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EMIR: Delegated Regulations amending application timelines for exchange of collateral risk management procedures and clearing obligation published in Official Journal

Two Delegated Regulations amending the application timelines for certain elements of the European Market Infrastructure Regulation (EMIR) regime have been published in the Official Journal (OJ).

Commission Delegated Regulation (EU) 2021/236 amends Delegated Regulation 2016/2251 (supplementing EMIR with regard to regulatory technical standards (RTS) for risk-mitigation for OTC derivatives contracts not cleared by a central counterparty) as regards when certain risk management procedures will start to apply for the purpose of the exchange of collateral. Amongst other things, Delegated Regulation (EU) 2021/236:

- extends the temporary exemption for intragroup transactions to 30 June 2022;
- extends the temporary exemption for single-stock equity options or index options (equity options) to 4 January 2024 in order to avoid undue costs and an unlevel playing field situation for EU counterparties; and
- allows UK counterparties to be replaced with EU counterparties without triggering the bilateral margin and clearing obligation requirements under certain conditions until 1 January 2022. This limited exemption is intended to create a level playing field between EU counterparties and preserve the regulatory and economic conditions under which the contracts were originally entered into.

Commission Delegated Regulation 2021/237 amends RTS laid down in Delegated Regulations 2015/2205, 2016/592 and 2016/1178 as regards the date at which the clearing obligation takes effect for certain types of contracts.

Both Delegated Regulations entered into force on 18 February 2021.

CRR: Commission Implementing Regulation with regard to closely correlated currencies published in Official Journal

Commission Implementing Regulation (EU) 2021/249 amending Implementing Regulation (EU) 2015/2197 laying down implementing technical standards (ITS) with regard to closely correlated currencies under the Capital Requirements Regulation (CRR) has been published in the OJ. The Regulation updates the list of currencies for the purposes of calculating the capital requirements for foreign-exchange risk according to the standardised rules.

The Regulation will enter into force on 10 March 2021.

CRR: EU Commission reports on appropriateness of total exposure measure and possible extension of leverage ratio buffer framework to O-SIIs

The EU Commission has published a report to the EU Parliament and the Council discussing the appropriateness of:

- the definition and calculation of the total exposure measure referred to in Article 429(4) of the CRR, including the treatment of bank capital; and
- a possible extension of the leverage ratio buffer framework to other systemically important institutions (O-SIIs). The report sets out differences between the revised Capital Requirements Regulation (CRR2) regime for global systemically important institutions (G-SIIs) and O-SIIs as well as points relating to the postponement of the application date for the leverage ratio buffer for G-SIIs, amongst other considerations, and concludes that introducing a leverage ratio surcharge for O-SIIs would be inappropriate in the current context.

The Commission sets out its intention to amend the total exposure measure framework as part of an upcoming legislative proposal relating to Basel III implementation.

Coronavirus: EU Council formally adopts MiFID2 Quick Fix and Prospectus Regulation amendments

The EU Council has formally adopted the EU Commission's proposals for a directive amending MiFID2 as regards information requirements, product governance and position limits (MiFID2 Quick Fix) and a regulation amending the Prospectus Regulation.

The amendments set out in MiFID2 Quick Fix are intended to simplify information requirements and support the growth of euro-denominated derivatives markets.

The amendments to the Prospectus Regulation introduce a short-form 'EU Recovery Prospectus', which will apply until 31 December 2022.

The legislative texts of the amending directive and amending regulation will be signed on 16 February and are expected to be published in the OJ before the end of February.

MiFID Quick Fix will enter into force on the day following its publication in the OJ and become applicable 12 months later. Member States will be required to transpose the amendments into national law within nine months of its entry into force.

The regulation amending the Prospectus Regulation will enter into force on the 20th day following its publication in the OJ.

Both measures form part of the Capital Markets Recovery Package aimed at facilitating the EU's economic recovery from the COVID-19 pandemic. Proposed amendments to the EU securitisation framework as part of the package are due to be voted on by the EU Parliament in March and expected to be adopted by the EU Council thereafter.

CRR: EBA publishes final guidelines on conditions for alternative treatment of tri-party repurchase agreements for large exposure purposes

The European Banking Authority (EBA) has published its final guidelines specifying the conditions for applying the alternative treatment of institutions' exposures related to tri-party repurchase agreements (tri-party repos) for large exposure purposes.

The CRR sets out a mandatory substitution approach, and in particular for collateralised exposures sets out conditions for replacing the total amount of an institution's exposures to a collateral issuer due to a tri-party repo facilitated by a tri-party agent with the full amount of the limits that the institution has instructed the tri-party agent to apply to those exposures. The EBA's guidelines further specify those conditions, including the conditions and frequency for determining, monitoring and revising the limits that the institution specified to the tri-party agent, in fulfilment of a CRR mandate.

The final guidelines are published with amendments arising from a three-month consultation. They apply from 28 June 2021.

CRR: EBA consults on guidance to assess breaches of large exposure limits

The EBA has launched a consultation on the criteria that competent authorities should use to assess a breach of the large exposure limits under Article 395(1) of the CRR.

The draft guidelines clarify that any breach of the large exposure limits should always be considered as an exceptional case. According to the draft guidance, competent authorities should consider at least the following three criteria:

- whether the breach was a rare event;
- whether the institution could foresee the event when it had applied a proper and effective risk management; and
- whether it was caused by reasons beyond the institution's control.

If the breach does not fulfil those criteria, the competent authority should not grant the institution more than three months to restore compliance with the large exposure limit.

The draft guidelines also provide competent authorities with a set of criteria to determine the appropriate time that they could grant institutions to return to compliance with the large exposure limits. When an institution is granted more than three months to comply with the limits, it should present a compliance plan to the competent authority with a number of measures as listed in the guidelines.

The proposed guidelines will apply from 1 March 2022.

Comments are due by 17 May 2021.

EBA publishes draft ITS on disclosure of indicators of global systemic importance by G-SIIs

The EBA has published its final draft ITS on the disclosure of indicators of G-SIIs. The ITS are intended to help identify which banks are G-SIIs and to set out the formats and processes by which G-SIIs disclose the information that they are required to disclose under Titles II and III of Part 8 of the CRR2. They implement the disclosure requirements in Article 441 of CRR2 and amend the final draft ITS on institutions' public disclosures to incorporate G-SII disclosures.

ESMA publishes statement on social media driven share trading

The European Securities and Markets Authority (ESMA) has published a statement on the risks connected to trading decisions based on information shared on social media.

The statement, issued as part of ESMA's investor protection objective, follows recent episodes in the United States of high price volatility linked to a significant accumulation of net short positions and concerted action by some retail investors as a result of information shared on social media and unregulated online platforms.

The statement notes that although market rules and structures are different in the EU and that increased participation of retail investors in stock markets is welcome for the development of the Capital Markets Union, it cannot be ruled out that similar circumstances may occur in the EU. ESMA therefore highlights the following issues:

- investors should use information from reliable sources to make investment decisions;
- price volatility increases investors' risk of loss; and
- the possible market abuse risks related to the organisation or execution of coordinated trade strategies and the dissemination of information on social media and online platforms.

ESMA and national competent authorities intend to continue analysing market events and consider adopting further initiatives aimed at preserving investor protection and market integrity.

Brexit: SIs on UK Emissions Trading Scheme laid before Parliament

The draft Recognised Auction Platforms (Amendment and Miscellaneous Provisions) Regulations 2021 and draft Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 have been published and laid before Parliament.

Both draft statutory instruments (SIs) are being made in relation to the UK Emissions Trading Scheme (ETS), which was established by the Greenhouse

Gas ETS Order 2020 (the GGETS Order) following the end of the UK's participation in the EU ETS at the end of the transition period on 31 December 2020.

Among other things, the draft Recognised Auction Platforms SI:

- ensures the act of bidding in a UK emission allowance auction is a regulated activity;
- creates an oversight role for the Financial Conduct Authority (FCA) in the UK ETS and emission allowance market;
- further amends the Regulated Activities Order (RAO) to bring UK emission allowances into scope of what is considered a financial instrument and ensure they receive the correct regulatory treatment; and
- makes other consequential amendments to financial services law, such as UK MAR, to incorporate the UK ETS.

The draft explanatory memorandum notes that the amendments do not remove the ability to trade or regulate financial instruments based on EU emissions allowances.

The draft GGETS Auctioning SI, published alongside the draft Recognised Auction Platforms SI, sets out the rules for auctioning emission allowances created under the GGETS Order.

Both SIs come into force on the day after the day they are made.

The FCA intends to consult on its own rule changes and to provide guidance on how the regulations apply to the UK ETS.

PRA consults on implementation of outstanding Basel III standards

The Prudential Regulation Authority (PRA) has launched a consultation on its proposed approach to implementing some of the Basel III standards that were not implemented before the end of the Brexit transition period. In the EU, these standards are being implemented under CRR2; in the UK, the PRA intends to implement them through a new PRA rule instrument, which will broadly mirror CRR2 although with some areas of divergence if required to better align with the PRA's objectives. The proposals covered in the consultation include:

- the level and scope of application of the requirements for UK firms;
- revision to the definition of capital, in particular for the treatment of Common Equity Tier 1 deductions for software assets and certain collective investment undertakings (CIUs);
- revised Basel standards for prudent valuation for market risk and amendments to market risk management requirements;
- revised Basel standards for calculating risk-weighted exposures to CIUs under the standardised approach and a more prudent treatment of exposures to certain third country CIUs;
- a new Basel standardised approach to counterparty credit risk and the revised Basel framework for exposures to central counterparties;
- clarification of the treatment of operating leases under the basic indicator approach for operational risk;

- implementation of the Basel III standards revised large exposures framework;
- implementation of Basel III standards liquidity coverage ratio;
- Basel III standards for the net stable funding ratio;
- an update to supervisory reporting;
- revised Basel disclosure standards, aimed at enhancing the comparability, quality, and consistency of institutions' regulatory disclosures;
- the currency in which requirements would be set;
- the interaction between the temporary transitional power and CRR rules; and
- enhanced proportionality for smaller firms.

Comments are due by 3 May 2021. Once the rules are finalised, the PRA expects the standards to be implemented by firms from 1 January 2022.

HM Treasury consults on wind-down of critical benchmarks and legacy contracts

HM Treasury (HMT) has launched a consultation on additional legal protections for parties affected by the wind-down of a critical benchmark, such as LIBOR.

Following the introduction of the Financial Services Bill to Parliament, it has been suggested to HMT to incorporate a supplementary legal 'safe harbour' for relevant legacy contracts. A legal safe harbour could act as a contingency in reducing the potential risk of contractual uncertainty and disputes in respect of certain legacy contracts referencing or relying upon a benchmark that has been designated as an Article 23A benchmark, and that may be subject to a change in methodology under Article 23D.

HMT is seeking to understand the extent to which there is uncertainty over the continued application of a critical benchmark to contracts where the FCA has exercised its power to direct a change in how the benchmark is determined under the Benchmarks Regulation, and the risk of associated litigation.

Comments are due by 15 March 2021.

Working Group on Sterling Risk-Free Reference Rates publishes paper on non-linear derivatives referencing GBP LIBOR ICE Swap Rate

The Working Group on Sterling Risk-Free Reference Rates has published a paper setting out a potential methodology using SONIA-based rates which could form a replacement for GBP LIBOR ISR.

The paper is intended to support market participants to transition non-linear derivatives, structured products and cash market instruments that reference the GBP LIBOR ISR, in line with the target milestones in the Working Group's roadmap and priorities for 2021. The paper considers the use of SONIA swap rates, such as GBP SONIA ISR, to develop a potential methodology for a replacement for GBP LIBOR ISR.

ACPR calls for extreme caution as regards distributions until 30 September 2021

The Autorité de contrôle prudentiel et de résolution (ACPR) has decided to follow the European Systemic Risk Board (ESRB) 's recommendation, issued on 25 January 2021, on the restriction of distributions during the COVID-19 pandemic. Accordingly, the ACPR calls on institutions subject to its supervision (credit institutions apart from clearing houses, financing companies, investment firms, insurance and reinsurance undertakings) to exercise extreme caution as regards distributions (dividends, share buy-back, variable remuneration) until 30 September 2021. Institutions are invited to communicate their possible dividend distribution plans to their usual control team before making any decision. These requests will be examined on a case by case basis by the General Secretariat of the ACPR. The European Central Bank (ECB) website has further information for lower size credit institutions and financing companies. As regards insurance and reinsurance, these will have to provide three-year projections of their amount of own funds and solvency ratio, in the context of two scenarios at least.

Draft law on transparency financial information to amend German Money Laundering Act adopted

The German Federal Government has adopted a draft law, the Transparency Financial Information Act (Transparenz-Finanzinformationsgesetz), to amend the German Money Laundering Act (Geldwäschegesetz, GwG). This is intended to combat money laundering more effectively through greater transparency and an intensified exchange of information.

The German transparency register has so far been designed as a catch-all register, i.e. an entry of companies already registered in the commercial, cooperative or partnership register is unnecessary, in so far as all necessary data on the beneficial owners can be obtained from these registers. This means that those obliged under money laundering laws within the meaning of section 2 paragraph 1 GwG can sometimes only determine the beneficial owner by evaluating several complex register documents. With the catch-all register becoming a full register, the data on all beneficial owners will now be directly entered and digitally accessible. This will also create greater legal certainty with regard to the verification obligations in the area of money laundering.

The draft law also aims to further improve the national and international networking of the various actors in the field of prevention of money laundering and terrorist financing. For this purpose, existing mechanisms such as the German account retrieval procedure and the intensive information exchange channels between law enforcement agencies and the Financial Intelligent Unit (FIU) are taken up and transferred to the European context.

Bank of Italy amends its regulation on collective investment management

Following its consultation document on the introduction of a set of amendments to its Regulation of 19 January 2015 (as amended) on collective investment management, the Bank of Italy has now adopted a new regulation, which, amongst other things, affects certain investment limits applicable to EU and Italian credit funds. In particular, the new regime has been simplified by removing the existing 10% concentration limit for investments in loans to the same (Italian) counterparty, with a view to favouring the use of these EU and Italian credit funds for the purposes of financing Italy-based borrowers.

Luxembourg bill implementing EU regulation on mutual recognition of freezing orders and confiscation orders published

Bill No. 7758 implementing Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders has been lodged with the Luxembourg Parliament.

The bill is intended to adapt Luxembourg law to the obligations deriving from Regulation (EU) 2018/1805, constituting a further instrument in the system of judicial cooperation in criminal law matters within the EU and based on the cornerstone principle of mutual recognition of judicial decisions.

The new Luxembourg law provisions feed into the current legal regime, which consists mainly of the law of 8 August 2000 on international judicial cooperation in criminal law matters and of the law of 1 August 2018, notably with regard to the provisions on judicial remedies.

The bill sets out the conditions that need to be fulfilled for the recognition and execution by Luxembourg authorities of a foreign freezing order or a foreign confiscation order. It also establishes the relevant authorities presiding over the recognition and implementation proceedings, as well as the different judicial remedies available to persons or entities subject to the orders in question.

Luxembourg bill modernising authorisation regime for financial and insurance sector entities published

Bill No. 7761 modernising the authorisation regime for entities in the financial and insurance sector has been lodged with the Luxembourg Parliament.

In particular, the bill modernises the authorisation regime by granting the Commission de Surveillance du Secteur Financier (CSSF) and the Commissariat aux Assurances (CAA) the power directly to grant and withdraw the authorisation of entities subject to their respective supervision. The authorisation for these entities would hence no longer be granted by the Minister in charge of the financial sector (i.e. currently the Minister of Finance).

The changes to the law therefore proposed by the bill take into account the evolution of EU law, which is increasingly advocating the allocation of authorisation powers to the competent national authorities in charge of prudential supervision and reflects analogous allocation of authorisation powers to the European Central Bank (with regard to Eurozone credit institutions within the scope of the Single Supervisory Mechanism Regulation (EU) No 1024/2013) and ESMA (with regard to EU central counterparties) at the European level.

The bill aims to reflect the change in approach in a series of sectoral laws relating to the financial sector, including the financial sector law, the CSSF law, the payment services law, the insurance sector law and the markets in financial instruments law.

The bill foresees a transitional provision under which already authorised entities continue to benefit from their existing ministerial authorisation.

The lodging of the bill with the Parliament constitutes the start of the legislative procedure.

CSSF issues press release on financial innovation

The CSSF has issued a press release on its work and involvement regarding financial innovation, which is intended to raise awareness and communicate the CSSF's position on financial innovation to the public and the industry.

Amongst other things, the CSSF has announced the creation of a new division dedicated to financial innovation within its Innovation, Payments, Market Infrastructures and Governance Department, constituting the 'Innovation Hub' of the CSSF. The Innovation Hub is the single point of contact within the CSSF for any person seeking to present an innovative solution, initiate an open dialogue or raise any question related to financial innovation. The Innovation Hub can be contacted via the following e-mail address: innovation@cssf.lu. Detailed information on the dialogue with the CSSF and the various stages of assessment of a financial innovation project is set out in the press release.

The press release further explains the approaches the CSSF relies on to meet the challenges faced by technological innovation in financial services and markets, namely a proactive open regulatory approach, a prudent risk-based regulatory approach as well as a technology neutral approach.

The CSSF also describes the areas related to new technologies in which it currently conducts research and evaluates their concrete application in the financial sector. These areas include distributed ledger technologies, virtual/crypto assets and virtual/crypto asset service providers, emergence of new payment services providers, use of artificial intelligence, provision of robo-advice and crowdfunding services.

CSSF issues press release on transaction reporting obligation

The CSSF has issued a press release on the monitoring of the obligation for credit institutions and investment firms to report transactions in financial instruments as set out in Article 26 of MiFIR and the quality of the transaction reporting data.

In its press release, the CSSF provides information on the number of reporting entities (134 investment firms as of 1 January 2021) as well as the number of reports received by the CSSF in 2020 (30,346,915 reports). More particularly, the press release is intended to inform all reporting entities about the quality and completeness campaigns that the CSSF conducted during the year 2020. In this context, the CSSF highlights the following observations:

- several sources of error and inconsistencies have been detected in the context of the transmission of an order pursuant to Article 4 of RTS 22 (e.g. overly broad interpretation of the exemption in Article 2(5)(m) of RTS 22, confusion between a delegation of the reporting obligation and an order transmission in accordance with Article 4 of RTS 22 or transmission agreements with companies which do not fall within the scope of Article 26 of MiFIR (in particular entities from third countries) and which are therefore not in line with Article 4(1)(c) of RTS 22);
- some inconsistencies have been detected regarding the trading venue transaction identification codes (TVTIC);

- as far as field 5 is concerned, the CSSF reminds reporting entities that, as a general rule, apart from the transaction reports that an operator of a trading venue must submit to the CSSF in relation to transactions executed by its members not falling within the scope of MiFIR, all other transaction reports submitted to the CSSF by investment firms must include 'true' in field 5;
- the CSSF points out the importance of timely reporting;
- some inconsistencies have been detected regarding trading capacity (field 29); and
- some discrepancies have been noted between the number of reports submitted by one reporting entity and the number of reports submitted by its counterparty for the same traded quantity (in aggregate) of the same instrument at the same date.

Where inconsistencies and/or discrepancies have been detected, the CSSF has contacted the relevant entities in order to remedy the situation.

The CSSF has further highlighted the topics that will be the subject of dedicated campaigns during the year 2021. These comprise the use of the aggregated client account 'INTC', the identification of natural persons in the context of transaction reports, prices and the quantities reported.

The press release further introduces the new template that should be used to notify the CSSF of any errors, omissions or failures with respect to the reporting obligation as required under Article 15(2) of Commission Delegated Regulation (EU) 2017/590 (RTS 22).

The CSSF concludes its press release by referring to topics that have already been subject of a specific campaign and for which details are available in previous communications.

CNMV issues communication on implementation of EU regulation on sustainability-related disclosures in financial services sector

The Spanish Securities Market Commission (CNMV) has issued a communication on Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector, which establishes harmonised rules to be applied by financial market participants from 10 March 2021. Within the scope of the CNMV's remit, this affects CII management companies, closed-ended collective investment management companies, entities that provide discretionary portfolio management services and financial advisors.

The rules relate to information on the sustainability of financial products, as well as the sustainability risk policies and adverse impacts of market participants' decision-making processes, which shall be included on their websites, and in pre-contractual disclosures (or prospectuses in the case of CIIs and venture capital entities) and annual reports.

Moreover, CIIs or managed portfolios which promote environmental or social characteristics (provided that the investee companies follow good governance practices) or aim at making sustainable investments must include additional information on their websites and in the contractual documentation.

Regulation 2019/2088 requires registered investment fund prospectuses to be updated accordingly, for which the CNMV has developed a simplified procedure. Notwithstanding the above, the CNMV considers that in most cases, the information already contained in such prospectuses could be enough to consider the requirements of Regulation 2019/2008 to be met.

Australian Government consults on statutory demand threshold

The Australian Government has launched a public consultation to decide whether it is appropriate to maintain or permanently raise the minimum threshold amount at which creditors can issue a statutory demand on a company.

On 24 September 2020, the Government announced changes to Australia's insolvency framework intended to better serve Australian small businesses, their creditors and their employees. The consultation follows the commencement of the insolvency reforms on 1 January 2021.

A statutory demand is a formal demand for payment of a debt owed by a company, issued pursuant to part 5.4 of the Corporations Act 2001, which currently can be issued on a company in relation to a debt that is due and payable and totals at least AUD 2,000.

Comments on the consultation are due by 5 March 2021.

ASX consults on changes to netting and settlement confirmation workflows

The Australian Securities Exchange (ASX) has launched a public consultation on proposed changes to the design of both the netting and settlement confirmation workflows to deliver processing efficiencies and reduce subsequent messaging volumes as part of the overnight end-of-day process and daily batch settlement.

The proposed changes are intended to allow the Clearing House Electronic Subregister System replacement system to support clearing and settlement of significantly greater trading volumes and are largely in response to the extreme record trading activity in March 2020, which redefined the day 1 capacity requirements of the replacement system.

The ASX intends to publish the functional specifications and messaging requirements relevant to the proposed changes at the end of March 2021.

Comments on the consultation are due by 18 March 2021.

APRA announces aggregate committed liquidity facility for authorised deposit-taking institutions

The Australian Prudential Regulation Authority (APRA) has issued a letter to authorised deposit-taking institutions (ADIs) to announce updated aggregate amounts for the 2021 committed liquidity facility (CLF) established between the Reserve Bank of Australia (RBA) and certain locally incorporated ADIs that are subject to the liquidity coverage ratio (LCR).

The LCR is a minimum requirement that aims to ensure that ADIs maintain sufficient unencumbered high-quality liquid assets (HQLA) to survive a severe liquidity stress scenario lasting for 30 calendar days. The LCR is part of the Basel III package of measures to strengthen the global banking system. The

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CLF is intended to be sufficient in size to compensate for the lack of sufficient available HQLA, which in Australia consist of mainly Australian Government Securities and securities issued by the borrowing authorities of the states and territories.

APRA invites all LCR ADIs to apply for their 2021 CLF allocation effective as at 1 April 2021. It notes that due to the material improvements in ADIs' funding and liquidity along with substantial increases in government securities, ADIs have reduced their CLF allocations.

APRA also notes that, while it expects to ensure measured CLF reductions to avoid financial market disruptions, if government securities outstanding continue to increase beyond 2021, the CLF may no longer be required in the foreseeable future.

RECENT CLIFFORD CHANCE BRIEFINGS

Penrose report proposals to update the UK's competition and consumer protection regimes

On 16 February 2021, John Penrose MP published proposals to update and modernise the UK competition and consumer rules for an increasingly digitised economy. The proposals include increased powers for the Competition and Markets Authority (CMA) and, in the long-term, a substantial redesign of the competition regime.

This briefing discusses the proposals.

https://www.cliffordchance.com/briefings/2021/02/penrose-report-proposals-to-update-the-uk-s-competition-and-cons.html

Statutory quotas and targets to improve gender balance within Dutch large company boards

Last week, the bill introducing 1) a statutory diversity quota for supervisory boards (or the non-executive members of a one-tier board) of companies with a stock listing in The Netherlands, and 2) diversity related goal setting and reporting obligations for so-called 'large companies' was adopted by the Dutch House of Representatives, which is an important milestone in the enactment process of the bill. The bill has now been sent to the Dutch Senate; the enactment is expected in 2021.

This briefing discusses the bill.

https://www.cliffordchance.com/briefings/2021/02/statutory-quotas-and-targets-to-improve-gender-balance-within-du.html

New York Department of Financial Services issuers cyber insurance risk framework

On 4 February 2021, the New York Department of Financial Services issued its Cyber Insurance Risk Framework to help insurers effectively price and manage cyber insurance risk. In a circular letter introducing the framework, DFS cautioned insurers that failure to accurately price cyber risk can lead to compounded losses that threaten their stability and viability. DFS also expressed concern that insurers may create improper incentives for their clients, who may see paying for cybersecurity insurance as a substitute for an effective cybersecurity infrastructure. The framework reflects the DFS's continued focus on cybersecurity.

This briefing discusses the framework.

https://www.cliffordchance.com/briefings/2021/02/New-York-Department-of-Financial-Services-Issuers-Cyber-Insurance-Risk-Framework.html

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