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NPLs: Directive on credit servicers and purchasers published in Official Journal

Directive (EU) 2021/2167 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU has been published in the Official Journal.

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

The directive will enter into force on 28 December 2021. Member States are required to adopt and publish implementing legislation by 29 December 2023 and that implementing legislation must apply from 30 December 2023.

Taxonomy Regulation: Delegated Regulation on screening criteria for sustainable economic activities published in Official Journal

Delegated Regulation (EU) 2021/2139 establishing technical screening criteria for determining whether an economic activity qualifies as environmentally sustainable under the Taxonomy Regulation ((EU 2020/852) has been published in the Official Journal.

In particular, Delegated Regulation (EU) 2021/2139 sets out the criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or to climate change adaptation, and whether that economic activity causes no significant harm to any of the other environmental objectives laid down in Article 9 of the Taxonomy Regulation.

Delegated Regulation (EU) 2021/2139 enters into force on 29 December 2021 and applies from 1 January 2022.

Taxonomy Regulation: Delegated Regulation on disclosure obligations published in the Official Journal

Delegated Regulation (EU) 2021/2178 supplementing Regulation (EU) 2020/852 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 has been published in the Official Journal.

In particular, the Delegated Regulation has been developed following the February 2021 Joint Committee of the European Supervisory Authorities (ESAs) advice on key performance indicators (KPIs) disclosures for environmentally sustainable activities under Article 8 of the Taxonomy Regulation.

Delegated Regulation (EU) 2021/2178 will enter into force on 30 December 2021.

IFD: RTS on remuneration, risk-takers and criteria for subjecting certain firms to CRR published in Official Journal

Three Commission Delegated Regulations setting out regulatory technical standards (RTS) under the Investment Firms Directive (IFD) have been published in the Official Journal.

Delegated Regulation (EU) 2021/2155 lays down RTS specifying the classes of instruments that adequately reflect the credit quality of the investment firm as a going concern and possible alternative arrangements that are appropriate to be used for the purposes of variable remuneration, and enters into force on 12 December 2021.

Delegated Regulation (EU) 2021/2154 lays down RTS specifying the criteria to identify categories of staff whose professional activities have a material impact on the risk profile of an investment firm or of the assets that it manages, and enters into force on 12 December 2021.

Delegated Regulation (EU) 2021/2153 lays down RTS specifying the criteria for subjecting certain investment firms to the Capital Requirements Regulation (CRR), and enters into force on 27 December 2021.

ECON Committee adopts report on digital operational resilience for financial sector

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has adopted its report on the EU Commission's proposed directive on digital operational resilience for the financial sector (DORA).

The report sets out suggested amendments to the proposal. The rapporteur broadly supports the Commission's proposal, but believes further changes and clarifications to existing financial services directives are needed to increase legal clarity and consistency. The amendments relate to:

- the scope of the regulation;
- ICT risk reporting;
- resilience testing;
- the ICT risk management framework;
- the effective management of ICT third-party risks; and
- the oversight framework for critical third-party providers.

The rapporteur also recommends that the definition of financial instruments under MiFID2 be amended by DORA to cover cryptoassets, in order to ensure they are subject to the same requirements as traditional financial instruments.

The report has been tabled for the Parliament to consider in plenary.

EU Commission reports on improving transparency and efficiency in secondary markets for non-performing loans

The EU Commission has published a summary report following responses received to its consultation on improving transparency and efficiency in secondary markets for non-performing loans (NPLs).

The consultation was launched in June 2021 and covered possible alternatives for establishing a data hub to collect and store anonymised data on NPL transactions that have taken place in the EU, and the potential review of Pillar 3 disclosure requirements.

The report summarises the responses received to the consultation, covering in particular:

- the overarching principle and scope of an EU data hub;
- the types of transaction to be distinguished;
- data hub governance and services;
- Pillar 3 disclosure and market efficiency;
- targeted areas for more detailed disclosures and extension of the scope of disclosures; and
- keeping reporting burdens manageable and avoiding regulatory overlap.

The EU Commission states that the responses received will be considered in its next steps, and that a number of issues remain open and deserve deeper analysis.

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EBA consults on draft RTS setting out requirements for crowdfunding service providers

The European Banking Authority (EBA) has published for consultation draft RTS on the information that European crowdfunding service providers (ECSPs) have to provide to investors under the Crowdfunding Regulation (Regulation (EU) 2020/1503).

The draft RTS set out provisions relating to credit scoring and loan pricing disclosure, credit risk assessment and risk management requirements, including:

- the elements that ECSPs must include in the description of the pricing strategy and the method used to calculate credit scores for crowdfunding projects;
- the policies and procedures that ECSPs must have in place to ensure that investors are adequately informed;
- the information that ECSPs must consider when conducting creditworthiness assessments of crowdfunding projects and their owners; and
- the policies and procedures that ECSPs must have in place to ensure that credit risk assessments and loan valuations are conducted soundly and consistently, and that pricing is fair and appropriate.

Comments are due by 8 March 2022.

Benchmarks Regulation: ESMA publishes guidelines on methodology, oversight function and record keeping

The European Securities and Markets Authority (ESMA) has published its guidelines on methodology, oversight function and record keeping under the EU Benchmarks Regulation (BMR).

This follows a consultation launched by ESMA in February 2021. The guidelines cover:

- the details of any methodology to be used to determine a critical or significant benchmark in exceptional circumstances;
- material changes to the methodology used to determine a critical or significant benchmark;
- the oversight function for critical and significant benchmarks; and
- record keeping requirements.

The guidelines on non-significant benchmarks have also been amended with regard to the oversight function and the use of an alternative methodology in exceptional circumstances.

The guidelines will apply from 31 May 2022.

ECB publishes supervisory priorities for 2022-2024

The European Central Bank (ECB) has published its supervisory priorities for 2022-24, based upon its assessment of the risks and vulnerabilities faced by supervised institutions in the current economic, regulatory and supervisory environment.

The ECB reports that supervised institutions have remained resilient over 2021, although the risk landscape of the European banking sector continues to be shaped by the impact of the COVID-19 pandemic. The ECB has identified a number of vulnerabilities, including:

- deficiencies in credit risk management frameworks;
- exposures to COVID-19-vulnerable sectors, including commercial real estate;
- exposures to leveraged finance;
- sensitivities to shocks in interest rates and credit spreads;
- deficiencies in banks' digital transformation strategies and management bodies' steering capabilities;
- exposure to climate-related and environmental risks;
- exposures to counterparty credit risk, especially towards non-bank financial institutions; and
- deficiencies in IT outsourcing and cyber resilience.

Based upon these key vulnerabilities, the ECB's supervisory priorities aim to ensure that:

- banks emerge from the pandemic healthy;
- structural weaknesses are addressed via effective digitalisation strategies and enhanced governance; and
- emerging risks, including climate-related and environmental risks, IT and cyber risks, are tackled.

IOSCO consults on use of innovation facilitators in growth and emerging markets

The International Organization of Securities Commissions (IOSCO) has published a consultation on the use of innovation facilitators (IFs) in growth and emerging markets, drafted by the FinTech Working Group (FINWG) established by IOSCO's Growth and Emerging Markets Committee (GEMC).

In light of an increase of non-financial, non-regulated persons participating in financial innovation, the FINWG believes regulators need to review the perimeter of regulation or adapt existing regulations and develop new ways of cooperation among a wider range of authorities (including non-financial authorities) in addition to cross-border cooperation.

The consultation has been drafted based on responses from 49 GEMC member jurisdictions to its IFs survey and covers the work of three types of IFs: innovation hubs; regulatory sandboxes; and regulatory accelerators.

It sets out, among other things, four key recommendations for relevant authorities to assist emerging markets in developing IF initiatives in their jurisdictions. These include:

- the development of effective frameworks to support financial innovation, including IFs, and a comprehensive analysis and assessment of IFs before their establishment to ensure that their functions, scope and operational structure are designed in view of the local market conditions and are in accordance with the overall policy objectives;

- clear and public definitions of the objectives and functions of IFs and having innovation support functions in place with adequate resources according to the scope and objectives of the IFs, with good governance and accountability being part of the design of the IF;
- clear, transparent, and public definitions of the scope of eligible entities and the criteria for application and selection; and
- having in place mechanisms for cooperation and exchange of information with both local and foreign relevant authorities to facilitate a holistic approach and knowledge regarding issues of a crosscutting nature or issues that may fall outside their statutory responsibility.

The FINWG recommends that relevant authorities should consider their objectives, scope of regulatory options and available resources, as well as the characteristics of the ecosystem in which financial innovation is taking place.

Comments are due by 6 February 2022.

FCA publishes feedback statement and technical notice on legacy use of synthetic LIBOR

The Financial Conduct Authority (FCA) has published a feedback statement (FS21/12) and technical notice on the legacy use of synthetic LIBOR.

This follows a consultation (CP21/29) launched in September 2021 on the use of the FCA's powers under Article 23C(2) of the UK Benchmarks Regulation (BMR) for the 6 synthetic LIBOR settings and Article 21A of the BMR for the 5 US dollar LIBOR settings that will continue to be published after the end of 2021. In November, the FCA published a notice and draft notice with its decisions on allowing legacy use of synthetic LIBOR and restricting new use of US dollar LIBOR. FS21/12 sets out the FCA's response to the comments received to CP21/29.

The FCA has also published a technical notice to ensure that its decision to allow legacy use of the synthetic sterling and Japanese yen LIBOR settings comes into effect at the same time as the overall ban on use.

The FCA has published details of all of its decisions that will have an impact on LIBOR settings on 31 December 2021 and 1 January 2022. On 1 January 2022 the FCA will publish some formal notices with legal effect.

The FCA encourages users of LIBOR to continue to focus on active transition and move their contracts away from LIBOR wherever possible, rather than relying on synthetic LIBOR, which will not be published indefinitely.

FCA publishes discussion paper on financial services compensation framework

The FCA has published a discussion paper (DP21/5) on the UK's compensation framework and the purpose, scope and funding of the Financial Services Compensation Scheme (FSCS).

The FSCS provides compensation for customers when certain authorised firms are unable to meet claims against them. It is funded by levies on financial services firms. The increase in claims over recent years, driven by historic misconduct in the investment sector and failing firms, has focused attention on the compensation framework and led to increasing dissatisfaction amongst FSCS levy payers.

The FCA is therefore seeking to review the compensation framework to ensure it continues to balance the benefits to both consumers and firms. In its discussion paper, the FCA seeks stakeholder views on:

- which regulated activities should be protected under the FSCS;
- who should be eligible for compensation under the FSCS;
- what is an appropriate level of compensation for an individual claimant; and
- whether the way in which the FSCS is funded can be improved.

It also seeks feedback on four principles that it believes should underpin the elements of the FSCS that the FCA is responsible for. The principles are:

- that the FSCS is a fund of last resort and should not be the first line of defence for protecting customers;
- that FSCS protection for a particular regulated activity and category of individual should increase consumer confidence, and that the availability of protection, and the benefit to consumers, should be commensurate to the benefits to financial services markets;
- that the funding model should be robust, adaptable, economical and practical to implement; and
- that funding classes should provide sufficient funding for compensation while remaining sustainable (therefore some degree of cross-subsidy may be needed in practice).

Comments are due by 4 March 2022. The FCA intends to publish a feedback statement in 2022.

FCA consults on new consumer duty for financial services firms

The FCA has launched a consultation (CP21/36) on revised proposals for a new consumer duty, which would require firms to act to deliver good outcomes for retail customers.

CP21/36 sets out feedback and more developed proposals following the FCA's initial consultation published in May (CP21/13). Among other things, views are sought on:

- aligning the scope of the duty with the existing scope of the sectoral sourcebooks;
- new cross-cutting rules requiring firms to act in good faith, avoid foreseeable harm, and enable and support retail customers to pursue their financial objectives; and
- new rules relating to the governance of products and services, price and value, consumer understanding and consumer support.

The FCA also proposes an iterative implementation period and an initial expectation that firms fully implement the duty by 30 April 2023.

Comments are due by 15 February 2022. The FCA intends to confirm final rules by the end of July 2022.

UK CRR: PRA publishes modification for EEA government assets

The Prudential Regulation Authority (PRA) has published a direction for modification by consent (MBC) for the treatment of assets representing claims on or that are guaranteed by European Economic Area (EEA) central or regional governments, local authorities or public sector entities under the PRA's liquidity regime.

The MBC allows any Capital Requirements Regulation (CRR) firm or CRR consolidation entity to apply to continue treating certain EEA government assets as Level 1 High-Quality Liquid Assets (HQLA) for the purpose of the Liquidity Coverage Ratio (LCR) and Net Stable Funding Ratio (NSFR).

Any modification granted by the PRA will take effect on or after 1 January 2022.

PRA announces return of Pillar 2A as variable amount

The PRA has announced that all firms are to be set Pillar 2A as a percentage of total risk weighted assets (RWAs) in 2022.

In May 2020 the PRA announced that it was setting Pillar 2A requirements as a nominal amount, instead of a variable amount, in order to alleviate some of the pressure caused by the COVID-19 pandemic.

The PRA believes that the measure is no longer necessary. Supervisors will be in contact with firms that do not have a SREP assessment planned in 2022 to amend the requirements by end-2022.

UK EMIR: BoE issues policy statement on adding overnight index swaps referencing TONA to contracts subject to derivatives clearing obligation

The Bank of England (BoE) has published a policy statement setting out feedback and its final policy following a consultation on proposals to add overnight index swaps (OIS) that reference TONA to the scope of contracts subject to the derivatives clearing obligation.

In its consultation, the BoE proposed to introduce a clearing obligation for OIS that reference TONA, to come into force on 6 December 2021. This followed announcements made by the Japanese authorities ahead of the discontinuation of JPY LIBOR on 31 December 2021, which resulted in trading and liquidity in interest rate derivatives contracts referencing JPY LIBOR migrating to contracts referencing TONA. The BoE proposed that the new TONA OIS contract type in the clearing obligation would cover broadly the same maturity range as the JPY LIBOR contracts it was replacing, although the minimum maturity would be seven days (as opposed to 28 days for the JPY LIBOR contracts) to reflect differences in the types of transaction these contract types have historically been used in.

The BoE received six responses to its consultation, which were generally supportive of the proposals, although there were some requests for clarification and amendment. The BoE has therefore published its final policy largely as consulted upon, but has amended the date on which the change will come into force from 6 December 2021 to 31 January 2022 to allow firms additional time to prepare.

The policy has been implemented via amendments to the onshored Commission Delegated Regulation (EU) 2015/2205 supplementing the

European Market Infrastructure Regulation (EMIR) with regard to regulatory technical standards (RTS) on the clearing obligation (known as binding technical standards (BTS) 2105/2205).

The BoE notes it intends to consult on changes to the clearing obligation relating to the contract types referencing USD LIBOR in 2022.

New Payments Architecture: PSR publishes regulatory framework for central infrastructure services

The Payment Systems Regulator (PSR) has published its regulatory framework for the New Payments Architecture (NPA) central infrastructure services (CIS).

The framework has been developed taking account of responses to the PSR's February 2021 consultation on the delivery and regulation of the NPA and reducing risks to competition and innovation. The framework aims to address these risks by requiring that Pay.UK, the body responsible for delivery of the NPA, must:

- be the primary interface and decision-maker for CIS provision;
- set CIS user prices using a methodology that adheres to certain pricing principles;
- set rules and standards for the NPA CIS and ensure that these facilitate competition and innovation;
- ensure that the CIS facilitates innovation and competition;
- ensure that a CIS provider does not use, or disclose to any other party including its affiliates, information and data for anything other than CIS provision; and
- make available to the market information and data concerning the provision of CIS that would help facilitate competition and innovation.

The framework also requires CIS providers or affiliates to have their CIS provider functions operate separately from other parts of the business if they participate in a payment system that does, or is expected to, compete with the NPA payment system. If a CIS provider has no such competing interest, it must report annually on its position and must notify the PSR of any potential changes in circumstance.

The PSR has also published directions to illustrate to stakeholders, including Pay.UK, how future directions on implementing the framework could look. The PSR will consult on draft directions closer to the go-live date for the NPA.

BaFin consults on draft ordinances regarding outsourcing notifications

The German Federal Financial Supervisory Authority (BaFin) has launched consultations on several draft ordinances relating to the notification of material outsourcings. The purpose of the notification obligation is to provide BaFin with a comprehensive overview of the outsourced activities and processes of institutions under its supervision.

Under the Act on Strengthening Financial Market Integrity of 3 June 2021 (Finanzmarktintegritätsstärkungsgesetz), the regulatory framework for outsourcing, including the notification obligation, was reformed through the amendment of several laws, in particular the Capital Investment Act (Kapitalanlagegesetzbuch), the Banking Act (Kreditwesengesetz), the

Insurance Supervision Act (Versicherungsaufsichtsgesetz), the Securities Institutions Act (Wertpapierinstitutsgesetz), and the Payment Services Supervision Act (Zahlungsdiensteaufsichtsgesetz).

The draft ordinances set out BaFin's requirements for the implementation of the notification obligation under each of these acts. Notifications are to be submitted electronically via BaFin's reporting and publishing platform. This is intended to facilitate the systematic evaluation of the data and to identify concentration risks, in particular.

Comments are due by 23 December 2021.

CRD: Bank of Italy implements EBA guidelines on establishment of intermediate EU parent companies

The Bank of Italy has informed the European Banking Authority (EBA) of its intention to implement the EBA's guidelines on threshold monitoring and other procedural aspects relating to the establishment of an intermediate EU parent company pursuant to Article 21b of Directive 2013/36/EU (EBA/GL/2021/08).

The guidelines take the form of supervisory guidance and are addressed, amongst others, to less significant banks and SIMs (Italian investment firms) (excluding Tier 1 SIMs) with their registered office in Italy that are subsidiaries of third country groups, branches of third country groups established and authorised in Italy and financial holding companies and mixed financial holding companies, belonging to third country groups, for which the Bank of Italy is the competent authority for the exercise of supervision on a consolidated basis.

UAE Central Bank to publish Dirham Overnight Index Average

The Central Bank of the UAE (CBUAE) has announced that it will publish the Dirham Overnight Index Average (DONIA) for actual overnight funding transactions denominated in UAE Dirham (AED) from 7 December 2021.

DONIA is computed as a volume-weighted money market rate for all actual overnight secured and unsecured funding transactions of AED 10 million or greater contracted by all banks operating in the UAE, captured through the UAE Funds Transfer System. It will be published on UAE official working days by 09:30 hours local time on the CBUAE's website, and via Bloomberg (Index Ticker 'DONIA') and Refinitiv Eikon (Instrument Code 'DONIA').

The CBUAE expects that this index will assist banks in determining factors relevant to their daily fixing of interbank rates. The CBUAE has no plans to discontinue the Emirates Interbank Offered Rate (EIBOR) once the DONIA is published. At this stage, DONIA will not be used to price financial market products offered or structured in the UAE.

MAS revises notices on risk based capital adequacy requirements for banks, merchant banks and finance companies incorporated in Singapore

The Monetary Authority of Singapore (MAS) has revised its existing Notice 637 on risk based capital adequacy requirements for banks incorporated in Singapore. The notice has been revised to:

- incorporate edits to the standardised approach to credit risk and the internal ratings-based approach (IRBA) relating to the insertion of a new charge to be held by the Housing and Development Board (HDB) under the Prime Location Public Housing (PLH) model;

- incorporate clarifications by the Basel Committee on Banking Supervision to the standardised approach for counterparty credit risk framework and the revised capital requirements for bank exposures to central counterparties; and
- implement revisions to the IRBA application process, as well as technical revisions to the disclosure framework.

The amendments to the notice are effective from 1 January 2022, except for the insertion of the definition of 'HDB' in Part II of the notice and the amendments to paragraphs 7.3.1, 7.3.29A and 7.4.31 in Part VII of the notice (relating to the insertion of a new charge to be held by HDB under the PLH model), which are effective from 31 December 2021.

The MAS has also amended its notices on risk based capital adequacy requirements for finance companies (Notice 832) and merchant banks (Notice 1111) incorporated in Singapore to reflect edits to the standardised approach to credit risk relating to the insertion of a new charge to be held by the HDB under the PLH model. The revised notices are effective from 31 December 2021.

HKEX announces new initiatives to support sustainable finance ecosystem

The Hong Kong Exchanges and Clearing Limited (HKEX) has published a Practical Net-Zero Guide for Business and announced a new environmental, social and governance (ESG) data platform, ESG Data Display, designed to support businesses and investors in facilitating the transition to net-zero greenhouse gas emissions in the region.

The net-zero guide lays down essential steps for businesses to develop a pathway to net-zero. It provides guidance to help companies in understanding their greenhouse gas emissions in terms of where they are now, where they want to get to, and how they can get there.

The ESG Data Display platform, which has been launched through the Sustainable and Green Exchange (STAGE), HKEX's multi-asset platform that encourages greater transparency, market education and stakeholder engagement in sustainable finance, will display the ESG metrics of Hong Kong-listed companies. It aims to provide a consolidated view of ESG ratings from different providers, enabling investors to compare companies across sectors and sources when making their investment decisions.

SFC publishes ongoing compliance form and updates FAQs relating to reporting of pricing errors of UCITS schemes

The Securities and Futures Commission (SFC) has published a new form on ongoing compliance for the reporting of pricing errors of undertakings for collective investment in transferable securities (UCITS) schemes. The form should be used for reporting of pricing errors in relation to UCITS schemes in accordance with paragraphs 10.2, 10.2A and 10.2B of the Code on Unit Trusts and Mutual Funds.

The SFC has also updated its set of frequently asked questions (FAQs) on post-authorisation compliance issues of SFC-authorised unit trusts and mutual funds. In particular, Section 2 of the FAQs has been revised to:

- update Question 1, which provides guidance on whether a fund authorised by the SFC is required to comply with any post-authorisation requirements;
- update Question 4, which provides guidance on the type of form to be submitted to inform the SFC when there has been a pricing error with respect to a UCITS fund authorised by the SFC for public offerings in Hong Kong; and
- add a new Question 4A, which provides clarification on when a manager of a UCITS fund is required to submit Part A and Part B of the UCITS pricing errors form respectively to the SFC.

HKMA announces launch of enhanced competency framework on fintech

The Hong Kong Monetary Authority (HKMA) has issued a circular to announce the launch of its enhanced competency framework on fintech (ECF- Fintech).

The ECF- Fintech is a collaborative effort by the HKMA, the Hong Kong Institute of Bankers (HKIB) and the banking sector to establish a set of common and transparent competency standards, which is intended to develop a strong fintech talent pipeline and enhance the professional competence of existing banking practitioners who are performing functions that involve technological innovation for financial services in Hong Kong's banking industry.

As the supervisory policy manual module CG-6 'Competence and Ethical Behaviour' emphasises the importance of ensuring the continuing competence of staff members, the HKMA encourages authorised institutions to adopt the ECF- Fintech as part of their overall efforts in supporting relevant employees' on-going professional development. Apart from supporting their staff to attend trainings and examinations that meet the ECF certification, authorised institutions have also been advised to keep records of the relevant training and qualifications of their staff and to provide them with the necessary assistance in relation to applications for grandfathering and certification, and fulfilment of continuing professional development training under the ECF-Fintech.

The HKIB is the administrator of the ECF-Fintech, whose major role includes handling certification and grandfathering applications, administering the examinations and CPD requirements, and maintaining a public register of qualified certification holders.

Sustainable Finance: JPX publishes survey of TCFD disclosures in Japan

The Japan Exchange Group (JPX) has published a survey on disclosures based on the recommendations of the Task Force for Climate-related Financial Disclosures (TCFD) by Japanese listed companies.

The survey seeks to understand the current status around Japanese companies' TCFD disclosures and to support listed companies preparing their climate-related disclosures.

Among other things, the survey found:

- risks and opportunities was the most disclosed of the TCFD's recommended disclosures, followed by emissions, board oversight, and metrics used to assess risks and opportunities;
- out of the 259 surveyed companies, 42 had disclosed on all eleven of the TCFD's recommended disclosures, while 36 companies had not included information on any of the disclosures in any of the reports relevant to the survey; 233 had published an integrated or annual report, 119 had published an environmental, social and corporate governance (ESG), corporate social responsibility (CSR), environment or sustainability report, and 14 had published a TCFD report; and
- looking at the surveyed companies' disclosures by market capitalisation, while disclosure on all eleven categories was highest among companies worth JPY 1 trillion or more, in some categories there was only a small gap between them and those worth JPY 300 billion or more.

ASIC publishes report on firms' cyber resilience

The Australian Securities and Investments Commission (ASIC) has published a report on the cyber resilience of firms in Australia's financial markets.

The report identifies key trends from self-assessment surveys completed by financial market firms and highlights existing good practices and areas of improvement. Key findings from the assessments include:

- small, but steady, improvement in cyber resilience overall;
- the gap between large firms and small-to-medium enterprises (SMEs) is continuing to close;
- cyber resilience of many SMEs has improved;
- confidence of larger firms in their own cyber resilience has fallen slightly because of increased complexity in their business operating models and heavy reliance on supply chain partners; and
- the level of cyber resilience for supply chain risks has remained relatively static since cycle 2 (2018 – 2019) despite the increasing number of cyber threat actors, sources and types targeting firms' third parties and supply chains.

ASIC encourages all firms to consider and discuss the information in the report when developing or enhancing their cyber resilience frameworks. ASIC has also indicated that it will continue to monitor, assess and measure improvements over time by:

- engaging and collaborating with regulated firms, other regulators and the Government;
- raising awareness of cyber risks in the financial markets sector and highlighting good practices and areas for improvement;
- assessing the cyber resilience of regulated firms and measuring their progress against their targets; and
- engaging with firms that are failing to improve their cyber resilience.

APRA moves to strengthen crisis preparedness in banking, insurance and superannuation

The Australian Prudential Regulation Authority (APRA) has launched a consultation on two draft prudential standards titled 'CPS 190 Financial Contingency Planning' (CPS 190) and 'CPS 900 Resolution Planning' (CPS 900) to strengthen the preparedness of banks, insurers and superannuation trustees to respond to future financial crises.

The draft CPS 190 introduces requirements for all APRA-regulated entities to develop contingency plans to respond to financial stress by either recovering their financial resilience or exiting APRA-regulated activities in an orderly manner.

The draft CPS 900 requires large or complex entities, or those that provide critical functions to the economy, to be prepared for resolution to minimise the impact on the community and the financial system.

APRA proposes that the new prudential standards will come into force from 1 January 2024, and one year later for superannuation trustees in respect of CPS 190 only. APRA has also indicated that it will consult on supporting guidance material in 2022.

Comments on the consultation are due by 29 April 2022.

Alongside the release of the draft CPS 900, APRA is also finalising loss-absorbing capacity requirements for domestic systemically important banks. The purpose of the adjustment is to ensure that, in the unlikely event of a failure, a major bank could be recapitalised using a large pool of private, rather than taxpayer, funds. APRA confirms that the requirement will be set as an increase to minimum total capital requirements of 4.5 percentage points of risk-weighted assets on a Basel III basis, and will come into effect from 1 January 2026.

ASX consults on proposals for changes to ETO cancellation ranges, energy products and QCR process

The Australian Securities Exchange (ASX) has launched two consultations outlining a number of potential changes to the cancellation ranges and cancellation process that it is currently reviewing for the management of the ASX Trade market and the ASX 24 market respectively. In particular, ASX seeking feedback on:

- cancellation ranges that are currently prescribed under section 3200 of the ASX Operating Rules Procedures for exchange traded option (ETO) products, and under section 3200.9 of the ASX 24 Operating Rules Procedures in the electricity market base load cap products;
- the consent time for qualifying cancellation range (QCR) across all ASX trade products as well as ASX 24 products being extended from five minutes to ten minutes, in order to better facilitate participants' communications with clients around their intentions when an error is claimed; and
- any additional aspects of the cancellation process that market participants are looking to raise with it.

The ASX is also seeking comments on the timing for requests to cancel and re-price tailor made combinations be incorporated into the current timeframes used for request for cancellation in its Operating Rule Procedure 3200.

Comments on both consultations are due by 31 January 2022.

US House of Representatives passes Adjustable Interest Rate (LIBOR) Act of 2021

The US House of Representatives has passed a bill addressing the need to replace references to US dollar LIBOR in existing contracts that lack clearly defined or practicable benchmark replacement provisions. The bill, the Adjustable Interest Rate (LIBOR) Act of 2021 (H.R. 4616), was passed with strong bipartisan support. In addition to providing a uniform legislative solution for US law governed contracts, it provides a safe harbor from litigation. The bill will now move to the US Senate for consideration.

RECENT CLIFFORD CHANCE BRIEFINGS

EU MiFID Review – the MiFIR2/MiFID3 legislative proposals

The European Commission has now published its legislative proposals for a new regulation and directive amending the EU Markets in Financial Instruments Regulation and Directive. This new legislation would create a new process for selecting consolidated tape providers for EU trade data, make significant changes to the EU transparency regimes, update the EU share and derivative trading obligations, ban payments for order flow and make other changes to the EU regime for securities and derivatives trading.

The proposals aim to improve the level-playing field between execution venues, improve transparency and the availability of market data and ensure that EU market infrastructure remains competitive internationally.

This briefing paper discusses the proposals.

https://www.cliffordchance.com/briefings/2021/12/eu-mifid-review--the-mifir2-mifid3-legislative-proposals.html

Implementing the new EU rules on non-performing loans

The new EU directive on credit servicers and credit purchasers was published in the Official Journal on 8 December 2021. The directive will regulate the sale, purchase and servicing of non-performing loans originated by EU banks. The new regime will have a significant impact on trading, investment and securitisation transactions involving non-performing loans. The new rules will take effect on 30 December 2023, but market participants will have to take steps to implement the new rules well before then.

This briefing paper discusses the new rules.

https://www.cliffordchance.com/briefings/2021/11/implementing-the-new-eu-rules-on-non-performing-loans.html

Funds and securitisation – what does the future hold for asset managers?

There has been relatively little change in the securitisation regulatory landscape for asset managers over the past couple of years. Asset managers have faced some challenges and uncertainties around interpretation of the scope of the EU Securitisation Regulation (EUSR), as it applies to alternative investment fund managers (AIFMs), including non-EU AIFMs and small AIFMs in particular.

In the absence of interpretative guidance, AIFMs have necessarily had to take a view on how these rules apply to them today, leading to a fairly settled position across the market. However, in recent months, there have been a number of indications that changes are on the horizon both at EU level and in the UK.

This briefing paper reviews the recent and upcoming changes to the regulatory framework for securitisation as it relates to funds.

https://www.cliffordchance.com/briefings/2021/12/funds-and-securitisation-what-does-the-future-hold-for-asset-mangers.html

How data and DLT can accelerate sustainable finance

'Greenwashing' – the making of unsubstantiated claims about the sustainability of an investment product – is high on regulators' agendas for 2022 and it is crucial that ESG capital markets are transparent for the benefit of both issuers and investors.

Technology and innovation have an important role to play in addressing these risks and ensuring the continued growth of the sustainable finance market, which has surged in recent years and is worth in excess of USD 3 trillion.

This briefing paper discusses technology's role in tackling greenwashing risks.

https://www.cliffordchance.com/briefings/2021/12/how-data-and-dlt-can-accelerate-sustainable-finance.html

Synthetic Securitisations and Significant Risk Transfer

A key motivation for banks to execute synthetic securitisations is to reduce the amount of regulatory capital the bank is required to hold in respect of the underlying portfolio. Where the transaction satisfies the requirements for significant risk transfer under the Capital Requirements Regulation (CRR), the bank is able to substitute the pre-securitisation capital requirement for each underlying exposure with an aggregate capital calculation based on the securitised tranches.

The requirement for each tranche will be based on the credit risk of that tranche, with the first loss tranche being viewed as high risk and the senior tranche receiving a significantly lower risk weight. By transferring the exposure to some or all of the riskiest tranches to investors, as is typically the case for synthetic securitisations, the reduction in regulatory capital for originators can be significant.

This briefing paper discusses the key issues.

https://www.cliffordchance.com/briefings/2021/12/synthetic-securitisations-and-significant-risk-transfer.html