in the event that a liability of a payment service provider is ascribable to another payment service provider involved, or to any other person carrying out the operation;
- the enrolment within the Bank of Italy special registers of authorised institutions as well as other branches established in a Member State other than Italy;
- the exclusion of the duty to adopt alternative dispute resolutions systems for those who exclusively provide account information services; and
- an extension of the sanctions relating to the violation of the banking transparency rules.

The Legislative Decree will come into force on 10 June 2020.

Act implementing amendments to AMLD4 enters into force

The Act implementing amendments to the Fourth Anti-Money Laundering Directive has [entered](#) into force. As of 21 May 2020, crypto service providers are subject to integrity supervision by the Dutch Central Bank (DNB).

The Implementation Act, the Implementation Decree and the Royal Decree announcing the effective date were published in the Official Journal of 20 May 2020. The Implementation Regulation was published on 15 May 2020.

CNMV sets out criteria for notification of transactions in treasury shares when the issuer has entered into equity swaps or similar financial instruments

The Spanish National Securities Market Commission (CNMV) has [published](#) a non-exhaustive list of indicative factors to clarify how the presumption on the consideration of a person as a nominee contained in Article 24.2.b) of Royal Decree 1362/2007 of 19 October in relation to the obligation of listed companies to report treasury shares transactions (pursuant to Article 40 of RD 1362/2007) should apply in certain situations where a listed entity has entered into a financial instrument with a counterparty which may at some point retain title to certain shares of the listed company. The list includes a number of factors, for indicative purposes only, that listed companies should take into account for the purposes of determining whether the counterparty of a financial instrument is acting as a nominee or not and, therefore, whether the financial transaction underlined by the shares of the listed company should be treated as treasury shares for the purposes of notification of treasury shares.

FINMA designates reviewing bodies for prospectuses

The Swiss Financial Market Supervisory Authority (FINMA) is [granting](#) BX Swiss AG and SIX Exchange Regulation AG licences as reviewing bodies for prospectuses with effect from 1 June 2020. The reviewing bodies regulated in accordance with the Financial Services Act (FinSA) are charged with the task of checking prospectuses published in connection with a public offer of securities or the admission of securities to trading on a stock exchange with regard to their completeness, coherence and clarity and approving them.

The publication of approved prospectuses will be mandatory from 1 December 2020.

While the reviewing bodies must be licensed by FINMA, they will not be subject to prudential supervision. In particular, the sole responsibility for reviewing the prospectuses lies with the reviewing bodies. The reviewing bodies must report important changes to FINMA and submit an annual activity report.

HKMA issues circular on review of self-assessment reports on bank culture

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) sharing the key observations from its [review](#) of the self-assessment on bank culture. The review found that the banks covered in the self-assessment exercise have implemented a range of culture initiatives and made significant progress in promoting sound bank culture over the past two years. The HKMA has identified a range of practices under each of the three pillars (governance, incentive systems, and assessment and feedback mechanisms) as a reference for authorised institutions as they move on and devise further culture enhancement measures.

The HKMA encourages all authorised institutions to pay attention to the common themes that have been identified from the self-assessments, make reference to the range of practices, and consider whether such practices are effective in driving cultural changes based on their desired culture, values and behavioural standards.

As a next step, the HKMA will conduct focused reviews with an aim to investigate the incentive systems of front offices in the business of distributing banking, investment and/or insurance products in retail banks. The HKMA has also indicated that it will continue to gauge the progress of bank culture reform in Hong Kong and share industry-wide insights and practices on culture with the industry as and when appropriate, as well as exploring other culture initiatives, taking into account overseas experience and emerging themes that may arise.

SFC updates circular on leveraged and inverse products

The Securities and Futures Commission (SFC) has updated its [circular](#) on leveraged and inverse products, which was last amended in March 2019. The circular sets out the requirements according to which the SFC will consider authorising leveraged and inverse products structured as exchange traded funds for public offering in Hong Kong under the Securities and Futures Ordinance.

The SFC has recently conducted a review regarding applications for leveraged and inverse products tracking Mainland China indices. The SFC has indicated that it is prepared to accept swap-based leveraged and inverse products tracking Mainland equity indices with a leverage factor up to two-time (2x) or negative one-time (-1x). In light of this, paragraphs 8, 9 and 10 of the circular have been amended.

Cross-Industry Committee on JPY Interest Rate Benchmarks issues statement regarding calculation and publication of prototype rates for JPY term risk free rates

The Cross-Industry Committee on Japanese Yen (JPY) Interest Rate Benchmarks has [announced](#) that QUICK Corp., a financial market information vendor which was selected in February 2020 as a calculating and publishing

entity of prototype rates, has begun publishing prototype rates for JPY term risk free rates calculated based on JPY overnight index swap. The Committee expects that the publication of prototype rates will encourage market participants and end users to advance their preparations for the discontinuation of LIBOR. The publication and use of production rates are expected to take place in the next phase.

MAS announces development of fairness metrics to support responsible artificial intelligence adoption in financial services

The Monetary Authority of Singapore (MAS) has [announced](#) that the first phase of the Veritas initiative, a framework for financial institutions to promote the responsible adoption of Artificial Intelligence and Data Analytics (AIDA) announced in November 2019, will commence with the development of fairness metrics in credit risk scoring and customer marketing. The fairness metrics will allow financial institutions to validate the fairness of their AIDA solutions in these two use cases. More use cases will be identified in subsequent phases of the initiative.

Two core teams within the Veritas consortium will be taking on the development of the fairness metrics. The first group, comprising UOB and Element AI, will develop the metrics on credit risk scoring, whilst the second group, comprising HSBC, IAG Firemark Labs and Gradient Institute, will develop the metrics on customer marketing. The consortium will publish a white paper documenting the metrics and release an open-source code to enable financial institutions to adopt the fairness metrics in these two areas by the end of 2020.

Financial institutions will be allowed to integrate the open-source code into their own information technology environment to validate the fairness of their artificial intelligence solutions. Moreover, the open-source code will also be deployed as a service on the 'APIX platform' to allow financial institutions and fintechs to have access to the service and technology providers on the platform who are able to validate their artificial intelligence solutions.

ARRC publishes best practices for transition from USD LIBOR

The US Alternative Reference Rates Committee (ARRC) has published recommended [best practices](#) to assist market participants as they prepare for the cessation of USD LIBOR.

The recommended best practices are intended to clarify the timelines and interim milestones to support a smooth transition away from USD LIBOR to the broad voluntary adoption of the ARRC's recommended alternative reference rate, the Secured Overnight Financing Rate (SOFR). The ARRC has also published an updated [timeline](#) of key transition dates and a [factsheet](#) to accompany the guidance.

The ARRC's recommendations outline date-based guidance on near-term transition steps that market participants could take across floating rate notes, business loans, consumer loans, securitizations, and derivatives. The ARRC's key recommendations are:

- to the extent not already utilized, new USD LIBOR cash products should include ARRC recommended (or substantially similar) fallback language as soon as possible;
- third-party technology and operations vendors relevant to the transition should complete all necessary enhancements to support SOFR by the end of 2020;
- new use of USD LIBOR should stop, with timing depending on specific circumstances in each cash product market; and
- for contracts specifying that a party will select a replacement rate at their discretion following a LIBOR transition event, the determining party should disclose their planned selection to relevant parties at least six months prior to the date that a replacement rate would become effective.

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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