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MiFIR: EU Commission adopts amendments to RTS 2

The EU Commission has adopted a delegated regulation amending Commission Delegated Regulation (EU) 2017/583 (RTS 2) to move to stage three of the phase-in for the transparency requirements with regard to:

- the average daily number of trades (ADNT) threshold used for the quarterly liquidity assessment of bonds; and
- the trade percentile used to determine the pre-trade size specific to the financial instrument (SSTI) threshold for bonds.

The delegated regulation will enter into force on the twentieth day following its publication in the Official Journal.

EU Commission updates list of high-risk third countries

The EU Commission has adopted a delegated regulation amending the list of high-risk third countries with strategic anti-money laundering (AML) and counter-terrorist financing (CTF) deficiencies.

The delegated regulation amends Delegated Regulation (EU) 2016/1675 to:

- add Burkina Faso, Cayman Islands, Haiti, Jordan, Mali, Morocco, the Philippines, Senegal, and South Sudan to the table in point I of the Annex; and
- delete The Bahamas, Botswana, Ghana, Iraq and Mauritius from the table.

The EU Commission considers that Burkina Faso, Cayman Islands, Haiti, Jordan, Mali, Morocco, the Philippines, Senegal, and South Sudan meet the criteria set in Article 9(2) of Fourth Money Laundering Directive ((EU) 2015/849) (MLD4) and should be added to the list in Delegated Regulation

(EU) 2016/1675 as countries presenting strategic deficiencies in their AML/CFT regime that pose significant threats to the financial system of the EU. The EU Commission observes that these jurisdictions have provided a written political commitment and developed an action plan with the Financial Action Task Force (FATF) to address the identified deficiencies. The EU Commission welcomes these commitments and calls on these jurisdictions to complete the implementation of the action plan expeditiously.

The EU Commission has found that The Bahamas has addressed strategic deficiencies previously identified and that Iraq has made significant progress to address several strategic deficiencies, and that both should be deleted from the EU's list of high risk third countries.

The delegated regulation will enter into force 20 days after it is published in the Official Journal.

Delegated Regulation lowering net short positions notification threshold published in Official Journal

Commission Delegated Regulation (EU) 2022/27 amending the Short Selling Regulation (SSR) to permanently lower the notification threshold of significant net short positions in shares from 0.2% to 0.1% has been published in the Official Journal.

The Regulation enters into force on 31 January 2022.

Investment firms: RTS on K-factors and on segregated accounts published in Official Journal

Two Delegated Regulations setting out regulatory technical standards (RTS) under the Investment Firms Regulation (IFR) have been published in the Official Journal.

Commission Delegated Regulation (EU) 2022/25 sets out RTS specifying the methods for measuring K-factors.

Commission Delegated Regulation (EU) 2022/26 sets out RTS specifying the notion of segregated accounts to ensure client money's protection in the event of an investment firm's failure.

Both Delegated Regulations enter into force on 31 January 2022.

BRRD: EBA publishes resolvability guidelines and consults on transferability guidelines

The European Banking Authority (EBA) has published final resolvability guidelines and a consultation on draft transferability guidelines in relation to the resolvability assessment under the Bank Recovery and Resolution Directive (BRRD).

The final guidelines on improving resolvability for institutions and resolution authorities are intended to be the policy point of reference on resolvability-related topics in the EU, and set out the resolvability conditions for institutions or groups whose strategies involve the use of resolution powers, covering:

- operational continuity in resolution;
- access to financial market infrastructures (FMIs);
- funding and liquidity in resolution;
- bail-in execution;

- business reorganisation; and
- communication.

Institutions and authorities are expected to comply with the guidelines in full by 1 January 2024.

The EBA is also seeking views on draft guidelines on transferability to complement the resolvability assessment for transfer strategies, covering:

- the transfer perimeter definition;
- separability; and
- the operational transfer of the perimeter.

The consultation closes on 15 April 2022.

The EBA has indicated that it is working on guidelines on bail-in disclosure, resolution disclosure and resolvability testing.

ECB issues opinion on proposed regulation on artificial intelligence

The European Central Bank (ECB) has issued an opinion on the EU Commission's proposed regulation on a harmonised EU approach to artificial intelligence (AI). The proposals establish a legal framework for the development, marketing and use of trustworthy AI.

Overall the ECB supports the objectives of the proposed regulation, acknowledging the increasing importance of AI in the banking sector, and the need to establish a consistent, risk-based approach. However, it also identifies areas where it believes the proposal could be improved, particularly around supervisory responsibilities and the classification of AI systems.

Among other things, the ECB recommends that the draft regulation be amended to:

- clarify the ECB's role in relation to market surveillance responsibilities. The ECB suggests that the proposal should clearly state that the ECB is not designated as a market surveillance authority or entrusted with any market surveillance tasks, as this would be inconsistent with its competencies;
- clarify the ECB's role in relation to conformity assessment responsibilities. The proposal requires that 'high risk' AI systems that will be used to evaluate the creditworthiness of natural persons or establish their credit score, should be subject to conformity assessments as part of the supervisory review and evaluation process (SREP). The ECB notes that this responsibility for this assessment may also be inconsistent with its competencies;
- provide more specific guidance on the requirements applicable to high risk AI systems, such as how to ensure that training, validation and testing data sets are relevant, representative, free of errors, and complete;
- amend the definition of AI systems to exclude systems that operate subject to human supervision; and
- delay the application of the requirements on high risk AI systems used for credit scoring until the Commission has adopted common specifications on the matter.

Resolution planning: FSB publishes papers on funding and interconnectedness for insurers

The Financial Stability Board (FSB) has published two papers on resolution funding for insurers and internal interconnectedness in resolution planning for insurers.

The paper on resolution funding for insurers discusses different sources of resolution funding, including privately funded policyholder protection schemes and standalone resolution funds, and how they interact with each other when both exist. The paper on internal interconnectedness in resolution planning examines ways to map and assess financial and operational interconnectedness in insurance companies.

The FSB has invited feedback on both papers by 15 March 2022.

IOSCO consults on lessons learned from operational resilience of trading venues and market intermediaries

The Board of the International Organization of Securities Commissions (IOSCO) has launched a consultation on its report on the lessons learned regarding the operational resilience of trading venues and market intermediaries (regulated entities) during the COVID-19 pandemic.

IOSCO concludes that regulated entities largely proved to be operationally resilient and continued to serve their clients and the broader economy, despite unprecedented challenges. In its report, IOSCO sets out some observations and identifies lessons learned from the pandemic to help inform regulated entities' future operational resilience arrangements, including:

- operational resilience depending on the regulated entity's processes, premises and personnel, as well as technological solutions;
- dependencies and interconnectivity should be considered before and after a disruption to adequately assess potential risks and changes to controls, especially for service providers and off-shore services;
- business continuity plans should be reviewed, updated and tested to ensure they reflect lessons learned from the pandemic;
- an effective governance framework facilitates and supports operational resilience during novel or unexpected situations;
- compliance and supervisory processes with greater automation and less dependence on physical documents and manual processes may better accommodate a remote workforce; and
- decentralized and remote work may increase the importance of monitoring processes to help ensure information security and prevent cyber-attacks.

Comments are due by 14 March 2022.

FCA publishes policy statement on authorisation application fees

The Financial Conduct Authority (FCA) has published a policy statement (PS22/1) on the new structure for authorisation application fees.

Key features of the new structure include:

- condensing application fees into 10 pricing categories and revalorising them in line with inflation;

- replacing income-based consumer credit application fees with flat-rate fees;
- replacing the lower income-based fee for claims management companies with a new category charge for lead generators; and

introducing structured charges for validation orders based on the value of the agreements.

The new structure comes into effect from 24 January 2022.

In relation to the introduction of the new charge for applications under the senior managers regime (SMR) and controlled functions for appointed representatives (CF(AR)), the FCA intends to publish a handbook notice setting out the implementation date in due course.

FCA publishes feedback statement and plans to review competition concerns in wholesale data markets

The FCA has published a feedback statement (FS22/1) setting out its latest findings on the use of data in wholesale markets and proposed next steps.

This follows a call for input launched in March 2020 on the way competition is working for the supply of trading data, benchmarks and market data. Overall, views from respondents were mixed, largely reflecting respondents' position in the market. However, there were concerns that limited competition in the markets for benchmarks and indices, credit ratings and trading data may increase costs for investors and affect investment choices.

The FCA intends to conduct a market study in summer 2022, to look into concerns that complex contracts for benchmarks and indices prevent switching to cheaper, better quality or more innovative alternative providers.

The FCA also intends to launch a second market study by end 2022, to assess whether high charges for access to credit ratings data is adding costs to investors and limiting new market entrants.

The FCA also plans to begin gathering further information on competition in the market for wholesale trading data.

UK MiFIR: FCA publishes statement on short selling indicator

The FCA has announced that it is putting in place temporary measures for the reporting of the short selling indicator while it considers policy options for the UK MiFIR transacting reporting regime.

In particular, the FCA:

- will not take action against firms who do not meet the requirement to correct errors and omissions in the short selling indicator field and resubmit affected transaction reports; and
- does not expect firms to notify it about issues affecting the short selling indicator field through an errors and omissions notification form.

The FCA intends to keep its position under review.

PRA issues Dear CEO letters on 2022 priorities for insurance supervision, international banks and UK deposit takers

The Prudential Regulation Authority (PRA) has issued Dear CEO letters on its 2022 priorities for insurance supervision, international banks active in the UK and UK deposit takers.

The PRA's common priorities for 2022 are:

- financial resilience, particularly in the context of COVID-19;
- operational risk and resilience, particular in relation to cyber threats and outsourcing and third party risk management;
- financial risks arising from climate change; and
- diversity & inclusion.

For insurance supervision, the PRA will also be focusing on its review of Solvency II, regulatory changes and third country branches seeking authorisation in the UK.

For international banks active in the UK and UK deposit takers, the PRA will be focusing on risk-free rate transition. The PRA expects firms to continue making best efforts actively to transition LIBOR-referencing contracts wherever possible. The PRA, with the Financial Conduct Authority (FCA), intends closely to monitor actions to remove any remaining dependencies on LIBOR, including synthetic LIBOR. The PRA also expects firms to use the most robust alternative reference rates to LIBOR, and highlights that any firm considering the use of credit-sensitive rates should assess the risks carefully and raise this with their supervisors before doing so.

For UK deposit takers, the PRA will also be focusing on credit risk and model risk, and regulatory reporting and data quality.

FCA and PRA consult on management expenses levy limit for FSCS

The FCA and PRA have published a joint consultation on the management expenses levy limit (MELL) for the Financial Services Compensation Scheme (FCFS).

The MELL covers the costs of operating the compensation scheme and is the maximum amount the FSCS may levy in a year without further consultation. It does not include compensation costs, which are levied separately and decided by the FSCS.

The proposed MELL is GBP 110.5 million for 2022/23, consisting of a management expenses budget of GBP 95.5 million and an unlevied contingency reserve of GBP 15 million. The proposed MELL would apply from 1 April 2022 to 31 March 2023.

Comments are due by 14 February 2022.

House of Lords Economic Affairs Committee reports on central bank digital currencies

The House of Lords Economic Affairs Committee has published a report on central bank digital currencies (CBDCs). The report sets out the findings from the Committee's inquiry on the potential for a UK retail CBDC and the impact it would have on the role of the Bank of England (BoE), monetary policy and the UK financial sector.

The Committee notes that the two main drivers of introducing a CBDC are concerns that big tech companies will issue their own digital currencies and accrue excessive market power, and concerns regarding the declining use of physical cash. Key risks associated with CBDCs include increasing state surveillance and central bank power without sufficient scrutiny, financial instability, and the creation of a centralised point of failure, which could be targeted by hostile nation states or criminals.

The report concludes that:

- while the concerns around private money creation are valid, these should be addressed by regulation rather than the introduction of a CBDC;
- the digital nature of a CBDC and the lack of privacy makes them an inappropriate replacement for cash;
- the introduction of a CBDC could exacerbate financial instability if people transfer money out of banks and into CBDC wallets during periods of economic stress, and measures to prevent this, such as limits on CBDC holdings, would reduce the attractiveness and competitiveness of the CBDC;
- it would be difficult to reconcile concerns around anonymous transactions being used to conceal criminal activity and concerns about state surveillance;
- while CBDCs are often cited as a potential solution to the high costs and slow process of cross-border payments, there is still much work to be done before an interoperable global CBDC system can be established;
- the technological requirements of CBDC transactions may result in financial exclusion; and
- the value and importance of a centralised CBDC ledger would make it an attractive target to hostile state and criminal actors.

In light of the above conclusions, the Committee believes there is not currently a convincing case for a UK retail CBDC.

The Committee has also set out a series of questions it believes the BoE and HM Treasury Joint Taskforce on retail CBDCs should consider before proceeding. These focus on clearly defining the problems that a UK CBDC would solve, the risks it would pose, and how to address them. The Committee recommends that, given the rapid change in technological developments, consumer preferences, and the choices of other countries, the Joint Taskforce should continue to assess the rationale and technology behind a UK CBDC in order to be prepared if one is needed in the future. The Committee also notes that the UK is well placed to lead on the development of international CBDC standards, and recommends that it seeks to ensure global rules on governance, privacy, security, and interoperability are compatible with the nation's interests.

PSR publishes five-year strategy

The Payment Systems Regulator (PSR) has published its new strategy setting out its priorities and objectives for the next five years.

The PSR's strategic priorities are:

- ensuring users have continued access to the payment services they rely on and supporting a choice of payment options;
- ensuring users are sufficiently protected when using the UK's payment systems;
- promoting competition between UK payment systems and the markets supported by them and protecting users where that competition is not sufficient; and
- acting to ensure the interbank systems provide the infrastructure, rules and incentives that foster innovation and competition in payments.

The strategy also details the outcomes the PSR wants to see in the payments sector and how it will measure progress towards achieving those outcomes.

The PSR intends to publish its annual work plan in March 2022.

ACPR publishes charter for assessment of fintech authorisation requests

The Autorité de contrôle prudentiel et de résolution (ACPR) has published a charter for the assessment of fintech authorisation requests. The charter is intended to provide greater clarity regarding the processing time and expectations of the ACPR in the authorisation procedures for fintechs in France. It is organised according to the four steps of the authorisation process applicable to fintechs:

- initial contact with the ACPR and presentation of the project;
- completion and submission of the application by the project initiator;
- assessment of the application by the ACPR; and
- follow-up on the decision made by the supervisory board (collège) of the ACPR.

Clarifications are also provided in relation to:

- the authorisation waiver for payment institutions and electronic money institutions;
- the registration procedure for the appointment of agents by payment services providers; and
- the role played by the ACPR in the registration of digital asset service providers (DASPs).

A set of guides and FAQs supplementing the charter is also available on the ACPR's website.

German Federal Ministry of Finance publishes draft statutory provisions on electronic communication regarding bank levy collection

The German Federal Ministry of Finance (BMF) has published draft statutory provisions regarding the use of electronic communication related to the collection of the bank levy. The rules are intended to ensure the legally compliant collection of the bank levy in electronic form. The Ministry believes that electronic communication for collecting the bank levy is ecologically preferable in view of the large volume of notices previously sent in paper form and contributes to achieving the goal of digitising the administration.

As a result of section 4f of the Law on the Federal Financial Supervisory Authority (Gesetz über die Bundesanstalt für Finanzdienstleistungsaufsicht) which was introduced in 2021, notices can already be sent electronically if banks open electronic access voluntarily or are required to do so by law. The proposed mandatory requirement would provide for a uniform procedure applying equally to all banks.

This legal requirement would also not give rise to any significant additional costs for banks since an IT solution has already been developed for banks to participate voluntarily in the electronic procedure and that solution is based on a platform which all banks already use for electronic communication with the Federal Financial Supervisory Authority (BaFin).

BaFin to apply ESMA guidelines on settlement fails reporting

The German Federal Financial Supervisory Authority (BaFin) has announced that it will apply the German version of the European Securities and Markets Authority (ESMA) guidelines on settlement fails reporting under Article 7 of CSDR as of 1 February 2022.

The purpose of the ESMA guidelines is to ensure consistent application in the EU of Article 7(1) of CSDR, as well as Articles 14 and 39 of the RTS on settlement discipline, including the exchange of information between ESMA and competent authorities regarding settlement fails, and the content of such reporting.

Pursuant to Article 7(1) of CSDR, central securities depositories (CSDs) shall establish for each securities settlement system they operate a system that monitors settlement fails of transactions in financial instruments referred to in Article 5(1) CSDR. Each CSD shall regularly report to the competent authority the number and details of settlement fails and any other relevant information, including the measures envisaged by it and its participants to improve settlement efficiency, while the competent authorities subsequently inform ESMA.

BaFin plans to set countercyclical capital buffer and systemic risk buffer for residential real estate sector

BaFin has announced that it intends to set a countercyclical capital buffer of 0.75 percent of risk-weighted assets on domestic risk exposures and to introduce a sectoral systemic risk buffer of 2.0 percent of risk-weighted assets on loans secured by residential real estate. Currently, the quota is zero percent in each case.

BaFin will issue a general decree (Allgemeinverfügung) for each of the two measures and both buffers are intended to be activated shortly. However, institutions will have sufficient time to adjust to the measures as they will only be required to fully comply with the additional capital requirements as from 1 February 2023. In addition, most bank will be able to meet the requirements from existing surplus capital. Only few institutions will require a small amount of additional capital.

BaFin's decision takes into account analyses by the German Financial Stability Committee (AFS) and the European Systemic Risk Board (ESRB). While the financial system has proven to be robust during the COVID-19 pandemic, vulnerabilities have built up especially in the residential property market, where property prices and lending have developed particularly dynamically. BaFin and AFS wish to counteract the resulting increasing risks.

Hearings on the proposed measures will be held between 12 and 26 January 2022.

CSSF clarifies conditions for Luxembourg depositary to act as depositary for investment fund investing directly in virtual assets

The Luxembourg financial sector supervisory authority (CSSF) has updated both of its FAQs on virtual assets, relating to UCIs and relating to credit institutions, to clarify that a Luxembourg depositary can act as depositary for investment funds investing directly in virtual assets, subject to complying with certain regulatory requirements.

In particular, fund depositaries must put in place adequate organisational arrangements and an appropriate operational model, considering the specific risks relating to the safekeeping of virtual assets, and notify the CSSF before they act as depositary for an investment fund investing directly in virtual assets.

In relation to the depositary's liability and additional conditions, the CSSF distinguishes three cases:

- when the virtual assets qualify as 'other assets', the depositary function is limited to ownership verification and record keeping;
- when the depositary does not offer safekeeping or administration type of services for virtual assets, the investment fund or investment fund manager must directly appoint a specialised virtual asset service provider (VASP) and is required to establish a direct contractual relationship with that VASV. The depositary is then not liable for the restitution of the assets; and
- when the depositary does provide safekeeping or administration type services for virtual assets, including custodian wallet services, the depositary must be registered as a VASP, has an obligation of restitution for the loss or theft of the assets, and must inform the CSSF in a timely manner when it envisages directly safeguarding virtual assets.

CSSF intends to comply with ESMA guidelines on marketing communications by 2 February 2022

The CSSF, along with the other EU national competent authorities, is required to ESMA whether it complies or intends to comply with ESMA's guidelines on marketing communications under the Regulation on cross-border distribution of funds.

ESMA has now indicated that the CSSF has notified its intention to comply with the ESMA guidelines by 2 February 2022.

As a result, UCITS management companies, including any UCITS which has not designated a UCITS management company, AIFMs, EuVECA managers and EuSEF managers supervised by the CSSF must ensure all marketing communications addressed to investors or potential investors for UCITS and AIFs comply with the ESMA guidelines before 2 February 2022.

The ESMA guidelines further specify the application of the requirements set out in Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings (CBDF Regulation) that establish that marketing communications addressed to investors and potential investors should:

- be identifiable as such;
- contain a description of risks and rewards in an equally prominent manner; and
- have only fair, clear and not misleading information.

The ESMA guidelines contain non-exhaustive lists of what should be considered as marketing communications and what should not. They also contain detailed indications on the format and content of compliant marketing communications, such as, for instance, the wording for disclaimers, the font and size of the description of risks (which should be at least equal to that of the rewards), the consistency with other fund documentation, the acceptable information on past and future performance, and on sustainability-related aspects.

CSSF issues circular on application of ESMA guidelines on settlement fails reporting under Article 7 CSDR

The CSSF has issued Circular 22/792 on the application of the ESMA guidelines on settlement fails reporting under Article 7 CSDR (ESMA70-156-4717).

The purpose of the circular is to inform all central securities depositories (CSDs) established in Luxembourg (i.e. currently Clearstream Banking S.A. and LUXCSD S.A.) that the CSSF applies the guidelines and has integrated them into its administrative practice and regulatory approach.

The purpose of the guidelines is to establish consistent, efficient and effective supervisory practices within the European system of financial supervision, and to ensure proper exchanges of information between ESMA and the competent authorities regarding settlement fails, and proper reporting by CSDs. The guidelines are enclosed in an annex to the circular and apply from the date of entry into force of the RTS on settlement discipline, i.e. 1 February 2022.

The circular entered into force on 11 January 2022.

HKEX concludes consultation on operational model for derivatives holiday trading

The Hong Kong Exchanges and Clearing Limited (HKEX) has published the conclusions to its November 2021 consultation on the proposed operational model for non-Hong Kong Dollar (HKD) denominated futures and options trading and clearing services on Hong Kong public holidays (Derivatives Holiday Trading).

HKEX notes that it received 55 responses from a wide range of market participants, with strong support for the launch of Derivatives Holiday Trading and the proposed operational model. HKEX will proceed with launching Derivatives Holiday Trading with the operational arrangements as proposed in April 2022 to cover the Easter holidays, subject to market readiness and regulatory approval. All MSCI futures and options will be included as the first batch of Holiday Trading Products.

As part of the consultation conclusions, HKEX will make minor adjustments to the liquidity management arrangement on days when both Hong Kong and the United States have mutual holidays, accounting for feedback received during the consultation.

Derivatives Holiday Trading will allow international investors to trade non-HKD denominated futures and options products on Hong Kong public holidays, when the markets of their underlying securities may be open. HKEX plans to add non-HKD denominated futures and options to Derivatives Holiday Trading in batches, with the first batch being all MSCI futures and options contracts.

HKMA issues discussion paper on crypto-assets and stablecoins

The Hong Kong Monetary Authority (HKMA) has issued a discussion paper on crypto-assets and stablecoins seeking views from the industry and public on its regulatory approach.

In view of the growing adoption and ongoing evolvement of crypto-assets as well as discharging its responsibilities in maintaining the monetary and financial stability in Hong Kong, the HKMA has been reviewing the regulatory treatment of crypto-assets locally.

The discussion paper sets out the HKMA's thinking on the regulatory approach to crypto-assets, particularly on payment-related stablecoins, taking into consideration international recommendations, the market and regulatory landscape, and the characteristics of stablecoins.

In particular, the HKMA has placed emphasis on issues that may affect the public's confidence in, and the safety, efficiency, and soundness of, payment systems, and accord appropriate priority to user protection.

The HKMA has identified two key areas for deliberation at this stage, namely:

- its regulatory approaches regarding authorised institutions' interface with and provision of intermediary services to customers related to crypto-assets; and
- the adequacy of the existing regulatory framework in response to the challenges arising from the growing use of stablecoins and other types of crypto-assets in financial markets.

Comments are due by 31 March 2022.

Exchanges (Demutualisation and Merger) (Amendment) Bill moved for second reading in Singapore Parliament

The Exchanges (Demutualisation and Merger) (Amendment) Bill has been moved for its second reading in the Singapore Parliament.

The Bill is intended to amend the Exchanges (Demutualisation and Merger) Act 1999 to allow the special purpose company designated under section 3(2)(b) of the Act (i.e. SEL Holdings Pte Ltd), with the Minister's approval, to subscribe to Singapore Exchange Limited (SGX) rights issues, elect to receive dividends in SGX scrip dividend schemes, and participate in other corporate actions under which it may elect to receive additional SGX shares. The Bill also provides that new SGX shares acquired through such participation will be subject to the provisions of the Act in the same manner as the shares originally acquired by SEL from SGX under the Act (Original SGX Shares). In particular, consistent with the Original SGX Shares:

- SEL will hold the new SGX shares for the benefit of the Financial Sector Development Fund (FSDF);
- SEL will not be allowed to transact with the new SGX shares without the prior approval of or direction from the Minister-in-charge of the Monetary Authority of Singapore (MAS);
- SEL will not be able to exercise the voting rights attached to the new SGX shares; and
- the dividends paid in respect of the new SGX shares and any proceeds in respect of any sale of the new SGX shares, less expenses incurred in the sale of the new SGX shares, will accrue to the FSDF.

Monetary Authority of Singapore (Amendment) Bill moved for second reading in Singapore Parliament

The Monetary Authority of Singapore (Amendment) Bill 2021 has been moved for its second reading in the Singapore Parliament.

The Bill sets out legislative amendments that will empower the MAS to subscribe for reserves management government securities (RMGS), a new type of non-marketable security that will be issued by the Government under the Government Securities Act 1992 (GSA) in consideration for official foreign reserves (OFR) being transferred.

To ensure that the MAS's ability to fulfil its mandate remains unaffected, the MAS and the Government have proposed two sets of safeguards in both the Monetary Authority of Singapore Act 1970 and the GSA, wherein conditions pertaining to the MAS' subscription of RMGS and the Government's issuance of RMGS are circumscribed. The first set of safeguards is intended to address potential misperceptions of monetary financing, and the second set of safeguards aims to preserve the MAS' access to sufficient OFR to fulfil its mandate of conducting monetary policy and ensuring financial stability.

MAS issues circular regarding publication of 2020 Revised Editions of Acts in Singapore

The MAS has issued a circular to all financial institutions with respect to the publication of the 2020 Revised Editions of the Acts in Singapore. The circular is intended to explain the revisions made to the Acts administered by the MAS in the 2020 Revised Editions of the Acts, and clarify how to read the references to the Acts in the MAS-issued instruments and documents.

On 31 December 2021, the Law Revision Commissioners published the 2020 Revised Edition of the Acts in Singapore, which followed the Universal Law Revision Exercise carried out by the Commissioners. The objective of the exercise is to modernise and simplify the language used in Singapore legislation. The exercise covered Acts administered by the MAS effective before 1 October 2021. The key revisions to the Acts are as follow:

- name of Act – Acts have been renamed based on their year of enactment and not their chapter numbers. For example, the Banking Act (Cap. 19) is now the Banking Act 1970;
- removal of roman numerals – parts within Acts are no longer numbered using Roman numerals. For example, Parts I, II and III, will now be referred to as Parts 1, 2 and 3; and
- renumbering of sections – some section numbers and sub-section numbers in Acts have also been revised so they run in numerical order.

For example, sections 1, 1A, 1B, and 2, are now be renumbered as sections 1, 2, 3 and 4.

The 2020 Revised Edition of Acts are effective from 31 December 2021. The MAS has indicated that, as there are some changes to the names of, and the Part, section and sub-section numbers of the various Acts administered by it, it will progressively update the existing instruments and other documents over the next few years. In the meantime, the MAS has clarified that:

- for instruments, documents and other communications issued by it before 31 December 2021, the references to names of any Act, and any Part, section or sub-section number, will continue to refer to the pre-revised version of the Acts; and
- for communications with financial institutions going forward, it will transition to referring to the 2020 Revised Editions of the Acts by no later than 31 March 2022. Such Acts will be cited based on their year of enactment.

The MAS encourages all financial institutions to update the relevant references in their internal and external documents to refer to the 2020 Revised Editions of the Acts, where applicable, and adjust the references in their correspondence with it accordingly.

Internal Revenue Service and Treasury Department issue final regulations providing guidance on transition from LIBOR

The US Internal Revenue Service and the Department of the Treasury have issued final regulations providing guidance concerning the tax consequences of the transition away from the use of LIBOR in debt instruments, derivative contracts, and other contracts. The final regulations are intended to address the possibility that a modification of the terms of a contract to replace LIBOR with a new reference rate could result in the realization of income, deduction, gain, or loss for Federal income tax purposes or have other tax consequences.

Under paragraph 1.1001-6(b)(1) of the final regulations, a 'covered modification' of a contract is not treated as an exchange of property for other property differing materially in kind or in extent for purposes of paragraph 1.1001-1(a).

A 'covered modification' generally comprises four elements:

- a contract with an operative rate or fallback provision that references a discontinued IBOR;
- a modification of that contract (a) to replace an operative rate that refers to a discontinued IBOR with a 'qualified rate' and, if the parties so choose, to add an obligation for one party to make a qualified one-time payment, (b) to include a 'qualified rate' as a fallback to an operative rate that refers to a discontinued IBOR, or (c) to replace a fallback rate that refers to a discontinued IBOR with a 'qualified rate';
- any associated modifications with respect to those modifications of the operative rate or fallback provisions; and
- satisfaction of rules in paragraph 1.1001-6(j) of the final regulations that exclude certain modifications.

Replacement benchmark rates considered to be ‘qualified rates’ for purposes of the ‘covered modification’ definition include:

- SOFR;
- Sterling Overnight Index Average;
- Tokyo Overnight Average Rate;
- Swiss Average Rate Overnight;
- Euro short-term rate administered by the European Central Bank;
- any rate selected, endorsed, or recommended by the Alternative Reference Rates Committee as a replacement for USD LIBOR (i.e., CME Term SOFR rates);
- any alternative, substitute, or successor rate selected, endorsed, or recommended by the central bank, reserve bank, monetary authority, or similar institution (including any committee or working group thereof) as a replacement for a discontinued IBOR or its local currency equivalent in that jurisdiction.

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New EU guidelines on state aid for climate, environmental protection and energy – which sectors could benefit

On 1 January 2022, the revised guidelines of the European Commission on state aid for climate, environmental protection and energy entered into force, extending the scope of the previous guidelines to new areas in order to achieve the goal of reaching climate neutrality by 2050.

This briefing paper discusses the guidelines.

https://www.cliffordchance.com/briefings/2022/01/new-eu-guidelines-on-state-aid-for-climate--environmental-protec.html

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