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## **CRD 4: Delegated Regulation amending RTS on G-SIIs identification and categorisation published in Official Journal**

[Commission Delegated Regulation \(EU\) 2021/539](#), which amends the regulatory technical standards (RTS) on the methodology for identifying global systemically important institutions (G-SIIs) and the definitions of subcategories of G-SIIs, has been published in the Official Journal. This follows the Basel Committee on Banking Supervision's (BCBS) revised methodology published in July 2018 and Directive (EU) 2019/878.

Delegated Regulation (EU) 2021/539 amends Delegated Regulation (EU) No 1222/2014 containing the RTS to reflect the revised methodology as set out by the BCBS, which:

- introduced a new indicator to measure systemic importance relating to the trading volume and which is included in the category that measures the substitutability of services or of the financial infrastructure provided by a banking group; and

- included insurance activities in the indicators-based measurement approach used to assess the systemic importance of banking groups.

It also amends the RTS in line with Directive 2019/878, which:

- introduced an additional overall score for G-SIIs with the cross-border activities indicator excluding the cross-border activities across the Member States participating in the Single Resolution Mechanism (SRM); and
- further enabled competent and designated authorities to use sound supervisory judgement to reallocate a G-SII from a higher subcategory to a lower subcategory based on the additional overall score that accounts for the specificities of the Banking Union and the SRM within cross-border activity indicators.

The provisions reflecting changes in the methodology will apply from 1 December 2021.

## **EU Commission launches public consultation on instant payments**

The EU Commission has launched a public [consultation](#) aimed at understanding the remaining obstacles as well as possible enabling actions that it could take to ensure a wide availability and use of instant payments in the EU.

The consultation should also enable the Commission to decide on whether EU coordinated action and policy measures are warranted in order to ensure that a critical mass of EU payment service providers (PSPs) offer instant credit transfers.

The Commission seeks to identify factors that would be relevant for stimulating customer demand (from consumers, corporate users and merchants alike) towards instant credit transfers.

Comments are due by 23 June 2021.

## **EU Commission adopts RTS on estimation of Pillar 2 and combined buffer requirements for setting MREL**

The EU Commission has adopted a [Delegated Regulation](#) setting out RTS specifying the methodology to be used by resolution authorities to estimate the Pillar 2 (P2R) and combined buffer requirements (CBR) at resolution group level for the purpose of setting the minimum requirement for own funds and eligible liabilities requirement (MREL).

The Delegated Regulation provides:

- the parameters under which additional own funds requirements should be estimated and the methodology to do so;
- the methodology to adjust the estimated additional own funds requirements; and
- the methodology to estimate the CBR of resolution entities.

The Delegated Regulation enters into force on the twentieth day following its publication in the Official Journal.

## **Securitisation Regulation: ESAs publish opinion on jurisdictional scope and Q&As on cross-sectoral aspects**

The European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), have published an [opinion](#) and [questions and answers](#) (Q&As) relating to the Securitisation Regulation.

The opinion to the EU Commission on the jurisdictional scope of the Securitisation Regulation's application is intended to clarify potential obligations of third country-based entities that become parties to a securitisation. The ESAs set out their common views on difficulties faced by market participants in relation to four scenarios and recommend that the EU Commission address the difficulties by way of interpretative guidance, as well as inviting the Commission to review the jurisdictional scope framework as part of an upcoming review of the Regulation.

The Q&As on cross-sectoral aspects are intended to foster supervisory convergence in relation to the following topics:

- the content and format for information to be disclosed by the originator, sponsor and securitisation special purpose entity (SSPE);
- transaction documentation for Simple, Transparent and Standardised (STS) securitisations to be made publicly available; and
- the type of STS certification services third party verifiers can provide to securitisation parties.

## **Investment firms: EBA consults on draft RTS on investment policy disclosure**

The EBA has launched a [consultation](#) on draft RTS on the public disclosure of investment policy by investment firms under the Investment Firms Regulation (IFR).

The draft RTS, which seek to show investment firms' influence over the companies in which they have voting rights, specify templates and tables, as well as detailed instructions, for the quantitative and qualitative disclosure of the following information:

- proportion of voting rights attached to shares held;
- voting behaviour;
- use of proxy advisor firms; and
- voting guidelines.

The investment policy disclosure requirement, which has the objective of showing if an investment firm is an active shareholder, applies to:

- class 2 investment firms with on- and off-balance sheet assets on average greater than EUR 100 million over the four-year period immediately preceding a given financial year; and
- information in relation to companies whose shares are admitted to trading on a regulated market and in which the proportion of voting rights exceeds 5% of all voting rights issued by the company.

The consultation closes on 1 July 2021. A public hearing will take place on 6 May.

### **Coronavirus/MiFID2: ESMA publishes statement on suspension of RTS 27 reports**

ESMA has published a [statement](#) on the application date of the temporary suspension of the obligation on execution venues to publish best execution reports (RTS 27 reports) under MiFID2.

The statement seeks to clarify an issue arising under MiFID Quick Fix, which provides that the requirement to publish RTS 27 reports shall not apply until 28 February 2023 and that Member States should apply the measures necessary to comply with MiFID Quick Fix by 28 February 2022.

ESMA expects national competent authorities (NCAs) not to prioritise supervisory actions towards execution venues relating to that obligation until the date on which the national transposition measures of MiFID2 Quick Fix postpone that obligation in national law.

### **ESMA advises on data reporting service provider framework**

The ESMA has published advice to the EU Commission related to data reporting service providers (DRSP). The advice focuses on a two-step assessment of the [derogation criteria](#) (to determine whether certain DRSPs may be exempted from ESMA supervision) and leveraging on the existing [fees, fines and penalties frameworks](#).

According to ESMA, it agrees with stakeholders that two of the four derogation criteria appear to be more significant for assessing whether the activity of an approval publication arrangement (APA) or authorised reporting mechanism (ARM) is of relevance to the internal market. Therefore, ESMA has proposed a derogation framework where the assessment of more significant criteria is cumulative while the assessment of the remaining two criteria is non-cumulative.

It has also drawn on the existing fee frameworks for trade repositories and securitisation repositories and has proposed both application and authorisation fees, and an annual supervisory fee for DRSPs, as well as making proposals on specific procedural aspects.

Following the ESAs review, authorisation and supervision of ARMs and APAs will transfer from competent authorities to ESMA. After submitting its technical advice to the Commission, ESMA will continue working with NCAs on a smooth transfer of supervisory responsibilities for the relevant DRSPs as of 1 January 2022.

### **Benchmarks Regulation: ESMA publishes technical advice on fines and penalties for benchmark administrators**

ESMA has published its [final technical advice](#) to the EU Commission on procedural rules for imposing fines and penalties for benchmark administrators under its supervision.

The advice is intended to inform the EU Commission in its proposals for a delegated act under the Benchmarks Regulation on particular aspects of the rules regarding fines and penalties for benchmark administrators. These aspects include:

- the right to be heard by the independent investigating officer (IIO);
- the content of the file to be submitted by the IIO;
- access to this file;
- the procedure for imposing fines;
- the adoption of interim decisions;
- the limitation periods for the imposition and enforcement of penalties;
- the collection of fines and penalties; and
- the relevant calculation periods.

The EU Commission is required to adopt delegated acts under the Benchmarks Regulation by 1 October 2021.

### **Beyond Brexit: ESMA issues statement on application of Transparency Directive requirements by UK issuers**

ESMA has published a public [statement](#) intended to clarify the application of EU Transparency Directive requirements by UK issuers with securities admitted to trading on regulated markets in the EU.

The statement is intended to ensure a common supervisory approach by NCAs in respect of accounting frameworks used by UK issuers in relation to consolidated and individual financial statements, and sets out details of acceptable accounting standards as well as conditions for available exemptions.

Following the end of the Brexit transition period, issuers with a registered office in the UK are considered in the EU as third country issuers.

### **MiFIR review: ESMA reports on transaction and reference data reporting obligations**

ESMA has published a [final report](#) reviewing transaction and reference data reporting obligations under MiFIR. The report was prepared for the EU Commission in light of an obligation under Article 26 MiFIR and discusses the functioning of that Article's transaction reporting regime, as well as the functioning of Article 26 MiFIR on financial instruments reference data and Article 4 of the Market Abuse Regulation (MAR).

The report sets out recommendations and possible amendments to MiFID2/MiFIR in order to simplify the reporting regime. It suggests the following measures in particular:

- replacing the 'trading on a trading venue' (TOTV) concept with the systematic internaliser (SI) approach for OTC derivatives;
- removing the short sale indicator;
- aligning with reporting regimes such as MAR, the European Market Infrastructure Regulation (EMIR) and the Benchmark Regulation; and

- including certain data elements in the regime in order to harmonise reporting and avoid inconsistency and duplication at the national level.

The EU Commission is expected to adopt legislative proposals based on these recommendations.

ESMA has also published a [final review report](#) setting out its technical advice to the EU Commission on the application of administrative and criminal sanctions under MiFID2 and MiFIR.

### **MiFID2/MiFIR: ESMA updates Q&A on investor protection and intermediaries**

ESMA has updated its MiFID2 and MiFIR [Q&A](#) document on investor protection and intermediaries topics dated 29 March 2021.

The updated document sets out a new Q&A concerning one of the conditions specifying when an inducement can be considered as designed to enhance the quality of the relevant service to the client. In particular, the new Q&A provides guidance on the following three elements of the condition laid down in Article 11(2)(a) of the MiFID2 Delegated Directive that the inducement is justified by:

- an additional or higher-level service;
- provided to the relevant client; and
- proportional to the level of inducements received.

### **SRB publishes guidance on bail-in for international debt securities**

The Single Resolution Board (SRB) has published a [document](#) on reflecting bail-in in the books of the International Central Securities Depositories (ICSDs).

The document describes the elements that banks should consider for the operationalisation of the bail-in in respect of international bearer debt securities issued by and safekept in ICSDs, namely Euroclear Bank (EB) and Clearstream Banking Luxembourg (CBL).

The document is based on existing market practices and operational rules, and seeks to explain:

- the role of ICSDs in respect of the bail-in of instruments for which they are issuer central securities depository (CSD) and investor CSD;
- the stakeholders involved;
- processes and steps to follow;
- data and information requirements; and
- communication timelines and channels.

Annexed to the document are a detailed description of the steps under the main operational scenarios (write-down and conversion) and communication templates for notifying the resolution event and the application of the bail-in tool to the securities issued in the ICSDs.

The SRB expects banks to reflect the content of the document in their bail-in playbooks, in accordance with the SRB's expectations for banks.

## **Basel Committee publishes principles for operational resilience and risk**

The BCBS has published a new set of [principles for operational resilience](#) (POR), as well as a [revised version](#) of its existing principles for the sound management of operational risk (PSMOR). The new and revised principles are intended to complement existing guidance and practices and to ensure banks are able to absorb shocks from operational risks arising from, among other things, cyber incidents, technology failures, pandemics and natural disasters.

The POR sets out BCBS's principles for governance, operational risk management, business continuity planning and testing, the mapping of interconnections and interdependencies of critical operations, third-party dependency management, incident management, and resilient information and communication technologies (ICT), including cyber security.

The PSMOR has been amended to streamline BCBS's overall approach to improving banks' operational resilience, align the PSMOR with the Basel III operational risk framework, update guidance in the areas of change management and ICT, and improve the overall clarity of the principles.

## **Central Bank Governors and Heads of Supervision endorse Basel Committee's 2021/22 strategic priorities and work programme**

The oversight body of the BCBS, the Group of Central Bank Governors and Heads of Supervision (GHOS), has [endorsed](#) the Committee's strategic priorities and work programme for 2021/22. In line with GHOS's agreement issued in November 2020, the new work programme prioritises implementing agreed reforms, assessing emerging risks and vulnerabilities, and increasing supervisory cooperation. BCBS will also continue monitoring the resilience of the global banking system in light of the COVID-19 pandemic and work to ensure banks contribute to the recovery in a sustainable way. The full work programme will be published later in April 2021.

GHOS members also took the opportunity to exchange views on various global initiatives regarding non-bank financial intermediation (NBFi). GHOS members agreed that work on the safety and soundness of the NBFi sector should take a holistic approach, considering the need to improve the resilience of NBFi, to minimise systemic risk and to meet other market-related objectives. Such initiatives should also safeguard the resilience and agreed prudential standards of the global banking system as a whole. In the meantime, bank supervisors should continue to monitor NBFi developments in order to better gauge the range of direct and indirect interconnections with the banking system.

## **FSB publishes final report on too-big-to-fail reforms for banks**

The Financial Stability Board (FSB) has published a [final report](#) on its evaluation of the effects of too-big-to-fail (TBTF) reforms for systemically important banks (SIBs).



The report broadly finds that TBTF reforms have reduced moral hazard and systemic risk without material side-effects, but notes gaps that need to be addressed by the relevant global bodies, such as:

- improvements to resolvability, including TLAC implementation, gaining more clarity on resolution funding mechanisms, the valuation of bank assets in resolution, operational continuity and continuity of access to financial market infrastructure, and cross-border coordination;
- the need to implement resolution reforms in full to minimise the need for state solvency support to distressed banks;
- enhancing disclosures of information relating to the operation of resolution frameworks and funding mechanisms, and the details of resolution actions after the event;
- improvements to SIBs' internal reporting frameworks;
- the need to provide public authorities with further information, such as who owns TLAC issued by G-SIBs, in order to assess the potential impact of a bail-in on the financial system and economy;
- further monitoring of the application of the reforms to domestic SIBs (D-SIBs); and
- continued close monitoring of risks arising from the shift of credit intermediation to non-bank financial intermediaries.

The FSB intends to launch its next evaluation on the effects of G20 financial reforms on bond market liquidity in mid-2021 and to complete the evaluation in 2022.

## **Beyond Brexit: UK and EU conclude technical negotiations on financial services MoU**

The UK Government has [announced](#) that technical negotiations on the text of the UK-EU memorandum of understanding (MoU) establishing a framework for regulatory cooperation in financial services have concluded.

The EU and UK had agreed an intention to conclude the MoU by March 2021 in the joint declaration on financial services cooperation published alongside the Trade and Cooperation Agreement (TCA) in December 2020.

Among other things, the MoU will establish a Joint UK-EU Financial Regulatory Forum to serve as a platform to facilitate dialogue on financial services issues.

Both parties are required to complete formal steps before the MoU can be signed, which the UK Government expects to be done expeditiously.

## **FCA and Bank of England publish statement on switch to SONIA in sterling non-linear derivatives market**

The Financial Conduct Authority (FCA) and the Bank of England (BoE) have published a joint [statement](#) to encourage liquidity providers in the sterling non-linear derivatives market to adopt new quoting conventions for inter-dealer trading based on SONIA instead of LIBOR from 11 May 2021.

A key milestone recommended by the Working Group on Sterling Risk-Free Reference Rates is to cease initiation of new GBP LIBOR-linked non-linear

derivatives expiring after 2021 by end-Q2 2021, other than for risk management of existing positions.

An FCA survey of participants in the non-linear derivatives market identified strong support for a change in the interdealer quoting convention, which would see SONIA rather than LIBOR become the default price from 11 May 2021.

The FCA and the BoE encourage all participants in the sterling non-linear derivatives market to take the steps necessary to prepare for and implement these changes to market conventions on 11 May and shift liquidity away from GBP LIBOR to SONIA. In the period leading up to 11 May 2021, the FCA and the BoE intend to engage with market participants to determine whether market conditions allow the switch to proceed smoothly.

### **PRA, FCA and BoE publish policy statements on operational resilience and third party and outsourcing risk management**

The Prudential Regulation Authority (PRA), the FCA and the BoE have jointly issued a policy statement ([PS6/21](#)) containing feedback and final policy following their consultation (CP29/19) and discussion paper (DP1/18) on proposals designed to improve the operational resilience of firms and financial market infrastructures (FMIs).

In particular, the supervisory authorities sought views on proposed requirements that firms and FMIs:

- identify their important business services by considering the impact that disruption of these services would have beyond their own commercial interests;
- set a tolerance for disruption for each important business service; and
- ensure they can continue to deliver these services and remain within their impact tolerances during severe (or, in the case of FMIs, extreme) but plausible scenarios.

Respondents were largely supportive of the proposed policy, but requested clarity and amendments around implementation, proportionality and alignment with existing principles. The supervisory authorities have therefore largely published the policy as consulted upon with some amendments to reflect the responses. The policy is set out in:

- a new Operational Resilience Part of the PRA Rulebook;
- amendments to the Group Supervision Part of the PRA Rulebook;
- a new supervisory statement 'Operational resilience: Impact tolerances for important business services' (SS1/21); and
- a new Statement of Policy, 'Operational resilience'.

The new policy will be effective from 31 March 2022.

Alongside PS6/21, the PRA has also published a policy statement ([PS7/21](#)) providing feedback and final policy following its consultation (CP30/19) on outsourcing and third party risk management. CP30/19 sought feedback on a draft supervisory statement (SS2/21) which set out the PRA's expectations regarding firms' compliance with the wide range of existing requirements on outsourcing and third party risk management throughout the lifecycle of an arrangement.

Respondents were largely supportive of the proposals, although the PRA has made targeted revisions to the final policy in light of feedback. The final SS2/21 is intended to:

- complement the policy on operational resilience published in PS6/21;
- facilitate greater resilience and adoption of the cloud and other new technologies; and
- align with the guidelines and recommendations published by the European Supervisory Authorities.

Firms will be expected to comply with the policy set out in SS2/21 by 31 March 2022. Outsourcing arrangements entered into on or after 31 March 2021 should meet the expectations by 31 March 2022. Legacy outsourcing agreements entered into before 31 March 2021 should be reviewed and updated at the first appropriate renewal or revision point to meet the expectations as soon as possible on or after 31 March 2022.

## **PRA and FCA write Dear CEO letter on LIBOR transition**

The PRA and the FCA have published a [Dear CEO letter](#) setting out their expectations of firms regarding the transition from LIBOR to risk free rates (RFR) now that the cessation dates for all panel bank LIBOR settings have been confirmed.

In particular, firms are expected to meet all the milestones established by the Working Group on Sterling Risk Free Reference Rates, with a focus on the priority areas of:

- the cessation of new sterling LIBOR business milestones;
- ensuring systems readiness for LIBOR cessation;
- actively transitioning legacy LIBOR exposures;
- mitigating conduct risks;
- developing RFR markets;
- preparing for internal model changes required by the transition; and
- selecting appropriate alternatives to LIBOR.

The letter also notes that the FCA and PRA have written separately to the senior management responsible for overseeing the LIBOR transition at firms with the largest and most complex LIBOR exposures to outline the specific steps they are expected to take to ensure an orderly transition. Among other things, this includes using the transition as a performance criteria for determining their variable remuneration.

## **BaFin consults on circular on online notifications of appointments of directors and members of supervisory bodies**

The German Federal Financial Services Supervisory Authority (BaFin) has [published](#) a draft circular on the use of the Reporting and Publication Platform (Melde- und Veröffentlichungsplattform, MVP) for companies not supervised by the European Central Bank (ECB) for consultation. Companies that notify appointments of managing directors and members of administrative and supervisory bodies online will no longer have to submit an additional paper-

based notification in accordance with the German Notification Ordinance (Anzeigenverordnung, AnzV).

BaFin will accept comments on the draft until 19 April 2021.

### **Bank of Spain consults on draft circular amending Circular 5/2012 to credit institutions and payment services providers on transparency of banking services and responsibility in granting loans, regarding definition of €STR-based reference interest rate**

The Bank of Spain has commenced a public consultation on a [draft circular](#) amending Circular 5/2012, of 27 June, to credit institutions and payment services providers, on transparency of banking services and responsibility in granting loans, regarding the definition of reference interest rate based on the Euro short-term rate (€STR) (Circular 5/2012) (the Draft Circular).

Further to the press release published by the ECB on 18 March 2021, regarding the daily publication of the compounded €STR average rates, Circular 5/2012 is amended for the purposes of adapting the definition of the reference interest rate based on the €STR to the methodology used by the ECB in the calculation of compounded rates based on the €STR (described in said ECB communication).

The Draft Circular will be open for comments until 8 April 2021 (excluded).

### **HKEX consults on reforms to enhance listing regime for overseas issuers**

The Stock Exchange of Hong Kong Limited (SEHK), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), has launched a public [consultation](#) on proposals to enhance and streamline the listing regime for overseas issuers. The key proposals in the consultation include the following:

- streamlining requirements for overseas issuers, whilst continuing to ensure robust shareholder protection standards;
- expanding the HKEX secondary listing regime to welcome overseas-listed Greater China companies in traditional sectors to the HKEX's markets;
- allowing eligible issuers to dual-primary list while keeping their existing weighted voting right structures and variable interest entity structures.

The consultation paper contains several other proposals to enhance, codify and streamline existing requirements for overseas issuers. Amongst others, these proposals include the following:

- the consolidation of requirements for overseas issuers into Chapter 19 (for primary listing) and Chapter 19C (for secondary listing), with one guidance letter;
- the codification of some conditional common waivers for dual-primary listings and secondary listings; and
- guidance on the application of waivers following a de-listing from an overseas exchange of primary listing.

Comments on the consultation are due by 31 May 2021.

## **HKMA revises transition timeline for interest rate benchmarks reform**

The Hong Kong Monetary Authority (HKMA) has [announced](#) updates to its transition timeline in relation to the reform of interest rate benchmarks. In July 2020 the HKMA, in consultation with the Treasury Markets Association (TMA), developed the following transition milestones for authorised institutions (AIs):

- AIs should be in a position to offer products referencing alternative reference rates to LIBOR from 1 January 2021;
- adequate fall-back provisions should be included in all newly issued LIBOR-linked contracts that will mature after 2021 from 1 January 2021; and
- AIs should cease to issue new LIBOR-linked products that will mature after 2021 by 30 June 2021.

The HKMA's latest findings indicate that the vast majority of AIs have substantially achieved the first two transition milestones above. With respect to the third transition milestone, the UK FCA confirmed in early March 2021 that all LIBOR settings will either cease to be provided by any administrator or no longer be representative, immediately after:

- 31 December 2021, in the case of all sterling, euro, Swiss franc and Japanese yen settings, and the 1-week and 2-month US dollar settings; and
- 30 June 2023, in the case of the remaining US dollar settings.

Following the FCA's announcement, other authorities including the United States Federal Reserve have indicated that financial institutions should cease entering into new LIBOR contracts as soon as practicable and in any event by 31 December 2021.

In light of the latest developments and taking into account the industry's feedback, the HKMA and the TMA have agreed that the earlier timeline of ceasing to issue new LIBOR-linked products by the end of June 2021 is no longer appropriate. AIs are advised to continue to press ahead with their transition preparations and cease to issue new LIBOR-linked contracts by the end of 2021.

## **QUICK Corp. announces publication of Tokyo Term Risk Free Rate production rates**

The QUICK Corp., a financial market information vendor which was selected by the Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks as a calculating and publishing entity of prototype rates in February 2020, has, along with its group company QUICK Benchmarks Inc. (QBS), [announced](#) that QBS will calculate and publish production rates of Tokyo Term Risk Free Rate (TORF) for actual trading from 26 April 2021.

TORF is one of the interest benchmarks for the Japanese yen, an alternative to the LIBOR, and QUICK Corp. has been calculating and publishing prototype rates to help implement a smooth transition from LIBOR.

QBS intends to calculate and publish the TORF production rates to maintain the transparency of its calculation and operational soundness, and to comply with the Principles for Financial Benchmarks set out by the International

Organization of Securities Commissions (IOSCO). The production rates will be published for each business day on the same day at 17:00, as is the case for the prototype rates.

QUICK Corp. has indicated that it aims for TORF to be designated as a 'Specified Financial Benchmark' under the Financial Instruments and Exchange Act and for QBS to be designated as a 'Specified Financial Benchmark Administrator'.

### **MAS publishes information paper on good practices relating to disciplinary action framework in financial advisory industry**

The Monetary Authority of Singapore (MAS) has published a new [information paper](#) on good practices relating to disciplinary action frameworks in the financial advisory industry.

The information paper is intended to:

- provide guidance to financial advisers on sound principles in key areas of their disciplinary action (DA) framework, in order to achieve more consistent outcomes in their application of DA; and
- raise standards among financial advisers through sharing of good practices.

The information paper sets out twelve good practices in the following areas:

- policies and procedures;
- decision-making process;
- accountability of supervisors; and
- relevance of the DA framework.

While the new information paper is meant to apply to financial advisers serving retail customers, other players in the financial services industry are encouraged to take guidance from the good practices in the paper and adapt them as necessary to suit their own circumstances and business needs.

### **MAS responds to feedback received and consults further on proposed implementation of final Basel III reforms in Singapore pertaining to credit risk capital and output floor requirements**

The MAS has published its [responses](#) to the feedback it received on its May 2019 public consultation on the proposed implementation of the final Basel III reforms in Singapore pertaining to the proposals on credit risk capital and output floor requirements. Amongst other things, the MAS has clarified its proposals as follows:

- where the MAS notifies banks that a published international assessment has identified that a securities firm or other financial institution is not subject to prudential standards and supervision equivalent to those applied to banks, the exposures to such foreign securities firm or financial institution must not be treated as exposures to banks;

- the banks will be required to risk-weight exposures secured by Residential Real Estate (RRE) and Commercial Real Estate (CRE) based on the loan-to-value ratio (LTV) and apply the risk weight to the whole loan;
- for real estate exposures, the MAS will maintain the proposal for banks to use the valuation of the real estate at origination for computing the LTV, revise the value downwards to reflect subsequent valuations of the real estate, and cap any upward adjustments in value at the valuation at origination. For refinanced loans, the banks will be allowed to use the valuation at the date of loan refinancing for computing the LTV;
- on exposures secured by RRE, the banks will be allowed to assess whether standardised approach for credit risk (SA(CR)) exposures secured by non-owner occupied RRE to individuals who have mortgaged more than two non-owner occupied RRE units to the bank are indeed materially dependent on the cash flows generated by the RRE units. On exposures secured by CRE, the MAS recognises the operational concerns raised by banks and will not exercise the national discretion to avoid adding complexity to the capital framework;
- to align with the revised treatment under the SA(CR), banks will be allowed to assess whether internal ratings-based approach for credit risk (IRBA) exposures secured by non-owner occupied RRE to individuals who have mortgaged more than two non-owner occupied RRE units to the bank are indeed materially dependent on the cash flows generated by the RRE units. If so, the exposure will remain categorised in the residential mortgage asset sub-class, but will be capitalised using the capital computation formula for an exposure in the general corporate asset sub-class;
- the loss-given-default (LGD) floor of 10% will be retained for IRBA exposures in the residential mortgage asset sub-class, to be applied at the individual exposure level; and
- the MAS will adopt the Basel Committee on Banking Supervision phase-in arrangement for the output floor calibration, which has been extended by one year in view of the deferral of the Basel III implementation timeline.

Following the responses to the feedback received, the MAS has also launched a [public consultation](#) on draft standards relating to credit risk capital and output floor requirements in the MAS Notice 637 Risk Based Capital Adequacy Requirements for Banks Incorporated in Singapore. The MAS proposes to implement the revised standards for credit risk capital and output floor from 1 January 2023, while providing transitional arrangements for implementation of the output floor until 1 January 2028.

Comments on the consultation are due by 26 April 2021.

### **SC-STs announces new timelines to cease issuance of SOR derivatives and SIBOR-linked financial products**

The Steering Committee for Singapore Dollar Swap Offer Rate (SOR) & Singapore Interbank Offered Rate (SIBOR) Transition to Singapore Overnight Rate Average (SORA) (SC-STs) has published a [report](#) announcing new industry timelines to cease issuance of SOR derivatives and SIBOR-linked financial products by end-September 2021. The new timelines specify that by end-September 2021:

- all financial institutions (FIs) and their customers should cease usage of SOR in new derivatives contracts, except for specified purposes relating to the risk management and transition of legacy SOR positions to SORA; and
- all FIs and their customers should cease usage of SIBOR in new contracts, to prepare for the discontinuation of the less widely used 6-month SIBOR by March 2022, and the widely used 1-month and 3-month SIBOR benchmarks by end-2024.

In preparation for this shift to SORA usage, most domestic systemically important banks are already offering a range of SORA products, while other banks are expected to do so by end-April 2021.

The SC-STS notes that, while SOR remains available until mid-2023, liquidity in SOR derivatives markets has started to decline and this trend is expected to accelerate with the new cessation timeline on the use of new SOR derivatives. Therefore, it strongly encourages market participants to take active steps to transition their SOR derivatives, loans and other contracts to SORA in 2021, when the liquidity conditions in the SOR-SORA basis swap markets is still expected to remain conducive.

The SC-STS has also reviewed its guidance around Fallback Rate (SOR), which was designed only as an interim fallback solution for contracts that cannot be transitioned to SORA before SOR ceases. With SOR now set to be discontinued later in mid-2023, more existing legacy SOR transactions would be able to mature and the need for extended Fallback Rate arrangements would be much lower. Hence, SC-STS has decided to retain the original end-2024 end-date for Fallback Rate.

## **SGX consults on listing framework for special purpose acquisition companies**

The Singapore Exchange (SGX) has launched a public [consultation](#) on a proposed regulatory framework for the listing of Special Purpose Acquisition Companies (SPACs) on its Mainboard of Singapore Exchange Securities Trading Limited (SGX-ST). SPACs are typically listed on stock exchanges as companies with no prior operating history, operating and revenue-generating business or asset at the time of listing. They are formed to raise capital through initial public offerings (IPOs) for the sole purpose of acquiring operating business(es) or asset(s).

Given market developments in United States SPACs listings in recent years and potential merger and acquisition opportunities in the Asia Pacific region, the SGX received renewed and increasing market interests to introduce SPACs in the Singapore capital market. In particular, under the current economic environment, the SGX is of the view that the introduction of SPACs may generate benefits to capital market participants and become a viable alternative to traditional IPOs for fund raising in Singapore and the region.

Accordingly, the SGX is consulting on a proposed listing framework for SPACs which seeks to introduce a balanced regime that effectively safeguards investors' interests against certain concerns posed by the unique features of SPACs, while meeting the capital raising needs of the market.

The proposed SGX-ST Listing Rules amendments have been set out in Appendix 2 to the consultation paper.

Comments on the consultation are due by 28 April 2021.



## **Coronavirus: APRA updates FAQs on capital framework for COVID-19 related disruptions**

The Australian Prudential Regulation Authority (APRA) has updated its [frequently asked questions](#) (FAQs) for private health insurers on the application of the capital framework for COVID-19 related disruptions.

The revision to FAQ 3 follows the ongoing uncertainty associated with the impact of the pandemic on the private health insurance industry, as it continues to create difficulty in valuing the Deferred Claims Liability (DCL). The updated FAQ stipulates that, as at 31 March 2021, APRA is providing insurers with the opportunity to use their own valuations for the DCL for both the regulatory liabilities and the prudential liabilities. This guidance is intended to address the considerations and communication protocols required for an insurer to prepare a prudentially sound provision for the DCL.

The updated FAQ also states that insurers using their own valuation are expected to have a robust process in place and be able to demonstrate the matters outlined in FAQ 8.

## **ARRC publishes supplemental recommendation of hardwired fallback language for business loans**

The Alternative Reference Rates Committee (ARRC) has published [supplemental versions](#) of its recommendation of hardwired fallback language for US dollar (USD) LIBOR denominated syndicated and bilateral business loans.

The language supplements the recommended fallback language for syndicated business loans published on 30 June 2020 and the recommended fallback language for bilateral business loans published on 27 August 2020. The supplemental recommendation offers simplified versions of the more elaborate fallback language offered in the 2020 recommendations. The supplemental versions also incorporate the certainty on fallback timing and economics following the announcements made on 5 March 2021 by the FCA and ICE Benchmark Administration outlining when LIBOR panels will end.

The ARRC has stated that either the original 2020 or simplified 2021 language can be used as both versions lead to the same outcome at transition.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **European Commission launches SFD and FCD consultations**

The European Commission has recently launched two targeted consultations on the Settlement Finality Directive (98/26/EC) (SFD) and the Financial Collateral Directive (2002/47/EC) (FCD).

The consultations consider issues arising from market developments and regulatory changes and aim to ensure coherence across the different legislative frameworks in which the two directives have been operating. The 'trigger' for the consultations was Article 12a of the SFD, requiring the European Commission to produce a report on the SFD by 28 June 2021 but, due to the close links between the two directives, the European Commission has decided to review both in parallel.

This briefing discusses the key issues being consulted on.

<https://www.cliffordchance.com/briefings/2021/03/european-commission-launches-sfd-and-fcd-consultations.html>

### **Final rule codifies NISPOM with updates into CFR**

Recent actions of the US Government focus on protecting US national security through safeguarding US-based technologies and information from foreign misappropriation. Amongst others, these include a final rule codifying the National Industrial Security Program Operating Manual (NISPOM) into the US Code of Federal Regulations (CFR), effective as of 24 February 2021, which also seeks to deter the foreign diversion of US technologies through changes to NISPOM regarding the handling of classified materials by US Government contractors. Changes include the incorporation of reporting requirements under Security Executive Agent Directive (SEAD) 3, and eliminating preconditions for certain government contractors operating under a Special Security Agreement (SSA) to obtain a National Interest Determination (NID) for access to classified information.

This briefing discusses the final rule.

<https://www.cliffordchance.com/briefings/2021/03/final-rule-codifies-nispom-with-updates-into-cfr.html>

### **APAC ESG Perspectives – Australian Key Considerations**

Environmental, Social and Governance (ESG) considerations are important to businesses for the opportunities they bring, and for the reputational and economic risks that come with making the wrong decisions.

This briefing identifies a number of ESG considerations that may be relevant when doing business in Australia.

<https://www.cliffordchance.com/briefings/2021/03/apac-esg-perspectives--australian-key-considerations.html>

# C L I F F O R D C H A N C E

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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