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If you would like to know more about the subjects covered in this publication or our services, please contact:

**International Regulatory Group Contacts**

Marc Benzler +49 69 7199 3304

Caroline Dawson +44 207006 4355

Steven Gatti +1 202 912 5095

Owen Lysak +44 207006 2904

Lena Ng +65 6410 2215

Gareth Old +1 212 878 8539

Mark Shipman + 852 2826 8992

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

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## Securitisation Regulation: Technical standards on disclosure templates, STS notification requirements and securitisation repositories published in Official Journal

Four Commission Delegated Regulations and three Commission Implementing Regulations, laying down various regulatory technical standards (RTS) and implementing technical standards (ITS) relating to the EU Securitisation Regulation, have been published in the Official Journal.

The regulations relating to disclosure are as follows:

- Commission Delegated Regulation (EU) 2020/1224 of 16 October 2019 with regard to RTS specifying the information and the details of a securitisation to be made available by the originator, sponsor and securitisation special purpose entity (SSPE); and
- Commission Implementing Regulation (EU) 2020/1225 of 29 October 2019 laying down ITS with regard to the format and standardised templates for making available the information and details of a securitisation by the originator, sponsor and SSPE.

The regulations relating to the simple, transparent and standardised (STS) notification requirements are as follows:

- Commission Delegated Regulation (EU) 2020/1226 of 12 November 2019 laying down RTS specifying the information to be provided in accordance with the STS notification requirements; and
- Commission Implementing Regulation (EU) 2020/1227 of 12 November 2019 laying down ITS with regard to templates for the provision of information in accordance with the STS notification requirements.

The regulations relating to securitisation repositories are as follows:

- Commission Implementing Regulation (EU) 2020/1228 of 29 November 2019 laying down ITS with regard to the format of applications for registration as a securitisation repository or for extension of a registration of a trade repository;
- Commission Delegated Regulation (EU) 2020/1229 of 29 November 2019 with regard to RTS on securitisation repository operational standards for data collection, aggregation, comparison, access and verification of completeness and consistency; and
- Commission Delegated Regulation (EU) 2020/1230 of 29 November 2019 with regard to RTS specifying the details of the application for registration of a securitisation repository and the details of the simplified application for an extension of registration of a trade repository.

The European Securities and Markets Authority (ESMA) has confirmed that the publication of the technical standards in the Official Journal triggers the following developments, both to take place on 23 September 2020:

- the entry into force of new disclosure templates; and
- the opening of applications for entities to register as a Securitisation Repository (SecRep).

## EMIR: EU Commission adopts draft delegated act on changes to the composition, functioning and management of colleges for CCPs

The EU Commission has adopted a draft delegated act under the European Market Infrastructure Regulation (EMIR) as regards changes to the composition, functioning and management of colleges for central counterparties (CCPs).

Article 18(6) of EMIR, as amended by Regulation (EU) 2019/2099 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs (EMIR 2.2), renewed the mandate for ESMA, in cooperation with the European System of Central Banks (ESCB), to develop draft RTS specifying the conditions under which EU currencies are to be considered as the most relevant and the details of the practical arrangements for the functioning of CCP colleges.

In order to ensure EU-wide coherence of the processes within colleges, EMIR 2.2 mandates that the written agreements determining the practical arrangements for the functioning of colleges should be refined and more standardised.

ESMA's proposal includes amendments to Commission Delegated Regulation (EU) 876/2013 to facilitate a smooth adjustment of CCP colleges to the amended provisions.

Because the proposed amendments are straightforward, limited in scope, and only affect competent authorities and do not impose any additional requirements on market participants, ESMA has not issued its proposed changes for public consultation.

The delegated act will now be forwarded to the EU Council and the Parliament for scrutiny.

## CRR: EBA issues opinion on Commission amendments to draft RTS on economic downturn

The European Banking Authority (EBA) has issued an opinion in response to the EU Commission's intention to amend the EBA's final draft RTS on the specification of the nature, severity and duration of an economic downturn to be taken into account for the estimation of loss given default (LGD) and conversion factors (CF) under the internal rating-based (IRB) approach.

In the opinion, the EBA identifies substantive and non-substantive changes made by the Commission's amendments and proposes the following revisions, among others, with the aim of maintaining the agreed consensus of the originally submitted text:

- the re-introduction of the requirement that economic indicators relating to one downturn period be significantly correlated, clarifying that this condition must be met in conjunction with the occurrence of simultaneous or very close most severe values related to the relevant economic indicators; and

- clarifying that the proportionality of the cost of data take into account the type of indicator (e.g. aggregate default rates or aggregate loss rates).

The EBA also sets out its reasons for agreeing to the Commission's proposal to remove the possibility for institutions to consider a period shorter than twenty years for economic indicators relating to a Member State that acceded to the EU less than 20 years ago.

The revised amended RTS on economic downturn are set out in Annex 1 to the opinion.

## EBA publishes annual report on resolution colleges

The EBA has published its annual report on resolution colleges for 2019, setting out its observations on the efficiency, effectiveness and consistency of the functioning of resolution colleges during the year, and the progress achieved in key areas of resolution planning. The report also highlights the main areas that the EBA will monitor in 2020, which include:

- the credibility and feasibility of the preferred resolution strategy in the current environment and the analysis of alternative resolution strategies;
- the extent to which supervisory authorities, finance ministries and administrators of deposit guarantee schemes are actively involved in consideration of their respective roles;
- analysis of the suitability of written arrangements underpinning colleges; and
- the extent to which colleges undertake reviews of business reorganisation plans to assess if changes are required in response to the economic effects of COVID-19.

According to the report, written arrangements that underpin the functioning of each college should be reviewed to assess their suitability, in particular to reflect the increased prevalence of remote working and the accuracy of emergency contact details. The EBA has found that resolution colleges continue to be an active forum for resolution authorities in the development of resolution plans for cross-border banking groups, where the intensity and quality of cooperation and dialogue has also improved.

## MiFID2/MiFIR: ESMA launches call for evidence on practical application of equity and non-equity instruments transparency regime

ESMA has launched a call for evidence in the context of its intention to review Commission Delegated Regulation (EU) No 2017/587 (RTS 1) and Commission Delegated Regulation (EU) No 2017/583 (RTS 2) in relation to the technical rules on pre- and post-trade transparency obligations for equity and non-equity instruments under MiFID2/MiFIR.

The purpose of the exercise is separate to ESMA's current transparency review, and instead seeks to identify practical issues, including any technical issues, policy gaps and unclear provisions, to be addressed in a consultation paper and ultimately a final report to be submitted to the EU Commission setting out any proposed changes to RTS 1 and 2.

The deadline for responses is 31 October 2020. Following consideration of the responses, ESMA intends to publish a consultation paper in 2021.

## SRD2: ESMA publishes list of national thresholds for shareholder identification

ESMA has published a document listing the thresholds above which shareholders can be identified in EU Member States.

The document sets out:

- national thresholds for shareholder identification, where available;
- relevant national legislation and rules; and
- an indication of Member States where the revised Shareholder Rights Directive (SRD2) has not yet been transposed into national law.

The revised SRD2 requires Member States to ensure that companies have the right to identify their shareholders. Member States may provide for companies having a registered office on their territory to be only allowed to request the identification of shareholders holding more than a certain percentage (not exceeding 0.5%) of shares or voting rights.

## Brexit: PRA publishes Dear CEO letter on the temporary permissions regime

The Prudential Regulation Authority (PRA) has published a Dear CEO letter reminding firms to be operationally prepared to enter, and meet the regulatory requirements of, the temporary permissions regime (TPR).

The TPR, during which firms with a deemed Part 4A permission or passporting firms with a deemed variation of a top-up permission can carry on their existing activities in the UK for up to a maximum of three years (subject to HM Treasury's power to extend the duration of the regime by increments of twelve months), takes immediate effect at the end of the transition period at 11pm on 31 December 2020.

Among other things, the letter notes that the PRA has updated its webpages on EU withdrawal and the TPR, and asks firms to read the information and take all appropriate actions to ensure they are fully operationally prepared for entering the TPR.

## PRA publishes responses to occasional consultation paper CP3/20

The PRA has published a policy statement setting out its final rules and feedback on Chapters 2 to 7 of its occasional consultation paper CP3/20.

CP3/20 set out proposals to:

- update supervisory statement (SS) 24/15 and the 'Instructions for completing PRA110' to remove redundant material, move certain expectations, and align expectations with existing policy material (Chapter 2);
- replace a reference to LIBOR with Sterling Overnight Index Average (SONIA), as the risk-free rate benchmark within Rule 18.4(2) of Insurance Company – Mathematical Reserves (Chapter 3);

- make minor updates, corrections, and clarifications to National Specific Templates (NSTs), NST LOG files, the market risk sensitivities template and associated instructions, and SS7/17 (Chapter 4);
- make minor administrative changes and corrections to several Senior Managers & Certification Regime (SM&CR) forms (Chapter 5);
- remove incorrect validations from Part 3 of the Branch Return Form (Chapter 6); and
- rectify errors identified within versions of the PRA101 and Capital+ reporting templates, made effective through an update to the Regulatory Reporting Part of the PRA Rulebook (Chapter 7).

The PRA received responses to Chapter 4 that requested clarity on several aspects of the market risk sensitivities template. No responses were received in relation to the other chapters, but the PRA has made minor amendments to the proposed policy in Chapters 5 and 6.

The implementation dates for the policy changes set out in the statement are 4 September 2020 (Chapters 2, 3, 6, and 7), 30 November 2020 (Chapter 4), and 25 October 2020 (Chapter 5).

## Working Group on Sterling Risk-Free Reference Rates recommends SONIA loan market conventions

The Working Group on Sterling Risk-Free Reference Rates has published recommendations on conventions to support the use of SONIA in loan markets for sterling bilateral and syndicated facilities, including multicurrency syndicated facilities where there is a sterling currency option.

The aim of these recommendations is to enable and expedite the transition away from the use of LIBOR based products for the loan market, with the ultimate aim of market participants being ready to offer non-LIBOR loans products by end Q3 2020. The Working Group recommends:

- that loan markets should move consistently towards SONIA, the Working Group's recommended alternative to Sterling LIBOR, implemented via a compounded in arrears methodology;
- using the approach of a Five Banking Days Lookback without Observation Shift. This aligns with the approach recommended by the Alternative Reference Rate Committee for US dollar loan markets and, in the Working Group's view, is most likely to be made rapidly available. Whilst this approach is the recommendation, where lenders are also able to offer lookback with an observation shift this remains a viable and robust alternative;
- that it may be necessary to apply the floor to each daily interest rate before compounding, where an interest rate floor is used; and
- that accrued interest should be paid at the time of principal prepayment.

These recommendations are not binding and the Working Group recognises that in certain transaction or client-specific circumstances an alternative methodology or rate may be more appropriate or convenient, and that market conventions may continue to evolve over time.

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## Bank of Italy issues new regulation on recovery plans

The Bank of Italy has issued a new regulation regarding recovery plans in application of Commission Delegated Regulation (EU) 2019/348, which supplements the Bank Recovery and Resolution Directive (BRRD) with regard to RTS specifying the criteria for assessing the impact of an institution's failure on financial markets, on other institutions and on funding conditions.

The assessment is intended to identify those institutions that may be granted the possibility to prepare recovery plans in a simplified form. With this piece of regulation, which fully replaces the previous one on this matter, the Bank of Italy is exercising certain discretionary powers with respect to less significant banks and investment firms (SIMs) and coordinating them with:

- the EBA guidelines on the minimum qualitative and quantitative requirements of recovery plans (EBA/GL/2015/02);
- the EBA guidelines on scenarios to be used in recovery plans (EBA/GL/2014/06); and
- the EBA recommendation on the treatment of entities in a group recovery plan (EBA/REC/2017/02).

## CSSF indicates that UCITS must disinvest from their positions in loans by 31 December 2020

The Commission de Surveillance du Secteur Financier (CSSF) has updated its frequently asked questions on the Luxembourg Law of 17 December 2010 relating to undertakings for collective investment (UCI Law) to reflect its new position in relation to the eligibility of loans as UCITS investments.

Following an internal eligibility analysis and discussions at the level of ESMA and with other national competent authorities earlier in 2020, the CSSF considers that loans can no longer be deemed eligible (direct) investments for UCITS as they do not fall into the list of assets set out in Article 41 (1) and (2) of the UCI Law, and in particular do not qualify as either money market instruments or transferable securities within the meaning of the UCI Law.

As a consequence of this new position, UCITS that are invested in loans are required to disinvest from those positions by 31 December 2020, taking into account the best interests of investors. In addition, the prospectuses of those UCITS have to be updated by 31 March 2021 to remove the possibility of investments in loans.

Indirect investment by UCITS in loans through eligible transferable securities or money market instruments (e.g. via investment in shares of UCIs, notes giving exposure to the loans, etc.) may remain possible subject to due eligibility analysis according to the UCI Law and the Grand-Ducal Regulation of 8 February 2008 and provided that there is no derivative in the structure implying a look through on the loans.

## ASIC provides regulatory relief for companies planning initial public offering

Following the responses to the feedback it received on its February 2020 public consultation on proposals to grant conditional relief for voluntary escrow arrangements and pre-prospectus communications in connection with an initial public offer (IPO), the Australian Securities and Investments Commission

(ASIC) has issued regulatory relief to help reduce red tape for companies undertaking an IPO.

ASIC has offered to provide the relief through the creation of the following two instruments:

- ASIC Corporations (Amendment) Instrument 2020/721, which amends the ASIC Class Order [CO 13/520] to facilitate voluntary escrow arrangements under an IPO while ensuring that the relevant interests of an issuer, professional underwriter or lead manager arising from the escrow agreement are disregarded for the purposes of the takeover provisions, but not the substantial holding provisions, in the Corporations Act 2001; and
- ASIC Corporations (IPO Communications) Instrument 2020/722, which facilitates non-promotional communications to security holders and employees of a company proposing to undertake an IPO prior to lodging a disclosure document with ASIC.

ASIC has clarified that the relief has been provided subject to the issuers meeting certain requirements and conditions of the relief.

ASIC has also updated its guidance in the ‘Regulatory Guide 5: Relevant Interests and Substantial Holding Notices’ in relation to voluntary escrow arrangements and the ‘Regulatory Guide 254: Offering securities under a disclosure document’ in relation to advertising and publicity for offers of securities that require a disclosure document. These regulatory guides are intended to provide guidance on the circumstances under which an issuer may rely upon ASIC’s relief.

Moreover, ASIC has indicated that it will continue to consider individual relief applications in relation to voluntary escrow arrangements and pre-prospectus communications for those situations outside of the legislative relief.

## ASIC and APRA publish corporate plans for 2020-2024

ASIC and the Australian Prudential Regulation Authority (APRA) have published their corporate plans for 2020-2024.

ASIC’s plan outlines the actions that ASIC is taking with a view to addressing the long-term impact of the COVID-19 pandemic as well as longer term threats and harms in the regulatory environment. These actions are guided by the following five strategic priorities:

- protecting consumers from harm at a time of heightened vulnerability;
- maintaining financial system resilience and stability;
- supporting Australian businesses to respond to the effects of the COVID-19 pandemic;
- continuing to identify, disrupt and take enforcement action against the most harmful conduct; and
- continuing to build ASIC’s organisational capacity in challenging times.

APRA’s plan has been updated to address the impact of the COVID-19 pandemic and continues to be founded on delivering four key community outcomes over the planning horizon, which form the long-term objectives of the 2020-2024 plan:

- maintaining financial sector resilience;

- improving outcomes for superannuation members;
- transforming governance, culture, remuneration and accountability across all regulated institutions; and
- improving cyber resilience across the financial system.

## HKEX concludes consultation on proposals to codify general waivers and principles relating to IPOs and listed issuers

The Stock Exchange of Hong Kong Limited (SEHK), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), has published the conclusions to its August 2019 public consultation on the proposed codification of general waivers and principles relating to initial public offerings (IPOs) and listed issuers in the HKEX listing rules, and minor amendments to the existing listing rules. Considering the feedback of respondents, the SEHK will adopt, with modifications to reflect comments received, all the consultation proposals except for the 'company secretary proposal'.

The key changes to the related listing rules include:

- codification of a number of waivers with general effect previously approved by the Securities and Futures Commission (SFC) which relate to the following:
  - publication and distribution of annual results and reports;
  - shareholder approval requirement for bonus or capitalisation issues by People's Republic of China (PRC) incorporated issuers;
  - calculation of the consideration ratio for PRC incorporated issuers dually listed on the SEHK and a PRC exchange; and
  - inclusion of stock code in documents;
- codification of general principles underpinning a number of waivers which have been granted to new applicants and/or listed issuers relating to financial disclosure matters, incentive schemes, and working capital statement in listing documents and transaction circulars of Main Board issuers that are banking companies or insurance companies; and
- minor amendments to the listing rules for the purpose of providing greater clarity to these rules, as well as to codify a number of administrative guidance that is currently provided in guidance letters or listing decisions.

The listing rule amendments are effective from 1 October 2020.

The SEHK has also published a new guidance letter on experience and qualification requirements of a company secretary to provide clarifications and guidance on the policy rationale of the Main Board Listing Rule 3.28 (GEM Listing Rule 5.14) and factors it considers when granting a waiver to this rule, and the related conditions.

## HKMA further extends pre-approved principal payment holiday scheme

The Hong Kong Monetary Authority (HKMA), together with the Banking Sector SME Lending Coordination Mechanism, has announced that the Pre-approved Principal Payment Holiday Scheme has been extended for a further six months to April 2021, in light of the ongoing impact of the COVID-19 outbreak on economic activities and the cash flow difficulties faced by some corporates.

Under the extended arrangement, the principal payments of all loans of eligible corporate customers falling due between November 2020 and April 2021 will be deferred by six months except for repayments of trade loans, which will be deferred by 90 days. The HKMA has clarified that, as customers are already familiar with the Scheme, authorised institutions will not be required to issue individual notifications to eligible customers regarding the further extension of the Scheme. It has also asked corporate customers in need of relief to contact their respective banks.

The HKMA has also clarified that, given the time elapsed since the original launch of the Scheme in May 2020, authorised institutions may request customers (especially those who have been granted multiple extensions of payment holidays) to provide up-to-date business and financial information to better understand their needs when processing their cases. All other terms of the Scheme set out in the annex to the HKMA's circular on 17 April 2020 will continue to apply.

For corporate customers not eligible for the Scheme, the HKMA expects authorised institutions to adopt a sympathetic stance and understand whether these customers require similar deferments and assess, on a case-by-case basis, whether it is in line with established risk management principles to provide such arrangements.

## HKMA revises supervisory policy manual module on regulatory framework for supervision of liquidity risk

HKMA has issued a revised version of its supervisory policy manual (SPM) module titled 'LM-1: Regulatory Framework for Supervision of Liquidity Risk' as a statutory guideline under the Banking Ordinance.

The SPM module has been revised to incorporate the HKMA's regulatory requirements consequential to the commencement of the Banking (Liquidity) (Amendment) Rules 2019, and reflect the latest development in the Basel III liquidity standards.

## SFC concludes consultation on changes to open-ended fund companies regime and consults further on customer due diligence requirements

The SFC has published the conclusions to its December 2019 public consultation on proposed enhancements to the open-ended fund companies (OFC) regime.

Considering the feedback received, the SFC has decided to implement the reforms to the OFC regime, which include:

- removing all investment restrictions for private OFCs to allow them to invest in all asset classes without any limit;
- allowing intermediaries licensed or registered for the regulated activity of dealing in securities to act as custodians of private OFCs provided that they meet certain requirements as set out in the revised Code on OFCs (OFC Code); and
- introducing a statutory re-domiciliation mechanism to enable overseas corporate funds to re-domicile to Hong Kong.

The SFC has indicated that the removal of the investment restrictions and expansion of the custodian eligibility requirements will take immediate effect upon gazettal of the revised OFC Code. In this regard, the SFC will allow existing private OFC custodians a six-month transition period from the gazettal of the revised OFC Code to make necessary adjustments in order to comply with the new safekeeping requirements. In relation to the re-domiciliation mechanism, the SFC has indicated that the new mechanism will take immediate effect upon completion of the legislative process.

In addition, the SFC is further consulting on the customer due diligence (CDD) requirements for OFCs to better align them with the practices adopted by other investment funds in Hong Kong. Under the proposed CDD requirements, OFCs will be required to appoint a responsible person to carry out anti-money laundering and counter-financing of terrorism functions as stipulated under Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance.

Comments on the further consultation are due by 5 October 2020.

## Industry-led Steering Committee outlines role of fallback rate arrangements for swap offer rate derivatives

The Steering Committee for swap offer rate (SOR) Transition to Singapore overnight rate average (SORA) has outlined its views on the role played by Fallback Rate (SOR) in the ongoing transition from SOR to SORA, and reiterated its support for the use of Fallback Rate (SOR) as the primary fallback reference rate for SOR derivatives.

Under the SOR-to-SORA transition roadmap set out by the Committee, market participants are expected to transition from SOR to SORA well ahead of end-2021, in order to ensure that parties to outstanding SOR transactions have good control over the timing and execution of their transition plans. The Committee notes that there could, however, be scenarios where market participants are unable to complete the transition for all their contracts despite best efforts, in which case they will be required to have robust contractual fallbacks in place to address the risks of contractual frustration and settlement issues following the discontinuation of SOR.

The Committee has worked with the International Swaps and Derivatives Association (ISDA) to identify Fallback Rate (SOR) as the primary fallback reference rate for SOR derivatives, with SORA-based reference rates ranking lower in the hierarchy of fallbacks and applying if Fallback Rate (SOR) is unavailable. Market participants have been advised to incorporate the hierarchy of fallbacks into existing SOR contracts by adhering to ISDA's interbank offered rate (IBOR) Fallback Protocol, which is expected to be launched soon.

The Committee has also emphasised that Fallback Rate (SOR) is intended solely as a fallback reference rate, and is not intended for usage in new derivative contracts as it will likely become illiquid, challenging to value, and difficult to transition from. Hence, to limit the reliance on Fallback Rate (SOR) and pre-empt any possible bifurcation of the market between SORA and Fallback Rate (SOR), the Committee has announced that Fallback Rate (SOR) will only be published for about three years following the fallback trigger, after which time Fallback Rate (SOR) is expected to be permanently discontinued.

## MAS enhances access to liquidity facilities to strengthen banking sector resilience

The Monetary Authority of Singapore (MAS) has introduced measures to enhance the banking system's access to Singapore dollar (SGD) and US dollar (USD) funding, strengthen banking sector resilience, promote more stable SGD and USD funding conditions, and support credit intermediation amid the continued economic impact of the COVID-19 pandemic. In particular, the new measures include the following:

- the establishment of the MAS SGD term facility – a new MAS SGD term facility offering SGD funds in the 1-month and 3-months tenor will be launched in the week of 28 September 2020. A wider range of collateral comprising cash and marketable securities in SGD and major currencies will be accepted. Pricing will be set above prevailing market rates;
- acceptance of residential property loans as collateral at the MAS SGD term facility – domestic systemically important banks that are incorporated in Singapore will be able to pledge eligible residential property loans as collateral at the MAS SGD term facility. The MAS will also raise the asset encumbrance limit imposed on locally-incorporated banks under the Banking Act to 10% of a bank's total assets, up from the current limit of 4%; and
- the expansion of collateral accepted at the MAS USD facility – the MAS will expand the range of collateral that banks in Singapore can use to access USD liquidity from the MAS USD facility. Presently, banks in Singapore can borrow USD by pledging eligible SGD-denominated collateral. Under this measure, banks will be able to obtain USD liquidity by pledging a wider pool of cash and marketable securities from 28 September 2020, in line with what is accepted at the SGD term facility.

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