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Digital Finance: EU Commission publishes supervisory reporting strategy

The EU Commission has published a strategy on supervisory data in financial services intended to achieve an integrated EU reporting system across all financial sectors.

Aimed at promoting digital innovation as part of the digital finance package and contributing to the objectives of the Capital Markets Union (CMU), the strategy builds on the November 2019 fitness check of reporting requirements in EU financial services legislation and sets out actions for delivering the following building blocks of a modernised reporting system:

- increasing consistency and standardisation of reported data;
- enhancing the sharing and reuse of data and laying the foundations of a supervisory data space;
- improving the design of reporting requirements; and
- establishing joint governance arrangements involving the Commission, the European Supervisory Authorities (ESAs), the European Central Bank (ECB), the Single Resolution Board (SRB) and the European Systemic Risk Board (ESRB).

The Commission intends to take a gradual approach consisting of both targeted amendments to sectoral measures and more longer-term cross-sectoral improvements.

The Commission intends to prepare a progress report on implementation of the strategy in 2023.

Capital requirements: ECON Committee publishes draft report on 'daisy chain' proposal

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has published its draft report on the proposed amendments to the Capital Requirements Regulation (CRR) in the area of resolution, known as the 'daisy chain' proposal. The draft report sets out 16 proposed amendments to the Commission's proposal.

Working Group on Euro Risk-Free Rates publishes statement on cessation of EUR, GBP, CHF and JPY LIBORs and EONIA, and ceasing use of USD LIBOR

The Working Group on Euro Risk-Free Rates has published a statement reminding market participants to cease entering into new contracts that use EONIA and EUR, GBP, CHF, JPY and USD LIBORs as soon as practicable and in general terms by 31 December 2021.

For USD LIBOR, the Working Group supports guidance published by the US regulatory authorities to cease use of USD LIBOR in new contracts as of the end of 2021 (except for limited use cases). There is no statutory replacement rate available for EUR LIBOR, and the Working Group reminds market participants to transition proactively to an alternative benchmark rate or update to robust RFR fallbacks as soon as practicable.

The EU Commission has confirmed €STR +8.5bps as the statutory replacement for EONIA and the designation of SARON compounded in advance as the statutory replacement rate for CHF LIBOR. The replacement rates will apply to all contracts and financial instruments under the EU Benchmarks Regulation from 3 January 2022 for EONIA, and 1 January 2022 for CHF LIBOR, that have not been transitioned to an alternative rate or updated to robust RFR fallbacks.

The Chairman of the Working Group has sent a letter to the EU Commission formally requesting the designation of a statutory replacement rate for GBP and JPY LIBORs under the EU Benchmarks Regulation.

For EUR, GBP, CHF, and JPY LIBORs, the Working Group recommends the adoption of the selected alternative risk-free rates identified by the relevant national working groups in new and legacy contracts.

The Working Group recognises that firms may be at different stages in their transition plans but reminds all market participants to be ready for the year-end deadline.

ESMA issues statement on implementation of clearing and derivative trading obligations in light of benchmark transition

The European Securities and Markets Authority (ESMA) has issued a statement on the implementation of the changes to the clearing obligation (CO) and derivative trading obligation (DTO) in light of the benchmark transition.

In the statement, ESMA clarifies that its proposed draft regulatory technical standards (RTS) on the CO and DTO will not enter into force in time for the transition to alternative benchmarks of EONIA or LIBOR-based OTC derivative contracts by the end of 2021.

Accordingly, from 3 January 2022, ESMA expects national competent authorities (NCAs) not to prioritise their supervisory actions in relation to the:

- CO for interest rate derivatives (IRD) classes referencing EONIA, GBP LIBOR, JPY LIBOR or USD LIBOR; and
- DTO for IRD classes referencing GBP or USD LIBOR.

ESMA recommends voluntary clearing of derivative classes that will be included in the scope of the CO ahead of its start date.

The draft RTS are yet to be adopted by the EU Commission.

ESMA issues assessment report on systemically important UK CCPs

ESMA has published a report (in parts one and two) on the conclusions from its assessment of third-country central counterparties (Tier 2 CCPs) established in the UK.

In the report, ESMA identifies three UK CCPs, one provided by LCH Ltd and two by ICE Clear Europe Ltd, as being of substantial systemic importance for the EU's financial stability and posing risks that may not be fully mitigated under the current European Market Infrastructure Regulation (EMIR) regulatory framework.

ESMA does not recommend to the EU Commission the derecognition of any of the Tier 2 CCPs since the costs and risks of derecognition would outweigh the benefits to the EU. Instead, ESMA proposes measures to:

- reduce the size of the EU's exposure to Tier 2 CCPs;
- review the mechanism of comparable compliance set out in Article 25a EMIR to ensure appropriate powers of ESMA over Tier 2 CCPs;
- examine whether to require Tier 2 CCPs to directly comply with all or part of the provisions embedded in the CCP Recovery and Resolution Regulation.
- grant powers to ESMA to approve recovery plans of Tier 2 CCPs and to request from Tier 2 CCPs (and third country authorities) to be notified prior

to imposing any restriction, suspension, or termination of access to EU clearing members;

- include a new mandate in the CCP Recovery and Resolution Regulation to provide ESMA with the possibility to negotiate an additional Memorandum of Understanding (MoU) with Tier 2 CCPs on recovery and resolution; and
- consult ESMA on any measures that could potentially have an adverse impact on EU market participants before CCPs adopt them in the context of the resolution of a Tier 2 CCP.

Alongside the report, ESMA has published a statement summarising its conclusions.

ESMA publishes statement on DRSP supervision

ESMA has published a statement to clarify the transfer of competences and duties relating to certain data reporting services providers (DRSPs) from national competent authorities (NCAs) to ESMA.

Under MiFIR (as amended by the ESAs Review Regulation), operations of certain DRSPS are to become subject to ESMA's authorisation and supervision as of 1 January 2022. However, the EU Commission has not yet adopted a delegated act specifying:

- the criteria to identify DSRPs derogated from ESMA supervision;
- the rules of procedure for the exercise of the power by ESMA to impose fines and periodic penalty payments on in-scope DRSPs; and
- the rules for ESMA to charge supervisory fees to those DRSPs.

The statement clarifies that, in the interim period until the delegated act becomes applicable, ESMA will:

- as of 1 January 2022, take over supervisory responsibilities from NCAs only for the DRSPs which may fall under its remit once the delegated act will apply; and
- charge fees to DRSPs which are not derogated and fall under its supervision for the entire period starting from 1 January 2022.

ESMA expects the delegated act to be adopted and become applicable shortly after 1 January 2022.

EBA publishes final draft RTS on credit risk adjustments

The European Banking Authority (EBA) has published its final report on the draft RTS amending the RTS on credit risk adjustments in the context of the calculation of the risk weight of defaulted exposures under the standardised approach of credit risk.

The proposed amendments follow up on the EU Commission's Action Plan to tackle Non-Performing Loans (NPLs) in the aftermath of the COVID-19 pandemic, which indicated the need for a revision of the treatment of purchased defaulted exposures under the standardised approach. The revision aims to ensure that the prudential framework does not create disincentives to the sale of non-performing assets by banks.

The proposed amendment to the existing RTS on credit risk adjustments introduces a change to the recognition of total credit risk adjustments to ensure that the risk weight remains the same on both the seller's balance sheet and the balance sheet of the credit institution buying the assets. In particular, the price discount stemming from the sale will be recognised as a credit risk adjustment for the purposes of determining the risk weight.

The EBA recommends that the treatment set out in the RTS be directly reflected in the Level 1 text, in line with the EU Commission's Capital Requirements Regulation (CRR) 3 proposal.

EBA consults on liquidity requirements for investment firms

The EBA has launched a consultation on its draft RTS specific liquidity measurement requirements for investment firms and draft guidelines on liquidity requirements exemptions for small and non-interconnected investment firms. The draft RTS and guidelines are intended to ensure consistent supervisory practices with regard to the application of liquidity requirements for investment firms across all EU Member States.

The draft RTS on specific liquidity measurement set out liquidity risk elements that may raise major concern for investment firms and that competent authorities will be required to consider when setting specific liquidity requirements as a result of an investment firm's supervisory review and evaluation process (SREP). The draft RTS specify that those elements shall be considered under normal and severe, but plausible, conditions. In addition, to ensure proportionality, competent authorities should assess only a smaller set of elements for small and non-interconnected investment firms.

The draft guidelines set out the criteria that competent authorities should take into account when exempting small and non-interconnected investment firms from liquidity requirements set out in the Investment Firms Regulation (IFR). The guidelines specify that an exemption should be based on the assessment of the financial resource needed for an orderly wind-down of the investment firm.

Comments are due by 10 March 2022.

CRR: EBA reports on feasibility study on integrated reporting system

The EBA has published its final report on its feasibility study of an integrated reporting system (IRS).

The reports forms part of a broader EU Commission strategy to improve and modernise EU supervisory reporting while minimising the aggregate reporting burden for all parties.

The EBA has found that an IRS could be feasible to achieve but will require strong commitment from all parties involved so as to ensure further data comparability, data sharing, and coordination of reporting processes. The report details a long-term vision on how reporting processes could be streamlined and improved for institutions and competent authorities and how cooperation among the latter could be enhanced in the area of prudential, resolution, and supervisory reporting.

Short term action points identified to serve as a basis for a more detailed roadmap include:

- developing the common data dictionary by defining business glossaries and common data models;
- drawing best practices for data integration; and
- providing an estimate of the resources needed to achieve the integration objectives.

The report stresses that any change should be implemented gradually so as not to disrupt the current processes and should foster the principle of proportionality.

EBA publishes revised guidelines on supervision of credit and financial institutions' compliance with AML/CFT obligations

The EBA has published revised guidelines on the risk-based supervision of credit and financial institutions' compliance with their anti-money laundering and countering the financing of terrorism (AML/CFT) obligations. The guidelines set out the steps supervisors should take to ensure there is adequate, risk-based AML/CFT oversight in their sector and to support credit and financial institutions in their adoption of effective AML/CFT risk management policies and procedures.

The EBA consulted on proposed revisions to the guidance in March 2021, after it identified various issues in their implementation by national competent authorities (NCAs). The updated guidelines provide additional guidance intended to address these issues and to reflect the changes in the EU legal framework and international standards since the guidelines were first issued. In particular they:

- emphasise the need for a comprehensive risk assessment at a sectoral and sub-sectoral level to ensure NCAs effectively identify risk areas that require more intense supervisory attention;
- set out the different supervisory tools available to NCAs and provide guidance on selecting the most effective tools for different purposes;
- emphasise the importance of a robust follow-up process and set out different aspects that NCAs should consider when determining the most effective follow-up action;
- provide further guidance on the implementation of an effective supervisory strategy and plan, to ensure that NCAs allocate their supervisory resources in accordance with the risk exposure;
- clarify NCAs' obligations for the AML/CFT supervision of groups;
- highlight the importance of cooperation among NCAs and other stakeholders, including prudential supervisors, financial intelligence units, tax authorities, law enforcement and AML/CFT authorities in third countries; and
- provide further guidance on how NCAs can determine the type of guidance needed within the sector and how to communicate this guidance effectively.

The guidelines will now be translated into the official EU languages. They will enter into force three months after the translations have been published, and NCAs will have two months within which to report whether they comply with the guidelines.

FSB publishes bail-in execution practices paper

The Financial Stability Board (FSB) has published a practices paper on the execution of bail-in.

The paper draws on examples and practices across different jurisdictions to provide a general description of operational processes and arrangements for:

- the suspension of trading and delisting from trading venues of securities of bailed-in firms;
- the (re-)listing and (re-)admission to trading of new and existing securities as part of the bail-in process;
- the cancellation of shares, write-downs and/or conversion of eligible instruments and issuance of new shares; and
- resolution approaches providing for the issuance of interim instruments.

The paper also discusses the role of central securities depositories (CSDs) in the execution of bail-in, as well as the cross-border challenges which may need to be addressed as part of resolution planning.

FSB reports on global trends and risks in non-bank financial intermediation

The FSB has published its 2021 global monitoring report on non-bank financial intermediation (NBFI). The report presents the results of the FSB's annual monitoring exercise of NBFI trends and risks and is based on end-2020 data from 29 jurisdictions. It focuses in particular on those parts of NBFI that may pose bank-link financial stability or regulatory arbitrage risks (the 'narrow measure' of NBFI).

Key findings from the 2020 exercise include:

- total global financial assets showed strong growth in 2020 (increasing by 10.9% to USD 468.7 trillion). This was mainly driven by banks and central banks, which grew at their highest rate since the 2008 global financial crisis. In contrast to the trend over the past decade, the NBFI sector grew less (at 7.9%) than the banking sector (at 11.1%), and the sector's share of total financial assets declined from 49.7% to 48.3%;
- the narrow measure of NBFI grew by 7.4% in 2020 to USD 63.2 trillion, driven mainly by collective investment vehicles with features that make them susceptible to runs, which grew by 9.0% in 2020. As a share of total global financial assets, the narrow measure decreased slightly from 14.1% in 2019 to 13.7% in 2020; and
- despite the substantial volatility in financial markets during the first half of 2020, measures of vulnerability in NBFI appeared broadly stable when compared to 2019. The measures of credit intermediation, maturity and liquidity transformation and leverage remained relatively unchanged, highlighting the effectiveness of the rapid sector intervention following the March 2020 market turmoil.

Cross-border payments: FSB launches survey on effect of data frameworks

The FSB has launched a survey on the effect of existing national and regional frameworks on cross-border data flows.

The survey is part of the FSB's work under Building Block 6 of the G20 roadmap for enhancing cross-border payments.

The FSB intends to gather feedback from stakeholders to better understand how requirements applicable to data could affect, positively or negatively, cross-border payments in terms of cost, speed, access, security, or interoperability of payment networks. The FSB is also requesting views on potential frictions and effective policies.

Data frameworks that fall within the scope of the survey include:

- domestic data frameworks, including rules, regulations, guidelines and supervisory guidance, that affect the provision of cross-border payment services in one or more jurisdictions, or the manner in which those services utilise cross-border payments data in one or more jurisdictions;
- implementation of international standards from the FSB and other standard-setting bodies, if not included as part of formal domestic data frameworks; and
- other international efforts, arrangements, or agreements that jurisdictions may implement in their domestic data frameworks or that may affect cross-border data flows.

Feedback is due by 14 January 2022.

Critical Benchmarks (References and Administrators' Liability) Bill receives Royal Assent

The Critical Benchmarks (References and Administrators' Liability) Bill has received Royal Assent and has become an Act of Parliament.

The Critical Benchmarks (References and Administrators' Liability) Act 2021 is intended to support the effective operation of the powers granted to the Financial Conduct Authority (FCA) under the Financial Services Act 2021 to oversee the wind-down of a critical benchmark. In particular, the Act aims to provide legal certainty as to how contractual references to a critical benchmark should be treated where the FCA exercises powers under the UK Benchmarks Regulation (BMR) to provide for the continuity of an unrepresentative critical benchmark.

The Act also grants an immunity to the administrator of a critical benchmark that is designated under Article 23A of the BMR, where the administrator acts in accordance with specific requirements imposed upon it by the FCA.

Financial Services and Markets Act 2000 (Consequential Amendments of References to Rules) Regulations 2021 published

The Financial Services and Markets Act 2000 (Consequential Amendments of References to Rules) Regulations 2021 (SI 2021/1388) have been made and laid before Parliament.

SI 2021/1388 amends legislation that references rules made by the Prudential Regulation Authority (PRA) and the FCA to update the prudential regime for banks and investment firms in the UK. The PRA and FCA have made various rules to implement the Investment Firms Prudential Regime (IFPR) and the remaining Basel III standards, which will enter into force on 1 January 2022. SI 2021/1388 therefore amends definitions that reference these rules to capture them as they have effect on 1 January 2022, rather than on IP completion day.

SI 2021/1388 comes into force on 1 January 2022.

HM Treasury reports on review of Securitisation Regulation

HM Treasury (HMT) has published a report on its review of the UK Securitisation Regulation.

This follows a call for evidence launched by HMT in June 2021, and a statutory obligation under Article 46 of the Securitisation Regulation for HMT to review the functioning of the Regulation and lay a report before Parliament by 1 January 2022.

According to the report, there are signs that the Securitsation Regulation has increased the transparency and robustness of the UK securitisation market. However, there are some indications that the Regulation has not boosted securitisation issuance or broadened the investor base as much as it could have. Overall, HMT supports the Securitisation Regulation, but suggests some areas of the Regulation that may benefit from refinement, including:

- refining disclosure requirements, especially to assess the distinction between different types of securitisations (i.e. whether they are public or private), and to consider whether the disclosure requirements for certain private securitisations are appropriate;
- amending or clarifying some of the jurisdictional scope matters, including scoping out certain unauthorised, non-UK Alternative Investment Fund Managers (AIFMs) from the Regulation's definition of institutional investor and clarifying due diligence requirements for investors when they invest in non-UK securitisations; and
- introducing an STS equivalence framework, under which future equivalence determinations could be made.

HMT also intends to consider revisions to risk retention requirements and expanding disclosure templates to require more information about a securitisation's environmental, social, and governance (ESG) impact.

The report also covers the prudential treatment of securitisation (i.e. capital and liquidity requirements) within regulatory regimes for banks, building societies, and insurance firms, to which there was high interest shown in the HMT's call for evidence.

HMT, the FCA and the PRA intend to continue to monitor the securitisation market.

HM Treasury consults on financial promotion exemptions for high net worth individuals and sophisticated investors

HMT has launched a consultation on proposed amendments to the financial promotion exemptions for high net worth individuals and sophisticated investors under the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (FPO).

Under the FPO, individuals and businesses cannot communicate a financial promotion unless they are authorised to carry out a regulated financial services activity by the FCA or PRA, or have the content of the promotion approved by a regulated firm. Exemptions are in place to enable SMEs to raise finance from certain investors without the cost of compliance with the financial promotions regime.

HMT is seeking views on proposed amendments that are intended to reflect economic, social and technological changes that have occurred since the exemptions were first introduced and to address instances of misuse identified by the FCA. The consultation focuses on the exemptions for certified high net worth individuals, sophisticated investors, and self-certified sophisticated investors.

In particular, HMT is proposing to:

- increase the financial thresholds for high net worth individuals;
- amend the criteria for self-certified sophisticated investors;
- place a greater degree of responsibility on firms to ensure individuals meet the criteria to be deemed high net worth or sophisticated;
- update the high net worth individual and self-certified sophisticated investor statements; and
- update the name of the high net worth individual exemption.

Comments are due by 9 March 2022.

Green Finance: FCA sets out policy on climate-related disclosure rules

The FCA has published two policy statements on enhancing climate-related disclosures rules.

The first policy statement (PS21/23) sets out feedback and the FCA's final rules following its June 2021 consultation (CP21/18) on proposed changes to extend the application of the TCFD-aligned Listing Rule for premium-listed commercial companies to issuers of standard listed equity shares.

The FCA has made the following key changes:

- extension of the application of its existing TCFD-aligned disclosure requirements to standard listed issuers of Global Depositary Receipts (GDRs); and
- an additional guidance provision for issuers in-scope of both the existing and new rule on metrics, targets and transition plans.

The second policy statement (PS21/24) sets out feedback and the FCA's final rules following its June 2021 consultation (CP21/17) on proposed changes to introduce a climate-related financial disclosure regime for asset managers, life insurers and FCA-regulated pension providers in line with the TCFD recommendations.

The FCA has made the following key changes:

- firms will not be required to disclose information if data gaps or methodological challenges cannot be addressed through use of proxies and assumptions, or if to do so would result in disclosures that are misleading;
- only the disclosure of core metrics using TCFD methodologies is compulsory;
- a firm headquartered in, or operating in, a country that has made a commitment to a net zero economy is encouraged to consider the extent to which it has considered that commitment in developing and disclosing its transition plan; and
- the 'on demand' obligation has been amended to require that firms provide a report to clients at a single reference point consistent with public disclosures in a reasonable format.

Both sets of rules come into effect on 1 January 2022.

The FCA intends to publish a discussion paper on ESG integration in capital markets in the first half of 2022.

FCA publishes report and response to interest rate hedging products review

The FCA has published the report of the independent 'lessons learned' review on the supervisory intervention on interest rate hedging products (IRHPs), as well as the FCA's response to the report.

The review, led by John Swift QC, examined the design, implementation and operation of the IRHP voluntary redress scheme agreed by the Financial Services Authority (replaced by the FCA) and banks to compensate customers who had been mis-sold IRHPs from 2001 to 2011, and set out recommendations relating to the supervisory approach to securing appropriate redress and the outcomes of the scheme.

In its response, while noting that it is a very different organisation from how it was during IRHP sales, the FCA commits to incorporating the Review's recommendations into its wider workstream, including:

- combining swift actions to secure redress with realistic timings and plans;
- giving due consideration to using its statutory powers to secure redress;
- making sure any differential treatment of consumers by a redress intervention provides appropriate protection and is evidence-based and objectively justified;
- weighing more carefully the potential importance of consultation and transparency in agreeing voluntary redress schemes, and be willing, if firms do not consent, to take a potential agreement off the table;
- striving for simplicity;
- making clear the role, if any, of skilled persons, and ensuring coherence between what they are expected to deliver and how they can deliver;

- introducing an independent appeal mechanism in redress interventions, unless disproportionate or unworkable;
- when considering redress interventions, giving thought to how they will deliver an appropriate level of consistency, and to proportionate reporting and monitoring;
- making realistic assessments of what work and resource will be required in the later phases of a redress intervention; and
- carry out timely evaluations and lessons learned exercises throughout the lift of a redress intervention.

PRA and FCA issue Dear CEO letter on equity finance businesses

The PRA and FCA have issued a Dear CEO letter on their supervisory review of global equity finance businesses.

This follows the default of Archegos Capital Management in March 2021, which led to a review of firms' equity finance businesses, focusing in particular on counterparty risk management.

The letter highlights significant cross-firm deficiencies which the FCA and PRA have identified, and sets out their expectations relating to:

- business strategy and organisation;
- onboarding and reputational risk;
- financial risk management controls and governance; and
- liquidation and close-out.

The PRA and FCA expect firms to carry out a systematic review of their equity finance business and risk management practices and controls, and to report their findings to the PRA and the FCA, with detailed plans for remediation where relevant, by the end of Q1 2022.

PRA publishes policy statement on designating investment firms

The PRA has published a policy statement (PS27/21) on minor changes to its policy on designating investment firms.

PS27/21 updates the PRA's statement of policy (SoP) and final rules in the definition of capital part of its rulebook in order to:

- widen the scope of the firms that can be designated to reflect the amended PRA Regulated Activities Order (PRA RAO);
- extend the date that a designated decision would take effect once issued from three months to six months;
- note that the PRA will take into account whether or not a firm offers clearing services to other financial institutions that are not clearing members themselves when making a designation decision; and
- increase the base capital resources requirement for designated firms from EUR 730,000 to GBP 750,000.

The changes take effect on 1 January 2022.

PRA publishes feedback statement on prudential framework for non-systemic banks and building societies

The PRA has published a feedback statement summarising responses to its discussion paper on developing a 'strong and simple' prudential framework (DP1/21) for non-systemic banks and building societies.

According to the PRA, the statement is intended to stimulate further debate about the design of such a framework. It covers comments on policies discussed in DP1/21 but does not include policy proposals and does not provide the PRA's views about the merits of the different comments in the responses received.

The feedback statement tries to extract broad themes and provide an overall summary of the responses to DP1/21. The PRA has clarified that the statement does not refer to all of the comments in the responses, but it intends to make use of all the responses as it considers how best to design and implement the framework.

PRA issues policy statement on remuneration and identification of material risk takers

The PRA has issued a policy statement (PS28/21) providing feedback to the responses it received to its consultation (CP18/21) on remuneration and the identification of material risk takers. PS28/21 also contains the PRA's final policy, as follows:

- changes to the Remuneration Part of the PRA Rulebook, in relation to the criteria for identifying Material Risk Takers (MRTs) and relevant definitions;
- the revocation of the PRA version of Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014;
- changes to Supervisory Statement (SS) 2/17 'Remuneration' (July 2021 version), to reflect the rule changes and the amended process for excluding an employee identified as an MRT solely based on the quantitative criteria; and
- consequential changes to the Certification Part of the PRA Rulebook and to SS28/15 'Strengthening individual accountability in banking' which mirror the Remuneration Part changes.

The changes to the Remuneration Part of the PRA Rulebook will take effect on 30 December 2021, and are required to be implemented by firms from the first performance year which starts after this date. The changes to the Certification Part of the PRA Rulebook will take effect on 1 March 2022.

CSSF issues communication on AML/CFT cross-sector survey for 2021

The Luxembourg financial sector supervisory authority (CSSF) has issued a communication concerning its annual online cross-sector survey relating to the fight against money laundering and terrorist financing (AML/CTF) for the year 2021.

The 2021 survey will be available through the CSSF eDesk Portal from 15 February 2022 and answers will have to be submitted by 15 April 2022 at the latest.

The purpose of the annual survey is to collect standardised key information concerning AML/CTF risks to which professionals subject to CSSF supervision are exposed and the implementation of measures to mitigate these risks. In particular, the following Luxembourg-based professionals are in scope for completing the survey:

- credit institutions;
- investment firms;
- investment fund managers (including registered AIFMs, self-managed UCITS, internally managed AIFs and investment funds which have not designated an investment fund manager);
- payment institutions and electronic money institutions;
- specialised professional of the financial sector;
- central securities depositories; and
- Luxembourg branches of the above professionals that have their registered office in the EU or in a third country.

The survey must be initiated and submitted by either the person responsible for compliance (RR) or the person responsible for control of compliance (RC). However, the completion of the survey may be assigned to another employee or third party while the ultimate responsibility for the adequate completion remains with the RR or the RC.

CSSF issues circular regarding survey of amount of covered deposits held on 31 December 2021

The CSSF, acting in its function as Depositor and Investor Protection Council (Conseil de Protection des Déposants et des Investisseurs) (CPDI), has issued a circular (21/28) regarding the survey of the amount of covered deposits held as of 31 December 2021.

The circular is addressed to all members of the Luxembourg deposit protection scheme, the Fonds de garantie des dépôts Luxembourg (FGDL) (in particular to all credit institutions incorporated under Luxembourg law, to the POST Luxembourg, and to Luxembourg branches of non-EU/EEA credit institutions), and reminds them that the CPDI collects the amount of covered deposits on a quarterly basis in order to identify the trends and changes in the relevant indicators of deposit guarantee throughout the year.

The circular further draws members' attention to the provisions of the CSSF-CPDI circular 16/02, notably as regards the exclusion of structures assimilated to financial institutions and the treatment of omnibus accounts. The volume of eligible and covered deposits in omnibus and fiduciary accounts and the number of beneficiaries (ayants droit) are to be reported where FGDL members wish to ensure deposit protection for relevant beneficiaries and to allow the CPDI to prepare the FGDL for the reimbursements of such deposits.

In addition, FGDL members are requested to provide the data at the level of their legal entity, including branches located within other Member States, by 20 January 2022 at the latest.

In order to transmit these data, institutions are requested to complete the table attached to the circular, which is also available on the CSSF's website. The file containing the data must be duly completed and sent out regardless of the circumstances in which the entity may find itself. The file shall respect the special surveys naming convention, as defined by CSSF circular 08/344, and shall be submitted through secured channels (E-File/SOFiE).

A member of the authorised management, i.e. the member in charge of the FGDL membership in accordance with CSSF circular 13/555, must review and approve the file prior to its transmission to the CSSF.

HKMA shares sound practices adopted by leading banks to support transition to carbon neutrality

The Hong Kong Monetary Authority (HKMA) has issued a circular to share with the industry certain sound practices adopted by leading banks to support the transition to carbon neutrality.

The circular highlights the sound practices adopted by leading banks in the space of climate risk management under four areas, namely (i) reducing greenhouse gas emissions of own operations; (ii) reducing financed emissions through portfolio alignment; (iii) assisting clients to transition to carbon neutrality; and (iv) promoting collective efforts to assist the economy to transition to net zero. The HKMA considers that these sound practices will be of reference value to authorised institutions (AIs) in formulating their own climate strategies. Details of the sound practices are set out in the annex to the circular.

The HKMA strongly encourages AIs to enhance their own overall green and sustainability programmes to encompass both the management of climate risk and the supporting measures set out in the circular to contribute to carbon neutrality. It also requires AIs to consider developing metrics to monitor the progress of adopting these sound practices as part of their business strategy.

Further, the HKMA has indicated that it will consider reflecting elements of these sound practices in its greenness assessment framework, with a view to evaluating the overall green and sustainable landscape of the banking sector.

HKMA welcomes revised code of banking practice

The HKMA has welcomed the revised Code of Banking Practice jointly issued by the Hong Kong Association of Banks (HKAB) and the DTC Association (DTCA).

The revised code intends to incorporate measures that ensure bank consumer protection is in line with fintech developments happening across the banking industry, particularly through digitisation and innovative technologies.

Among other things, the revised code aims to:

- enhance customer experience and protection in digital banking services, including information disclosures by banks, channels for public to authenticate bank's digital promotional activities, and warning issuance on specific security risk events;
- strengthen protection and transparency of banking services, such as broader information sharing on credit card chargeback mechanisms, local and cross-boundary transfers, and strengthening the procedures for handling mis-transfer of funds by customers; and
- further promote financial inclusion to ensure that customers with different needs are provided with appropriate banking services, require banks to

consider customers' needs for physical banking services when modifying their branch networks as well as when providing services through digital means.

The revised code is effective as of 10 December 2021. Authorised institutions are expected to fully comply with the new provisions within six months which is further extendable up to 12 months for provisions requiring more extensive system enhancements.

HKMA publishes additional guidance on corporate governance standards

The HKMA has issued a circular providing additional guidance on the corporate governance standards for locally-incorporated authorised institutions (AIs) in light of the Financial System Stability Assessment report published by the International Monetary Fund (IMF) in 2021.

The HKMA issued a revised supervisory policy manual (SPM) module CG-1 'Corporate Governance of Locally Incorporated Authorized Institutions' in October 2017 to provide detailed guidance on the corporate governance standards to be observed by locally-incorporated AIs. While the revised guidance has led to an increased emphasis on the proper discharge by the board of directors and senior management of their respective responsibilities, there are cases of directors of AIs (including chief executives (CEs) serving as executive directors) holding multiple directorships or management positions in entities outside of the AI's banking group (outside mandates). As some of these entities are engaged principally in commercial activities, questions have been raised about potential conflicts of interest and the ability of the directors concerned to devote sufficient time to performing their roles in the AI. In view of these findings, the IMF recommended that the HKMA take suitable action to address potential issues around conflicts of interest and the time commitments of directors and senior management of AIs.

The HKMA intends to take into consideration the robustness of an AI's performance evaluation process for directors and alternate chief executives (ACEs) in assessing its corporate governance. Under a new submission requirement, locally-incorporated AIs will need to submit relevant information to their usual supervisory contacts in the Banking Supervision Department on an annual basis.

For future applications for appointment as a director, CE or ACE of a locally-incorporated AI under section 71 of the Banking Ordinance, the AI should provide an assessment by the board (or its nomination committee) of the applicant in terms of time commitment to the role being applied for and any potential conflicts of interest identified, if the applicant has outside mandates.

The HKMA notes that its guidance in respect of time commitment and management of conflicts of interest of CEs (including ACEs) also applies to AIs incorporated outside Hong Kong.

SFC introduces next generation licensing platform on WINGS

The Securities and Futures Commission (SFC) has issued a circular announcing the introduction of its fully digitalised licensing platform on the WINGS portal.

The platform is intended to provide a one-stop, comprehensive service for users to prepare, electronically sign and submit licensing forms, track the progress of applications, pay licensing fees and communicate directly with the SFC. A companion mobile application, WINGS Mobile App, will offer key features of the website version.

From 3 January 2022, the new electronic licensing forms for licence applications, annual returns, notifications and regulatory filings are to be submitted through WINGS. The SFC will continue to accept paper forms for corporate applications until 31 March 2021.

MAS proposes to introduce due diligence requirements for corporate finance advisers

The Monetary Authority of Singapore (MAS) has launched a consultation seeking feedback on its proposal to introduce due diligence requirements for capital markets services (CMS) licensees and banks, merchant banks as well as finance companies exempt from holding a CMS licence that undertake the regulated activity of advising on corporate finance (collectively, corporate finance advisers) when they advise on corporate finance transactions, with additional requirements when advising on initial public offerings (IPOs).

Currently, corporate finance advisers are required to have effective internal controls to address the risks associated with their activities and mitigate conflicts of interests that may arise from these activities. The proposed requirements, which are set out in Annex A to the consultation paper, are intended to:

- set out the minimum standards which corporate finance advisers should adhere to when conducting due diligence on corporate finance transactions; and
- improve the quality of disclosures from entities seeking to raise funds from the public, thus allowing investors to make informed decisions.

Under the proposal, amongst other things, corporate finance advisers will be required to:

- exercise reasonable judgement in determining the scope of the due diligence work to be performed on a corporate finance transaction;
- assess the veracity of information obtained in the course of their due diligence; and
- in relation to their role as issue managers of IPOs, satisfy additional requirements such as assessing the suitability of listing the applicant and conducting an independent review of the due diligence performed by the team responsible for advising on a specific IPO, in order to better safeguard the interests of retail investors.

The MAS has indicated that the proposed requirements will be applicable to corporate finance advisory engagements which are entered into on or after the date of commencement of the new notice containing the requirements.

Comments on the consultation are due by 15 February 2022.

SGX responds to feedback received on mandatory climate reporting, board diversity disclosures and common set of core ESG metrics

The Singapore Exchange (SGX) has unveiled its roadmap for issuers to provide climate-related disclosures based on the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) under a phased approach. The roadmap follows the SGX's August 2021 public consultation on both sustainability reporting and board diversity disclosures, which received broad support.

Under the roadmap, all issuers must provide climate reporting on a 'comply or explain' basis in their sustainability reports from the financial year (FY) commencing in 2022. Climate reporting will subsequently be mandatory for issuers in the (i) financial, (ii) agriculture, food and forest products, and (iii) energy industries from FY 2023. Issuers which are from the (a) materials and buildings industry, and (b) transportation industry must do the same from FY 2024. Other key changes effective from 1 January 2022 include requiring:

- issuers to subject sustainability reporting processes to internal review;
- all directors to undergo a one-time training on sustainability;
- sustainability reports to be issued together with annual reports unless issuers have conducted external assurance;
- issuers to set a board diversity policy that addresses gender, skill and experience, and other relevant aspects of diversity; and
- issuers to describe the board diversity policy and details such as diversity targets, plans, timelines and progress in their annual reports.

Separately, the SGX has published its responses to the feedback received on its August 2021 public consultation on a list of 27 proposed core ESG metrics and a portal for issuers to input ESG data.

The SGX notes that while there is strong support for the list of core ESG metrics to be used as a starting point for reporting, respondents have also cautioned against viewing it as an exhaustive list. In this regard, while the SGX encourages issuers to report against the list of core ESG metrics to facilitate consistency and comparability of ESG data disclosures, issuers should not be limited to the list of core ESG metrics, and should still conduct a materiality assessment to ensure the relevance and completeness of their reported metrics. Consequently, at the current juncture, the list of core ESG metrics will not be made mandatory, nor will any specific sustainability reporting framework be mandated.

The SGX also notes the strong support for an ESG data portal and has confirmed that it will proceed with the development of the portal. It expects the portal to house ESG information beyond the core ESG metrics. Information recorded in the portal may include material ESG factors, commentaries and explanations for reported metrics, and discussions on strategies, processes, board statements and targets relating to ESG matters.

SEC requests comments on proposed amendments to Rule 10b5-1

The US Securities and Exchange Commission (SEC) has published a proposed rule that would amend Rule 10b5-1 under the Securities Exchange Act of 1934. The proposed amendments would:

- add new conditions to the availability of the affirmative defense under Exchange Act Rule 10b5-1(c)(1);
- create new disclosure requirements regarding issuers' insider trading policies and regarding the adopting and termination (including modification) of Rule 10b5-1 and certain other trading arrangements by directors, officers, and issuers;
- create new disclosure requirements for executive and director compensation regarding the timing of certain equity compensation awards; and
- update Forms 4 and 5 to require corporate insiders subject to the reporting requirements of Exchange Act Section 16 to identify transactions made pursuant to a Rule 10b5-1(c)(1) trading arrangement and to disclose all gifts of securities on Form 4.

The proposed rule and a related fact sheet are available on the SEC website. Public comment is requested for 45 days following the publication of the proposed rule in the Federal Register.

SEC proposes new share repurchase disclosure rules

The SEC has proposed a new rule, new form and amendments that would require an issuer to report any purchase made by or on behalf of the issuer or any affiliated purchaser of shares or other units of any class of the issuer's SEC-registered equity securities by furnishing a new Form SR before the end of the first business day following the day on which the issuer executes a share repurchase. Proposed new Form SR would require the following disclosures:

- date of the repurchase;
- identification of the class of securities purchased;
- the total number of shares (or units) purchased, including all issuer repurchases whether or not made pursuant to publicly announced plans or programs;
- the average price paid per share (or unit);
- the aggregate total number of shares (or units) purchased on the open market;
- the aggregate total number of shares (or units) purchased in reliance on the safe harbor in Exchange Act Rule 10b-18; and
- the aggregate total number of shares (or units) purchased pursuant to a plan intended to satisfy the affirmative defense conditions of Exchange Act Rule 10b5-1(c).

The proposal would also require the following enhanced disclosures in periodic reports, including Forms 10-Q, 10-K and 20-F:

- the objective or rationale for its share repurchases and process or criteria used to determine the amount of repurchases;
- any policies and procedures relating to purchases and sales of the issuer's securities by its officers and directors during a repurchase program, including any restriction on such transactions;
- whether repurchases were made pursuant to a plan that is intended to satisfy the affirmative defense conditions of Exchange Act Rule 10b5-1(c), and if so, the date that the plan was adopted or terminated; and
- whether repurchases were made in reliance on the Exchange Act Rule 10b-18 nonexclusive safe harbor.

The proposed rule and a related fact sheet are available on the SEC website. Public comment is requested for 45 days following the publication of the proposed rule in the Federal Register.

ASIC consults on intervention orders for short term credit and continuing credit contracts

The Australian Securities and Investments Commission (ASIC) has launched a public consultation on the proposed use of its product intervention powers to address consumer detriment in the short-term credit and continuing credit contracts industries.

The consultation has been launched following ASIC's earlier consultation, addendums, and intervention orders. The current consultation paper sets out ASIC's proposal to make, under Pt. 7.9A of the Corporations Act 2001:

- product intervention order in substantially the same terms as 'ASIC Corporations (Product Intervention Order—Short Term Credit) Instrument 2019/917' (short term credit product intervention order); and
- product intervention order as set out in Consultation Paper 330 'Using the product intervention power: Continuing credit contracts' (CP 330) and the Addendum to CP 330 (continuing credit contracts product intervention order).

Comments on the consultation are due by 21 January 2022.

ASIC calls for greater focus on material business risk disclosure in financial reports

ASIC has reminded company directors of the importance of a high-quality operating and financial review (OFR), after its latest review of the financial reports of 150 listed entities for the year ending 30 June 2021 identified some listed entities that did not disclose material business risks.

ASIC's latest review of financial reports resulted in inquiries of 29 entities on 53 matters. The largest number of matters relates to impairment of assets, disclosure of business risks in the OFR, and revenue recognition. In particular, while acknowledging that many companies have continued to make useful and meaningful disclosures as COVID-19 conditions evolve, ASIC identified some entities that did not appear to give sufficient attention to the reporting of asset values and the disclosure of business risks in the OFR.

ASIC has emphasised that the OFR provides an important complement to the financial report by telling the story about the drivers of the company's results, its strategies and prospects. This includes the material non-generic risks to those achieving the financial prospects described.

ASIC has also indicated that it will continue to review financial reports to ensure that entities are correctly disclosing their material business risks.

APRA consults on amendments to prudential standard on audit and related matters

The Australian Prudential Regulation Authority (APRA) has launched a consultation on proposed changes to Prudential Standard SPS 310 Audit and Related Matters (SPS 310) to align with the changes in APRA's reporting standards for superannuation.

The specified data items that APRA proposes to review include those that will be used for APRA's administration of the Your Future, Your Super (YFYS) performance test and data published in APRA's Heatmap. APRA also sets out the information provided under APRA reporting standards that must be covered in the registrable superannuation entities (RSE) auditor's annual report, and the level of assurance required.

The proposed amendments to SPS 310 cover the following:

- removing the requirement to review seven reporting standards because the data collected will (after a short period of parallel reporting) be superseded by new reporting standards;
- leaving the requirements applying to six existing reporting standards unchanged; and
- requiring assurance over six new reporting standards. Of these, the review must cover specified data items within three reporting standards.

Comments on the consultation are due by 11 March 2022.

RECENT CLIFFORD CHANCE BRIEFINGS

New euro area model collective action clause

The existing euro area model collective action clause (CAC) became mandatory in all new euro area government securities with a maturity over one year issued on or after 1 January 2013 as a result of Article 12 of the Treaty Establishing the European Stability Mechanism (the ESM Treaty).

At the Euro Summit held on 14 December 2018, the Heads of State and Government of euro area member states confirmed the commitment to reform the 2012 Euro Area CAC, following an announcement by euro area finance ministers earlier that month. These announcements were made as part of policy measures intended to strengthen Economic and Monetary Union.

The EFC Sub-Committee on EU Sovereign Debt Markets (the EFC Committee) took on the role of producing the update to the 2012 Euro Area CAC which is again in the form of common terms of reference.

An explanatory note and voluntary supplemental provisions have been published alongside this updated CAC (the Single-limb CAC).

On 7 December 2021, the EFC Committee issued a press release delaying the introduction of the new Single-limb CAC pending ratification of the related Amending Agreement to the Treaty Establishing the European Stability Mechanism.

This briefing paper discusses the new CAC.

https://www.cliffordchance.com/briefings/2021/12/new-euro-area-model-collective-action-clause.html

Synthetic LIBOR and the UK Critical Benchmarks (References and Administrators' Liability) Act 2021 – 10 things that you need to know

With a matter of weeks to go, the UK legislation to address contract continuity for contracts relying on synthetic LIBOR after 31 December has now received Royal Assent.

This briefing paper is intended to assist with the assessment of the Critical Benchmarks (References and Administrators' Liability) Act 2021 – especially given that the UK legislative approach (with its reliance on continued use of a forward-looking rate, albeit on a modified and temporary basis) differs from the statutory replacement approach adopted by the EU and the United States.

https://www.cliffordchance.com/briefings/2021/12/synthetic-libor-and-the-uk-critical-benchmarks--references-and-a.html

LIBOR transition – changes to the UK and EU OTC derivatives clearing and trading obligations

The UK and the EU are making different changes to the scope of their respective OTC derivatives clearing and trading obligations to reflect the planned transition from LIBOR to risk-free rates.

This briefing paper summarises and compares the changes made by the Bank of England and the FCA to the UK clearing and trading obligations and those proposed to be made by ESMA to the EU clearing and trading obligations.

https://www.cliffordchance.com/briefings/2021/12/libor-transition---changes-to-the-uk-and-eu-otc-derivatives-clearing.html

Luxembourg opens covered bonds issuances to universal banks and implements Covered Bonds Directive

The Luxembourg law of 8 December 2021 on the issue of covered bonds, which implements Directive 2019/2162 on the issue of covered bonds and covered bonds public supervision and Regulation (EU) 2019/2160 on exposures in the form of covered bonds into Luxembourg law has recently been published in the Official Journal and will enter into force on 8 July 2022. While the existing framework is already largely in line with the EU Directive, the new law introduces so-called 'European' covered bonds along the traditional Luxembourg covered bond types and brings some technical adjustments and clarifications.

This briefing paper provides an overview of the main changes introduced by the new law and explores the opportunities for universal banks to issue covered bonds.

https://www.cliffordchance.com/briefings/2021/12/luxembourg-opens-covered-bonds-issuances-to-universal-banks-and-.html

The UAE Data Protection Law – Key Takeaways

As part of the major legal reforms implemented on the occasion of the UAE's 50th anniversary, the UAE published the highly anticipated Federal Data Protection Law (Law No: 45 of 2021). The new Law will come into force on 2 January 2022 and provides companies approximately a year (unless extended) to regulate their personal data activities before enforcement begins.

This briefing paper discusses the key aspects of the new law and some practical steps companies should be considering for compliance.

https://www.cliffordchance.com/briefings/2021/12/the-uae-data-protection-law---key-takeaways.html

C L I F F O R D

C H A N C E