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Securitisation Regulation: RTS on supervisory cooperation published in Official Journal

Delegated Regulation (EU) 2021/1415 supplementing the Securitisation Regulation with regard to regulatory technical standards (RTS) on the cooperation, exchange of information and notification obligations between competent authorities (CAs) and the European Supervisory Authorities (ESAs) has been published in the Official Journal.

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The Delegated Regulation sets out the general cooperation obligations, the information to be exchanged and the common notification procedures in the event of infringements of the Securitisation Regulation in the EU.

The Delegated Regulation will enter into force on 19 September 2021.

Transparency Directive: ESMA updates guide on major holding notifications

The European Securities and Markets Authority (ESMA) has updated its practical guide to national rules across the European Economic Area (EEA) on major holdings notifications under the Transparency Directive.

The guide, compiled with information provided by national competent authorities (NCAs) under the Transparency Directive, is intended to help market participants navigate the different requirements on investors to notify issuers when they acquire or dispose of shares admitted to trading, resulting in their total voting rights crossing certain set thresholds.

In particular, the guide has been updated to incorporate changes to information relating to Iceland and Italy and to remove the information concerning the United Kingdom following the end of the Brexit transition period.

The guide will be updated on an ad hoc basis, based on changes to national rules and practices.

BIS Innovation Hub, MAS and central banks of Australia, Malaysia, and South Africa to test CBDCs for international settlements through Project Dunbar

The Bank for International Settlements Innovation Hub (BIS Innovation Hub), the Monetary Authority of Singapore (MAS), the Reserve Bank of Australia, Bank Negara Malaysia and the South African Reserve Bank have announced that they will jointly test the use of central bank digital currencies (CBDCs) for international settlements through 'Project Dunbar'.

Led by the Innovation Hub's Singapore Centre, Project Dunbar is intended to develop prototype shared platforms for cross-border transactions using multiple CBDCs. These multi-CBDC platforms will allow financial institutions to transact directly with each other in the digital currencies issued by participating central banks, eliminating the need for intermediaries and cutting the time and cost of transactions.

The project will work with multiple partners to develop technical prototypes on different distributed ledger technology platforms. It will also explore different governance and operating designs that would enable central banks to share CBDC infrastructures. Moreover, it will explore the international dimension of CBDC design and support the efforts of the G20 roadmap for enhancing cross-border payments.

The results of the project, expected to be published in early 2022, will inform the development of future platforms for global and regional settlements. Technical prototypes of the shared platforms, developed in collaboration with different technology partners, will be demonstrated at the Singapore FinTech Festival in November 2021.

FCA issues warning on potential financial crime risks linked to Afghanistan

The Financial Conduct Authority (FCA) has issued a warning to firms of the potential financial crime risks arising from the current situation in Afghanistan.

The FCA notes that, while Afghanistan is not currently listed as a high-risk jurisdiction under the Money Laundering Regulations (MLRs), firms are required by Regulation 33(1)(a) to apply enhanced due diligence measures where there is a high risk of money laundering or terrorist financing (ML/TF). Regulation 33(6) sets out factors that firms may use in their assessment, including country risks.

The FCA therefore calls on firms to consider the impact that the recent developments may have on risks and risk profiles, and adapt their anti-money laundering (AML) policies and procedures accordingly. In particular, it expects firms to:

- ensure that they appropriately monitor and assess transactions to Afghanistan to mitigate the risks of their firm being exploited for ML/TF purposes;
- continue to ensure that suspicious activity is reported to the UK Financial Intelligence Unit at the National Crime Agency and that they meet their obligations under the MLRs and other terrorist financing legislation; and
- continue to screen against the UK sanctions list and the regime specific list for Afghanistan.

FCA publishes Quarterly Consultation No. 33

The FCA has published its latest quarterly consultation paper.

CP21/27 proposes miscellaneous amendments to the FCA Handbook, including:

- an amendment to how legal expenses insurance is reported under FCA value measures reporting;
- to move application forms from the Handbook;
- to amend the Handbook to reflect branding changes made by the Money and Pensions Service;
- to amend references in the Handbook due to the cessation of LIBOR;
- consequential changes to the Prospectus Regulation Rules and Listing Rules to align with changes to prospectus regime guidance;
- alterations to the question and guidance notes (SUP 16 Annex 1B) for form FIN-A (Annual Report and Accounts form);
- to amend the TD ESEF Regulation on corporate reporting in machine-readable electronic format, which relates to FCA rules in DTR 4.1, to allow issuers to use a wider range of taxonomies when preparing annual financial reports for the financial years starting on or after 1 January 2021 and 2022; and
- changes to PERG to take account of the increased scope of participants permitted to bid on the UK emission trading scheme auction platform, notably certain third country firms.

Comments on Chapter 2 are due on 27 September 2021, comments for Chapter 3 are due on 4 October 2021, and comments on Chapters 4 to 9 are due on 11 October 2021.

BaFin launches automated pre-evaluation of ORSA reports

The German Federal Financial Supervisory Authority (BaFin) has launched its new HERA evaluation programme. The programme is used for the automated preliminary analysis of ORSA reports, i.e. reports on the results of the own-risk and solvency assessments which insurance and reinsurance undertakings are required to carry out under Solvency II.

HERA, which also employs artificial intelligence, is used for the preliminary evaluation of all ORSA reports that have been, and will be, received by BaFin since the beginning of July 2021.

CSSF updates its FAQs on UCI Law to clarify procedure following breach of UCITS global exposure limit

The Luxembourg financial sector supervisory authority (CSSF) has updated its FAQs on the law of 17 December 2010 on undertakings for collective investment (UCI Law) to clarify how passive and active breaches of the UCITS global exposure limit should be treated.

Breaches that are beyond the control of the UCITS, including breaches of the value at risk (VaR) limit resulting from an increase of volatility in the financial markets, should be considered as passive investment breaches and do not need to be notified to the CSSF.

However, in case of a passive breach of the regulatory VaR limit (i.e. art. 42(3) of the UCI Law) or of any more restrictive internal VaR limit as laid down in the prospectus, investment fund managers are expected to take appropriate steps to be back in line with the applicable limit and within a reasonable time period.

In case of an active breach of the VaR limit, the CSSF provides information in its updated FAQs on the process for notifying the CSSF, including the list of information that should be mentioned in the notification process with the CSSF.

For more information, see questions 11.1 to 11.4 in the CSSF FAQ on UCI Law.

CSSF issues communiqué on IFD/IFR package

CSSF has issued a communiqué on the entry into force of the new regulatory provisions applicable to investment firms under the IFD package, which includes the national implementation of Directive (EU) 2019/2934 on the prudential supervision of investment firms (IFD), and Regulation (EU) 2019/2033 on the prudential requirements of investment firms (IFR).

The CSSF draws the attention of supervised entities to the main requirements of and changes introduced by the IFD package, including, among others, the new categorisation of investment firms, minimum capital requirements with a phase-in compliance period for existing investment firms, liquidity rules and requirements in relation to concentration risk monitoring, remuneration and transparency, as well as the new European reporting framework.

The CSSF has also indicated that following a mapping exercise, about one third of the investment firms incorporated under Luxembourg law belong to 'class 2', whereas the remainder belongs to 'class 3' and that no 'class 1' investment firm has been identified by the CSSF so far.

In addition, the communiqué draws the attention of supervised entities that are already authorised to the revision and repeal of the investment firm statuses under the Luxembourg law of 5 April 1993 on the financial sector, as amended (FSL) by the law of 21 July 2021. In this context, the CSSF has clarified that these amendments do not nullify the authorisations of previously authorised investment firms. However, with a view to complying with the new legal provisions, the CSSF requires that an updated version of the articles of incorporation, reflecting the corporate objects that have been amended to be in line with the new provisions of the FSL, are filed with the Luxembourg Register of commerce and companies.

Finally, the communiqué informs supervised entities that any questions regarding the entry into force of the IFD package can be submitted via email to the dedicated email address: ifd@cssf.lu.

Coronavirus: CSSF provides update on operational working arrangements

CSSF has issued a communiqué to highlight that entities under the supervision of the CSSF should help prevent the spread of coronavirus while ensuring their business continuity. The communiqué indicates that it is up to supervised entities to define their operational working arrangements, be they on-site or remote. As regards on-site employees, their safety needs to be guaranteed, notably by observing protective measures. Furthermore, the CSSF notes that Circular CSSF 21/769 on telework, which was due to enter into force on 30 September 2021, will only apply from the end of the pandemic, in accordance with Article 66 of the circular.

SGX introduces listing framework for Special Purpose Acquisition Companies

The Singapore Exchange (SGX) has announced new rules that enable special purpose acquisition companies (SPACs) to list on the Mainboard of Singapore Exchange Securities Trading Limited (SGX-ST), which were effective from 3 September 2021.

The SGX has also published its responses to the feedback received on its March 2021 public consultation on the proposed listing framework for SPACs. Considering the feedback received, the SGX has decided to implement the proposals set out in the consultation broadly as proposed, with some amendments to reflect comments made by respondents on matters of detail and to clarify the intent of some of the Mainboard Rules.

The SGX's SPAC framework is intended to give companies an alternative capital fund raising route with greater certainty on price and execution. An SGX listing under the SPAC framework must have the following key features:

- minimum market capitalisation of SGD 150 million at initial public offering (IPO);
- de-SPAC must take place within 24 months of IPO with an extension of up to 12 months subject to fulfilment of prescribed conditions;
- sponsors must subscribe to at least 2.5% to 3.5% of the IPO shares/units/warrants depending on the market capitalisation of the SPAC;

- de-SPAC can proceed if more than 50% of independent directors approve the transaction and more than 50% of shareholders vote in support of the transaction;
- warrants issued to shareholders will be detachable and maximum percentage dilution to shareholders arising from the conversion of warrants issued at IPO is capped at 50%;
- all independent shareholders will be entitled to redemption rights;
- sponsor's promote limit of up to 20% of issued shares at IPO; and
- moratorium on sponsors' shares from IPO to de-SPAC, a 6-month moratorium after de-SPAC and for applicable resulting issuers, a further 6-month moratorium thereafter on 50% of shareholdings.

The SGX has indicated that it will work with the Securities Investors Association (Singapore) to increase retail investors' understanding of SPACs through collaborative efforts including the conduct of educational programmes. Moreover, the SGX will separately partner Singapore Institute of Directors to educate future directors of SPACs on the responsibilities and duties expected of them.

Australian Government consults on draft Financial Accountability Regime (Consequential Amendments and Transitional Provisions) Bill 2021

The Australian Government has released for consultation the draft Financial Accountability Regime (Consequential Amendments and Transitional Provisions) Bill 2021.

The Bill supports the Financial Accountability Regime Bill 2021 and gives effect to recommendations 3.9, 4.12, 6.6, 6.7 and 6.8 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, in order to establish the financial accountability regime. In particular, the Bill is intended to:

- make consequential amendments to various Commonwealth laws at the commencement of the financial accountability regime to ensure the regime functions appropriately;
- provide for transitional arrangements relating to the repeal of the Banking Executive Accountability Regime under the Banking Act 1959; and
- postpone the application of the deferred remuneration obligations under the financial accountability regime so that the obligations apply to the banking sector (authorised deposit-taking institutions and their authorised non-operating holding companies) six months after the rest of the regime applies to that sector.

Comments on the consultation are due by 17 September 2021.

Australian Government publishes final report on review of Australian payments system

The Australian Government has published its final report on the review of the Australian payments system. The report, entitled 'Payments system review: From system to ecosystem':

- describes the nature of payments and the evolution of Australia's payments system into an ecosystem;

- examines the role of regulation in the context of Australia's payments ecosystem, as well as outlining Australia's current regulatory architecture and exploring how the need for regulation has evolved;
- sets out four principles that the regulatory architecture should be built upon and evaluates the current regulatory architecture against them;
- makes recommendations for the regulatory architecture to ensure it is well-positioned to respond to future developments and ensure the payments ecosystem continues to meet the needs of consumers and businesses; and
- discusses critical issues in the payments ecosystem and the ways that a modernised regulatory architecture may address them.

APRA publishes information paper on climate vulnerability assessment

The Australian Prudential Regulation Authority (APRA) has published an information paper outlining the purpose, design and scope of the climate vulnerability assessment (CVA) that is underway with Australia's five largest banks.

Along with its draft prudential guidance on climate risk, which was released for consultation in April 2021, the CVA forms a core plank of APRA's efforts to help its regulated entities understand and manage the financial risks associated with climate change.

The CVA is intended to measure the impact on individual institutions and the financial system of two different plausible future scenarios for how climate change, and the global response to it, may unfold. The analysis will provide insights into the potential financial exposure of institutions, the financial system and economy to the physical and transition risks of climate change.

The information paper also compares and contrasts the CVA with similar assessments that other central banks and regulators, including the European Central Bank, the Bank of England and Banque de France, are undertaking in their jurisdictions.

ARRC publishes FAQs on best practice recommendations for use of Term SOFR

The Alternative Reference Rates Committee (ARRC) has published a set of frequently asked questions (FAQs) on its best practice recommendations related to the scope of use of the CME Group's SOFR Term Rate (Term SOFR).

The FAQs follow the ARRC's formal recommendation of Term SOFR in July 2021 and cover general questions about the scope of use and more specific questions, such as the use of Term SOFR in end-user facing derivatives. The FAQs provide the following clarifications:

while Term SOFR is the first step of the waterfall in the ARRC's recommended hardwired fallback language for business loans, floating rate notes, and securitizations, the ARRC believes it is appropriate to use a daily SOFR rate as a bilaterally-negotiated fallback where counterparties see this as feasible, have hedging requirements, and wish to better align with ISDA fallbacks and current SOFR swap market conventions;

the ARRC does not recommend the trading of Term SOFR derivatives in the interdealer market because such activity could undermine trading activity in the underlying overnight SOFR derivatives that are needed to construct Term SOFR rates and could, thereby, compromise the robustness of the rates and corresponding utility to market participants; and

whether and to what extent the CME elects to license the use of its SOFR Term Rate consistent with the ARRC's recommendations as to scope of use will be determined by the CME.

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