INTERNATIONAL REGULATORY UPDATE 23 – 27 AUGUST 2021

- **Money Market Funds: Delegated Regulation on reverse repurchase agreement exemption published in Official Journal**
- **MiFIR: ESMA consults on DRSP management body RTS**
- **Continuity of access to FMIs for firms in resolution: FSB publishes information framework and guidance**
- **Credit rating agencies: FCA and JFSA exchange letters on regulatory cooperation**
- **UK publishes guidance on its approach to international data transfers**
- **FCA writes to Boards of Directors on risks and expectations regarding loan-based P2P crowdfunding platforms**
- **BaFin applies ESMA guidelines on written agreements between members of CCP college**
- **China releases Personal Information Protection Law**
- **SFC concludes consultation on management and disclosure of climate-related risks by fund managers**
- **SGX consults on mandatory climate reporting, board diversity disclosures and common set of core ESG metrics**
- **ASIC and Reserve Bank of Australia publish independent expert review of ASX Trade outage**
- **ASIC publishes corporate plan for 2021-25**
- **APRA releases final remuneration prudential standard**
- **APRA publishes corporate plan for 2021-25**
- **Recent Clifford Chance briefings: SEC continues focus on cybersecurity with enforcement action against London-based publisher. Follow this link to the briefings section.**

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

Money Market Funds: Delegated Regulation on reverse repurchase agreement exemption published in Official Journal

Commission Delegated Regulation (EU) 2021/1383 amending Commission Delegated Regulation (EU) 2018/990 with regard to requirements for assets received by money market funds as part of reverse repurchase agreements

has been published in the Official Journal.

Delegated Regulation (EU) 2021/1383 has been made pursuant to the Money Market Funds Regulation (EU) 2017/1131 (MMFR) and seeks to clarify the legal bases for the application of the exemption from the supplementary qualitative and quantitative requirements on eligible investments in reverse repurchase agreements under Delegated Regulation (EU) 2018/990, namely to specify that the exemption applies to transactions entered into with credit institutions, investment firms and insurance undertakings established in the EU or covered by an equivalence decision adopted under the Capital Requirements Regulation (CRR), the Markets in Financial Instruments Regulation (MiFIR) or the Solvency II Directive.

The Delegated Regulation will enter into force on 12 September 2021.

MiFIR: ESMA consults on DRSP management body RTS

The European Securities and Markets Authority (ESMA) has published a consultation paper on draft regulatory technical standards (RTS) on the management body of Data Reporting Services Providers (DRSPs) under MiFIR.

The draft RTS, which build on existing ESMA guidelines on the management body, seek to reflect the additional supervisory powers granted to ESMA with regard to DRSPs under the Omnibus Regulation ((EU) 2019/2175). In particular, the draft RTS relate to the assessment of the suitability of the members of the management body of DRSPs, taking into account the different roles and functions carried out by them and the need to avoid conflicts of interest between members of the management body and users of the DRSP.

The consultation closes on 24 September 2021. ESMA intends to finalise and submit its draft RTS to the EU Commission by Q1 2022.

Continuity of access to FMIs for firms in resolution: FSB publishes information framework and guidance

The Financial Stability Board (FSB) has published an information framework and a revised version of its questionnaire for financial market infrastructures (FMIs) on continuity of access for firms in resolution. The two documents are intended to support firms' resolution planning by helping FMI intermediaries better understand which information clients and their resolution authorities (RAs) may need from them and by reducing the burden of duplicative information-gathering efforts by streamlining the collection of certain baseline information relevant to continuity of access in resolution.

The information framework sets out a baseline of information potentially relevant to clients and RAs in order to help FMI intermediaries to predict the topics that could form part of clients' or clients' RAs' information requests. The FSB will host a webinar on the framework for stakeholders on 16 September 2021.

Following feedback, the FSB has included clarifications and amendments to the introductory materials to its questionnaire for FMIs on continuity of access for firms in resolution. The FSB notes it has not made any major changes to the questionnaire itself.

Credit rating agencies: FCA and JFSA exchange letters on regulatory cooperation

The Financial Conduct Authority (FCA) has published a pair of letters it has exchanged with the Japanese Financial Services Agency (JFSA) on cooperation regarding supervision and enforcement in the area of credit rating agencies (CRAs). The letters, dated 10 August 2021, set out a non-legally binding framework for regulatory cooperation intended to meet the conditions for endorsement and certification under Articles 34 and 35 of the UK onshored version of the Credit Rating Agencies Regulation (UK CRAR).

UK publishes guidance on its approach to international data transfers

The UK Government has published a press release on the UK's data regime, including materials setting out the UK's approach to international data transfers.

Among other things, the UK Government has:

- published a mission statement on the UK's approach to data adequacy, and a data adequacy assessment manual and associated guidance document setting out a framework for data adequacy assessments;
- stated that it will seek to strike data adequacy partnerships with the US, Australia, the Republic of Korea, Singapore, the Dubai International Financial Centre and Colombia, as well as prioritising future partnerships with India, Brazil, Kenya and Indonesia; and
- announced the launch of an International Data Transfers Expert Council to provide independent technical and tactical advice on the UK's international data transfers policy; and
- announced an intention to launch a consultation on the UK's data protection regime in the coming weeks.

The UK Government has also announced John Edwards, currently New Zealand's Privacy Commissioner, as its preferred candidate for Information Commissioner.

FCA writes to Boards of Directors on risks and expectations regarding loan-based P2P crowdfunding platforms

The FCA has published a letter to the Boards of Directors of regulated firms active in the peer-to-peer (P2P) market. The letter, dated 25 May 2021, sets out the FCA's views on the key risks that loan-based P2P crowdfunding platforms pose to their customers or the markets in which they operate, including:

- the secondary markets for loans, and associated risk management obligations;
- wind-down plans (WDPs), their triggers, and liquidity monitoring;
- disclosure of loan performance during periods of loan forbearance, and the use of contingency funds; and
- unclear platform fees, charges and priority over recoveries.

The letter also outlines the FCA's expectations of P2P firms, including:

- ensuring that their risk management framework effectively addresses the risks associated with secondary loan markets, with particular reference to the requirements in COBS 18.12.16 R and 18.12.17 R;
- preparing WDPs that allow for the possibility of a solvent wind-down, and that consider the firms' ability to generate cashflows in good time across a wind-down period;
- holding funds directly relating to wind-down activities in cash, or another readily realisable form, in a UK bank account under the control of the firm. There should be no right of set-off over the account and, where possible, it should be excluded from charges and debentures;
- providing investors with ongoing disclosures, as specified in COBS 18.12.31 R, to ensure they have sufficient details of each P2P agreement they have entered into;
- providing risk warnings to investors when offering a contingency fund and publishing information on the fund's performance on a quarterly basis; and
- reviewing their contractual arrangements to ensure they are compliant with the requirements in the FCA Handbook regarding the disclosure of information about fees, charges and the order of recoveries to customers.

BaFin applies ESMA guidelines on written agreements between members of CCP colleges

The German Federal Financial Supervisory Authority (BaFin) has announced that it agrees with ESMA guidelines on written agreements between members of CCP colleges issued on 1 July 2021 and will fully apply them in its supervisory practice.

The guidelines are intended to ensure the common, uniform and consistent application of Articles 18 and 19 of the European Market Infrastructure Regulation (EMIR) and Delegated Regulation (EU) 876/2013. In particular, they aim to propose a standard written agreement to ensure the timely establishment and smooth functioning of a CCP college.

China releases Personal Information Protection Law

The Standing Committee of the National People's Congress has passed the Personal Information Protection Law (PIPL), which will take effect from 1 November 2021. Amongst other things, the following key aspects of the PIPL are worth noting:

- jurisdiction – the PIPL applies to personal information (PI) processing activities (i) taking place in China or (ii) conducted outside China to the extent that such activities are carried out for the purpose of (a) providing products or services to persons in China or (b) analysing and assessing behaviours of persons in China;
- basis for PI processing – a data processor is permitted to process PI only if such processing falls under one of the six categories of legal justifications provided in the PIPL. These include, for example, that the data processing is necessary for the execution and enforcement of contracts to which the data subject is a party. Alternatively, processing may be performed with the informed consent of the relevant data subjects;

- sensitive PI – PI the leakage or illegal use of which could cause harm to human dignity or personal or property security (sensitive PI) is afforded a higher level of protection based on the PIPL. Processing sensitive PI triggers the requirement to obtain separate consent or even written consent;
- cross-border transfer of PI – the PIPL provides four schemes where PI can be transferred outside China: (i) security assessment by the cybersecurity administration, (ii) third-party verification, (iii) execution of standard data contracts, and (iv) exceptional provision under laws, administrative regulations and cyberspace regulations;
- data rights and obligations – the PIPL sets out certain other rights of data subjects and obligations of data processors, including, for example, the right of a data subject to withdraw his or her consent to PI processing and the corresponding obligation of the data processor to delete the relevant PI upon the withdrawal of such consent by the data subject; and
- enforcement – penalties for violations include fines of up to RMB 50 million or 5% of annual revenue, suspension or termination of data processing activities, removal or suspension of directors or senior staff, or public censure on the social credit system. In addition, the PIPL provides a mechanism for individuals to receive compensation.

SFC concludes consultation on management and disclosure of climate-related risks by fund managers

The Securities and Futures Commission (SFC) has published the conclusions to its October 2020 consultation on the management and disclosure of climate-related risks by fund managers. The SFC will amend the Fund Manager Code of Conduct (FMCC) with a view to requiring fund managers managing collective investment schemes (CIS) to take climate-related risks into consideration in their investment and risk management processes and make appropriate disclosures. The requirements cover four key elements, namely governance, investment management, risk management and disclosure.

The SFC has also issued a circular to set out the expected standards for complying with the new requirements under the FMCC. These include baseline requirements for all those managing CIS (fund managers) and enhanced standards for fund managers with CIS under management which equal or exceed HKD 8 billion in fund assets for any three months in the previous reporting year (large fund managers). The SFC has indicated that the new requirements will be implemented in phases with the first phase beginning on 20 August 2022. Further details of the implementation timeline have been set out in the circular.

Further, the SFC has published a set of frequently asked questions (FAQs) to provide guidance on the application of the climate-related risks requirements under the FMCC, as well as on the baseline requirements and enhanced standards set out in the circular.

SGX consults on mandatory climate reporting, board diversity disclosures and common set of core ESG metrics

The Singapore Exchange Regulation (SGX RegCo) is consulting the public on a proposed roadmap for climate-related disclosures to be made mandatory in issuers' sustainability reports (SRs), requiring assurance of SRs and one-time sustainability training for all directors.

On mandatory climate reporting, the SGX RegCo is proposing for issuers to make disclosures based on recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) under a phased approach:

- all issuers will be required to adopt climate reporting on a 'comply or explain' basis for their financial year (FY) commencing in 2022;
- from the FY commencing in 2023 onwards, climate reporting will be mandatory for some sectors of issuers while 'comply or explain' will remain the approach for the others; and
- from the FY commencing in 2024 onwards, more sectors of issuers will be required to adopt mandatory climate reporting with the rest doing so on a 'comply or explain' basis.

In respect of assurance, the SGX RegCo proposes to require issuers to subject their SRs to assurance by their internal auditors. The scope should minimally include assurance on whether the data being reported is accurate and complete. Issuers may also choose to have their SRs externally assured through external auditors or an independent assurance services provider.

SGX RegCo also proposes that all directors attend a one-time training on sustainability.

Additionally, the SGX RegCo is seeking feedback on proposals to mandate issuers having in place a board diversity policy and to disclose in their annual reports (ARs):

- a board diversity policy including targets, accompanying plans and timeline for achieving the stipulated diversity on its board; and
- a description of how the combination of skills, talents, experience and diversity of directors in the board serves the needs and plans of the issuers.

It is proposed that issuers be required to adopt these enhancements (i.e. enhancements regarding climate-related disclosures, internal assurance, directors' training, timeframe for reporting and disclosures on board diversity) for their SRs and ARs for financial years beginning on or after 1 January 2022.

Separately, to assist issuers in providing, and investors in accessing, an aligned set of environmental, social and governance (ESG) data, a list of 27 proposed ESG metrics is being consulted on. While not mandatory, these metrics may be used by issuers in conjunction with their sustainability reporting. The SGX RegCo is also seeking comments on a proposed data portal where investors can access ESG data in a structured format as reported by issuers in accordance with aligned metrics and disclosure requirements.

Comments on both consultations are due by 27 September 2021.

ASIC and Reserve Bank of Australia publish independent expert review of ASX Trade outage

The Australian Securities and Investments Commission (ASIC) and the Reserve Bank of Australia (RBA) have published a summary of the independent expert review of the Australian Securities Exchange (ASX) Trade Refresh project.

On 16 November 2020, an outage occurred shortly after a major upgrade to ASX's equity trading platform, ASX Trade. The regulators view operational incidents of this nature with significant concern and informed ASX of their expectation that an independent review of the ASX Trade Refresh project be conducted in the first half of 2021.

The purpose of the independent expert review was to examine the project and assess whether it met internationally recognised standards or frameworks and relevant securities industry practices. Overall, the independent expert found that ASX met or exceeded leading industry practices in a majority of the capabilities assessed. However, the independent expert identified several key shortcomings in the project. These included: factors suggesting that the ASX Trade system was not ready to go live considering ASX's near-zero risk appetite for service disruption; gaps in the rigour applied to the project delivery risk and issue management process; and that it was not reasonable to conclude that ASX's test plan was consistent with its risk appetite.

The independent expert made recommendations in seven key categories: risk, governance, delivery, requirements, vendor management, testing and incident management. The regulators expect ASX to apply the insights from the independent expert's findings across the ASX Group to ensure existing and proposed projects, including the CHESS replacement program, are managed and implemented appropriately.

ASIC publishes corporate plan for 2021-25

ASIC has published its corporate plan for 2021-25, which outlines its regulatory priorities and actions over the next four years in order to achieve a fair, strong and efficient financial system.

The corporate plan is consistent with ASIC's new 'Statement of Intent' released in response to the Australian Government's 'Statement of Expectations'. It highlights both external and internal projects and commitments to ensure ASIC delivers on its statutory objectives. In particular, ASIC's external strategic priorities are intended to:

- promote economic recovery, including through better and more efficient regulation, facilitate innovation, and target regulatory and enforcement action to areas of greatest harm;
- reduce risk of harm to consumers exposed to poor product governance and design, and increased investment scam activity in a low-yield environment;
- support enhanced cyber resilience and cyber security among its regulated population, in line with the whole-of-government commitment to mitigating cyber security risks; and
- drive industry readiness and compliance with standards set by law reform initiatives (including the Financial Accountability Regime, reforms in

superannuation and insurance, breach reporting, and the design and distribution obligations).

APRA releases final remuneration prudential standard

The Australian Prudential Regulation Authority (APRA) has released its final prudential standard 'Cross-industry Prudential Standard CPS 511 Remuneration' (CPS 511), which has been designed to strengthen remuneration practices across the banking, insurance and superannuation industries.

CPS 511 introduces heightened requirements on remuneration and accountability intended to create more balanced incentive structures, promote financial resilience and support better outcomes for customers. In doing so, the standard seeks to address recommendations 5.1, 5.2 and 5.3 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

APRA has also released a response paper confirming that the finalised standard will require:

- entities to apply material weight to non-financial metrics (such as customer complaints, breaches, and regulatory and audit findings) when determining variable remuneration for employees;
- entities to reduce variable remuneration, potentially to zero, when warranted by poor risk conduct;
- new minimum deferral requirements for variable remuneration, coupled with malus and clawback provisions; and
- increased board oversight, transparency and accountability on remuneration outcomes.

APRA has indicated that the standard will come into effect from 1 January 2023, with a phased implementation starting with large authorised deposit-taking institutions. APRA also expects to finalise Prudential Practice Guide CPG 511: Remuneration in the coming months to assist entities in meeting their new requirements under CPS 511.

APRA publishes corporate plan for 2021-25

APRA has published its corporate plan for 2021-25 outlining how it intends to ensure the ongoing strength and resilience of the Australian financial system over the next four years. The latest corporate plan is based around the strategic theme of 'protected today, prepared for tomorrow'.

The corporate plan sets out APRA's strategic priorities for protecting bank deposit-holders, insurance policyholders and superannuation members during the current period of disruption and uncertainty, while also ensuring it is focused on preparing for future challenges.

In addition to strengthening the resilience of the entities it regulates, the corporate plan also outlines APRA's goal of enhancing its own performance by fostering a modern, highly-skilled and flexible working environment.

CLIFFORD
CHANCE

RECENT CLIFFORD CHANCE BRIEFINGS

SEC continues focus on cybersecurity with enforcement action against London-based publisher

Continuing a recent trend of using disclosure rules to police cybersecurity, on 16 August 2021 the Securities and Exchange Commission (SEC) announced a settlement with London-based publisher Pearson PLC for a 2018 cybersecurity breach that affected the personal data of millions of students. Pearson agreed to a USD 1 million fine along with an order to cease and desist from committing or causing future violations. As with another cybersecurity-related enforcement action from June, the SEC charges against Pearson were not based on inadequate cybersecurity; rather, the SEC charged Pearson for making material misstatements and omissions regarding the incident. The penalty is a reminder that companies subject to SEC oversight (including foreign issuers) must take care to ensure their public disclosures are both accurate and precise.

This briefing discusses the settlement.

https://www.cliffordchance.com/briefings/2021/08/sec-continues-focus-on-cybersecurity-with-enforcement-action-aga.html