

# CLIFFORD CHANCE

## INTERNATIONAL REGULATORY UPDATE 07 – 11 JUNE 2021

- **CRR: RTS on economic downturns and on derivatives material risk drivers and supervisory delta calculations published in Official Journal**
- **CRD4: RTS on identifying staff with material risk impact published in Official Journal**
- **CRR/Solvency II: ESAs publish draft amending ITS on mapping of ECAIs' credit assessments**
- **Green Finance: EU Commission adopts delegated regulation on climate change mitigation and adaptation under Taxonomy Regulation**
- **NPLs: EU Parliament announces agreement with Council on proposed directive on credit servicers and purchasers**
- **Capital Markets Union: EU Council sets out negotiating position on proposed regulation on assignment of claims**
- **Capital Markets Union: EU Commission publishes indicators to track progress**
- **EBA consults on draft RTS on crowdfunding service providers**
- **EBA consults on draft RTS on reclassification of investment firms as credit institutions**
- **PSD2: EBA publishes revised guidelines on major incident reporting**
- **EMIR: ESMA publishes statement on implementation of FRANDT commercial terms**
- **EU Commission proposes framework for European digital identity**
- **Basel Committee consults on prudential treatment of cryptoasset exposures**
- **Basel Committee issues statement on impact of COVID-19 on banks, post-crisis reforms, and cryptoassets**
- **Green Finance: FSB's TCFD consults on proposed guidance for climate-related metrics, financial impacts, targets, and transition plans**
- **Green Finance: NGFS publishes updated set of climate scenarios for climate risk assessments**

*Clifford Chance's International Regulatory Update is a weekly digest of significant regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.*

To request a subscription to our Alerter: Finance Industry service, please [subscribe to our Client Portal](#), where you can also request access to the Financial Markets Toolkit and subscribe to publications, insights and events.

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  
[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](http://www.cliffordchance.com)

- **G7 Finance Ministers and Central Bank Governors publish communiqué**
- **BoE issues discussion paper on digital money**
- **Stress testing: BoE outlines climate change financial risk scenario for 2021 exercise**
- **Green Finance: HMT appoints new independent expert group to advise on standards for green investment**
- **Credit risk: PRA responds to consultation on overseas IRB models**
- **PSR sets out proposed five-year strategy**
- **Working Group on Sterling Risk-Free Reference Rates updates GBP loans guidance and Q&A**
- **AMF updates its policy on rules applicable to digital asset service providers and amends its General Regulation on location of digital asset services**
- **BaFin publishes interpretation and application guidance for credit institutions on German Money Laundering Act**
- **BaFin publishes special guidelines on ad hoc disclosure for credit and financial institutions**
- **German Federal Ministry of Finance proposes draft to amend regulation on BaFin's statutes**
- **Swiss Federal Council adopts report on systemically important banks**
- **China releases Data Security Law**
- **HKMA adjusts implementation timeline for revised capital standards in Basel III final reform package**
- **HKMA unveils 'Fintech 2025' strategy**
- **Ordinance implementing uncertificated securities market regime and enhancing OTC derivatives licensing regime gazetted**
- **ASX publishes Listing Rules amendments relating to online forms, notification of security issues and corporate action timetables**
- **Australian Government announces financial market infrastructure regulatory reforms**
- **Recent Clifford Chance briefings: the EU Securitisation Regulation, the UK National Security and Investment Act, and more. Follow this link to the briefings section.**

## **CRR: RTS on economic downturns and on derivatives material risk drivers and supervisory delta calculations published in Official Journal**

Delegated Regulations (EU) [2021/930](#) and [2021/931](#) supplementing the Capital Requirements Regulation (CRR) have been published in the Official Journal.

Delegated Regulation 2021/930 supplements the CRR with regard to regulatory technical standards (RTS) specifying the nature, severity and duration of an economic downturn referred to in Article 181(1)(b), and Article 182(1)(b) of the Regulation.

Delegated Regulation 2021/931 supplements the Regulation with regard to RTS in relation to derivative transactions. The Delegated Regulation specifies the following:

- the method for identifying derivative transactions with material risk driver(s), and where relevant the most material of those drivers, for the purposes of Article 277(5); and
- for the purposes of Article 279a(3):
- the formula for calculating the supervisory delta of call and put options mapped to the interest rate risk category as well as the suitable accompanying supervisory volatility; and
- the method for determining whether a transaction is a long or short position in the primary risk driver, or in the most material risk driver, in the given risk category for transactions referred to in Article 277(3) (the standardised approach for counterparty credit risk).

The Delegated Regulations enter into force on 30 June 2021, and Delegated Regulation 2021/930 applies from 1 January 2021.

#### **CRD4: RTS on identifying staff with material risk impact published in Official Journal**

[Commission Delegated Regulation \(EU\) 2021/923](#) supplementing the fourth Capital Requirements Directive (CRD4) with regard to RTS setting out criteria for the following has been published in the Official Journal:

- defining managerial responsibility, control functions, material business units and a significant impact on a material business unit's risk profile; and
- identifying staff members or categories of staff whose professional activities have an impact on the institution's risk profile that is comparably as material to that of staff members or categories of staff referred to in Article 92(3) of the Directive.

The Delegated Regulation entered into force on 14 June 2021.

#### **CRR/Solvency II: ESAs publish draft amending ITS on mapping of ECAs' credit assessments**

The Joint Committee of the European Supervisory Authorities (ESAs) has published final reports setting out draft amending implementing technical standards (ITS) on the mapping of External Credit Assessment Institutions (ECAIs) assessments. The draft Commission Implementing Regulations would amend the following:

- [Implementing Regulation \(EU\) 2016/1799](#) as regards the mapping tables specifying the correspondence between the credit risk assessments of ECAIs and the credit quality steps (CQS) set out in the CRR; and
- [Implementing Regulation \(EU\) 2016/1800](#) laying down ITS with regard to the allocation of credit assessments of ECAIs to an objective scale of CQS in accordance with Solvency II.

Implementing Regulations 2016/1799 and 2016/1800 were intended to ensure that only credit ratings issued by ECAs can be used for calculating capital requirements of financial institutions and insurance undertakings. The draft amendments are intended to reflect the recognition of two new, and deregistration of a number of, credit rating agencies (CRAs), as well as the outcome of a monitoring exercise on the adequacy of existing mappings. The ESAs propose to amend the CQS allocation for two ECAs and to introduce new credit rating scales for nine ECAs.

### **Green Finance: EU Commission adopts delegated regulation on climate change mitigation and adaptation under Taxonomy Regulation**

The EU Commission has adopted a [Delegated Regulation](#) supplementing Regulation (EU) 2020/852 by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives.

The Delegated Regulation will enter into force on the twentieth day following its publication in the Official Journal and it will apply from 1 January 2022.

### **NPLs: EU Parliament announces agreement with Council on proposed directive on credit servicers and purchasers**

The EU Parliament has announced an [agreement](#) with the EU Council on the proposed directive on credit servicers and credit purchasers. The proposed directive would regulate the transfer of non-performing loans (NPLs) from banks to secondary buyers and is intended to foster the development of NPL secondary markets while protecting borrowers' rights.

Under the agreed revisions, the Parliament notes that credit servicers (who act on behalf of credit purchasers and manage rights and obligations under a non-performing credit agreement) would require authorisation and be subject to supervision by Member States' competent authorities. Further measures outlined in the Parliament's press release include the following, amongst others:

- national registers or lists of credit servicers;
- an obligation on credit purchasers to get a credit servicer appointed for consumer portfolios, and on third country purchasers to get a servicer appointed for SME portfolios;
- measures intended to protect borrowers unable to pay their debts, including the right to be notified of any transfer of a creditor's rights in advance of the first debt collection; and
- an assessment of a borrower's individual circumstances.

The trilogue parties are working on technical aspects of the text ahead of the agreement being approved by the Economic and Monetary Affairs Committee (ECON) and Parliament in plenary.

## Capital Markets Union: EU Council sets out negotiating position on proposed regulation on assignment of claims

The EU Council has approved its [general approach](#) for negotiations with the EU Parliament on a proposed regulation on the third-party effects of assignments of claims. The EU Commission's proposal for a regulation was published in March 2018 as part of the Capital Markets Union (CMU) Action Plan and is intended to enhance certainty regarding cross-border transfers of claims by setting out uniform conflict-of-laws rules at EU level.

Assignments of claims occur where a creditor transfers the right to claim a debt to another in exchange for payment. The Council notes that at present there is insufficient certainty as to which national law applies when determining who owns a claim after it has been assigned in a cross-border case. Under the Commission's proposals as supported by the Council, the law of the country where creditors (assignors) have their habitual residence would apply. The Council concluded, however, that the law of the assigned claim would be more suitable for certain specified assignments, including the assignment of cash claims and claims in financial markets, whereas its text would preserve a twofold choice of law for securitisation.

The proposed regulation concerns assets in intangible form, and the Council notes that the following matters are implicitly excluded from its scope:

- the transfer of financial instruments, including securities and derivatives;
- the transfer of crypto-assets; and
- the assignment of claims where the claims are not in intangible form but incorporated in a certificate or represented by a book entry.

In order to future-proof the proposed regulation, the Council's text would include within its scope claims arising from all crypto-assets, except those arising out of crypto-assets that qualify as transferable securities, money-market instruments or units in a collective investment undertaking.

The approved text will form the basis for trilogue negotiations with the EU Parliament.

## Capital Markets Union: EU Commission publishes indicators to track progress

The EU Commission has published a staff working document setting out a [toolkit](#) of indicators for monitoring overall progress towards accomplishing the following broad objectives of the CMU:

- making financing more accessible to EU companies;
- making the EU a safer place for individuals to save and invest long-term; and
- integrating national markets into a genuine single market.

The indicators are intended to complement evaluations and impact assessments of individual measures under the CMU action plan, and to provide a framework for analysing capital market developments and to help identify areas for adjusting or developing new policies.

The Commission plans to update the indicators annually, to allow for the integration of new or adapted indicators, especially with regard to green and digital finance, once more or better data becomes available.

### **EBA consults on draft RTS on crowdfunding service providers**

The European Banking Authority (EBA) has published a [consultation](#) paper on draft RTS setting out the information that crowdfunding service providers (CSPs) offering individual portfolio management of loans must provide to investors on credit risk assessment and the composition of the portfolio. In particular, the draft RTS require CSPs to provide information on:

- the measurement techniques used for credit risk assessments, in order to demonstrate that they are appropriate for the complexity and level of risks underlying the individual projects, the portfolio and the project owners; and
- the key characteristics of each loan included in a portfolio, in order to ensure investors have a full understanding of their features and risk profile.

The draft RTS also specify the policies, procedures and organisational arrangements that CSPs should have in place in relation to any contingency funds they may set up to provide investors with compensation in the event of a borrower default or to smooth their returns. The provisions are designed to ensure the existence of these funds does not hide or misrepresent the underlying risk or lead investors to assume that they will benefit from a guaranteed rate of return on their loans.

Comments are due by 4 September 2021.

### **EBA consults on draft RTS on reclassification of investment firms as credit institutions**

The EBA has launched a second [consultation](#) on draft RTS on the reclassification of investment firms as credit institutions under the CRD.

The draft RTS, which form part of the EBA's roadmap for delivering on mandates related to the implementation of a new prudential regime for investment firms under the Investment Firms Directive (IFD) and Regulation (IFR), set out the methodology for calculating the EUR 30 billion threshold for an investment firm to be required to apply for an authorisation as a credit institution, including:

- the definition of assets and the concept of consolidated assets;
- accounting standards for determining asset values;
- procedure for calculating total assets on a monthly basis; and
- treatment of assets of branches of third country groups.

In light of feedback received to the first June 2020 consultation raising concerns on the level playing field between undertakings, the draft RTS have been amended with the aim of ensuring that the framework is neutral with regard to geographical limitations and include relevant undertakings domiciled in the EU as well as in third countries.

The consultation closes on 17 July 2021. A public hearing will take place on 23 June. The EBA intends to submit the RTS to the Commission for endorsement in early Q4 2021.



## **PSD2: EBA publishes revised guidelines on major incident reporting**

The EBA has published its final [revised guidelines](#) on major incident reporting under the Payment Services Directive (PSD2).

The EBA believes the guidelines will:

- optimise and simplify the reporting process and templates, which is estimated to reduce reportable incidents by more than 10%;
- focus on incidents with significant impact on payment service providers (PSPs), such as malicious actions that compromise network or information systems;
- improve the meaningfulness of the information to be reported, through changes to some of the original classification criteria; and
- reduce the reporting burden for PSPs by removing unnecessary steps from the reporting process and allowing more time for the submission of the final report.

The guidelines will apply from 1 January 2022.

## **EMIR: ESMA publishes statement on implementation of FRANDT commercial terms**

The European Securities and Markets Authority (ESMA) has issued a public [statement](#) on the implementation of fair, reasonable, non-discriminatory and transparent (FRANDT) commercial terms to provide clearing services as required under the European Market Infrastructure Regulation (EMIR).

In particular, the statement notes:

- challenges reported in relation to clearing members' and clients' preparations for the 18 June 2021 deadline to meet the FRANDT requirement;
- the current status of the Delegated Regulation specifying the conditions for FRANDT status; and
- a likely period between the deadline and the Delegated Regulation's entry into force.

The public statement sets out recommendations for market participants and expectations for competent authorities in light of these considerations.

## **EU Commission proposes framework for European digital identity**

The EU Commission has proposed a new [regulation](#) to establish a framework for a European digital identity (e-ID). The proposed regulation amends Regulation (EU) 910/2014 on electronic identification and trust services for electronic transactions in the internal market (the eIDAS Regulation) to introduce a voluntary e-ID and an associated digital wallet, which will enable EU citizens and businesses to prove their identity, share electronic documents and access public and private services.

Under the proposed regulation:

- users of the framework will be able to link their e-IDs with proof of other personal attributes such as driving licences and bank accounts;

- very large private platforms will be required to accept the e-ID as a form of identification, allowing users to access services online without having to use private identification methods or share additional personal data;
- the digital wallet will allow users to store, manage and share identity data and official documents in electronic format;
- the digital wallet will be provided by public authorities or private entities authorised by a Member State; and
- the framework will build on the provisions of the eIDAS Regulation and will supplement, rather than replace, any existing Member State digital identity schemes.

Alongside the proposal, the Commission has published a recommendation in which it calls on Member States immediately to begin work on preparing a common toolbox covering the technical architecture, standards and best practice guidelines for the e-ID framework. This toolbox should be finalised by September 2022 and will be published by the Commission in October 2022.

### **Basel Committee consults on prudential treatment of cryptoasset exposures**

The Basel Committee on Banking Supervision (BCBS) has published a [consultation](#) on its preliminary proposals for the prudential treatment of banks' cryptoasset exposures. The consultation builds on the responses received to the discussion paper published by the BCBS in December 2019 on the same topic.

The BCBS is proposing to divide cryptoassets into two groups. The first ('Group 1') would meet certain criteria, such as having stabilisation mechanisms (i.e. stablecoins) or being tokenised versions of traditional assets, and would therefore be eligible for treatment under the existing Basel Framework. The second ('Group 2') would consist of cryptoassets which do not meet those criteria, such as Bitcoin, and which are therefore deemed to pose additional and higher risks. These would be subject to a new conservative prudential treatment based on a 1250% risk weight applied to the maximum of long and short positions.

The consultation sets out the BCBS's proposals for prudential treatment, including:

- credit and market risk requirements for the different groups;
- the application of the existing Basel Framework for other minimum requirements, such as leverage ratio, large exposures and liquidity ratios, with additional guidance where applicable;
- additional guidance on the supervisory review process to ensure that risks not captured under Pillar 1 requirements are assessed, managed and appropriately mitigated; and
- new disclosure requirements to ensure that banks report on cryptoasset exposures on a regular basis.

The consultation does not cover central bank digital currencies.

Comments on the proposals are due by 10 September 2021.



## **Basel Committee issues statement on impact of COVID-19 on banks, post-crisis reforms, and cryptoassets**

The BCBS has issued a [statement](#) summarising the discussions held at its recent meeting. The BCBS met to discuss the ongoing risks and vulnerabilities posed by COVID-19 to the banking system and its upcoming policy and supervisory initiatives.

In its statement, the BCBS:

- reiterates its previous guidance that banks should make use of Basel III capital and liquidity buffers to absorb shocks and maintain lending;
- calls on banks to strengthen their operational resilience in line with the principles published by the BCBS in March 2021;
- notes that it will continue to monitor banks' provisioning practices and engage with international accounting and auditing standard-setting boards and audit firms regarding the impact of the pandemic;
- notes that BCBS members will continue to exchange information and monitor the implementation of temporary adjustments to the Basel framework to ensure the adjustments are meeting their objectives and are unwound in good time; and
- announces its intention shortly to launch a public consultation on the design of a prudential treatment of banks' exposures to cryptoassets, which will build on the BCBS's discussion paper on the same topic, which was published in December 2019.

## **Green Finance: FSB's TCFD consults on proposed guidance for climate-related metrics, financial impacts, targets, and transition plans**

The Financial Stability Board's (FSB's) Task Force on Climate-related Financial Disclosures (TCFD) has launched a consultation on its [proposed guidance](#) on climate-related metrics, targets and transition plans.

The proposed guidance provides general information for organisations seeking to establish relevant metrics, targets, and transition plans for their climate-related risks and opportunities and proposes specific changes to the June 2017 final and implementing reports on recommendations of the TCFD.

Comments are due by 7 July 2020 and the TCFD intends to finalise the guidance in Q4 2021.

Alongside the consultation, the TCFD has published a [technical supplement](#) containing the feedback on its October 2020 consultation on forward-looking climate metrics for financial firms. The responses to the consultation suggest that some organisations are using forward-looking metrics, but many of them look for more clarity on methodology and standardisation.

## **Green Finance: NGFS publishes updated set of climate scenarios for climate risk assessments**

The Network for Greening the Financial System (NGFS), comprising 91 central banks and supervisors with the aim of meeting the goals of the Paris Agreement, has published an updated set of [climate scenarios](#) for central banks and supervisors, built on its June 2020 first set.

The updated set, intended not only for central banks and supervisors but also for use by the private sector, government and academia, provides a common starting point for analysing climate risks to the economy and financial system and includes key themes such as rapid decarbonisation of electricity, increasing electrification, more efficient uses of resources, and a spectrum of new technologies to tackle remaining hard-to-abate emissions.

Alongside the climate scenarios, the NGFS has launched an [online portal](#) to gather the NGFS climate scenarios and to direct users to all related NGFS publications and data.

The NGFS intends to continue developing the climate scenarios and to collaborate with industry ahead of the November 2021 COP26 summit to ensure the scenarios are suitable for wider use.

## **G7 Finance Ministers and Central Bank Governors publish communiqué**

G7 Finance Ministers and Central Bank Governors have published a [communiqué](#) following a virtual meeting on 28 May 2021 and meetings on 4-5 June in London.

The communiqué sets out actions agreed at the meetings aimed at deeper multilateral economic cooperation, including:

- support for mandatory climate-related financial disclosures and the need for a baseline global reporting standard, which is being developed by the International Financial Reporting Standards (IFRS) Foundation and builds on the TCFD framework;
- encouraging further consultation on a final proposal on the establishment of an International Sustainability Standards Board ahead of COP26;
- working to determine the best approach to ensure global consistency to impact reporting, such as on net zero alignment and broader sustainability metrics;
- G7 Central Banks to assess the financial stability risks posed by climate change, and to discuss later in the year how to make their own disclosures based on the TCFD recommendations;
- an intention to reach an agreement at the G20 meeting in July on the allocation of taxing rights, with market countries awarded taxing rights on at least 20% of profit exceeding a 10% margin for the largest and most profitable multinational enterprises, and a global minimum tax of at least 15% on a country by country basis, as well as the removal of all digital services taxes;
- working towards common principles on central bank digital currencies (CBDCs);
- support for the FSB's ongoing work in reviewing regulatory, supervisory and oversight challenges to the implementation of its high level recommendations for global stable coin arrangements, and the implementation of the G20 roadmap to enhance cross-border payments; and
- increased funding to support the global implementation of the Financial Action Task Force (FATF) standards for combatting money laundering,

terrorist financing and proliferation financing and FATF-Style Regional Bodies (FSRB) assessment programmes.

The G7 Summit was held in Cornwall, UK, on 11-13 June 2021. The UK, which has taken the Presidency of the G7, invited Australia, India, South Korea and South Africa as guest countries.

## **BoE issues discussion paper on digital money**

The Bank of England (BoE) has published a [discussion paper](#) on digital money. The paper considers two forms of digital money: CBDCs; and 'systemic stablecoins', which the BoE defines as digital tokens issued by the private sector that are stable in value at all times and offer 1-to-1 redemption.

In particular, the BoE is seeking feedback on its views regarding:

- the role of money in the economy and the impact that moving toward digital forms might have;
- public policy considerations including issues around access to cash, financial inclusion, data protection, competition, payment innovation, and the ease of switching services;
- a proposed illustrative scenario for the demand of new forms of digital money and its impact modelled by the BoE;
- the implications for macroeconomic stability; and
- the regulatory environment.

The discussion paper also summarises the responses the BoE received to the paper it published in March 2020 on the opportunities, challenges and design of a future CBDC. In light of the feedback, the BoE intends to focus on the following core principles in its future work on a CBDC:

- ensuring the CBDC is accessible regardless of geography, age, socioeconomic status, digital skills or disability;
- establishing a competitive ecosystem in which the BoE provides the minimum level of infrastructure to ensure the system is reliable, resilient and efficient, and the private sector takes a leading role in meeting the needs of end users;
- ensuring that sufficient consideration is given to whether non-CBDC payment innovations and private sector proposals could deliver the same benefits as a CBDC;
- protecting users' privacy; and
- ensuring the CBDC does not impact the BoE's ability to meet monetary and financial stability requirements.

Comments on the discussion paper are due by 7 September 2021.

## **Stress testing: BoE outlines climate change financial risk scenario for 2021 exercise**

The BoE has outlined its [2021 Biennial Exploratory Scenario](#) (BES), which will explore the resilience of the UK financial system to risks associated with different climate pathways, and published accompanying [guidance](#) for participants.

The Climate Biennial Exploratory Scenario (CBES) will use three scenarios of early action, late action, and no action, based on a subset of the NGFS scenarios, in order to explore risks arising from the significant structural changes to the economy needed to achieve net zero emissions (transition risks) and the risks associated with higher global temperatures (physical risks).

The 2021 exercise will test banks and insurers together for the first time. A qualitative questionnaire is intended to capture participants' views on their risks, approach to climate risk management, and potential management actions. The CBES will ask firms to conduct a detailed analysis of their largest counterparties and, for other counterparties, to differentiate exposures by geography and sector.

The Bank expects to publish results from the exercise in May 2022.

### **Green Finance: HMT appoints new independent expert group to advise on standards for green investment**

HM Treasury (HMT) has established a new [independent expert group](#) to provide non-binding advice to the Government on market, regulatory and scientific considerations for developing and implementing a UK Green Taxonomy, a common framework setting the bar for investments that can be defined as environmentally sustainable.

The new Green Technical Advisory Group (GTAG), expected to run for two years, will be chaired by the Green Finance Institute and comprise 18 [members](#) including financial and business stakeholders, taxonomy and data experts, and subject matter experts from academia, non-governmental organisations (NGOs), the Environment Agency and the Committee on Climate Change.

The GTAG plans to have its first meeting in June 2021 and intends to provide its first set of recommendations in September 2021.

As part of the GTAG, the Government also intends to establish an Energy Working Group aimed at providing advice on technologies such as hydrogen, carbon capture, utilisation and storage, and how to address nuclear power in the taxonomy, which is a key element of the UK's net zero objectives.

### **Credit risk: PRA responds to consultation on overseas IRB models**

The Prudential Regulatory Authority (PRA) has published its [feedback](#) to responses to its [consultation](#) on credit risk and the approach to overseas internal ratings based (IRB) models.

The PRA received three responses to the consultation, which generally supported the proposals. According to the PRA, the main issues raised during the consultation related to:

- the aggregate amount of credit risk risk-weighted assets (RWAs) derived using overseas models and the aggregate amount of exposure value allowed on the overseas model approach (OMA);
- the scope of jurisdictions eligible for the OMA; and
- the scope of asset classes eligible for the OMA.

The policy statement contains the PRA's final policy, including an updated [supervisory statement](#) (SS) 11/13 and [updated pro-forma](#) for firms to complete and submit to the PRA.

The statement is relevant to UK banks, building societies, and PRA-designated investment firms.

## **PSR sets out proposed five-year strategy**

The Payment Systems Regulator (PSR) has published its proposed five-year [strategy](#).

The strategy sets out the PSR's approach that aims to ensure payments and payment systems work well for everybody and that there is fair competition and access to payments for all. It considers what is going well, where there is scope for improvement, and the risks and issues that need to be tackled.

The PSR's priorities are:

- ensuring users have continued access to the payment services they rely upon and supporting effective choice of alternative payment options;
- ensuring users are sufficiently protected when using the UK's payment systems, now and in the future;
- promoting competition in markets and protecting users where that competition is not sufficient, including between payment systems within the UK and in the markets supported by them; and
- ensuring the renewal and future governance of the UK's interbank payment systems supports innovation and competition in payments.

The PSR is seeking feedback on its proposed strategy with a view to publishing a final version by the end of 2021.

## **Working Group on Sterling Risk-Free Reference Rates updates GBP loans guidance and Q&A**

The Working Group on Sterling Risk-Free Reference Rates has updated its [Best Practice Guide](#) for GBP Loans and its [GBP loan market Q&A](#) for the Working Group's end-Q1 2021 recommended milestone.

The Working Group has updated its Best Practice Guide for GBP Loans to include a technical appendix on the calculation of SONIA-based cost of carry for loans traded on the secondary market. The Working Group recognises that there may be practical constraints and systems limitations affecting secondary market participants' ability readily to calculate cost of carry and the technical appendix addresses possible options in light of these practical challenges.

The Q&A has been updated to include a new question concerning existing facilities with extension options. The Working Group clarifies that the end-Q1 2021 milestone to cease initiation of all new or refinanced GBP LIBOR-linked loans that expire after the end of 2021 includes existing facilities which are due to mature before the end of 2021 but contain an extension option which would extend the maturity beyond end 2021 (except where the extension option gives the borrower a contractual right to unilaterally extend without seeking lender consent).

## **AMF updates its policy on rules applicable to digital asset service providers and amends its General Regulation on location of digital asset services**

The Autorité des marchés financiers (AMF) has added a new article 721-1-1 to its [General Regulation](#), specifying the conditions under which a digital asset service is deemed to be provided in France. The new article is based on the approach previously adopted in AMF [Position DOC-2020-07](#), which was updated on 7 June 2021, namely that a digital asset service is deemed to be provided in France when it is provided by a digital asset service provider with an establishment in France or at the initiative of the digital asset provider (DASP) to clients resident or established in France.

The AMF further reminds service providers who were providing services consisting of the exchange of digital assets against other digital assets and who were operating digital asset trading platforms before 10 December 2020 that they had until 10 June 2021 to comply with the requirement to register with the AMF to perform such activities in France.

The AMF has also updated its policy ([Instruction DOC-2019-23](#), [Instruction DOC-2019-24](#) besides Position DOC-2020-07) on rules applicable to DASPs. Amongst others, a new definition of the distribution network and an updated list of items requested in the registration and/or license application have been added.

## **BaFin publishes interpretation and application guidance for credit institutions on German Money Laundering Act**

The German Federal Financial Services Supervisory Authority (BaFin) has published the '[Interpretation and Application Guidance Special Part: Credit Institutions](#)' in relation to the German Money Laundering Act (Geldwäschegesetz, GwG) for credit institutions which it supervises under section 50 no 1 lit a GwG.

In accordance with BaFin's obligation under section 51 para 8 GwG, the interpretation and application guidance aims to specify the statutory provisions intended to support credit institutions in implementing their anti-money laundering obligations.

The guidance serves to ensure proper implementation of due diligence duties and internal safeguards provided for in the GwG and follows a risk-based approach. Furthermore, it includes rules reflecting the results of the First National Risk Assessment as part of Germany's efforts to combat money laundering and terrorist financing.

## **BaFin publishes special guidelines on ad hoc disclosure for credit and financial institutions**

BaFin has added [guidelines](#) specifically for credit and financial institutions to Module C of its Issuer Guidelines.

These guidelines address the question of which ad hoc disclosure requirements arise for credit and financial institutions whose financial instruments are admitted to trading on an organised market or are included with their consent for trading on a multilateral trading facility (MTF) or an organised trading facility (OTF) when they are the addressee of supervisory action.



Module C of the Issuer Guidelines explains BaFin's administrative practice in relation to the concept of inside information under Article 7 of the Market Abuse Regulation (MAR) and the ad hoc disclosure obligation under Article 17 MAR with respect to all issuers. Sections I.2 and I.3 of this Module are therefore authoritative in principle for the determination of potential inside information.

However, for institutions that are subject to ongoing supervision by BaFin, further specific questions arise with respect to inside information in the areas of supervisory action (including supervisory classifications, recovery planning and banking supervision measures) and resolution which are examined in more detail in the newly published guidelines.

### **German Federal Ministry of Finance proposes draft to amend regulation on BaFin's statutes**

The German Federal Ministry of Finance (BMF) has published a [draft regulation](#) amending the Regulation on the statutes of BaFin (Verordnung über die Satzung der Bundesanstalt für Finanzdienstleistungsaufsicht), which will enter into force on 1 July 2021. The draft regulation is intended to address the need, highlighted by cases such as that involving Wirecard, for more effective financial supervision in Germany and a more powerful role for BaFin in enforcing the interests of investors and consumers in particular.

The German Federal Government commissioned a comprehensive external study of BaFin's organisational structures, workflows and resources to identify instruments to strengthen supervision also in these areas. Based on the results of the study, the BMF has presented a 7-point reform plan to make BaFin's supervisory structure more effective and efficient. The basis of the intended modernisation is a further development of BaFin's management structure that more clearly reflects the responsibilities of the members of BaFin's Executive Board and strengthens the central management function of its President. Provisions of the Financial Services Supervision Act (Finanzdienstleistungsaufsichtsgesetz) that are fundamental to this further development are to be amended as part of the recently adopted Act to Strengthen Financial Market Integrity (Gesetz zur Stärkung der Finanzmarktintegrität) which will also enter into force on 1 July 2021. Consequential amendments to BaFin's statutes are therefore necessary.

The reform plan of the BMF also aims to strengthen investor and consumer protection through BaFin's supervisory activities. BaFin's mandate of collective consumer protection is to be strengthened. Existing and new instruments for exercising this mandate are to be used more proactively. Investor and consumer protection is also to be given greater weight at the Executive Board level.

### **Swiss Federal Council adopts report on systemically important banks**

The Swiss Federal Council has [adopted](#) its fourth evaluation report on systemically important banks. The report concludes that, by international standards, the Swiss regulatory approach does not require any fundamental adjustment and that the current design of the requirements ensures an appropriate level of resilience for systemically important banks. However, the Federal Council highlights some areas for action in its report, including the following:

- a working group comprising representatives from the Federal Department of Finance (FDF), the Swiss Financial Market Supervisory Authority (FINMA) and the Swiss National Bank (SNB) is tasked with identifying how the special, ordinance-level liquidity requirements for systemically important banks might be adjusted. An analysis has revealed that the liquidity requirements currently imposed on systemically important banks would probably not be enough to cover liquidity needs in an emergency or in a default event; and
- the FDF should draw up proposals on how incentive systems for systemically important banks could be better anchored in terms of global resolvability.

### **China releases Data Security Law**

The Standing Committee of the National People's Congress (NPCSC) has promulgated the [PRC Data Security Law](#) (DSL), which will take effect on 1 September 2021.

The DSL is largely consistent with the second draft of the DSL, and provides the statutory basis for the PRC Government to:

- implement a national data classification system;
- introduce a unified mechanism for data security risk assessment, reporting, information sharing and surveillance and early warning; and
- based on the established system and mechanism, establish data security contingency plans and carry out data security review.

In addition, PRC entities and international institutions with a PRC presence should prepare for the prior approval requirement applicable to exporting any data from the PRC at the request of non-PRC judicial/enforcement entities. It is recommended to check with competent PRC authorities before responding to any such request. The DSL provides that exporting data without governmental approval may trigger administrative penalties, including fines up to RMB 5 million for the relevant entities, together with penalties for the responsible individuals.

### **HKMA adjusts implementation timeline for revised capital standards in Basel III final reform package**

The Hong Kong Monetary Authority (HKMA) has [decided](#) to revise the timeline for authorised institutions to implement the revised capital standards in the Basel III final reform package. The target effective dates of the standards are the following:

- revised frameworks on credit risk, operational risk, output floor and leverage ratio – these frameworks will take effect as minimum requirements from 1 July 2023, instead of 1 January 2023;
- revised market and credit valuation adjustment (CVA) risk frameworks – the industry will be provided with an additional six-month window. This means that locally incorporated authorised institutions will be required to implement the new market and CVA risk frameworks for reporting purposes by 1 July 2023. The new frameworks will take full effect from a date no earlier than 1 January 2024; and

- revised disclosure framework – the disclosure requirements associated with the above revised framework will take effect according to the effective dates of the corresponding frameworks.

The HKMA intends substantially to complete the drafting of the rules by the end of 2022 so that authorised institutions can make use of the lead time to finalise the necessary system changes prior to their effective dates.

### **HKMA unveils ‘Fintech 2025’ strategy**

The HKMA has [unveiled](#) ‘Fintech 2025’, its new strategy for driving the fintech development of Hong Kong. The new fintech strategy is intended to encourage the financial sector to adopt technology comprehensively by 2025 and to promote the provision of fair and efficient financial services for Hong Kong citizens and the economy. The five focus areas of the strategy are the following:

- all banks go fintech – the HKMA will continue to promote the all-round adoption of fintech by Hong Kong banks and encourage them fully to digitalise their operations, from front-end to back-end. The HKMA plans to roll-out a tech baseline assessment to take stock of banks’ current and planned adoption of fintech in the coming years. The HKMA will issue further supervisory guidance to facilitate the uptake of novel technologies and digitalise its supervision of banks through the use of advanced technologies;
- future-proofing Hong Kong for CBDCs – the HKMA will strengthen its research work to increase Hong Kong’s readiness in issuing CBDCs at both wholesale and retail levels;
- creating the next-generation data infrastructure – the HKMA will enhance Hong Kong’s data infrastructure and build new ones to facilitate consent-based data sharing;
- expanding the fintech-savvy workforce – the HKMA intends to collaborate with various strategic partners to support all-round fintech talent through various initiatives, including developing fintech-specific training programmes and qualifications, as well as promoting joint projects between the industry and the academia; and
- nurturing the ecosystem with funding and policies – the HKMA, together with industry key players, will establish a new Fintech Cross-Agency Co-ordination Group to formulate policies for the Hong Kong fintech ecosystem. The HKMA will also enhance its fintech supervisory sandbox and, together with the Innovation and Technology Commission, it is exploring the possibility of providing funding support to qualified fintech projects.

### **Ordinance implementing uncertificated securities market regime and enhancing OTC derivatives licensing regime gazetted**

The Hong Kong Government has gazetted the [Securities and Futures and Companies Legislation \(Amendment\) Ordinance 2021](#), which is intended to:

- facilitate the establishment and implementation of an uncertificated securities market (USM) regime in Hong Kong to provide a regulatory regime for persons providing securities registrar services; and

- refine the scope of certain regulated activities in respect of the over-the-counter derivatives (OTCD) licensing regime.

The Amendment Ordinance was enacted by the Legislative Council on 2 June 2021.

The Securities and Futures Commission (SFC) will make subsidiary legislation to prescribe the detailed rules and implementation timetable of the USM regime and the OTCD licensing regime. The SFC will consult the market on the subsidiary legislation in due course.

### **ASX publishes Listing Rules amendments relating to online forms, notification of security issues and corporate action timetables**

The Australian Securities Exchange (ASX) has [amended](#) its Listing Rules to incorporate changes relating to its online forms, notification of security issues and corporate action timetables. The amendments follow the ASX's responses to the feedback received to its November 2020 public consultation entitled 'Proposed Listing Rules changes: online forms, notification of security issues and corporate action timetables'.

The ASX has also made [consequential amendments](#) to the following guidance notes to reflect the Listing Rule changes in order to assist listed entities to prepare for these changes:

- Guidance Note 8 - Continuous Disclosure: Listing Rules 3.1 – 3.1B;
- Guidance Note 14 - ASX Market Announcements Platform;
- Guidance Note 20 - ASX Online; and
- Guidance Note 30 - Notifying Changes in Issued Securities and Applying for Quotation of New or Additional Securities.

The Listing Rule changes and updated guidance notes were effective from 5 June 2021.

### **Australian Government announces financial market infrastructure regulatory reforms**

The Australian Government has released the [report](#) of the Council of Financial Regulators (CFR) review into financial market infrastructure (FMI) regulatory reforms.

In 2019, the CFR consulted on a range of measures to enhance the regulation of FMIs. Following the consultation process, the CFR provided advice to the Government recommending a package of reforms so that the Australian financial system is supported by resilient, efficient and stable FMIs. Consistent with the CFR's recommendations, the Government's reform package is designed to:

- introduce a crisis management regime that will allow the Reserve Bank of Australia (RBA) to manage a failure at a domestic clearing and settlement facility;
- enhance the supervisory and licensing powers of the Australian Securities and Investments Commission and the RBA in respect of FMIs; and
- streamline and clarify certain regulatory powers.

This reform initiative also delivers on the recommendations of the Financial System Inquiry and the International Monetary Fund and is consistent with existing crisis management arrangements applying to authorised deposit-taking institutions and general insurers.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **The future of the EU Securitisation Regulation**

The EU Securitisation Regulation (EUSR) is just over two years old, but already the review process is in full swing. In the last year, we have had several indications of the direction that review might take.

This briefing examines recent publications from the ESAs for indications as to the direction of travel and the challenges ahead and attempting to put them in a broader regulatory, policy and political context.

<https://www.cliffordchance.com/briefings/2021/06/the-future-of-the-eu-securitisation-regulation.html>

### **The UK National Security and Investment Act – what is the impact?**

The UK Government, like many others around the world, is focusing on the perceived threat of hostile investors owning or controlling critical businesses or infrastructure and, as a result, enacted the National Security and Investment Act (NSI) in May 2021. When the regime becomes effective later this year, it will give the UK Government very broad powers to block inward investment on national security grounds.

This briefing assesses the impact of the new Act on a wide variety of investments and financing transactions.

<https://www.cliffordchance.com/briefings/2021/05/the-uk-national-security-and-investment-act--what-is-the-impact-.html>

### **Changes to the foreign ownership landscape in the UAE**

Following recent news relating to the removal of the UAE's foreign ownership restrictions, the Ministry of Economy (MoE) and the Abu Dhabi, Dubai and Ajman Economic Departments have issued announcements paving the way for 100% foreign ownership of UAE onshore companies that operate in certain sectors or business activities.

This briefing gives an overview of the key changes.

<https://www.cliffordchance.com/briefings/2021/06/changes-to-the-foreign-ownership-landscape-in-the-uae.html>

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

[www.cliffordchance.com](http://www.cliffordchance.com)

Clifford Chance, 10 Upper Bank Street,  
London, E14 5JJ

© Clifford Chance 2021

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street,  
London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to [nomorecontact@cliffordchance.com](mailto:nomorecontact@cliffordchance.com) or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Moscow • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.