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NPLs: EU Council confirms agreement with EU Parliament on credit servicers and purchasers directive

The EU Council's Committee of Permanent Representatives (Coreper) has confirmed a provisional agreement between the Council Presidency and the EU Parliament on the proposed directive on credit servicers and credit purchasers of non-performing loans (NPLs) issued by credit institutions. The proposed directive is intended to support the development of NPL secondary markets in order to allow banks to clean their balance sheets whilst ensuring that such sales do not affect borrowers' rights.

The Council press release notes that the provisional agreement between its Presidency and Parliament addressed the following key issues:

- credit servicing activity authorisations, which are intended to ensure that borrowers are treated fairly and diligently; and
- forbearance measures intended to take into account the rights and interests of consumers before starting enforcement proceedings.

The Parliament and Council are expected formally to adopt the directive after legal-linguistic revision. Following publication in the Official Journal and entry into force, there will then be an implementation deadline of 24 months.

EU Parliament adopts regulation on cross-border payments

The EU Parliament's plenary session has adopted the proposed regulation on cross-border payments in the Union at first reading.

The regulation, which codifies the existing texts in this area without any change in their substance, still needs to be formally approved by the EU Council.

EU Commission publishes proposals to replace Consumer Credit Directive

The EU Commission has published proposals for a new directive on consumer credits which will repeal and replace Directive 2008/48/EC on credit agreements for consumers (the Consumer Credit Directive (CCD)).

A REFIT evaluation conducted in 2018 and 2019 found that the CCD's objectives, namely ensuring high standards of consumer protection and fostering the development of an internal market for credit, are still relevant but have only partially been met. Regulatory fragmentation across the EU, together with legal uncertainty due to the imprecise wording of some CCD provisions, have hampered the smooth functioning of the internal market for consumer credit and do not guarantee a consistently high level of consumer protection. Digitalisation has also changed consumer behaviour and expectations with regard to obtaining credit and has introduced new players, products and processes to the market. The disruption caused by the COVID-19 pandemic has also had a significant impact on the credit market and consumers.

Against this backdrop, the EU Commission is proposing a new directive on consumer credits designed to:

- expand the scope of the consumer credit framework, including to cover crowdfunding credit services;

- update the requirements to reflect digitalisation-related developments;
- simplify information disclosure obligations;
- clarify the provisions on creditworthiness assessments;
- more effectively address irresponsible lending practices, information overload, data use and over-indebtedness, in particular in the context of COVID-19; and
- streamline the information provided to consumers at the advertisement and pre-contractual stages.

Securities settlement: EU Commission reports on efficacy of CSDR

The EU Commission has published a report to the EU Parliament and Council on the Central Securities Depositories Regulation (CSDR), as required under Article 75 of the Regulation.

The report sets out the Commission's conclusion that, in broad terms, the CSDR achieves its objectives to enhance the efficiency of securities settlement in the EU and the soundness of central securities depositories (CSDs), but also identifies areas where further action may be required. It raises specific concerns in relation to implementation, including for the following topics:

- cross-border provision of services;
- access to commercial bank money;
- settlement discipline; and
- the framework for third-country CSDs.

The Commission is considering a possible legislative proposal amending CSDR, subject to an impact assessment, which would be intended to ensure the following:

- effective post-trading infrastructure;
- enhanced competition among CSDs; and
- strengthened cross-border investment.

EBA reports on use of regtech in EU

The European Banking Authority (EBA) has published a report on the current landscape for regulatory technology (regtech) in the EU. The report assesses the overall benefits and challenges faced by financial institutions and regtech providers in the use of regtech. It focuses on the five most common regtech use cases: anti-money laundering and countering the financing of terrorism; fraud prevention; prudential reporting; ICT security; and creditworthiness assessment.

Overall, financial institutions listed enhanced risk management, better monitoring and sampling capabilities, and reduced human errors as the main benefits of using regtech solutions. Regtech providers emphasised the ability to increase efficiency, mitigate the impact of ongoing regulatory change and improve effectiveness.

Key challenges to the development of the regtech market included data quality, security and privacy, interoperability and integration with the existing

legacy systems, a lack of financial institutions' application programming interface capabilities, costly, lengthy and complex due diligence processes, and lack of awareness. While the current legal and regulatory framework was not identified as a key obstacle for regtech adoption, the lack of common regulatory standards across Member States could pose barriers for wider market adoption.

The report also contains the EBA's recommendations for steps to be taken to ensure the sound adoption and scale-up of regtech, and its effective regulation and supervision in the EU. These include:

- enhancing knowledge and addressing any skill gaps among regulators and supervisors;
- supporting supervisory convergence across the EU;
- providing clarity on supervisory expectations;
- further harmonising the legal and regulatory requirements, where appropriate; and
- making greater use of the role and expertise of the European Forum for Innovation Facilitators (EFIF) and the national regulatory sandboxes and innovation hubs.

Investment firms: EBA publishes final draft ITS on supervisory disclosure

The EBA has published a report setting out final draft implementing technical standards (ITS) with regard to the requirements for competent authorities publicly to disclose information for all types of authorised MiFID investment firms under the Investment Firms Directive (IFD).

In particular, the draft ITS set out the format, structure, contents list and annual publication date of information on:

- the texts of laws, regulation, administrative rules and general guidance adopted in Member States in the field of prudential regulation;
- the options and national discretions available under the IFD and Investment Firms Regulation (IFR);
- the criteria and methodologies that competent authorities use in the supervisory review and evaluation process (SREP); and
- aggregated statistical data on own funds, risk to market supervisory measures and administrative penalties and applied exemptions.

Competent authorities are expected to complete the templates set out in the ITS with a reference date to 31 December each year and to publish the information the following year by 30 June, with public disclosures commencing from 30 June 2022.

The draft ITS have been submitted to the EU Commission for endorsement and will apply twenty days following publication in the Official Journal.

Investment firms: EBA clarifies implementation of new prudential regime

The EBA has published an opinion to ease the implementation of the IFR and IFD, which entered into force on 26 June 2021.

The IFR/IFD classify investment firms according to their business model and size, the latter of which is benchmarked on various thresholds. Concerns have been raised that the relevant EUR 30 billion threshold for the identification of the prudential regime to be applied to investment firms cannot be determined without the guidance provided in the EBA regulatory technical standards (RTS) that are currently subject to a second consultation.

The opinion is intended to provide clarity to both investment firms and their supervisors in the specific cases where uncertainty about the relevant classification, and subsequent need for application for an authorisation as a credit institution, arises in the absence of the RTS.

The EBA has advised competent authorities to apply a pragmatic approach in these cases and has advised supervisors not to prioritise any supervisory or enforcement action in relation to the identification of investments firms, until six months after the final methodology is in place.

Supervisory review: EBA consults on amended common procedure guidelines in light of CRD5/CRR2

The EBA has launched a consultation on draft amended guidelines on common procedures and methodologies for the SREP and stress testing under the fourth Capital Requirements Directive (CRD4). The revisions are intended to reflect changes under the fifth Directive (CRD5) and the second Capital Requirements Regulation (CRR2), amongst other developments.

The EBA draws attention to key guideline changes in relation to the following topics:

- categorisation and application of the minimum engagement model following the introduction of new definitions for small and non-complex, and large, institutions;
- money laundering and terrorist financing (ML/TF) risk assessments;
- Pillar 2 capital add-ons and guidance; and
- assessment requirements for interest rate risk in the non-trading book, as well as liquidity risk and liquidity adequacy assessments.

The SREP is an ongoing supervisory process intended to bring together supervisory findings into a comprehensive overview of an institution. The guidelines are also intended to achieve a convergence of competent authorities' supervisory stress testing practices.

Comments are due by 28 September 2021.

Securitisation Regulation: EBA consults on updated draft RTS specifying risk retention requirements for originators, sponsors, original lenders and servicers

The EBA has launched a consultation on draft RTS specifying the risk retention-related requirements for originators, sponsors, original lenders and servicers under Article 6(7) of the Securitisation Regulation.

The EBA notes it has carried over a substantial part of the risk retention provisions it set out in final draft RTS in 2018, with certain modifications relating to the following topics in particular:

- amendments to the Securitisation Regulation made by Regulation (EU) 2021/557 in respect of securitisations of non-performing exposures (NPEs);
- the effects of fees payable to the retainer on risk retention;
- risk retention in re-securitisations and securitisations of own issued debt instruments; and
- the treatment of synthetic excess spread.

Comments on the consultation are due by 30 September 2021. The EBA will submit final draft RTS to the EU Commission for adoption.

ECB consults on options and discretions policy amendments

The European Central Bank (ECB) has launched a consultation on draft revisions to its policies on the options and discretions it can exercise under EU law when supervising banks.

The revisions are intended to account for legislative change since it adopted the policies in 2016. The ECB notes that most revisions relate to the application of liquidity requirements. Supervisory topics addressed by the consultation include the following among others:

- permissions for banks seeking to reduce their capital;
- leverage ratio calculation treatment of certain large exposures; and
- exemptions from the large exposures limit.

The proposed changes are set out across the following draft amended instruments:

- an ECB Guide setting out guidance for Joint Supervisory Teams in relation to significant institutions (SIs);
- an ECB Regulation in which the ECB exercises several generally applicable options and discretions in respect of SIs;
- an ECB Recommendation addressed to national competent authorities (NCAs) regarding less significant institutions (LSIs); and
- an ECB Guideline to NCAs on generally applicable options and discretions in relation to LSIs.

Comments are due by 23 August 2021.

ESMA reports on national rules governing investment fund marketing

The European Securities and Markets Authority (ESMA) has submitted to the EU Parliament, Council and Commission its first report on national rules governing the marketing of investment funds under Regulation (EU) 2019/1156 on the cross-border distribution of funds.

Key findings of the report, which is based on the responses of NCAs to two questionnaires prepared by ESMA, include:

- national laws, regulations and administrative provisions governing the marketing of investment funds are predominantly based on the transposition of the Alternative Investment Fund Managers Directive (AIFMD) and the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive, although some additional national requirements may also be applicable;
- only a very limited number of NCAs carry out ex-ante or ex-post verification of marketing communications; and
- it is expected that the transposition of Directive (EU) 2019/1160 on cross-border distribution of collective investment undertakings, required by 2 August 2021, will result in further harmonisation of marketing requirements.

ESMA will publish its next report in July 2023.

Green finance: IOSCO publishes report on corporate issuers' sustainability-related disclosures

The International Organization of Securities Commissions (IOSCO)'s Sustainable Finance Taskforce (STF) has published a report on corporate issuers' sustainability-related disclosures.

The report highlights the need to improve the consistency, comparability and reliability of sustainability reporting for investors and sets out IOSCO's vision for the development of an International Sustainability Standards Board (ISSB) under the International Financial Reporting Standards (IFRS) Foundation.

The ISSB would aim to deliver a global set of investor-oriented sustainability-related disclosure standards focused on enterprise value creation, which jurisdictions could consider incorporating as part of their mandatory reporting requirements according to their domestic regulatory frameworks.

IOSCO intends to continue collaborating with the IFRS Foundation Trustees and other stakeholders for the establishment of an ISSB expected to be launched by November 2021.

Green finance: IOSCO consults on sustainability-related regulatory and supervisory expectations in asset management industry

IOSCO has launched a consultation proposing recommendations for sustainability-related practices, policies, procedures and disclosure in the asset management industry.

The consultation aims to encourage asset managers to take sustainability-related risks and opportunities into account in their investment decision-making and risk management processes. It also aims to address the risk of greenwashing by improving transparency, comparability and consistency in sustainability-related disclosure.

The consultation sets out five key recommendations covering the following areas:

- asset manager practices, policies, procedures and disclosure;
- product disclosure;
- supervision and enforcement;
- terminology; and

- financial and investor education.

Comments are due by 15 August 2021.

FSB seeks feedback on enhancing MMF resilience

The Financial Stability Board (FSB) has published a consultation paper on policy proposals to enhance money market fund (MMF) resilience. The proposals form part of the FSB's work programme on non-bank financial intermediation (NBFI).

The proposals aim to address the vulnerabilities in MMFs highlighted in the FSB's holistic review of the March 2020 market turmoil and are intended to inform jurisdiction-specific reforms and necessary adjustments to MMF policies issued by IOSCO.

The FSB believes that enhancing MMF resilience will help address systemic risks and minimise the need for future extraordinary central bank interventions to support the sector.

The report includes proposals to:

- impose on redeeming investors the cost of their redemptions;
- absorb losses;
- reduce threshold effects; and
- reduce liquidity transformation.

Policies aimed at enhancing the resilience of MMFs could be accompanied by additional reforms in two areas:

- policies to support robust risk management by fund managers and risk monitoring by authorities; and
- measures to improve the functioning of the underlying short-term funding markets.

Comments are due by 16 August 2021.

Basel Committee publishes final technical amendments for minimum haircut floors for securities financing transactions

The Basel Committee on Banking Supervision (BCBS) has published the final technical amendments to the standard on minimum haircut floors for securities financing transactions (SFTs). The amendments were consulted upon in January 2021 and have been finalised as originally proposed.

The first amendment is intended to address an interpretative issue relating to collateral upgrade transactions. Specifically, the BCBS has revised CRE56.4 to clarify that banks are exempt from haircut floors on collateral upgrade transactions if the recipient of the securities (rather than the bank itself) is unable to re-use, or provides representations that they will not re-use, the securities received as collateral against the securities lent. The second amendment corrects a misstatement of the formula used to calculate haircut floors for netting sets of SFTs.

UK and Singapore sign MoU on financial services regulatory cooperation

The Monetary Authority of Singapore (MAS) and Her Majesty's Treasury in the UK (HMT) have signed a memorandum of understanding (MoU) on financial services regulatory cooperation, and have agreed to enter a financial partnership. The agreements demonstrate the joint commitment by the UK and Singapore to build a more comprehensive and enhanced relationship in financial services and to strengthen regulatory cooperation between the two countries.

Under the partnership, the two countries agree to:

- exchange information on regulatory initiatives;
- share good practices and progress in the implementation and enforcement of regulatory and supervisory frameworks;
- recognise each other's financial services regulatory regimes in order to reduce frictions for firms operating in each other's markets; and
- strengthen cooperation in areas such as fintech, green finance and carbon markets.

An additional MoU on cybersecurity was also signed, which is intended to establish a formal basis for cooperation between the UK and Singapore on cybersecurity in the financial sector.

Mansion House speech: Chancellor sets out vision for future of UK financial services as Government consults on Wholesale Market Review, prospectus regime and access to cash

The Chancellor of the Exchequer, Rishi Sunak, has delivered his Mansion House speech, in which he set out the Government's vision for an open, green, and technologically advanced financial services sector that is globally competitive and acts in the interests of communities and citizens across all of the UK.

The Government's vision, which is further elaborated in an accompanying strategy document entitled 'A new chapter for financial services', is shaped around four key themes:

- an open and global financial hub;
- a sector at the forefront of technology and innovation;
- a world-leader in green finance; and
- a competitive marketplace promoting effective use of capital.

This builds on the vision originally announced by the Chancellor in his statement to the House of Commons on the future of financial services in November 2020.

Alongside the speech and document, the Government has announced a number of consultations intended to take its strategy forward, including:

- a UK Wholesale Markets Review consultation, which covers trading venues, systemic internalisers (SIs), equity markets, fixed income and derivatives, commodities markets, market data, reporting and cross-cutting issues. Amongst other things, it outlines the Government's proposals to

clarify the regulatory perimeter to ensure the market can operate in confidence, and to remove requirements that limit firms' ability to access the most liquid pools of capital. This consultation closes on 24 September 2021;

- a review of the UK's prospectus regime, following Lord Hill's recommendations in the UK Listings Review. The review is intended to facilitate wider participation in the ownership of public companies, improve the efficiency of public capital raising by simplifying regulation and removing the duplications that currently exist in the UK prospectus regime, improve the quality of information that investors receive, and improve the agility of regulation in this area. This consultation closes on 24 September 2021; and
- a consultation seeking views on the Government's legislative proposals for protecting access to cash and, in particular, on establishing geographic requirements for the provision of cash withdrawal and deposit facilities, the designation of firms for meeting these requirements, and establishing further regulatory oversight of cash service provision. This consultation closes on 23 September 2021.

The Government has also published a summary of the responses it received to its October 2020 call for evidence on access to cash as well as its response to the call for evidence on HM Treasury's review of Solvency II, which was also launched in October 2020.

HMT and DMO publish UK Government green financing framework

HMT and the UK Debt Management Office (DMO) have published the UK Government green financing framework.

The framework sets out the Government's climate and environmental agenda and its vision for the UK as the world's green financial centre. It also underpins the Government's inaugural green gilt and retail green savings bonds intended to finance expenditures to help tackle climate change, biodiversity loss, and other environmental challenges, while creating green jobs across the UK.

The framework lists six types of green expenditures:

- clean transportation;
- renewable energy;
- energy efficiency;
- pollution prevention and control;
- living and natural resources; and
- climate change adaptation.

The Government has also published two independent reports evaluating the framework:

- a second party opinion, issued by Moody's Vigeo Eiris (VE) and aimed at assessing the alignment of the framework with the four core components of the Green Bond Principles (GBPs) 2021 published by the International Capital Market Association (ICMA); and
- a pre-issuance impact report, issued by the Carbon Trust and reviewing the Government's intended allocation of proceeds under the framework.

Financial Markets and Insolvency (Transitional Provision) (EU Exit) (Amendment) Regulations 2021 made and enter into force

The Financial Markets and Insolvency (Transitional Provision) (EU Exit) (Amendment) Regulations 2021 (SI 2021/782) have been made and entered into force following the approval of a draft of the Regulations by resolution of both Houses of Parliament.

SI 2021/782 amends the Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (SI 2019/341) in order to ensure continuity for UK firms and their customers who rely on EEA systems retaining settlement finality protection as a requirement for continued membership to those systems.

In particular, the SI changes the Temporary Designation Regime (TDR) that was established by SI 2019/341 by modifying the consequences of a non-UK system failing to submit an application to the Bank of England (BoE) for Settlement Finality Regulations (SFR) designation within six months of the end of the transition period (TP). Instead of immediately losing settlement finality protections under the TDR, systems that fail to apply by the deadline are to retain protections for a period of 30 months following the end of the TP.

Investment firms: draft Financial Services and Markets Act 2000 (PRA-regulated Activities) (Amendment) Order 2021 published

The draft Financial Services and Markets Act 2000 (PRA-regulated Activities) (Amendment) Order 2021 has been published.

The draft statutory instrument (SI) sets out consequential amendments and minor technical changes to the Financial Services and Markets Act 2000 (PRA-regulated Activities) (Amendment) Order 2013/556 (PRA RAO) as a result of the introduction of the Investment Firms Prudential Regime (IFPR) under the Financial Services Act 2021, including:

- removing the reference to the initial capital requirement of EUR 730,000;
- allowing for all investment firms that deal in investments as principal to be eligible for designation by the Prudential Regulation Authority (PRA);
- clarifying the meaning of controlled functions;
- removing the requirement for the PRA to consult the BoE before issuing a new designation statement of policy; and
- clarifying that, where the Financial Conduct Authority (FCA) has given its approval in relation to a particular function, such an approval should be deemed to be given by the PRA.

The draft SI follows the publication of HM Treasury's response to its consultation on the implementation of the IFPR and the remaining Basel III standards in the UK.

HM Treasury intends to lay the SI before Parliament before the end of 2021.

UK MiFIR: Markets in Financial Instruments (Capital Markets) (Amendment) Regulations 2021 laid before Parliament

HMT has laid the Markets in Financial Instruments (Capital Markets) (Amendment) Regulations 2021 (SI 2021/774) before Parliament.

SI 2021/774 amends the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 (SI 2001/995) and the UK onshored version of Commission Delegated Regulation (EU) 2017/565 supplementing MiFIR, which regulates the buying, selling and organised trading of financial securities.

The SI is intended to alleviate regulatory burdens on certain firms, including in relation to reporting requirements. It addresses the following topics:

- best execution requirements;
- service reports;
- switching, which occurs when a client sells an instrument and buys another or when they exercise a right to make a change in an existing financial instrument;
- delayed disclosure of costs and charges information;
- disclosure of information to eligible counterparties; and
- electronic communications.

The explanatory memorandum to SI 2021/774 describes the Regulations as part of the first legislative step of a wider package of reforms to the UK's wholesale capital markets framework. It is intended to complement related changes the FCA is proposing as set out in a consultation paper (FCA CP 21/9).

FCA publishes first policy statement on Investment Firm Prudential Regime

The FCA has published its first policy statement (PS21/6) on the introduction of the IFPR for investment firms authorised under the UK Markets in Financial Instruments Directive (UK MiFID).

The policy statement applies to UK MiFID firms subject to the Capital Requirements Directive (UK CRD) and Capital Requirements Regulation (UK CRR), as well as holding companies of groups containing firms authorised under UK MiFID and/or a collective portfolio management investment (CPMI), and cover:

- the categorisation of investment firms as either small and non-interconnected firms (SNIs) or not (non-SNIs);
- prudential consolidation and the group capital test (GCT);
- the definition of own funds and the composition of capital;
- own funds requirements, including transitional provisions relating to the initial collection and use of K-factor metrics;
- concentration risk; and
- reporting requirements.

The policy statement is accompanied by near final rules that will be made final once the relevant statutory instruments are made under the Financial Services Act 2021.

The FCA intends to publish a further consultation paper and two further policy statements bringing together all final rules in due course, and expects the IFPR to take effect in January 2022.

UK EMIR: FCA and PRA finalise amendments to margin requirements for non-centrally cleared derivatives

The FCA and PRA have published a policy statement (PS 14/21) setting out amendments to binding technical standards (BTS) 2016/2251 and providing feedback on responses to their consultation paper 'Margin requirements for non-centrally cleared derivatives' (CP 6/21). The BTS 2016/2251 are the UK onshored version of Commission Delegated Regulation (EU) 2016/2251 supplementing the European Market Infrastructure Regulation (EMIR) with regard to RTS for risk-mitigation techniques for OTC derivatives contracts not cleared by a central counterparty (CCP).

CP 6/21 set out proposals to amend implementation dates for the phase-in of initial margin (IM) requirements, require the exchange of variation margin (VM) for physically settled foreign exchange (FX) forwards and swaps for specified counterparties only, and extend the temporary margin requirements exemption for single-stock equity and index options until 4 January 2024.

Amongst other things, PS 14/21 details a change between the draft and final rules, in particular to the transitional provision extending the eligibility of EEA UCITS as eligible collateral.

Appended to the statement are the final FCA and PRA technical standards (bilateral margining) instruments. The requirements took effect on publication of the statement.

UK CRR: FPC and PRA consult on amendments to leverage ratio framework

The BoE's Financial Policy Committee (FPC) and the PRA have launched linked consultations on changes to the UK leverage ratio framework.

The FPC consultation paper (CP) sets out its leverage ratio framework proposals following a review in light of revised international standards as well as its commitment to ongoing policy review, including in relation to expanding the framework's scope to apply to the following, as well as the proposed basis of application:

- major UK banks, building societies and investment firms;
- UK banks, building societies and investment firms with significant non-UK assets; and
- any holding company approved or designated by the PRA whose consolidated situation is comparable to any other relevant firm.

PRA CP 14/21 sets out the PRA's proposed approach to implementing the FPC's proposals, which it considers would advance its objectives. In particular, the PRA's proposed implementation dates, as follows:

- changes to the definition of Leverage Exposure Measure, and the reporting and disclosure resulting from its CP – 1 January 2022; and

- changes to the scope and level of application of the minimum requirement, buffers, and related additional reporting and disclosure requirements for firms that would be newly brought into scope of the leverage ratio minimum requirement – 1 January 2023.

The PRA notes its consultation is relevant to all Capital Requirements Regulation (CRR) firms and CRR consolidated entities.

Comments are due by 24 August 2021.

BoE sets out FMI fee rates for 2021/22

The BoE has published a consultation paper on the fees regime for financial market infrastructure (FMI) supervision for 2021/22.

The main features of the proposals are, among others:

- the total cost for the 2021/22 fee year of the BoE's FMI supervisory activity and supporting policy activity, as permitted by the Bank's fee-levying powers, is expected to increase by 16% compared to 2020/21 fee year;
- the increase in fees in 2021/22 captures the remaining phasing in of the 2020/21 fee increase which was agreed at two years, as well as the increases expected in 2021/22;
- the BoE expects to recover an additional GBP 0.39 million (approximately) through a special project fee (SPF) for supervisory work associated with a time limited significant activity requiring additional resource; and
- the SPF hourly rates remain unchanged from 2020/21.

The consultation is relevant to all FMIs that currently pay FMI supervisory fees to the BoE or are expecting to do so within the 2021/22 fee year.

Comments are due by 30 August 2021.

BaFin to apply ESMA's guidelines on outsourcing to cloud service providers

The German Federal Financial Services Supervisory Authority (BaFin) has announced that it will apply ESMA's guidelines on outsourcing to cloud service providers. ESMA issued its guidelines on 10 May 2021.

ESMA's guidelines offer guidance on identifying, managing and monitoring risks in relation to outsourcing to cloud service providers (CSPs). The guidelines cover pre-outsourcing risk analysis and due diligence, governance, oversight and controlling, key contractual elements of outsourcing agreements with CSPs, including exit strategies, and notification obligations to competent authorities. Further, the guidelines seek to ensure that competent authorities take a consistent approach to CSPs outsourcing supervision. In that respect, the guidelines complement the European Banking Authority (EBA)'s existing guidelines on outsourcing arrangements as well as the European Insurance and Occupational Pensions Authority (EIOPA)'s guidelines on outsourcing to CSPs.

CSSF publishes feedback report on UCITS managers' liquidity risk management

The Luxembourg financial sector supervisory authority (CSSF) has published its feedback report, together with a related communiqué, in relation to the common supervisory action (CSA) on the supervision of UCITS managers'

liquidity risk management (LRM) carried out by ESMA with NCAs across the EU/EEA in 2020.

The overall analysis of compliance with the applicable rules on LRM in Luxembourg is generally satisfactory and consistent with the conclusions published by ESMA in its public statement of 24 March 2021 on the results of its CSA, i.e. most Luxembourg based UCITS investment fund managers (IFMs) that participated in the exercise also meet their regulatory obligations. However, as noted by ESMA, the exercise also identified shortcomings in some cases and the need for improvements in certain key areas. Consequently, the objective of the CSSF feedback report is to inform market participants about the CSSF's principal findings in the context of the CSA together with the related recommendations for further improvement by Luxembourg IFMs to comply with their LRM regulatory obligations under e.g. Grand Ducal Regulation of 8 February 2008, CSSF Regulation 10-04, CSSF Circular 19/733 and CSSF Circular 18/698.

In particular, the feedback report notes room for improvements by Luxembourg IFMs with regard the following topics:

- definition and implementation of a formalised and risk-based pre-investment liquidity assessment framework, which must be part of IFMs' risk management policy and which must provide, at a minimum, for (i) a clear allocation of responsibilities at the level of the IFMs for the assessment of liquidity at pre-investment level, (ii) a documented and well-founded approach towards the presumption of liquidity in view of the nature of the financial instruments authorised by the UCITS investment policy, and (iii) the carrying out of adequate and documented liquidity analyses and forecasts at pre-investment level for less liquid assets and assets not admitted or dealt in on a regulated market;
- employment of an appropriate LRM process in order to ensure that each UCITS managed is able to redeem its units/shares at the request of any investor, which implies for IFMs the implementation of the necessary approaches allowing them to have an adequate understanding of the investor basis and distribution channels of the UCITS managed as this constitutes an important building block of a comprehensive LRM process;
- implementation of adequate methodologies for the measurement of the liquidity risk of all the assets held by the UCITS managed, including appropriate controls to verify the reliability of the data used in the LRM processes;
- establishment and implementation of an effective risk management policy to be separate from the risk management procedure document to be submitted annually to the CSSF as per the requirement of Circular 18/698;
- assessment of the liquidity risk that the UCITS is likely to face during the product design phase, which must be adequately formalised and documented in the decision process and must contain the risk analyses performed;
- reporting, monitoring and escalation of the liquidity risks to the senior management and the board of directors as well as to the compliance and internal audit functions, which must all receive sufficiently detailed information on a regular basis to meet their own obligations and ensure an appropriate review of the adequacy of LRM processes, and decide on any prompt and appropriate action that should be taken; and

- KIID disclosures, including the definition and implementation of a documented internal approach underlying the definition of what is material or not in terms of liquidity risks for supporting the disclosure in the KIID.

In its communiqué, the CSSF indicates that it is currently engaging on a bilateral basis with Luxembourg UCITS IFMs in relation to the above observations so that they can implement the necessary corrective measures for the shortcomings observed. In addition, the CSSF also asks all UCITS IFMs to conduct, by the end of 2021, a comprehensive assessment with regard to the compliance of their LRM set-ups in relation to the observations of ESMA and of the CSSF and to take, if applicable, the necessary corrective measures.

CSSF updates Circular 14/593 on supervisory reporting requirements applicable to credit institutions

CSSF has issued Circular 21/774 dated 29 June 2021 amending CSSF Circular 14/593 on supervisory reporting requirements applicable to credit institutions (as amended).

The new circular updates CSSF Circular 14/593, following the publication of the following:

- Commission Implementing Regulation (EU) 2021/451 of 17 December 2020 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to supervisory reporting of institutions;
- Commission Implementing Regulation (EU) 2021/453 of 15 March 2021 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 with regard to the specific reporting requirements for market risk; and
- Regulation (EU) 2021/943 of the European Central Bank of 14 May 2021 amending Regulation (EU) 2015/534 on reporting of supervisory financial information.

CSSF updates FAQs on AIFM Law concerning accounting standards accepted for preparing annual report of Luxembourg AIFs

CSSF has updated its FAQs on the law of 12 July 2013 on alternative investment fund managers (AIFM Law) to confirm that Section 14, L2, which previously required the use of Luxembourg GAAP or IFRS as accepted accounting standards under Article 20(3) of the AIFM Law for preparing the accounting information given in the annual report of Luxembourg alternative investment funds (AIFs) managed by Luxembourg authorised alternative investment fund managers (AIFMs), is no longer applicable.

This update of the CSSF FAQs follows the governmental amendment introduced in Luxembourg bill of law no. 7737 in April 2021 with a view to clarifying directly under Article 20(3) of the AIFM Law that Luxembourg authorised AIFMs which manage Luxembourg AIFs established under the legal form of a special limited partnership (SCSp) may prepare the accounting information given in the annual reports of these SCSp-AIFs by using either Luxembourg GAAP, IFRS or other accounting standards considered as equivalent to IFRS by the EU Commission in its Decision of 12 December 2008 (as amended) on the use by third countries' issuers of securities of

certain third countries' national accounting standards and IFRS. These third-country equivalent accounting standards include US GAAP, but also the GAAP of the People's Republic of China, the Republic of Korea, Canada and, on a temporary basis, the GAAP of the Republic of India.

HKMA announces gazettal of Financial Institutions (Resolution) (Contractual Recognition of Suspension of Termination Rights—Banking Sector) Rules

The Hong Kong Monetary Authority (HKMA) has announced the gazettal of the Financial Institutions (Resolution) (Contractual Recognition of Suspension of Termination Rights—Banking Sector) Rules (Stay Rules).

The requirements under the Stay Rules support the contractual approach to giving effect to cross-border resolution actions which complements and supports the statutory frameworks as advocated by the Financial Stability Board in its Principles for Cross-border Effectiveness of Resolution Actions issued in November 2015. Under the Stay Rules, covered entities must ensure that covered contracts contain a term or condition (made, or evidenced, in writing) to the effect that the parties agree in a legally enforceable manner that the parties (other than an excluded counterparty) will be bound by any suspension of termination rights in relation to the contract that may be imposed by the HKMA under section 90(2) of the Financial Institutions (Resolution) Ordinance. An initial period of 24 or 30 months, depending on the counterparty types, beginning on the day on which the Stay Rules come into operation is provided for covered entities to achieve compliance with the Stay Rules.

The Stay Rules will be tabled before the Legislative Council for negative vetting on 7 July 2021. Subject to the views of the Legislative Council, the subsidiary legislation will come into operation on 27 August 2021.

SFC sets out guidance on notification of suspected ramp and dump scams

The Securities and Futures Commission (SFC) has issued a circular on notifications to the SFC of suspected ramp and dump scams involving market manipulation in the shares of companies listed on the Stock Exchange of Hong Kong. The SFC has noted a recent increase in apparent market manipulative activities, in particular the rising number of suspected ramp and dump scams, often conducted using popular social media platforms.

The SFC has warned that market manipulative activities seriously undermine market integrity and prejudice the interest of investors. The SFC notes that curbing such activities is a top enforcement priority and it has taken enforcement action to tackle them. In this regard, the circular is intended to:

- encourage intermediaries to provide information or documents which may facilitate the SFC's immediate assessment of the impact of potential market misconduct, in particular where a ramp and dump scam is suspected;
- remind intermediaries of their existing obligations under paragraph 12.5(f) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission to report market misconduct suspected to have been committed by their clients to the SFC in a timely manner; and

- provide intermediaries with guidance on red flags which may arouse the reasonable suspicion of intermediaries or their staff about suspected ramp and dump scams and warrant an assessment of whether the associated trading activities should be reported to the SFC under paragraph 12.5(f) of the Code of Conduct.

The SFC expects full cooperation from intermediaries and their staff once they are approached by the SFC for information or documents related to a suspected ramp and dump scam.

SFC publishes new guidance on ESG fund disclosures

The SFC has issued a circular to provide guidance to management companies of SFC-authorised unit trusts and mutual funds on enhanced disclosures for funds which incorporate ESG factors as a key investment focus (ESG funds). The latest circular supersedes a previous version issued in 2019 and includes a new requirement for ESG funds to conduct and disclose periodic assessments of how they incorporate ESG factors and provides additional guidance for ESG funds with a climate-related focus.

Given that the ESG investment landscape is rapidly developing, the SFC has noted that it will continue to monitor local and international developments and may provide further guidance or impose additional requirements for ESG funds, where appropriate.

The circular will take effect on 1 January 2022.

SFC issues guidance for licensed corporations on operation of bank accounts

The SFC has issued a circular on the operation of bank accounts for licensed corporations (LCs). In the course of its supervision the SFC has noted some unsatisfactory practices in the operation of LC's bank accounts which undermined their ability properly to safeguard client money and fully comply with the financial resources requirements under the Securities and Futures (Financial Resources) Rules at all times. Some examples of unsatisfactory practices included inadequate or inappropriate controls and lack of timely and effective access to information for responsible officers and managers-in-charge.

The SFC has set out its expected standards with respect to senior management responsibilities, authorised signer arrangements and timely and effective access to information in relation to bank accounts. The SFC has advised LCs critically to review their existing policies, procedures and internal controls to ensure the proper implementation of, and full compliance with, the circular. Noting the time it may take for LCs to make the necessary changes, the SFC expects LCs to implement the expected standards by 3 January 2022.

Monetary Authority of Singapore (Dispute Resolution Schemes) (Amendment) Regulations 2021 gazetted

The Singapore Government has gazetted the Monetary Authority of Singapore (Dispute Resolution Schemes) (Amendment) Regulations 2021 to amend certain provisions of the Monetary Authority of Singapore (Dispute Resolution Schemes) Regulations 2007 (Principal Regulations). The main revisions to the Principal Regulations are as follows:

- regulation 9(2) relating to the appointment of directors of an operator of a scheme, has been amended to require the appointment of 3 or more other directors, of whom at least half are to be independent directors;
- a new regulation 9A, requiring the appointment of the chief executive officer of an operator on or after 28 June 2021 to be subject to the prior approval of the Monetary Authority of Singapore, has been incorporated; and
- Part I (Financial Institutions) of the Second Schedule, relating to the list of financial institutions required to be a member of an approved dispute resolution scheme, has been revised.

The Monetary Authority of Singapore (Dispute Resolution Schemes) (Amendment) Regulations 2021 are effective from 28 June 2021.

MAS and financial industry further extend support measures for individuals and SMEs in tier 1 and 2 sectors

MAS, together with the Association of Banks in Singapore and the Finance Houses Association of Singapore, has announced an extension of the existing industry-wide support measures for individuals and small and medium-sized enterprises (SMEs) in Tier 1 and 2 sectors that continue to face financial difficulties due to the COVID-19 pandemic, by giving them additional time to transition to full loan instalment repayments.

For individual borrowers who can provide proof of income impact and with loan repayments that are not more than 90 days past due, the MAS will extend the application window for the following support measures from 30 June 2021 to 30 September 2021:

- property loans – reduced instalment repayment plans pegged at 60% of borrowers' monthly instalment until 31 December 2021;
- unsecured revolving credit facilities – convert outstanding balances to term loans at a reduced interest rate;
- debt consolidation plans – extend loan tenures by up to five years; and
- renovation and student loans – extend loan tenures by up to three years.

For SMEs in Tier 1 and 2 sectors which do not have loan repayments that are more than 30 days past due and who do not have overdue payments on loans which are already granted a partial principal moratorium, the MAS will extend the application windows for the Extended Support Scheme – Standardised (ESS-S) from 30 June 2021 to 30 September 2021. The ESS-S is on an opt-in basis.

Borrowers in Tier 1 and 2 sectors that are already participating in the ESS-S can choose to defer 80% of principal until 30 September 2021.

Borrowers in Tier 1 and 2 Sectors that are not currently under the ESS-S can choose to defer 80% of principal from 1 July 2021 to 30 September 2021.

For SMEs with multiple creditors that do not qualify for other restructuring programmes, the application window for the Extended Support Scheme – Customised (ESS-C) is extended from 30 June 2021 to 31 December 2021. The ESS-C facilitates multi-lender restructuring.

The MAS has indicated that this is expected to be the final extension of the industry-wide support measures.

MAS to launch global challenge for retail central bank digital currency solutions

MAS has launched a global challenge for retail Central Bank Digital Currency (CBDC) solutions, in partnership with the International Monetary Fund, World Bank, Asian Development Bank, United Nations Capital Development Fund, United Nations High Commission for Refugees, United Nations Development Programme, and the Organisation for Economic Co-operation and Development, to seek innovative retail CBDC solutions to enhance payment efficiencies and promote financial inclusion.

Fintech companies, financial institutions and solution providers around the world are invited to submit innovative solutions that can address 12 problem statements centred on the three key areas of CBDC Instrument, CBDC Distribution and CBDC Infrastructure.

Up to 15 finalists will be selected to receive mentorship from industry experts and be given access to the APIX Digital Currency Sandbox for rapid prototyping of digital currency solutions. Finalists will pitch their solutions to a global audience on Demo Day to be held at this year's Singapore FinTech Festival. Up to three winners will be selected, with each receiving SGD 50,000 in prize money.

Applications for the Global CBDC Challenge close on 23 July 2021.

MAS further extends temporary measure to allow for electronic dissemination of rights issue and take-over documents

MAS, together with the Securities Industry Council and the Singapore Exchange Regulation (SGX RegCo), has announced that listed issuers and parties involved in rights issues and take-over or merger transactions will continue to have the option electronically to disseminate offer documents through publication on SGXNet and their corporate websites, beyond the latest deadline of 30 June 2021. This extension is aligned to the extension of the alternative meeting arrangements under the COVID-19 (Temporary Measures) Act 2020.

Under the temporary measure, issuers and parties who opt to disseminate their offer documents electronically will be required to send a hardcopy notification to shareholders with instructions on how they can access the electronic version of the offer documents. They must also send the hardcopy application or acceptance forms to shareholders. These requirements will ensure that all shareholders continue to be informed of these significant corporate actions by mail during this time and are able to participate in the corporate actions.

The MAS strongly encourages parties undertaking rights issues or take-over or merger transactions to allow shareholders to apply and pay for the subscription of rights issues, accept offers and inspect documents through the internet. In order to provide certainty to listed issuers and relevant parties, at least six months' advance notice will be given before the temporary measure ceases to be available.

ASX responds to feedback received on proposed changes to netting and settlement workflows

The Australian Securities Exchange (ASX) has published its responses to the feedback received to its February 2021 consultation on proposed changes to netting and settlement workflows.

In response to the feedback received, ASX has confirmed that it will implement changes to netting and settlement workflows, including discontinuing the materialisation of the net broker obligation (NBO) and the sending of individual settlement confirmation messages for instructions that settle successfully. ASX has also made some modifications to the solution design for these changes, which includes changes to ISO messaging and the provision of additional information and reporting to assist participants with their exception management processes to address operational risk concerns.

Moreover, ASX Settlement will continue to operate a Bank for International Standards DvP Model 3 settlement model, with the benefits and efficiency of netting remaining. There is no impact to clearing risk management, specifically to margining or default management. The functional code for netting and settlement, as well as the accelerated delivery of new features for corporate actions, is now targeted for delivery into the customer development environment in August 2021, completing the external functional build for go-live. The revised functional specification and messaging requirements were published on 30 June 2021.

ASX has indicated that the timeline for CHESS replacement application deployment into production remains unchanged for April 2023.

RECENT CLIFFORD CHANCE BRIEFINGS

The digital future of syndicated loans

The outbreak of coronavirus or COVID-19 in late 2019 and 2020 has been an accelerator for digitalisation for many aspects of our lives. Is this the case for the syndicated loan market?

In recent years, there has been significant focus on the development of technological solutions (such as distributed ledger technology (DLT) and smart contracts) for the syndicated loan market with the aim of improving the negotiation, execution, administration and trading of loans – ideally through the adoption of single platform solutions. In practice, it appears that the syndicated loan market is adopting technology step by step by investing in various technological solutions which address specific points in the loan life cycle.

A survey conducted in November 2020 by the Loan Market Association (LMA) on the outlook for the syndicated loan market in 2021 shows that 17.7% of the members surveyed is using or looking to use blockchain and smart contracts. However, 60.4% of members surveyed are using or looking to use electronic platforms for document negotiation and/or transaction management. These statistics are also largely consistent with an earlier LMA Fintech survey conducted in May 2020. Interestingly, this is not dissimilar to the adoption of DLT by businesses – according to a 2020 Forbes Insights report, only 36% of businesses surveyed are using or exploring the use of DLT, this being the lowest compared to the use or exploration of the use of other technologies but this could also indicate greater room for growth as out of 36%, only 7% are currently using this technology.

Notwithstanding this, financial institutions are using or trialling a range of technology tools in all phases of the loan life cycle, from origination to secondary trading, and in key functions such as loan servicing and risk management.

This briefing explores the benefits and opportunities, as well as the legal, regulatory and practical challenges, of some of the potential technical solutions for the syndicated loan market under consideration.

https://www.cliffordchance.com/briefings/2021/06/the-digital-future-of-syndicated-loans.html

House Judiciary Committee passes six antitrust bills targeting tech platforms and large transactions, setting up vote before House of Representatives

Over the course of 19 hours on 23 June and 24 June, the House Judiciary Committee revised and approved five bills aimed at reining in Big Tech's power over consumers. After a brief recess, the Committee reconvened on 24 June and approved a sixth bill. The six bills will now move on to a full vote in the House of Representatives. If the voting trend continues from the Committee in the full House of Representatives, these bills will move on to the Senate, where the margin for passing these bills will be much narrower. It is unknown if the Senate, which is evenly split between 50 Democrats and 50 Republicans, will have the appetite to pass any of these bills, although the 'Merger Filing Fee Modernization Act' and the 'State Antitrust Enforcement Venue Act' have companion Senate bills, making it more likely that some iteration of these bills could become law. The Senate Judiciary Committee unanimously approved the 'Merger Filing Fee Modernization Act' in May 2021. These bills follow on from last year's high profile report published by the Committee, Investigation into Competition in Digital Markets, which called for a series of legislative overhauls intended to ensure federal antitrust laws effectively promote robust competition in technology markets.

This briefing discusses the antitrust bills.

https://www.cliffordchance.com/briefings/2021/06/house-judiciary-committee-passes-six-antitrust-bills-targeting-t.html