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Sustainable finance: EU Commission further delays application of SFDR RTS

The European Securities and Markets Authority (ESMA) has published a letter from the EU Commission to the EU Parliament and Council on the status of the draft regulatory technical standards (RTS) under the Sustainable Finance Disclosure Regulation (SFDR).

The Commission informs the EU Parliament and Council that it has been unable to adopt the draft RTS, which are to be bundled into a single delegated act, within the three-month period due to their length and technical detail, and that the date of application of the RTS will be further deferred from 1 July 2022 to 1 January 2023.

ECON Committee publishes draft report on European green bond standard amendments

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has published its draft report on the EU Commission's proposed regulation on a European green bond standard (EUGBS).

The proposed EUGBS is intended to create a gold standard for green bonds that other market standards can be compared to and seek alignment. The EUGBS also aims to reduce the risk of greenwashing and is open to any issuer of green bonds, including issuers located outside of the EU.

The rapporteur broadly supports the Commission's proposal, but argues that to achieve its objectives, the EUGBS needs to adhere to four key principles:

- money raised through European green bonds should be directed to activities and companies that fit in the sustainable economy to which Europe is transitioning;
- the benefits of using or investing in European green bonds should be clear to the market so that all those that could use the standard, will in fact use it;
- be credible through a transparent and credible review process; and
- lead to a deep and liquid market for European green bonds.

EU Council adopts negotiating mandate on anti-money laundering measures for cryptoassets

The EU Council has adopted its negotiating mandate on the proposal to extend the scope of rules on information accompanying transfers of funds to apply to certain cryptoassets. The proposal is part of a package of legislative amendments designed to strengthen the EU's AML/CFT rules. It requires cryptoasset service providers to collect and make accessible full information about the sender and beneficiary of any cryptoasset transfers, with the intention of improving the traceability of cryptoasset transfers and the identification of suspicious transactions.

Under its negotiating mandate, the Council is proposing to amend the EU Commission's proposal to, among other things:

- introduce requirements for cryptoasset transfers between cryptoasset services providers and un-hosted wallets;
- require that the full set of originator information travels with the cryptoasset transfer, regardless of the transaction amount; and
- ensure it is consistent with the proposed regulation on markets in cryptoassets (MiCA).

The Council and the EU Parliament will now begin trilogue negotiations on these proposals. Once a provisional political agreement is found between their negotiators, both institutions will formally adopt the regulations.

Transparency Directive: EU Commission adopts updated ESEF taxonomy

The EU Commission has adopted a Delegated Regulation amending the taxonomy laid down in the RTS on the single electronic reporting format (ESEF).

The Delegated Regulation makes technical amendments to the existing RTS to reflect the updates included in the 2021 International Financial Reporting Standards (IFRS) Taxonomy, and incorporates additional guidance to preparers made available by the IFRS Foundation to facilitate marking-up of financial statements.

If the EU Parliament and Council do not object to the RTS within three months, the Delegated Regulation will enter into force on the twentieth day following its publication in the Official Journal, and will be applicable, at the latest, for financial years beginning on or after 1 January 2022, allowing for early application.

EU Commission consults on macroprudential framework for banking sector

The EU Commission has launched a targeted consultation on improving the EU's macroprudential framework for the banking sector.

The framework aims to ensure the stability of the banking system as a whole and prevent substantial disruptions in the provision of loans and other vital banking services to citizens and businesses.

The Commission is seeking views on the functioning of the current macroprudential rules for credit institutions in line with the better regulation principles and in view of the upcoming legislative review mandated by the Capital Requirements Regulation (CRR). It also aims to determine whether current rules are suitable to address emerging risks to financial stability such as climate change and the growth of fintech.

The Commission has also published a call for evidence on the macroprudential rules to limit systemic risk.

The evidence gathered will feed into the impact assessment for a possible legislative proposal.

Comments on both papers are due by 18 March 2022.

SRB publishes guidance on solvent wind down of derivatives and trading books in resolution

The Single Resolution Board (SRB) has published guidance on the solvent wind down (SWD) of derivatives and trading books. The guidance is intended to supplement the Expectations for Banks document published by the SRB in April 2020, which sets out the necessary steps banks should take to ensure they are resolvable and to demonstrate their preparedness for a potential resolution. The new guidance provides additional details on how banks can demonstrate resolvability with regard to the size and complexity of their trading books.

It sets out the scope and minimum expectations for SWD planning and execution, with the intention of ensuring banks adequately prepare, develop and maintain their SWD plans and capabilities, and can execute their SWD

plan in a reasonable timeframe. Specifically, institutions with material trading books are expected to:

- have a plan outlining the different segments and associated exit strategies for their trading activities and the potential financial implications;
- provide information on SWD planning, such as capacity to update the plan in a timely manner, using internal, business as usual tools, systems and infrastructures wherever possible; and
- be able to execute the SWD under a 'playbook', which would focus on governance, HR and communication.

The SRB notes that the guidance may be adapted if required under the proportionality principle and following dialogue between banks and their internal resolution teams. Global systemically important banks (G-SIBs) are expected to deliver 'Day-1' expectations in 2022, while other banks are expected to deliver them in 2023.

SRB updates operational guidance for operational continuity in resolution

The SRB has published an update to its operational guidance on operational continuity in resolution. The guidance was published in July 2020 and provided clarification to banks on how to implement SRB expectations for operational continuity, as well as an indicative phasing-in timetable. The updated document gives more details on topics related to financial resilience and staffing.

ESMA to publish trading venues data to enable CSDs to apply cash penalties under CSDR

ESMA has announced that it will start publishing information on trading venues with the highest turnover for bonds. This data is needed by central securities depositories (CSDs) to apply cash penalties under the Central Securities Depositories Regulation (CSDR).

The CSDR aims to harmonise certain aspects of the settlement cycle and the settlement discipline, and to provide a set of common requirements for CSDs operating securities settlement systems across the EU.

ESMA intends to publish trading venues data by 1 February 2022 on a quarterly basis.

CRD 5: EBA consults on interest rate risks arising from non-trading book activities

The European Banking Authority (EBA) has launched three consultations on technical aspects of the revised framework for capturing interest rate risks for banking book (IRRBB) positions.

The first consultation is on draft guidelines on IRRBB and credit spread risk arising from non-trading book activities (CSRBB), which will replace the current guidelines published in 2018 with the aim of providing continuity and including new aspects of the mandate. The guidelines will, among other things, specify criteria to identify non-satisfactory internal models for IRRBB management and identify specific criteria to assess and monitor CSRBB.

The second consultation is on draft RTS on the IRRBB standardised approach that specify the criteria for the evaluation of IRRBB in case a competent

authority decides its application in view of a non-satisfactory IRRBB internal system. The RTS will also provide a simplified approach for smaller and non-complex institutions.

The third consultation is on draft RTS on the IRRBB supervisory outlier test that specify the supervisory shock scenarios as well as the criteria to evaluate if there is a large decline in the net interest income or in the economic value of equity that could trigger supervisory measures.

Comments on all three consultations are due by 4 April 2022.

IOSCO and CPMI consult on access to central clearing and portability

The Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) have called for comments on their joint discussion paper on access to central counterparties (CCP) clearing and client-position portability.

The client clearing process is intended to provide firms that are not direct participants in a CCP (and therefore reliant on intermediaries to indirectly clear their trades) with access to CCP services. The discussion paper considers:

- the benefits and challenges of the new access models developed by CCPs;
- effective ways to support successful porting, or transferring, of clients' accounts to a new CCP member if its current CCP member defaults; and
- potential areas for follow-up work on access and portability.

Comments are due by 24 January 2022.

FSB reports on good practices for crisis management groups

The Financial Stability Board (FSB) has published a report on good practices for 'crisis management groups' (CMGs), groups of home and key host authorities that have a role in the resolution of G-SIBs.

The guidance is intended to ensure CMGs are sufficiently prepared for the management and resolution of cross-border financial crises. It is informed by a 2020 stocktake, undertaken by the FSB, of CMGs and their experience during the COVID-19 pandemic. It is also intended to complement the FSB's guidance on key attributes of effective resolution regimes for financial institutions.

In particular, the report sets out good practices relating to:

- the structure and operation of CMGs;
- resolution policies, strategies and assessments;
- home-host coordination on enhancing firms' resolvability; and
- home-host coordination arrangements for crisis preparedness.

UK resolution regime: BoE publishes final policy on revised approach to setting MREL

The Bank of England (BoE) has published a policy statement and updated statement of policy (SoP) on its revised approach to setting a minimum requirement for own funds and eligible liabilities (MREL). MREL is the minimum amount of equity and eligible debt that a firm must maintain to ensure it can be 'bailed in' or otherwise support a resolution if it fails.

The publication of the policy marks the final stage of the BoE's MREL review, which sought to gather feedback on the calibration of MREL and the final compliance date, in light of any changes in the UK regulatory framework since it was last updated in 2018 and taking into account firms' experiences in issuing liabilities to meet their interim MRELs.

The policy statement:

- provides feedback to the responses the BoE received on its July 2021 consultation and provides clarifications or highlights the changes it has made to its proposals as a result;
- sets out an overview of its revised approach to setting MREL, including revisions to resolution strategy thresholds, MREL calibration and eligibility, and intragroup MREL distribution; and
- contains the text of the final revised MREL SoP.

The revised SoP will apply from 1 January 2022.

UK MiFID: FCA publishes policy statement on changes to research and best execution

The Financial Conduct Authority (FCA) has published a policy statement (PS21/20) on conduct and organisation requirements under the UK Markets in Financial Instruments Directive (UK MiFID), in particular on best execution reporting in RTS 27 and RTS 28, and investment research.

PS21/20 sets out the FCA's final policy position following feedback to CP21/9 and rules to:

- remove the obligation on execution venues to publish RTS 27 reports;
- remove the obligation on investment firms to publish RTS 28 reports;
- exempt from the inducement rules;
- clarify that openly available written research would not fall within the scope of the inducement rules.

The removal of best execution reporting in RTS 27 and RTS 28 came into force on 1 December 2021, and the changes to research rules come into force on 1 March 2022.

In relation to the UK Government's wider Wholesale Markets Review, the FCA notes that the Government intends to bring forward primary and secondary legislation, while the FCA intends to publish consultation papers on rules and guidance next year.

Primary Market Effectiveness Review: FCA confirms new Listing Rules

The FCA has issued a policy statement (PS21/22) providing feedback to its July 2021 consultation on a series of proposed reforms designed to improve the effectiveness and competitiveness of the UK primary markets, and setting out final changes to the Listing Rules.

The reforms are a response to the recommendations of the UK Listing Review, chaired by Lord Jonathan Hill, and the Kalifa Review of UK Fintech. They are intended to reduce barriers to listing for companies and increase the range of investment opportunities available to consumers on UK public markets, especially opportunities in higher growth sectors.

In particular, the FCA has confirmed the following changes:

- allowing a targeted form of dual class share structures within the premium listing segment to encourage innovative, often founder-led companies onto public markets sooner and so broaden the listed investment landscape for investors in the UK;
- reducing the amount of shares an issuer is required to have in public hands (i.e. free float) from 25% to 10%, reducing potential barriers for issuers created by current requirements; and
- increasing the minimum market capitalisation (MMC) threshold for both the premium and standard listing segments for shares in ordinary commercial companies from GBP 700,000 to GBP 30 million, which is intended to give investors greater trust and clarity about the types of company with shares admitted to different markets.

The new rules came into force on 3 December 2021, except for the more minor changes to modernise and streamline the FCA's primary markets rule books, which will come into force on 10 January 2022.

As part of its consultation, the FCA also asked for views on the overall structure of the UK listing regime and whether wider reforms could improve its longer-term effectiveness. The FCA intends to provide further feedback on this in the first half of 2022, including proposed next steps.

FCA publishes policy statement on changes to strong customer authentication and payment and e-money services

The FCA has published a policy statement (PS21/19) setting out feedback and its final rules following a consultation (CP21/3) on proposed changes to its guidance and requirements intended to remove identified barriers to growth, innovation and competition in the UK payments and e-money sectors and to reflect the changes arising from the UK's withdrawal from the EU and the establishment of the temporary permissions regime (TPR).

In CP21/3, the FCA proposed amending:

- regulatory technical standards on strong customer authentication and secure communication (SCA-RTS);
- 'Payment Services and Electronic Money – Our Approach' (the Approach Document, AD); and
- Perimeter Guidance Manual (PERG).

The amendments:

- add a new exemption from SCA if customers access their account information though an account information service provider;
- mandate the use of dedicated interfaces by account servicing payment service providers (ASPSPs) to facilitate third-party provider (TPP) access to retail and SME customers' payment accounts;
- amend requirements for publishing interface technical specifications, the availability of testing facilities, and fallback mechanisms by account providers;
- treat ASPSPs with deemed authorisation under the TPR as exempt from the requirement to set up a fallback interface, where the ASPSP has an exemption from its home state competent authority;
- consolidate and finalise the recent temporary guidance issued by the FCA containing its expectations of firms' prudential risk management and safeguarding requirements; and
- update its guidance to reflect the end of the transition period and to include certain industry guidance issued by the European Banking Authority and EU Commission prior to 31 December 2020, which the FCA has determined retains relevance for the UK.

Overall, respondents were supportive of the proposals and the FCA has published its final rules largely as consulted upon, with some minor changes and clarifications based on feedback.

The revised AD was effective as of 29 November 2021 and the amendments to the SCA-RTS entered into force on 30 November 2021. The amendments to PERG enter into force on:

- 26 March 2022 for Articles 10A and 36(6) in the Annex, and the amendments to Article 10 in the Annex;
- 26 May 2023 for amendments to Article 31 in the Annex; and
- 30 November 2021 for the remainder of the Annex.

ASPSPs offering personal payment accounts under the Payment Account Regulations 2015, equivalent payment accounts held by SMEs and credit card accounts operated for consumers or SMEs will need to have a dedicated interface in place no later than 18 months after the rules come into force. TPPs will need to reconfirm customer consent under Article 36(6) of the SCA-RTS no later than four months after the rules come into force.

FCA publishes third policy statement on Investment Firms Prudential Regime

The FCA has published its third policy statement (PS21/17) on the introduction of the Investment Firms Prudential Regime (IFPR) for investment firms authorised under UK MiFID.

The policy statement applies to UK MiFID firms subject to the Capital Requirements Directive (UK CRD) and Capital Requirements Regulation (UK CRR), as well as holding companies of groups containing firms authorised under UK MiFID and/or a CPMI, and covers, among other things:

- disclosure requirements;

- excess drawings by partners and members;
- onshored Binding Technical Standards (BTS);
- capital requirements for FCA investment firms with permission to act as depositaries;
- removal of FCA investment firms from the scope of the UK resolution regime;
- approach to enforcement; and
- applications and notifications.

The policy statement is accompanied by final rules that take effect on 1 January 2022.

FCA and HMT consult on appointed representatives regime

The FCA and Her Majesty's Treasury (HMT) have published consultations on the oversight of appointed representatives (AR).

Since the introduction of the current AR regime in 1986, the use of ARs in UK financial services regulation has increased to approximately 40,000 ARs operating under approximately 3,600 principal firms. According to the FCA, all sectors where firms have ARs have seen harm caused, often occurring because principals do not perform enough due diligence before appointing an AR or from inadequate oversight and control after an AR has been appointed.

The FCA is proposing changes to the regime to address the harm arising in this market while retaining the cost, competition and innovation benefits the AR model can provide. Its proposals would improve principals' oversight of ARs and require principals to provide the FCA with more information on their ARs, allowing the FCA to spot risks more quickly. The FCA also expects ARs to be more effectively overseen by their principals.

The FCA and HMT are both seeking views on how effectively the AR regime works in practice, wider risks posed by some of the business models operated by principal firms, and whether setting limits on such arrangements may help to reduce potential harm.

Comments for both consultations are due on 3 March 2022.

FCA sets out fees proposals for 2022/23

The FCA has published a consultation paper (CP21/33) setting out its regulatory fees and levies proposals for 2022/23. The minimum fee would increase from GBP 1,151 to GBP 2,200. The FCA intends to invest GBP 120 million over the next three years to strengthen its ability to identify firms and individuals of concern. In addition, the FCA is proposing changes to the calculation of consumer credit firm fees to bring them more in line with other firm fees.

Comments are due by 31 January 2022.

FCA publishes Quarterly Consultation No. 34

The FCA has published its latest quarterly consultation paper.

CP21/35 proposes miscellaneous amendments to the FCA Handbook, including:

- a minor amendment to the Enforcement Guide to reflect the EU Exit Passport Regulations;
- amendments to MAR 9 to include wind-down guidance when a data reporting services provider wishes to cancel its data reporting service authorisation;
- changes to RTS 22 as onshored to remove the requirement to report certain Securities Financing Transactions under UK MiFIR;
- consequential changes to SUP 8 to align with the revised procedure for making decisions on Waiver applications; and
- amendments to FCA forms in line with their interpretative guide on completing forms after the UK's withdrawal from the EU.

Comments on Chapters 2, 3 5 and 6 are due on 10 January 2022, and comments on Chapter 4 are due on 17 January 2022.

PRA sets out planned updates to Rulebook website

The Prudential Regulation Authority (PRA) has published a discussion paper on its plans for the next reiteration of the PRA Rulebook website and potential longer-term changes.

The PRA believes the changes will improve its flexibility to present in a comprehensive manner the increased volume of policy that the PRA expects from its new rule-making responsibilities.

The discussion paper focuses on the website platform and not policy content and forms part of the wider PRA review of its policy-making approach. Updates that the PRA expects to make by Q4 2023 include:

- expanded scope to include supervisory statements (SS) and SoP;
- exportable content in a machine-readable format;
- improved accessibility for users of assistive technology;
- easier to use 'time-travel' and navigation; and
- better online help.

Comments on the paper are due by 28 February 2022.

BaFin to focus on reverse factoring in 2021 balance sheet control

The German Federal Financial Supervisory Authority (BaFin) has announced that it will place particular emphasis on reviewing supply chain financing (reverse factoring) in the 2021 consolidated financial statements, since this type of corporate financing is being used with increasing frequency. In this context, BaFin will primarily turn its attention to how reverse factoring transactions are presented in balance sheets and cash flow statements and whether companies provide the required disclosures in the notes and management report. In justified individual cases and as a direct consequence of the Wirecard case, BaFin will also check whether the specified means of payment and assets actually exist.

Reverse factoring involves agreements in which the buyer and seller agree that the buyer's debt will be settled by a third party. In December 2020, the International Financial Reporting Standards Interpretations Committee published more specific guidance on this subject.

BaFin is preparing for the balance sheet control of 531 German companies in the regulated market, for which it will have sole responsibility from the beginning of 2022, when the existing two-tier balance sheet control procedure for supervised financial markets participants will change to a one-tier system on the basis of the Law on Strengthening Financial Market Integrity (FISG).

CRD 5/CRR 2: Italian implementing decree published

Legislative Decree No. 182 of 8 November 2021, implementing the Capital Requirements Directive (EU) 2019/878 (CRD 5), amending Directive 2013/36/EU (CRD 4), with regard to exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures, and the Capital Requirements Regulation (EU) 2019/876 (CRR 2), amending Regulation (EU) No. 575/2013 (CRR), on prudential requirements for credit institutions, has been published in the Italian Official Gazette.

The Decree amends Legislative Decree No. 385 of 1 September 1993 (Italian Banking Act) and Legislative Decree No. 58 of 24 February 1998 (Italian Financial Act) and, amongst other things, introduces the multiplication criterion for the acquisition of qualifying holdings, in accordance with the European Supervisory Authorities (ESAs)' joint guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the banking, insurance and securities sectors.

Although the Decree entered into force on 29 November 2021, a temporary regime applies with respect to various provisions. Amongst other things, these provisions will enter in full force upon publication of the second-level regulations, to be adopted by the Bank of Italy within 180 days of the publication of the Decree in the Italian Official Gazette.

IFD/IFR: Italian implementing decree published

Legislative Decree No. 201 of 5 November 2021, adapting national legislation to the provisions of Directive (EU) 2019/2034 on the prudential supervision of investment firms (Investment Firms Directive, IFD) and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU, and adapting national legislation to the provisions of Regulation (EU) 2019/2033 on the prudential requirements of investment firms (Investment Firms Regulation, IFR) and amending Regulations (EU) No. 1093/2010, (EU) No. 575/2013, (EU) No. 600/2014 and (EU) No. 806/2014, as well as setting out amendments to Legislative Decree No 58 of 24 February 1998 and Legislative Decree No 385 of 1 September 1993, has been published in the Italian Official Gazette no. 286 of 1 December 2021.

The two measures define a new prudential regime for investment firms, providing for a differentiated discipline with respect to credit institutions, which takes into account the size, activities carried out and risks of the different types of investment firms. Investment firms themselves are divided into four categories.

Regulation 2019/2033 amended the definition of credit institution, which now includes, in addition to banks, firms that provide certain investment services

and have balance sheet assets of at least EUR 30 billion, either individually or on a consolidated basis. This threshold is currently not exceeded by any Italian stock brokerage firm (SIM).

Although a temporary regime for certain provisions is provided for, the Decree entered into force on 2 December 2021.

EU Taxonomy Regulation: CSSF issues communiqué on phased-in implementation of Article 8 from 1 January 2022

The Luxembourg financial sector regulator, the Commission de Surveillance du Secteur Financier (CSSF), has issued a communiqué on the phased-in implementation of Article 8 of the EU Taxonomy Regulation for Issuers from 1 January 2022.

Article 8 of Regulation (EU) 2020/852 (Taxonomy Regulation) requires undertakings that are subject to the Non-Financial Reporting Directive 2014/95/EU (NFRD) to disclose information on how and to what extent their activities are associated with economic activities that qualify as environmentally sustainable under the Taxonomy Regulation.

The CSSF notes that the Taxonomy Regulation provides for a phased implementation, with different rules for financial and non-financial undertakings, and lists the elements they have to disclose starting from 1 January 2022 respectively.

The next steps are laid down in the Commission Delegated Regulation of 6 July 2021 supplementing the Taxonomy Regulation by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation (Disclosures Delegated Act) and include:

- its full applicability to non-financial undertakings from the financial year 2022 and to financial undertakings from the financial year 2023. In this context, the CSSF notes that the second delegated act concerning the technical screening criteria for economic activities with significant contribution to the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control, and the protection and restoration of biodiversity and ecosystems (Environmental Delegated Act) is currently being developed and will be published in 2022;
- its review by 30 June 2024, in particular with respect to the treatment in the KPIs of exposures of financial undertakings to sovereigns and non-NFRD undertakings; and
- its application as of 1 January 2026 to credit institutions for the KPIs on services other than lending and on trading portfolio for the financial year 2025.

Finally, the CSSF has indicated that the Commission Delegated Regulation of 4 June 2021 supplementing the Taxonomy Regulation by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental

objectives and the Disclosures Delegated Act are now being scrutinised by the EU Parliament and Council and will apply from 1 January 2022, if no objections are raised.

CSSF sets up fast track procedure to facilitate prospectus updates under Taxonomy Regulation

CSSF has put in place a fast track procedure to facilitate the submission of prospectuses updated in order to comply with the pre-contractual disclosures required under the Taxonomy Regulation, which amended Regulation (EU) 2019/2088 on SFDR.

The CSSF has reminded financial market participants of the deadline of 1 January 2022 under the Taxonomy Regulation. The CSSF is endeavouring to release the visa stamp prior to 31 December 2021 for any complete submission compliant with the Taxonomy Regulation that it receives by 17 December 2021. To benefit from this fast track procedure, the updates must relate to the Taxonomy Regulation only.

Bank of Spain issues circular to credit institutions and other supervised institutions on confidential financial information in market conduct, transparency and customer protection, and register of complaints

The Bank of Spain has issued Circular 4/2021, of 25 November, to credit institutions and other supervised institutions, on confidential financial information in market conduct, transparency and customer protection, and the register of complaints.

The circular sets out the information that supervised institutions must prepare on conduct of business matters. In particular, it determines the forms of confidential statements, defining their content and the frequency with which they must be submitted to the Bank of Spain. It also establishes the need for institutions to maintain a register of complaints available to the Bank of Spain with predefined content.

Considering the different types of institutions to which the circular is addressed, and the differences in their size and the types of customers they provide services to, a simplified reporting regime is established.

The circular will enter into force on 21 December 2021, with the first confidential statements on conduct of business to be submitted to the Bank of Spain being those for the second half of 2022. Institutions will have until 31 December 2022 to complete the register of complaints.

AMAS and SSF publish recommendations on minimum requirements and transparency for sustainable investment products

The Asset Management Association Switzerland (AMAS) and Swiss Sustainable Finance (SSF) have published their recommendations on minimum requirements and transparency for sustainable investment products.

The recommendations follow on from the key messages and recommendations for sustainable asset management published in 2020 and represent a further effort to reconcile the interests and goals of asset managers, other financial service providers, and end investors in the context of sustainable investment products on the Swiss market.

The recommendations are focused on sustainable products developed by the fund and asset management industry and sold to investors by financial service providers. They have three main aims:

- to define the various sustainable investment approaches more precisely and set minimum requirements for implementing each of them;
- to set minimum requirements for informing investors about the various investment approaches and instruments; and
- to explain which sustainable investment approaches are best suited to meeting investors' different objectives.

SFC publishes Hong Kong investor identification and OTC securities transactions reporting regimes guidance materials

Following its circular dated 13 September 2021 regarding the roadmap to implement the over-the-counter securities transactions reporting regime (OTCR) and the Hong Kong investor identification regime (HKIDR), the Securities and Futures Commission (SFC) has published the following guidance materials:

- a technical information paper which serves as a reference guide for relevant licensed corporations and registered institutions subject to the OTCR on the preparation and submission of information in relation to share transfers, and deposits and withdrawals of physical share certificates under the OTCR; and
- the first edition of the frequently asked questions (FAQs) relating to the HKIDR and OTCR – the FAQs are intended to help market participants better understand the requirements and prepare for the implementation of the regimes to ensure compliance going forward.

The HKIDR and OTCR will be implemented tentatively in the second half of 2022 and the first half of 2023 respectively.

Financial Advisers (Complaints Handling and Resolution) Regulations 2021 and Securities and Futures (Classes of Investors) (Amendment) Regulations 2021 gazetted

The Singapore Government has gazetted the Financial Advisers (Complaints Handling and Resolution) Regulations 2021 (FA(CHR) Regs). The FA(CHR) Regs are intended to effect the policy proposals on complaints handling and resolution (CHR) which include the requirements for a financial advisory (FA) firm to:

- establish a process for handling and resolving complaints from retail clients which is independent and prompt;
- designate a senior management member or committee comprising senior management member(s) within the firm to be responsible for the oversight of its compliance with the FA(CHR) Regs;
- ensure that information on its CHR process is publicly available;
- put in place a centralised management system for complaints; and
- report its complaints data to the MAS on a biannual basis.

The FA(CHR) Regs will be applicable to every licensed and exempt financial adviser, and to any complaint that:

- is made on or after 3 January 2022 by any client or prospective client of such financial adviser who, at the time when the complaint is made:
- is an individual or an individual proprietor of a sole proprietorship; and
- is not an accredited, expert or institutional investor; and
- relates to the provision of any financial advisory service by the financial adviser to the client or prospective client.

As the FA(CHR) Regs will only be applicable to complaints received by FA firms from retail clients, the MAS has also amended the Securities and Futures (Classes of Investors) Regulations 2018 (SF(COI) Regs) to require FA firms to inform clients that if they opt to be treated as accredited investors, the safeguards under the FA(CHR)Regs will not be applicable to them. The amendments to the SF(COI) Regs are set out in the Securities and Futures (Classes of Investors) (Amendment) Regulations 2021 (SF(COI)(A) Regs).

The FA(CHR) Regs and amendments to the SF(COI)(A) Regs follow a response to feedback received on draft FA(CHR) Regs and revised biannual report and implementation timeline for the FA(CHR) Regs released by the MAS in March 2021.

The FA(CHR) Regs and the SF(COI)(A) Regs are effective from 3 January 2022.

APRA finalises new bank capital framework designed to strengthen financial system resilience

The Australian Prudential Regulation Authority (APRA) has finalised its new regulatory capital framework for Australian banks, which is intended to embed strong levels of capital and align Australian standards with Basel III requirements. The new framework does not require banks to raise additional capital, but instead seeks to strengthen financial resilience by:

- ensuring existing high levels of capital adequacy are maintained;
- providing more flexibility and responsiveness to risks in the operating environment;
- being more risk sensitive, through increasing capital requirements for higher risk lending and decreasing it for lower risks;
- supporting competition by limiting differences in capital requirements between smaller and larger banks;
- improving the comparability of bank capital ratios, both domestically and with global peers; and
- reducing operational burden for smaller banks.

Within the new framework, APRA has introduced a set of simplified capital requirements that can be applied to small, less complex banks (those with under AUD 20 billion in assets and simple business models). Alongside the new framework, APRA has published the following:

- updated prudential standards for capital adequacy and credit risk capital, which will come into effect from 1 January 2023;

- an information paper that outlines the objectives of the new capital framework; and
- a response to submissions paper that provides a more detailed response to a range of capital management and technical issues raised in the December 2020 consultation on proposed changes to the authorised deposit-taking institution capital framework.

To assist banks to prepare for the new framework, APRA has also released for consultation draft guidance on the new framework, contained in the Prudential Practice Guide APG 110: Capital Adequacy, the Prudential Practice Guide APG 112 Capital Adequacy: Standardised Approach to Credit Risk and the Prudential Practice Guide APG 113 Capital Adequacy: Internal Ratings-based Approach to Credit. Comments on the consultation are due by 11 March 2022. APRA has indicated that it will also update associated reporting requirements and other related prudential standards over the course of 2022, including those related to market risk capital and public disclosure.

APRA finalises prudential guidance on managing financial risks of climate change

The Australian Prudential Regulation Authority (APRA) has released its final 'Prudential Practice Guide CPG 229: Climate Change Financial Risks' (CPG 229). The guide imposes no new regulatory requirements or obligations, but instead sets out examples of better practice to assist banks, insurers and superannuation trustees in managing climate-related risks and opportunities within their existing risk management and governance practices. It covers APRA's view of sound practice in areas such as governance, risk management, scenario analysis and disclosure of climate-related financial risks, and has been designed to be flexible in allowing APRA-regulated entities to adopt an approach that is appropriate for their size, customer base and business strategy.

The finalised guidance follows the feedback APRA received to its April 2021 consultation on the draft prudential practice guide. Considering the feedback received, APRA has made minor amendments to CPG 229 related to capital adequacy, the use of climate-related targets, and disclosing key design features of scenario analysis.

APRA encourages its regulated entities to begin using the finalised guidance immediately to enhance their management of climate change financial risks in a manner that is appropriate to their business and particular circumstances.

APRA has also indicated that it intends to undertake a survey in 2022 to help gauge the alignment between institutions' management of climate change financial risks, the guidance set out in CPG 229, and the Financial Stability Board's Taskforce for Climate-related Financial Disclosures. Further, APRA continues to advance its climate-related programme of activities, including the climate vulnerability assessment that is underway with Australia's five largest banks.

Federal banking agencies issue statement on cryptoasset policy sprint initiative

The Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) have issued a joint statement concerning the emerging

cryptoasset sector. The agencies recently conducted a series of interagency 'policy sprints' focused on cryptoassets, in which agency staff with various backgrounds and expertise conducted analysis on various cryptoassets related issues. The joint statement summarises the work, which included:

- developing a commonly understood vocabulary using consistent terms regarding the use of cryptoassets by banking organizations;
- identifying and assessing key risks, including those related to safety and soundness, consumer protection, and compliance, and considering legal permissibility related to potential cryptoasset activities conducted by banking organizations; and
- analyzing the applicability of existing regulations and guidance and identifying areas that may benefit from additional clarification.

Throughout 2022, the agencies plan to provide guidance as to whether certain activities related to cryptoassets conducted by banking organizations are legally permissible, and expectations for safety and soundness, consumer protection, and compliance with existing laws and regulations related to:

- cryptoasset safekeeping and traditional custody services;
- ancillary custody services;
- facilitation of customer purchases and sales of cryptoassets;
- loans collateralized by cryptoassets;
- issuance and distribution of stablecoins; and
- activities involving the holding of cryptoassets on balance sheet.

In addition, the agencies will evaluate the application of bank capital and liquidity standards to cryptoassets for activities involving US banking organizations and will continue to engage with the Basel Committee on Banking Supervision on its consultative process in this area.

RECENT CLIFFORD CHANCE BRIEFINGS

EU AIFMD – the AIFMD2 legislative proposal

On 25 November 2021, the EU Commission published its draft legislative proposal for AIFMD2. The proposal includes key changes to the AIFMD's delegation, loan origination and liquidity management provisions. Other areas affected by the proposal include the substance, client disclosure and regulatory reporting provisions and conditions for third country structures to market into the EU. The proposal also contains changes to the UCITS Directive which are intended to increase harmonisation with the AIFMD in the areas of delegation, liquidity management and regulatory reporting.

This briefing discusses the proposal and redlines to indicate the proposed changes to the texts of the AIFMD and UCITS Directive.

https://www.cliffordchance.com/briefings/2021/11/eu-aifmd--the-aifmd2-legislative-proposal.html

IRPH – second time lucky? The ECJ once again addresses the abusiveness of clauses linked to official indexes

Following the referral of a second request for a preliminary judgment by the same Barcelona Court, in a ruling dated 17 November 2021 the European Union Court of Justice (ECJ) has expressly confirmed that arranging loans linked to an official index without providing customers with information on its evolution does not infringe consumer protection rules.

This briefing discusses the ruling.

https://www.cliffordchance.com/briefings/2021/11/irph--second-time-lucky--the-ecj-confirms-that-official-indexes-.html

HKMA penalises four banks HKD 44.2 million for money laundering control failures – key takeaways

On 19 November 2021, the Hong Kong Monetary Authority (HKMA) announced that that it had completed investigations and disciplinary proceedings against four banks under the Anti-Money Laundering (AML) and Counter-Terrorist Financing (CTF) Ordinance (Cap. 615) (AMLO), imposing pecuniary penalties of a total of HKD 44.2 million. This arose from a series of onsite examinations the HKMA conducted on banks' systems and controls for compliance with the AMLO after its enactment on 1 April 2012. Common control lapses identified relate to ongoing monitoring of business relationships through customer due diligence (CDD) and deficiencies in conducting enhanced CDD in high-risk situations. Banks should reference these examples to review data quality and transaction monitoring system effectiveness, and take appropriate risk mitigating measures on an ongoing basis. The HKMA expects up-to-date understanding of evolving risks, responsible regtech adoption (particularly in CDD and transaction monitoring) and close collaboration in the ecosystem. These are areas of consistent regulatory emphasis.

This briefing summarises key recent guidance.

https://www.cliffordchance.com/briefings/2021/11/hkma-penalises-four-banks-hk-44-2-million-for-money-laundering-c.html

US federal banking agencies issue rule requiring banks to notify regulators of cyber incidents within 36 hours

On 18 November 2021, the OCC, the Board of Governors of the Federal Reserve System, and FDIC, issued a final rule requiring banking organizations to notify their primary federal regulator of significant computer-security incidents no later than 36 hours after determining the incident has occurred. The rule also requires bank service providers to notify their banking organization customers of any computer-security incident that has caused, or will likely cause, significant disruption. The rule imposes substantial new cyber security reporting requirements on banks with an effective compliance date of 1 May 2022.

This briefing discusses the rule.

https://www.cliffordchance.com/briefings/2021/11/u-s--federal-banking-agencies-issue-rule-requiring-banks-to-noti.html