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NPLs: EU Parliament adopts directive on credit servicers and purchasers and recovery of collateral

The EU Parliament's plenary session has adopted the proposed directive on credit servicers, credit purchasers and the recovery of collateral. This follows a provisional agreement with the EU Council in June 2021.

The directive will regulate the transfer of non-performing loans (NPLs) from banks to secondary buyers and is intended to foster the development of NPL secondary markets, in order to allow banks to clean their balance sheets while protecting borrowers' rights. Credit servicers (who act on behalf of credit purchasers and manage rights and obligations under a non-performing credit agreement) will require authorisation and be subject to supervision by Member States' competent authorities.

The directive still has to be formally approved by the EU Council. Following publication in the Official Journal and entry into force, there will then be an implementation deadline of 24 months.

EU Commission adopts 2022 work programme

The EU Commission has adopted a communication setting out its 2022 work programme.

New policy objectives relating to financial services include:

- an initiative on instant payments in the EU in Q2 2022;
- an initiative on harmonising certain aspects of substantive law on insolvency proceedings in Q3 2022;
- a proposal on implementation of the OECD global agreement on re-allocation of taxing rights; and
- amendment of the blocking statute Regulation in Q2 2022.

Priority pending proposals relating to financial services include:

- the proposal for a Regulation on digital operational resilience for the EU financial sector (DORA);
- the proposal for a Regulation on markets in crypto-assets (MICA);
- the proposal for a Directive establishing a framework for the recovery and resolution of insurance and reinsurance undertakings (IRRD);
- the proposal for a Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing;
- the proposal for a Regulation on European green bonds;
- the proposal for a Directive as regards corporate sustainability reporting (CSRD); and
- the proposal for a Regulation establishing a European Deposit Insurance Scheme (EDIS).

Annexes to the communication set out the new policy and legislative initiatives, regulatory fitness and performance (REFIT) initiatives, priority pending legislative files and intended withdrawals of pending proposals. Factsheets on the work programme have also been published.

The Commission will now start discussions with the EU Parliament and Council to establish a list of join priorities on which the co-legislators can take action.

ESAs consult on PRIIPs review

The Joint Committee of the European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), and the European Securities and Markets Authority (ESMA), has published a call for evidence concerning the EU Commission's call for technical advice on the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation.

Intended to feed into the Commission's retail investment strategy, and in particular the PRIIPs review, evidence is sought on a range of areas, including on:

- the use of the PRIIPs key information document (KID) across the EU;
- the operation of the comprehension alert in KIDs;
- the practical application of the rules, including whether they are applied consistently across the EU and compliance costs; and
- the types of physical and digital media for delivering or displaying KIDs.

Views are also sought on:

- whether the scope of the Regulation should be extended or changed to specify more precisely which types of financial instruments are captured;
- whether greater differentiation between different types of PRIIPs is needed;
- improving the comprehensibility of KIDs;
- whether past performance information should be included within the main contents of the KID, and any changes made to the requirements for information on potential future performance;
- potential alternative approaches to multi-option products (MOPs); and
- alignment between the information on costs and other disclosures.

Comments are due by 16 December 2021. The ESAs intend to hold a stakeholder event in Q1 2022 before finalising the technical advice.

UCITS: ECON Committee publishes draft reports on PRIIPs KIDs amendments

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has published two draft reports on the EU Commission's proposals concerning the use of KIDs under the PRIIPs Regulation by management companies of undertakings for collective investment in transferable securities (UCITS).

The reports set out amendments to the texts proposed by the Commission for:

- a directive amending the UCITS Directive to ensure PRIIPs KIDS are considered as satisfying the key investor requirements for UCITS; and
- a regulation amending the PRIIPs Regulation to extend the transitional arrangement for management companies, investment companies and

persons advising on, or selling, units of UCITS and non-UCITS from the requirement to provide retail investors with a PRIIPs KID.

Among other things, the ECON Committee proposes that the Commission's proposal to extend the transitional arrangement by six months to 30 June 2022 be extended by twelve months to 31 December 2022.

Benchmarks Regulation: Implementing Regulation on statutory replacement rate for EONIA published in Official Journal

Commission Implementing Regulation (EU) 2021/1848 on the designation of a replacement for the benchmark Euro overnight index average (EONIA) has been published in the Official Journal.

The Implementing Regulation designates the Euro short-term rate (€STR) as the replacement rate for EONIA to be used in legacy contracts that do not contain suitable fallback provisions. This follows recommendations from the Working Group on Euro Risk-Free Rates and a consultation on the draft implementing act launched in August 2021.

The replacement rate is based on €STR plus the fixed spread adjustment of 8,5 basis points.

The Implementing Regulation will enter into force on 10 November 2021 and apply from 3 January 2022, when EONIA is to be discontinued.

Benchmarks Regulation: Implementing Regulation on statutory replacement rate for CHF LIBOR published in Official Journal

Commission Implementing Regulation (EU) 2021/1847 on the designation of a replacement for certain settings of CHF LIBOR has been published in the Official Journal.

The Implementing Regulation designates the below rates as the replacement rates for CHF LIBOR to be used in legacy contracts that do not contain suitable fallback provisions:

- 1-month CHF LIBOR is replaced by 1-month SARON compound Rate, as observed over the 1-month period preceding the interest period;
- 3-month CHF LIBOR is replaced by 3-month SARON Compound Rate, as observed over the 3-month period preceding the interest period;
- 6-month CHF LIBOR is replaced by 3-month SARON Compound Rate, as observed over the 3-month period preceding the interest period; and
- 12-month CHF LIBOR is replaced by 3-month SARON Compound Rate, as observed over the 3-month period preceding the interest period.

The fixed spread adjustment to be added to the replacement rates shall be equivalent to the spread published for each relevant tenor and calculated on 5 March 2021 as a historical median spread between the CHF LIBOR concerned and the respective SARON compound over a five-year lookback period for each particular term.

The Implementing Regulation will enter into force on 10 November 2021 and apply from 1 January 2022.

CRR: EU Commission adopts RTS on internal ratings based approach assessment methodologies

The EU Commission has adopted a Delegated Regulation setting out regulatory technical standards (RTS) on the specification of the assessment methodology competent authorities are to follow when assessing the compliance of credit institutions and investment firms with the requirements to use the Internal Ratings Based Approach under the Capital Requirements Regulation (CRR).

The Delegated Regulation will enter into force 20 days after its publication in the Official Journal.

CRD: EU Commission adopts amended RTS on passport notifications

The EU Commission has adopted a Delegated Regulation amending the RTS on the information to be notified when exercising the right of establishment and the freedom to provide services under the Capital Requirements Directive (CRD 4).

The amendments are intended to improve the quality and consistency of the information to be provided by credit institutions notifying their home competent authorities of their intention to open a branch or provide services in another Member State or to cease their cross-border activity.

The most material changes concern:

- the request to the credit institution to indicate in a manner as accurate as possible the intended start date of each activity for which the notification is submitted, rather than just of the core business activities as currently envisaged
- the granularity of information on the financial plan to be notified in case of establishment of a branch, which now expressly requires assumptions underpinning forecasts to be included in the notification; and
- the information to be submitted in case of termination of the branch, in particular a statement indicating the measures taken or envisaged by the credit institutions to ensure that it will no longer hold deposits or repayable funds from the public through the branch is now expressly required.

The Delegated Regulation will enter into force 20 days after its publication in the Official Journal.

Banking Union / CMDI Review: EBA publishes advice on funding in resolution and insolvency

The EBA has published its response to the EU Commission's request for technical advice on funding in resolution and insolvency as part of the Commission's review of the crisis management and deposit insurance (CMDI) framework set out in the Bank Recovery and Resolution Directive (BRRD), the Single Resolution Mechanism Regulation (SRMR) and the Deposit Guarantee Schemes Directive (DGSD).

The response does not provide policy advice but presents the findings of the EBA's analysis of funding sources to handle a bank failure in resolution and insolvency in the light of possible changes in the creditor hierarchy. Main conclusions include:

- preferring deposits to other ordinary unsecured claims increases the number of banks that are able to meet the requirements to access resolution financing arrangements (RFA) without the bail-in of any type of depositors; and
- a single-tier depositor preference comes with the highest impact on covered deposits and the highest contributions from deposit guarantee schemes (DGS) compared to the other policy options and the current situation.

The response also provides an assessment of the reported issue of the difficulties for small and medium-sized banks to access the market for minimum requirement of own funds and eligible liabilities (MREL) instruments.

Investment firms: EBA publishes final draft RTS on disclosure of investment policy

The EBA has published its final draft RTS on the public disclosure of investment policy by investment firms under the Investment Firms Regulation (IFR).

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

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

These disclosure requirements apply to class 2 investment firms with total assets above EUR 100 million. These firms will have to disclose this information in relation to those companies whose shares are admitted to trading on a regulated market and in which the proportion of voting rights exceeds 5% of all voting rights issued by the company.

The first disclosure date will be 31 December 2021.

ESAs publish sectoral reports on independence of competent authorities

The ESAs, comprising the EBA, EIOPA, and ESMA, have published their individual reports on the supervisory independence of competent authorities (CAs) in their sectors.

The reports take stock of the factual situation on CAs' independence along key angles, such as operational, financial, and personal independence as well as accountability and transparency.

Key findings in the reports include that:

- the vast majority of CAs operate as independent bodies, however a few are established under the aegis of a ministry and a limited number are required to reply to requests made by certain public bodies, such as ministers. Not all CAs report being in a position to hire staff at the level needed for the fulfilment of their supervisory tasks;

- a variety of funding models are in operation with some being subject to centralised government budget rules and a few allowing for the creation of reserves, although almost all CAs reported adequate funding;
- most CAs have personal frameworks in place, however there are differences on aspects such as terms of office and removal conditions for CAs' senior management and board members, management of conflicts of interest, cooling-off periods, and legal protection for staff; and
- CAs typically ensure public transparency through the publication of documents such as annual reports or financial statements, disclosing supervisory measures taken, and through duties to report periodically on their activities to a government entity or democratic assembly. Some publish documents in English as a way to enhance transparency.

The reports are intended to support CAs in assessing whether it might be desirable to seek any legislative or regulatory amendment to further improve the framework underpinning their independence.

FSB reports on cyber incident reporting

The Financial Stability Board (FSB) has published a report on existing approaches to cyber incident reporting and next steps for broader convergence.

The FSB found that fragmentation exists across sectors and jurisdictions in the scope of what should be reported for a cyber incident, methodologies to measure severity and impact, timeframes for reporting, and how cyber incident information is used.

The report notes that greater harmonisation of regulatory reporting of cyber incidents would promote financial stability. In order to achieve greater convergence, the FSB intends to:

- develop best practices and identify a minimum set of information related to cyber incidents that financial authorities may require to promote financial stability;
- identify common types of information to be shared, to help authorities better understand impacts of a cyber incident across sectors and jurisdictions, and to understand any legal and operational impediments to sharing such information; and
- create common terminologies for cyber incident reporting.

The FSB aims to develop a detailed plan for taking this work forward by end-2021.

UK MiFID: FCA publishes Investment Firms Prudential Regime final rules

The Financial Conduct Authority (FCA) has made final rules intended to streamline and simplify prudential requirements for solo-regulated UK firms authorised under UK MiFID as part of the Investment Firms Prudential Regime (IFPR).

The FCA has converted the near-final rules from the first two policy statements on the IFPR into final rules, which are set out in the legal instruments FCA 2021/38 and FCA 2021/39. The new regime will come into force on 1 January 2022.

The FCA has also published a summary of minor updates made since it published the near-final versions of the instruments in PS21/9. It intends to publish a third policy statement by the end of 2021.

In addition, the FCA has published:

- an updated version of its general guidance (FG21/5) on the application of ex-post risk adjustment to variable remuneration, which brings FCA investment firms into scope of the guidance;
- a Remuneration Policy Statement (RPS) template, which FCA investment firms can use to document their remuneration policies and practices; and
- a template which FCA investment firms can use to record their material risk takers.

FCA publishes annual report on regulatory perimeter

The FCA has published its annual perimeter report. The perimeter is decided through legislation and determines which activities require authorisation and what level of protection consumers can expect for the financial services and products they purchase.

Amongst other things, the report:

- recommends that duties on internet companies in the Online Safety Bill should extend to paid-for advertising, as well as user-generated content, and that the Bill should designate content relating to fraud offences as 'priority' illegal content and require monitoring and preventative action by platforms;
- calls for amendments to the Financial Promotions Order, because current exemptions mean ordinary investors are at risk of receiving financial promotions, including for high-risk products, that do not have to comply with the FCA's rules;
- outlines other areas where the FCA believes that legislative change is needed, such as extending the Senior Managers and Certification Regime to payment and e-money firms; and
- highlights where the FCA is working with other agencies to prevent harm when issues fall outside its perimeter, including work with law enforcement agencies like the Serious Fraud Office, the National Crime Agency and the National Economic Crime Centre.

The FCA will formally discuss the report with the Economic Secretary to the Treasury (EST) later this year.

FCA publishes policy on LIBOR transition and derivatives trading obligation

The FCA has published a policy statement (PS21/13) modifying the list of derivatives subject to the derivatives trading obligation (DTO) in line with Articles 28 and 32 of UK MiFIR.

PS21/13 sets out the FCA's finalised amendments to the UK RTS on the DTO, following a consultation (CP21/22) launched by the FCA in July 2021.

The amendments reflect changes in the liquidity profile of certain interest rate swaps (IRS) which are subject to the DTO as a result of interest rate benchmark reform. They also take into account the Bank of England's policy statement modifying the derivatives clearing obligation in line with Article 5 of UK EMIR, which was published on 29 September 2021.

The changes come into force on 20 December 2021.

FCA publishes Q&A on powers under UK Benchmarks Regulation

The FCA has published questions and answers (Q&As) related to the use of its powers under the UK Benchmarks Regulation to help manage an orderly wind-down of LIBOR.

The Q&As cover:

- impact on contract provisions;
- use of synthetic LIBOR after end-2021; and
- implementing synthetic LIBOR.

HM Treasury publishes roadmap on new sustainability disclosure requirements

HM Treasury (HMT) has published a roadmap setting out details on new sustainability disclosure requirements (SDR).

The report, entitled 'Greening finance: a roadmap to sustainable investing', comes ahead of the UK hosting the COP26 conference in November 2021 and sets out new standards for environmental reporting by certain large businesses, including banks and insurance companies, to combat greenwashing and support transition to a greener financial system.

The new standards, which also apply to pension schemes, investment products and asset managers and owners, are intended to ensure investors have the data they need to make informed decisions about where to put their money and have a better understanding of whether their investments are aligned with the UK's net zero goals.

The roadmap also provides more details on the UK Green Taxonomy, a common framework setting the bar for investments that can be defined as environmentally sustainable.

HM Treasury consults on regulation of buy-now pay-later products

HM Treasury has launched a consultation on options to achieve a proportionate approach to the regulation of Buy-Now Pay-Later (BNPL) products.

This follows the publication of the Woodland Review in February 2021, which highlighted the potential risk of consumer detriment by unregulated interest-free BNPL products.

The consultation sets out policy options for the regulation of BNPL and considers:

- the potential scope of regulation, to target as closely as possible products where consumer detriment could arise; and
- a range of regulatory controls that could be put in place for BNPL, so that they are focused on those elements of lending practice that are most closely linked to the potential consumer detriment in this market.

Comments are due by 6 January 2022.

Basel III: PRA publishes final policy on non-performing loan securitisations

The Prudential Regulation Authority (PRA) has published a policy statement providing feedback to responses to its consultation on the implementation of the Basel standards and non-performing loan securitisations.

The statement contains the PRA's final policy including a new Non-Performing Exposures (NPE) Securitisation Part of the PRA Rulebook, and an updated supervisory statement 'Securitisation: General requirements and capital framework'.

Respondents to the consultation welcomed the PRA's development of an NPE securitisation framework as well as making a number of observations and requests for clarification, which are set out in Chapter 2.

The policy will take effect on 1 January 2022 in conjunction with any consequential amendments to the CRR by HM Treasury. The policy will stay under review and the PRA continues to welcome additional submissions of evidence regarding NPE securitisations.

Credit risk: PRA publishes final policy on identification of economic downturn for IRB models

The PRA has published a policy statement containing feedback to responses on its consultation on credit risk and the identification of the nature, severity, and duration of an economic downturn for the purposes of Internal Ratings Based (IRB) models.

The statement contains the PRA's final policy including a new UK Technical Standards instrument, an updated supervisory statement SS11/13 on IRB approaches, and versions of the relevant EBA guidelines as they stood at the end of the transition period.

The PRA received two responses to the consultation, which welcomed the proposal to introduce requirements for identifying an economic downturn as UK Technical Standards and requested clarifications. Specific areas where the PRA has amended or clarified the proposals are detailed in Chapter 2.

The implementation date for the policy changes resulting from the statement is 1 January 2022.

PRIIPs (UCITS Exemption) (Amendment) Regulations 2021 published

The Packaged Retail and Insurance-based Investment Products (UCITS Exemption) (Amendment) Regulations 2021 (SI 2021/1149) have been made and laid before Parliament.

SI 2021/1149 extends the current exemption for UCITS funds providers from the requirements of the onshored PRIIPs Regulation by five years, from 31 December 2021 to 31 December 2026.

Under this exemption, UCITS funds providers are permitted to produce Key Investor Information Documents (KIIDs) as per the requirements of the UCITS Directive, rather than PRIIPs KIDs.

The explanatory memorandum notes HMT's intention to introduce more changes to the rules for retail disclosure before the five-year period expires.

SI 2021/1149 was made according to the negative procedure and, if not annulled by Parliament, comes into force on 31 December 2021.

BoE launches first public CCP supervisory stress test

The Bank of England (BoE) has launched its first public supervisory stress test (SST) of UK central counterparties (CCPs). The SST is designed to explore the system-wide credit and liquidity resilience of UK CCPs. The findings from the SST will be used in conjunction with feedback to the BoE's paper on CCP supervisory stress testing to develop the BoE's stress testing regime. The test will include:

- both credit and liquidity components;
- application of four market risk scenarios that increase in severity; and
- reverse stress testing.

Consob complies with ESMA guidelines on market data requirements under MiFID2/MiFIR

The Commissione Nazionale per le Società e la Borsa (Consob) has confirmed its intention to comply with the ESMA guidelines on market data requirements under MiFID2/MiFIR by incorporating them into its supervisory practices.

ESMA's guidelines aim to ensure that financial market participants consistently comply with the obligation to provide market data on reasonable commercial terms, and transparency requirements, as well as the obligation to make market data available free of charge 15 minutes after publication (deferred data).

In particular, the guidelines provide for recommendations regarding the following:

- clarity and access of market data policies;
- cost-based provision of market data;
- requirement to provide data in a non-discriminatory manner;
- per-user fees;
- prohibition on combining data with other services;
- transparency requirements; and
- requirement to make market data available free of charge 15 minutes after publication.

The guidelines will enter into force on 1 January 2022.

CSSF issues circular on replacement of prior authorisation obligation by prior notification obligation for material IT outsourcing

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a circular (21/785) on the replacement of the prior authorisation obligation by a prior notification obligation in the case of material IT outsourcing.

The new circular amends CSSF Circular 12/552 (as amended), CSSF Circular 17/656, CSSF Circular 20/758 and CSSF Circular 17/654 (as amended) and provides that in the case of material IT outsourcing, a prior notification must be made to the competent authority using the appropriate forms at least three months prior to the effectiveness of the outsourcing (and one month for support PFS). At the end of the abovementioned period, if the authority has not reacted (by fully or partially objecting to the proposed IT outsourcing project or addressing requests for supplemental information to the professional) the IT outsourcing may be implemented. The CSSF may however decide to suspend the waiting period when reacting to the notification.

The new circular further specifies the requirements of the CSSF in relation to the contractual clauses in a cloud outsourcing agreement, notably as regards the requirements to agree on an EU governing law and on the resilience of the cloud outsourcing services within the EU. Limited exceptions to these requirements exist for group cloud outsourcing agreements and derogations can in justified cases be granted by the CSSF.

The circular is addressed to all credit institutions, all professionals of the financial sector (PFS), all payment institutions, all electronic money institutions as well as all managers of investment funds subject to CSSF Circular 18/698.

The new circular letter entered into force on 15 October 2021.

The CSSF circular further refers to transitional rules for authorisation requests filed before 15 October 2021 in a separate communiqué published by the CSSF.

CSSF issues communiqué on IFRS 9 and credit risk-related requirements

The CSSF has issued a communiqué on its conclusions on key IFRS 9 and credit risk-related requirements following agreed-upon procedures performed during 2021 by external auditors of credit institutions having a significant credit activity and publishing their annual accounts in Luxgaap.

The agreed-upon procedures highlighted room for improvement. The CSSF therefore expects credit institutions to review the compliance of their policies and procedures with requirements relating to:

- governance;
- risk classification, including forbearance exposures, and NPE and defaults exposures;
- collateral valuations; and
- staging and provisioning.

CSSF and Ministry of Finance provide updates on financial sanctions

The CSSF has published its latest newsletter and a dedicated communiqué drawing the attention of financial sector professionals to the redesign of the website of the Ministry of Finance, which is competent for international financial sanctions following the entry into force of the Law of 19 December 2020 on the implementation of restrictive measures in financial matters. In this respect, the Ministry has also updated its best practice guides on financial sanctions, which are available in French and in English on the Ministry's website. These guides contain non-exhaustive general recommendations on the implementation of financial sanctions. For further details on their content, the CSSF recommends that financial sector professionals subscribe to the newsletter of the Ministry of Finance in order to receive all updates in relation to financial sanctions.

Furthermore, the Ministry of Finance has posted a new template for the quarterly reporting of frozen funds for natural and legal persons required to implement the restrictive measures and to inform the Ministry of Finance of the execution of each new restrictive measure without delay and without postponing the reporting until the end of the quarter.

Finally, the CSSF has reminded professionals subject to its supervision that it has the same supervisory and sanction powers in relation to such professionals in the area of financial sanctions under the new law of 19 December 2020 as it has in the area of anti-money laundering and counterterrorism financing control.

HKMA and PBoC sign MOU on fintech innovation supervisory cooperation in Greater Bay Area

The Hong Kong Monetary Authority (HKMA) and the People's Bank of China (PBoC) have signed a memorandum of understanding (MOU) on fintech innovation supervisory cooperation in the Guangdong-Hong Kong-Macao Greater Bay Area.

Under the MOU, the HKMA and the PBoC will link up the PBoC's Fintech Innovation Regulatory Facility with the HKMA's Fintech Supervisory Sandbox to provide a one-stop platform for eligible financial institutions (FIs) and technology firms to conduct pilot trials of cross-boundary fintech initiatives in Hong Kong and the Greater Bay Area cities simultaneously. The arrangement is also intended to enable FIs and tech firms to obtain early supervisory feedback and user opinions, expediting the launch of fintech products and reducing development costs.

Securities and Futures (Closed-end Fund) (Excluded Arrangements) Notification 2021 gazetted

The Singapore Government has gazetted the Securities and Futures (Closed-end Fund) (Excluded Arrangements) Notification 2021, which was effective from 21 October 2021.

The definition of 'collective investment scheme' in section 2(1) of the Securities and Futures Act (Act) expressly excludes arrangements that fall within the definition of 'closed-end fund'. The definition of 'closed-end fund' expressly excludes arrangements the units of which are exclusively or primarily non-redeemable at the election of the holders of units, but otherwise satisfy the conditions under paragraph (aa) of the definition of 'closed-end fund' and effectively function as closed-ended investment funds. One of the conditions of paragraph (aa) of the definition of 'closed-end fund' is that the arrangement must be formed on or after 1 July 2013. Such arrangements would therefore fall within the scope of the definition of 'collective investment scheme' notwithstanding that their units are exclusively or primarily non-redeemable.

Section 15(1) of the Variable Capital Companies Act 2018 (VCC Act) provides that 'the sole object of a VCC is to be one or more collective investment schemes in the form of a body corporate.'

The notification enables foreign corporations that apply to be registered as, or are registered as, a VCC under Part 12 of the VCC Act to satisfy the requirement under section 15(1) of the VCC Act notwithstanding that they were incorporated before 1 July 2013 (and are therefore unable to meet the condition under paragraph (aa)(i)(A) of the definition of 'closed-end fund'). Such foreign corporations would still be need to satisfy the remaining conditions under paragraph (aa) of the definition of 'closed-end fund', which are provided in paragraph 2(1) of the notification.

MAS consults on proposed amendments to regulations governing appeals

The Monetary Authority of Singapore (MAS) has launched a public consultation proposing amendments to the following regulations governing appeals under their respective Acts:

- the Securities and Futures (Appeals) Regulations;
- the Financial Advisers (Appeals) Regulations;
- the Business Trusts (Appeals) Regulations;
- the Insurance (Appeals) Regulations; and
- the Trust Companies (Appeals) Regulations.

The proposed amendments are intended to strengthen the appeal process by making it more efficient, fair and practical. In particular, the MAS seeks comments on the following:

- the proposed amendments to the timelines for parties to file their respective cases as well as to the order in which parties file their cases;
- the proposed introduction of a case management conference, and the form or manner in which it should be conducted;
- the proposed amendments to the timeframe to conduct the hearing of an appeal;
- the proposal to empower the Appeal Advisory Committee (AAC) to conduct hearings by way of written submissions or video conference, as well as to consolidate appeal proceedings;
- the proposed amendments to the confidential treatment of documents or information; and
- the proposal that each party submits a summary of their respective arguments to the AAC at the close of an appeal hearing.

As the provisions of each of the appeal regulations are substantially the same, the MAS is proposing similar amendments to each of the regulations. The MAS also proposes to revoke the current appeals regulations and issue new appeals regulations instead. Further, the proposed provisions will be mirrored in the appeal regulations to be issued under the Credit Bureau Act.

Comments on the consultation are due by 15 November 2021.

MAS launches second consultation and responds to feedback on proposed revisions to guidelines on business continuity management

MAS has launched a second consultation on proposed revisions to its Guidelines on Business Continuity Management (BCM Guidelines).

The second consultation includes revisions to the BCM Guidelines to address feedback received to the first consultation in March 2019 and incorporates lessons from the COVID-19 pandemic. It also builds on the policy intent from the first consultation to emphasise the need for FIs to take an end-to-end view in ensuring the continuous delivery of critical business services, and introduce principles and practices that FIs can implement to strengthen operational resilience.

Under the second consultation, the MAS seeks comments on the following:

- the proposed identification and prioritisation of critical business services in addition to critical business functions;
- the proposed establishment of service recovery time objectives (SRTO) for each critical business service, and the implementation of recovery strategies to meet the SRTOs;
- the proposed development of an end-to-end dependency mapping on people, processes, and technology, including those involving third parties, for each critical business service;
- the expectation to conduct BCM audits that are commensurate with the criticality of the business services and functions; and
- any other aspects of BCM that warrant further guidance from the MAS.

The revised BCM Guidelines, when published, will supersede the current version issued in June 2003 and the MAS circular titled ‘Further Guidance on BCM’ that was issued in January 2006 (Circular SRD BCM 01/2006). FIs will be expected to adopt the revised BCM Guidelines within a year following their publication.

Comments on the consultation are due by 15 November 2021.

APRA finalises guidance for new prudential standard on remuneration

The Australian Prudential Regulation Authority (APRA) has published the final ‘Prudential Practice Guide CPG 511: Remuneration’ (CPG 511) to assist banks, insurers and superannuation licensees (collectively, entities) in meeting the requirements of the new prudential standard CPS 511: Remuneration (CPS 511).

CPS 511, which comes into effect from 1 January 2023, has been designed to strengthen remuneration practices across all APRA-regulated entities and to introduce heightened requirements on remuneration and accountability in order to create more balanced incentive structures, promote financial resilience and support better outcomes for customers.

The final CPG 511 is principles-based rather than prescriptive, and intended to assist industry in complying with the prudential standard CPS 511 by setting out guidance and examples of better practice for:

- strengthening incentives for individuals prudently to manage the risks they are responsible for;
- implementing appropriate consequences for poor risk outcomes; and
- improving oversight, transparency and accountability on remuneration.

With the finalisation of CPG 511, APRA expects all entities to have a strong focus on the implementation of CPS 511. Additionally, APRA has indicated that it is planning to release for consultation new reporting and disclosure requirements for remuneration and finalise these requirements in 2023.

APRA publishes annual report for 2020/21

APRA has published its annual report for the 2020/21 financial year. The latest annual report has been prepared in accordance with sections 43 and 46 of the Public Governance, Performance and Accountability Act 2013, and mainly covers the following:

- APRA's annual performance statement for the 2020/21 reporting period;
- APRA's internal management structure and arrangements and the executive's accountability with respect to its operation and performance;
- statutory reporting requirements; and
- APRA's financial statements for the year ended 30 June 2021.

SEC releases report on early 2021 equity and options market structure conditions

The US Securities and Exchange Commission (SEC) has published a staff report on equity and options market structure conditions in early 2021, which focuses on early 2021 trading activity in GameStop Corp (GME), the most well-know of the 'meme stocks' traded earlier this year.

Meme stocks experienced a dramatic increase in share price in early 2021 following positive attention on social media and sizeable investments by large numbers of primarily retail investors. As meme stock share prices rose to new highs, the trading activity received increased media attention, and shares issued by companies like GME rose sharply in value despite poor investment fundamentals. This phenomena resulted in the GME and other stocks being labelled 'meme stocks.' As the end of January approached, several retail broker-dealers temporarily limited or even prohibited trading activity in certain meme stocks and related option contracts. The SEC staff focused on GME in its report, because GME experienced all of the factors indicative of a meme stock, including poor investment fundamentals, large price moves, large volume changes, large short interest, frequent Reddit mentions, and significant media coverage.

The report concludes that the meme stock episode raised several important questions about US market structure and regulation. It suggests the following topics for potential study and consideration of whether existing laws, rules, and regulations adequately protect the US securities markets and market participants:

- situations under which broker-dealers should be allowed to restrict trading;

- retail investor digital engagement practices (e.g., gamification) and payment for order flow considerations;
- off-exchange trading in dark pools and through wholesalers; and
- the market dynamics of short selling and need for improved reporting of short sales.

US financial regulatory agencies issue statement on LIBOR transition and OCC publishes related assessment tool

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Consumer Financial Protection Bureau, the National Credit Union Administration, the Office of the Comptroller of the Currency (OCC), and the State Bank and Credit Union Regulators have jointly issued a statement emphasizing the expectation that supervised institutions with LIBOR exposure will continue to progress toward an orderly transition away from LIBOR. The statement includes clarification regarding new LIBOR contracts, considerations when assessing appropriateness of alternative reference rates, and expectations for fallback language.

The regulators have previously stated that entering into new contracts that use USD LIBOR as a reference rate after 31 December 2021 would create safety and soundness risks and that they will examine bank practices accordingly. The new statement clarifies that for these purposes:

- a ‘new contract’ includes an agreement that (i) creates additional LIBOR exposure for a supervised institution or (ii) extends the term of an existing LIBOR contract;
- a draw on an existing agreement that is legally enforceable (e.g., a committed credit facility) would not be viewed as a new contract; and
- contracts entered into on or before 31 December 2021 should either use a reference rate other than LIBOR or have fallback language that provides for the use of a strong and clearly defined alternative reference rate after LIBOR’s discontinuation.

The statement also repeats the regulators’ guidance that supervised institutions should take the following actions as they prepare for the LIBOR transition:

- develop and implement a transition plan for communicating with consumers, clients, and counterparties; and
- ensure systems and operational capabilities will be ready for transition to a replacement reference rate after LIBOR’s discontinuation.

To assist in this process, the OCC has published Bulletin 2021-46, which provides an updated self-assessment tool for banks to evaluate their preparedness for the cessation of LIBOR.

RECENT CLIFFORD CHANCE BRIEFINGS

Streamlining foreign investment and CFIUS processes

In recent years, there has been a global trend towards protectionism and raising of barriers to foreign investments. A number of countries have introduced new or stricter foreign investment regimes, including the EU

Screening Regulation, new review procedures in China and the expanding powers of the Committee on Foreign Investment in the US.

This guide on Foreign Direct Investment provides a digestible snapshot of the various foreign investment regimes in a number of jurisdictions (including the European Union, Austria, Czech Republic, France, Germany, Hungary, Italy, The Netherlands, Poland, Romania, Russia, Slovak Republic, Spain, UK, Australia, Canada, China, Japan and the USA) to help you navigate these rules to support you on your future investments.

https://www.cliffordchance.com/briefings/2021/10/streamlining-foreign-investment-and-cfius-processes-.html

Equitable subordination in Spanish insolvency proceedings – a necessary reform

The regime for classifying the credits of specially related parties (SRPs) as subordinated has been an impediment in refinancing processes. This could soon change.

This briefing discusses the consequences of SRP status and the imminent reform of the Spanish Insolvency Act.

https://www.cliffordchance.com/briefings/2021/10/equitable-subordination-in-spanish-insolvency-proceedings--a-nec.html

Investor protection to societal protection? With proposed amendments and recent probe, SEC takes concrete steps to increase ESG-related disclosures by public companies and investment managers

On 29 September 2021, the US Securities and Exchange Commission proposed amendments to Form N-PX under the Investment Company Act of 1940, as amended, to increase the amount of information that mutual funds, exchange-traded funds, closed-end funds and certain other registered investment companies must report about their proxy voting practices. The proposed rules also require certain investment managers to annually report how they voted proxies regarding executive compensation and other matters on Form N-PX. Managers would be required to categorize each proxy voting matter from a specified list of categories and subcategories, including compensation, corporate governance, the environment, diversity, and human rights or human capital.

This briefing discusses the proposed amendments and the broader SEC initiative to mandate more granular, specific disclosures on environmental, social, and governance (ESG) concerns by public companies and other securities industry participants.

https://www.cliffordchance.com/briefings/2021/10/sec-takes-concrete-steps-to-increase-esg-related-disclosures-by-.html

OFAC urges the virtual currency industry to get real about sanctions compliance

The United States Treasury Department's Office of Foreign Assets Control (OFAC) has further increased the pressure on crypto-currency service providers to ensure they maintain adequate OFAC compliance controls. In very clear language, OFAC has advised the virtual currency industry that it is holding them to the same compliance standards and expectations as the fiat currency industry, which has had many years to develop its compliance framework. This will require virtual currency market participants to quickly up their compliance game at the threat of enforcement action.

This briefing discusses the OFAC guidance.

https://www.cliffordchance.com/briefings/2021/10/ofac-urges-the-virtual-currency-industry-to-get-real-about-sanct.html