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If you would like to know more about the subjects covered in this publication or our services, please contact:

International Regulatory Group Contacts

[Marc Benzler](#) +49 69 7199 3304

[Caroline Dawson](#) +44 207006 4355

[Steven Gatti](#) +1 202 912 5095

[Lena Ng](#) +65 6410 2215

[Gareth Old](#) +1 212 878 8539

[Mark Shipman](#) + 852 2826 8992

[Donna Wacker](#) +852 2826 3478

International Regulatory Update Editor

[Joachim Richter](#) +44 (0)20 7006 2503

To email one of the above, please use firstname.lastname@cliffordchance.com

Clifford Chance LLP,
10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

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Data reporting service providers: EU Commission adopts Delegated Regulation on fines and penalties

The EU Commission has [adopted](#) a Delegated Regulation specifying the rules of procedure for the exercise by the European Securities Markets Authority (ESMA) of its power to impose fines or periodic penalty payments on data reporting service providers (DRSPs).

The Delegated Regulation broadly follows the measures proposed by ESMA in its technical advice and include provisions on the:

- rights of the defence;
- collection of fines or penalties; and
- limitation periods for the imposition and enforcement of fines or penalties.

The Delegated Regulation will enter into force on the third day following its publication in the Official Journal.

Benchmarks Regulation: EU Commission adopts Delegated Regulations on fees, fines and penalties for benchmark administrators

The EU Commission has adopted two Delegated Regulations specifying fees and rules of procedure for measures applicable to the supervision of certain benchmark administrators by ESMA.

The [first Delegated Regulation](#) sets out the procedure ESMA needs to follow to impose fines or penalties on benchmark administrators under its supervision.

The [second Delegated Regulation](#) lays down rules on fees that ESMA can charge to benchmark administrators in relation to authorisation, recognition and supervision.

Both Delegated Regulations will enter into force and apply on the third day following their publication in the Official Journal.

CRR: EU Commission adopts Delegated Regulation amending Liquidity Coverage Ratio Delegated Regulation

The EU Commission has [adopted](#) a Delegated Regulation amending the Liquidity Coverage Ratio (LCR) Delegated Regulation.

The Covered Bond Directive (CBD), published in November 2019, introduced a liquidity buffer requirement for covered bonds issued in the EU. Under the LCR Delegated Regulation, all credit institutions, including those issuing covered bonds, are subject to the liquidity coverage requirement applicable for a period of 30 calendar days, during which a covered bond issuer must ensure it has sufficient liquid assets to cover the net liquidity outflows, including those stemming from the covered bond programme.

At the same time, the CBD requires credit institutions issuing covered bonds to maintain at all times a liquidity buffer composed of liquid assets available to cover the net liquidity outflows of their covered bonds programmes for a period of 180 days.

While there exists a waiver to allow Member States to address such overlap, the Delegated Regulation seeks to amend the LCR Delegated Regulation to permit credit institutions to treat liquid assets held as part of the cover pool liquidity buffer as unencumbered up to the amount of net liquidity outflows from the associated covered bond programme. The draft regulation also proposes additional amendments, which are unrelated to the CBD, which aim to clarify certain provisions of the LCR Delegated Regulation.

The Delegated Regulation will now be subject to scrutiny by the EU Parliament and Council. If there are no objections, it will apply from the twentieth day following its publication in the Official Journal.

CRD: Amended RTS and ITS on passport notifications published in OJ

[Commission Delegated Regulation \(EU\) 2022/192](#) and [Commission Implementing Regulation \(EU\) 2022/193](#), both relating to passport notifications under the Capital Requirements Directive (CRD 4), have been published in the Official Journal.

Commission Delegated Regulation (EU) 2022/192 amends the regulatory technical standards (RTS) laid down in Commission Delegated Regulation (EU) No 1151/2014 as regards the information to be notified when exercising the right of establishment and the freedom to provide services.

The most material changes to the RTS concern:

- the request to the credit institution to indicate in a manner as accurate as possible the intended start date of each activity for which the notification is submitted, rather than just of the core business activities as currently envisaged;

- the granularity of information on the financial plan to be notified in case of establishment of a branch, which now expressly requires assumptions underpinning forecasts to be included in the notification; and
- the information to be submitted in case of termination of the branch, in particular a statement indicating the measures taken or envisaged by the credit institutions to ensure that it will no longer hold deposits or repayable funds from the public through the branch is now expressly required.

Commission Implementing Regulation (EU) 2022/193 amends the implementing technical standards (ITS) laid down in Implementing Regulation (EU) No 926/2014 laying down standard forms, templates and procedures as regards the information to be notified when exercising the right of establishment and the freedom to provide services.

Both Regulations will enter into force on 16 March 2022.

ECON Committee publishes draft report on information accompanying transfers of funds and cryptoassets

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has published its [draft report](#) on the EU Commission's proposal to extend the scope of rules on information accompanying transfers of funds to apply to certain cryptoassets. Specifically, the proposal would require cryptoasset service providers to collect and make accessible complete information about the sender and beneficiary of any cryptoasset transfers, with the intention of making it easier to trace these transfers and identify suspicious transactions.

The rapporteurs broadly support the Commission's proposal, but set out a series of recommendations intended to strengthen the rules and ensure they effectively reflect the specific characteristics of cryptoassets. These recommendations include:

- removing the exemption for low-value transfers in the case of cryptoasset transactions;
- clarifying that the requirements also apply to transfers to or from 'unhosted wallets' (wallets based on software or hardware that are not hosted by a third party);
- requiring cryptoasset service providers to obtain accurate information on the source and destination of the cryptoassets being transferred, in addition to the usual information on originators and beneficiaries applicable to other fund transfers;
- requiring cryptoasset service providers to conduct counterparty due diligence before transmitting required information on transfers to service providers established outside of the EU;
- requiring the European Banking Authority (EBA) to maintain a public register of cryptoasset service providers who pose a greater AML/CFT risk (for example, because they are not linked to a recognised jurisdiction or offer anonymising services); and
- separating the proposals on cryptoassets from the Commission's wider package of amendments designed to strengthen the EU's AML/CFT rules in order to fast track its adoption.

ESMA publishes opinion on Money Market Funds Regulation Review

The European Securities and Markets Authority (ESMA) has published its [opinion](#) on the review of the Money Market Funds Regulation (MMFR) and its implementing measures.

The opinion outlines policy proposals for the EU Commission's upcoming MMFR review, including:

- addressing the threshold effects for constant net asset value (CNAV) MMFs by removing the possibility to use amortized costs for low volatility NAV (LVNAVs) MMFs, and decoupling regulatory thresholds from suspensions, gates and redemption fees for LVNAV/CNAV MMFs; and
- addressing liquidity related issues by ensuring mandatory availability of at least one liquidity management tool for all MMFs, amending the daily and weekly liquid assets ratios as well as the pool of eligible assets, and including or reinforcing the possibility to temporarily use liquidity buffers in time of stress.

ESMA also proposes complementary reforms aimed at enhancing MMF's crisis preparedness, such as enhancing reporting requirements and the stress testing framework, clarifying the requirements on external support and introducing new disclosure requirements on MMF ratings.

The EU Commission is expected to launch the MMFR review later in 2022.

Money market funds: ESMA publishes final report on updated stress test guidelines

ESMA has published a [final report](#) setting out the 2021 update of its guidelines on stress test scenarios under the MMFR.

The 2021 update includes changes to section 5 (calibration), where shocks have been calibrated to severe, plausible and consistent with European Systemic Risk Board (ESRB) and European Central Bank (ECB) projections, taking into account the impact of the COVID-19 pandemic and reflecting important systemic risks identified by the ESRB General Board, including:

- widespread defaults in the private sector due to any deep global recession;
- any re-emergence of sovereign financing risk and debt sustainability concerns; and
- instability and pockets of illiquidity in financial markets.

The 2021 guidelines will apply two months after the publication of official EU language translations on ESMA's website.

In its report, ESMA also notes an intention to publish a consultation paper on section 4.8 (common reference stress test scenarios), in addition to its annual review of the guidelines, by Q2 2022.

ESMA responds to Listing Act consultation

ESMA has published its [response](#) to the EU Commission's targeted consultation on the Listing Act.

The response reflects ESMA's views on the functioning of the existing regulatory framework for companies' listing on public markets, particularly in relation to:

- the Prospectus Regulation;
- special purpose acquisition vehicles (SPACs);
- corporate governance;
- the research unbundling regime in MiFID II; and
- the Market Abuse Regulation (MAR).

ESMA believes that while the broad regulatory framework in place regarding listing activities is effective, there is some scope to streamline certain rules and find ways to alleviate certain burdens for issuers.

The letter reflects ESMA's general views on some of the key aspects of the consultation, while the annex to the letter addresses a selection of specific questions posed by the EU Commission.

Investment firms: EBA issues opinion on amendments to fixed overheads RTS

The European Banking Authority (EBA) has published an [opinion](#) on the EU Commission's proposed amendments to the final draft RTS specifying the methodology for calculating the fixed overhead requirement (FOR) for investment firms under the Investment Firms Regulation (IFR).

The EBA broadly agrees with the Commission's proposed substantive change to add an additional supplementary element to the list of deductions from total expenses. The new element specifically concerns investment firms that are market makers and targets fees that would be incurred by the firm in the context of a wind-down.

The EBA considers that the addition enables investment firms acting as market makers to benefit from the principle of deduction of trading fees in a comparable manner to non-market makers, and only recommends a minor editorial change intended to preserve consistency with the IFR.

European System of Central Banks reaffirms commitment to FX Global Code

The European System of Central Banks (ESCB) has issued renewed [statements of commitment](#) to the FX Global Code.

The code was updated in July 2021 by the Global Foreign Exchange Committee, following a three year review of its implementation. All members of the ESCB, including the ECB, simultaneously issued renewed statements of commitment to the FX Global Code.

The EU central banks also encourage foreign exchange market participants in their jurisdictions to review the updated FX Global Code and to renew their statements of commitment.

FSB publishes letter to G20 finance ministers and central bank governors

The Financial Stability Board (FSB) has published a [letter](#) from its Chair to G20 finance ministers and central bank governors ahead of their meeting on 17-18 February 2022. The letter sets out the FSB's planned policy work and

deliverables to the G20 in 2022, which form part of its efforts to promote global financial resilience. These include:

- reporting to the G20 on policy considerations to support a more even, sustainable and inclusive global recovery from COVID-19, and on effective practices for national authorities to address the long-term effects of the pandemic on the financial sector;
- delivering a comprehensive progress report on the various initiatives under its non-bank financial intermediation work programme;
- delivering, in collaboration with the Committee on Payments and Market Infrastructures and other standard-setting bodies, a progress report on the G20 cross-border payments roadmap, as well as a report on the implementation approach for monitoring progress on the roadmap's quantitative targets;
- consulting on its high-level recommendations for the regulation, supervision and oversight of global stablecoin arrangements, which were published in October 2020, including seeking feedback on how any gaps identified could be addressed by existing frameworks;
- publishing best practices for regulatory cyber incident reporting requirements; and
- delivering a progress report on its roadmap for addressing climate-related financial risks (to be published in July 2022), followed by a report on the progress made on achieving consistent financial disclosures, the use of scenario analysis, and regulatory and supervisory approaches (to be published in October 2022).

FSB reports on risks cryptoassets pose to financial stability

The FSB has published a [report](#) setting out its view on recent developments in cryptoasset markets and their implications for global financial stability.

The FSB notes that, at present, the impact of the cryptoasset market remains limited. Cryptoassets only represent a small portion of the overall global financial system, direct connections between cryptoassets and systemically important financial institutions, critical financial services and core financial markets remain low, and episodes of price volatility have not spilled over into traditional financial markets.

However, the FSB emphasises that cryptoasset markets are evolving rapidly and, due to their scale, international nature, structural vulnerabilities, and increasing interconnectedness with the traditional financial system, may soon represent a threat to global financial stability. The FSB also notes that it is challenging to gain a true picture of the use and impact of cryptoassets as their participants, products and markets often fall outside the regulatory perimeter or are not fully compliant with the applicable laws and regulations.

The report examines developments and potential vulnerabilities relating to three key segments of cryptoasset markets: unbacked cryptoassets; stablecoins; and decentralised finance (DeFi) and cryptoasset trading platforms. Key findings from the FSB's assessment of these segments include:

- DeFi is a fast-emerging sector and stablecoin growth has continued steadily;
- stablecoins are predominantly used as a bridge between traditional fiat currencies and cryptoassets, and as a result a large stablecoin's failure would impact the liquidity in the broader cryptoasset ecosystem; and
- other key risks associated with stablecoins include their exposure to liquidity mismatch, market concentration, position outside of many jurisdictions' regulatory perimeters and lack of transparency.

The FSB notes that it will continue to monitor developments and risks in cryptoasset markets, with a particular focus in 2022 on the implications and regulatory challenges posed by unbacked cryptoassets.

Artificial Intelligence Public-Private Forum publishes final report on AI/ML in financial services

The Artificial Intelligence Public-Private Forum (AIPPF), a joint initiative of the Bank of England (BoE) and Financial Conduct Authority (FCA), which was established in January 2020 to facilitate dialogue between the public and private sectors regarding the use, benefits and impact of artificial intelligence (AI) and machine learning (ML) in financial services, has published its [final report](#).

The report is the result of a series of workshops and meetings held by the AIPPF throughout 2020 and 2021, which were attended by experts from financial services, the tech sector and academia and observed by representatives from the UK regulators and government. The AIPPF participants identified three stages of AI systems where risks are most likely to arise, namely, data input, modelling, and governance. The report focuses on these three stages and sets out the key challenges and risks that may occur, as well as suggestions for best practice.

The report also explores the wider barriers to AI/ML adoption in UK financial services and sets out its recommendations for next steps. These include that:

- regulators should provide greater clarity on existing regulation and policy. This guidance should not be overly prescriptive and should include illustrative case studies;
- regulators should also identify the most important or high-risk AI/ML use-cases and prioritise developing mitigation strategies and policy initiatives to address them;
- engagement with a wide range of public and private stakeholders should continue;
- an industry consortium should be established to develop industry-wide solutions and standards; and
- it should be considered whether an organisation to certify AI practitioners would be useful, alongside algorithm certification.

MiFID2/MiFIR: BaFin applies ESMA guidelines on market data obligations

The German Federal Financial Supervisory Authority (BaFin) has [announced](#) that it has applied the German translation of the ESMA guidelines on market data obligations under MiFID2 and MiFIR in its supervisory practice since 1 January 2022.

The guidelines aim to ensure that financial market participants have a uniform understanding of the requirement to provide market data on a reasonable commercial basis (RCB), including the disclosure requirements, as well as the requirement to provide market data 15 minutes after publication (delayed data) free of charge.

The guidelines also aim to ensure that national competent authorities will have a common understanding and develop consistent supervisory practices when assessing the completeness, comprehensibility and consistency of the RCB and delayed data provisions.

BaFin consults on measure to protect retail clients from trading in futures with additional payments obligations

BaFin has launched a [consultation](#) on a draft general decree (Allgemeinverfügung) intended to protect retail clients in Germany from losing their assets in highly volatile market situations when trading in futures.

The draft general decree, which constitutes a product intervention under article 42 of MiFIR, prohibits investment firms from marketing, distributing or selling futures with additional payments obligations to retail investors in Germany, subject to a three month transition period as from the issuance of the general decree.

In BaFin's view, retail clients that trade in financial products involving an obligation to make additional payments are exposed to substantial risk. If the capital invested is not enough to offset losses, investors are required to use their other assets, meaning that retail clients can lose significantly more than their invested capital.

After banning contracts for difference (CfDs) with additional payments obligations for retail clients in 2017, BaFin has observed an increase in companies marketing futures with additional payments obligations to retail clients. In addition, an increasing number of mini and micro futures products with additional payments obligations aimed specifically at retail clients are coming onto the market. With its product intervention measure, BaFin aims to ensure that, in future, the losses incurred by retail clients trading in futures contracts will be limited to the amount invested, as is the case for CfDs.

BaFin will accept comments on the draft general decree until 17 March 2022.

Issuers' Regulation: Consob consults on amendments for sustainable investments

The Commissione Nazionale per le Società e la Borsa (Consob) has launched a [consultation](#) on proposed amendments to Regulation no. 11971 of 14 May 1999 (Issuers' Regulation), for the purpose of implementing the following EU legislation into domestic law:

- Directive (EU) 2019/1160 and Regulation (EU) 2019/1156 on the cross-border distribution of investment funds (CBDF package); and
- Regulation (EU) 2019/2088 on sustainability disclosures in the financial services sector (SFDR) and Regulation (EU) 2020/852 on the establishment of a framework to encourage sustainable investment and amending Regulation (EU) 2019/2088 (Taxonomy Regulation), with particular reference to the requirements on pre-contractual disclosure in the offering documents relating to UCITS.

With regard to the CBDF package, Consob is seeking feedback on amendments to the rules on:

- local facilities;
- the cessation of marketing;
- pre-marketing of reserved alternative investment funds (AIFs); and
- marketing communications.

With regard to the SFDR and Taxonomy Regulation, Consob is seeking feedback on proposed amendments to integrate the national regulatory framework with the pre-contractual information provided for by the EU legislation, in order to make it easier for operators to find details on the obligations regarding offering documentation, including the information on sustainability set out in the SFDR and the Taxonomy Regulation, within Consob's regulations.

The consultation will end on 11 March 2022.

Consob consults on changes to Intermediaries Regulation

Consob has launched a [consultation](#) on proposed amendments to Regulation no. 20307 of 15 February 2018 (Intermediaries Regulation), for the purpose of implementing the following EU legislation into domestic law:

- Directive (EU) 2021/338 which, as part of the Capital Markets Recovery Package, amends MiFID2 with regard to investor protection;
- delegated acts implementing regulations on sustainable finance under MiFID2, the UCITS Directive and the Insurance Distribution Directive; and
- Directive (EU) 2019/2034 amending MiFID2 with respect to the provision of investment services by non-EU firms at the exclusive initiative of clients.

The regulatory changes to implement Directive (EU) 2021/338 relate to Part II of Book III of the Intermediaries Regulation, in particular the provisions on:

- the transparency of costs and charges connected with financial instruments and investment services;
- the assessment of suitability in the context of advisory and portfolio management services, with specific reference to the cost-benefit analysis of switch operations;
- the rules on reporting; and
- the rules applicable to eligible counterparties.

The regulatory changes relating to sustainable finance include:

- adjusting the rules on product governance applicable to the provision of investment services so that they align with the new provisions of Delegated Directive (EU) 2021/1269;
- adjusting the rules on conflicts of interest and due diligence obligations applicable to managers in the performance of collective asset management activities so that they align with the delegated acts implementing the UCITS Directive and the Alternative Investment Fund Managers Directive (AIFMD); and

- adjusting the rules on the distribution of insurance investment products so that they with MiFID2 and the provisions of Delegated Regulation (EU) 2021/1257.

The regulatory changes to implement Directive (EU) 2019/2034 relate to the rules under the Intermediaries Regulation concerning the provision of investment services and activities by non-EU firms other than banks on a reverse solicitation basis.

Consob is also seeking feedback on proposals regarding:

- the knowledge and skill requirements of intermediaries' staff;
- the registration and activity of financial advisors; and
- the procedure for extending the authorisation of Italian investment firms to carry out investment services and the management of the register established under Article 20 of Legislative Decree no. 58/98 (Italian Financial Act), as well as their cross-border operation.

Comments are due by 19 March 2022.

Spanish Congress of Deputies passes law amending SAREB's legal regime to facilitate increase of Spanish state's stake

The Spanish Congress of Deputies (Congreso de los Diputados) has passed into law [Royal Decree-Law 1/2022 of 18 January](#), amending Law 9/2012, Law 11/2015, and Royal Decree 1559/2012 of 15 November, in relation to the legal regime for the Sociedad de Gestión de Activos procedentes de la reestructuración bancaria (SAREB). The law amends SAREB's legal regime to facilitate the increase of the Spanish state's stake.

China issues rules on depository receipts under the Domestic-Overseas Stock Connect Scheme

The China Securities Regulatory Commission (CSRC) has issued the Provisions on the Supervision and Administration of Depository Receipts under the Stock Connect Scheme between Domestic and Overseas Stock Exchanges ([Domestic-Overseas DR Provisions](#)), which took effect on 11 February 2022 and simultaneously replaced the Provisions on the Supervision and Administration of Depository Receipts under the Stock Connect Scheme between Shanghai Stock Exchange and London Stock Exchange (for trial implementation) (Shanghai-London DR Provisions).

The Domestic-Overseas DR Provisions aim to expand the in-scope companies under the Domestic-Overseas Stock Connect Scheme, further open up PRC capital markets and facilitate cross-border investment and financing. Specifically, eligible Shenzhen listed companies will be allowed to issue global depository receipts (GDRs), and listed companies on major European markets such as Germany and Switzerland will be allowed to issue Chinese depository receipts (CDRs).

Among other things, the following key aspects are worth noting:

- allowing overseas issuers to raise funds through issuance of CDRs representing newly issued shares;
- optimising information disclosure requirements; and

- clarifying the rule on disclosure of interests under the Domestic-Overseas Stock Connect Scheme.

Financial Services and Markets Bill 2022 moved for first reading in Singapore Parliament

The [Financial Services and Markets Bill 2022](#) (FSM Bill) has been moved for its first reading in the Singapore Parliament following a public consultation in January 2020.

The FSM Bill is intended to enhance the agility and effectiveness of the Monetary Authority of Singapore (MAS) in addressing financial sector-wide risks in a rapidly changing and increasingly integrated environment. Financial institutions related provisions will be moved from the MAS Act to the FSM Bill and new powers to address emerging risks and challenges that impact institutions across the financial sector will also be introduced.

Some of the key aspects of the FSB Bill include:

- harmonised and expanded power of the MAS in terms of issuing prohibition orders to persons who are not fit and proper;
- enhanced regulation of virtual asset service providers (VASP) for money laundering and terrorist financing risks – this will include all VASPs created in Singapore that provide virtual asset services outside of Singapore;
- harmonised power to impose requirements on technology risk management; and
- statutory protection from liability for mediators, adjudicators and employees of operators of approved dispute resolution scheme.

The Bill comes into operation on a date that the Minister appoints by notification in the Government's Official Gazette.

Singapore and EU agree to accelerate steps towards comprehensive digital partnership

The Republic of Singapore and the European Union have [agreed](#) to accelerate steps towards a comprehensive and forward-looking digital partnership. They have also reaffirmed their shared ambition to bring the EU-Singapore relationship into the digital realm and expand bilateral digital cooperation and trade.

The digital partnership is intended to provide an overarching framework to strengthen digital connectivity and interoperability of digital markets and policy frameworks and facilitate digital trade between the EU and Singapore. It will also pave the way for cooperation in new and emerging areas with transformative economic potential - such as artificial intelligence or digital identities.

Further, the EU and Singapore have agreed to launch technical workshops as soon as possible to further scope the content and processes of the digital partnership, in order to work towards a political agreement in 2022.

Australian Government consults on 2022 foreign investment reforms

The Australian Government has published a [discussion paper](#) on foreign investment reforms in response to the Australian Treasury's evaluation of the 2021 reforms published on 10 December 2021.

The discussion paper aims to explore how Australia's foreign investment framework could be further enhanced, and seeks views from interested parties on options to improve the overall design and operation of the Australian foreign investment framework, reduce regulatory burden, refine compliance, and enforcement powers and processes, and if there are areas where increased scrutiny of certain types of investments may be required.

The Australian Government has also developed a package of amendments to the Foreign Acquisitions and Takeovers Regulation 2015 aimed at reducing regulatory burden by clarifying certain aspects of the framework and streamlining some sensitive types of investment. Among other things, the [exposure draft regulations](#) are intended to:

- clarify that the moneylending exemption applies to a moneylending agreement that has been entered into by a new entity, where it was created by a foreign moneylending business predominantly for the purpose of lending money (or otherwise providing financial accommodation);
- exempt non-stock or mutual entities that are widely held (with at least 100 members) and are licensed financial institutions (whether in Australia or elsewhere) from seeking foreign investment approval when they are involved in moneylending for residential land;
- raise the control threshold for foreign persons who acquire an interest in an unlisted Australian land entity from 5 per cent to 10 per cent, aligning the control thresholds for listed and unlisted Australian land entities;
- exempt acquisitions of interests in securities where the proportionate share or unit holding does not increase as a result of a person's acquisition;
- clarify that foreign persons who acquire additional securities in an Australian entity under a rights issue do not require further approval if the issue is consistent with the meaning in the Corporations Act 2001; and
- amend the foreign custodian corporations exemption to ensure that foreign custodians do not require approval where they undertake acquisitions in the course of providing custodian services on behalf of someone who is not a foreign person.

Comments on the discussion paper are due by 11 March 2022 and on the exposure draft regulations by 25 February 2022.

ASIC consults on proposals to remake product disclosure statement, superannuation dashboard and financial services guide legislative instruments

The Australian Securities and Investments Commission (ASIC) has launched a [consultation](#) seeking industry feedback on proposals to extend relief provisions relating to certain financial services disclosure requirements by consolidating seven existing legislative instruments into three new instruments without substantive changes.

ASIC notes that the existing instruments are generally operating effectively and continue to form a necessary and useful part of the legislative framework. However, in remaking the instruments, ASIC proposes to omit relief that has become redundant and update some conditions of the relief. The proposals are intended to assist industry in complying with disclosure obligations by providing regulatory certainty.

In particular, the consultation paper sets out ASIC's proposals to:

- remake in a single new instrument relief relating to product disclosure statement (PDS) in-use notices for employer-sponsored superannuation and product dashboard disclosure;
- remake in a single new instrument relief relating to shorter PDSs and PDS obligations for superannuation trustees, investor directed portfolio service (IDPS) operators and responsible entities of IDPS-like schemes;
- remake as a new instrument an instrument on financial services guides in time-critical situations; and
- give effect to the new instruments for a period until 1 October 2027.

Comments on the consultation are due by 12 April 2022.

ASIC and RBA update MoU with ESMA to reflect key amendments to European Market Infrastructure Regulation regarding central counterparties

ASIC and the Reserve Bank of Australia (RBA) have [updated](#) the existing memorandum of understanding (MoU) with ESMA to reflect key amendments to the European Market Infrastructure Regulation (EMIR) relating to central counterparties (CCPs).

The MoU establishes regulatory and supervisory cooperation arrangements between ASIC, RBA and ESMA with respect to Australian CCPs that are recognised or seeking recognition in the EU (covered CCPs). Under the MoU, signatories agree to provide the fullest cooperation permissible under their laws and regulations in relation to all relevant information and supervisory activities regarding the covered CCPs.

The updated MoU is effective from 9 February 2022.

ASX consults on proposed changes to recovery rules on allocation of investment losses

The Australian Securities Exchange (ASX) has launched a [consultation](#) on proposed changes to the ASX Recovery Rules and Handbook to address the investment exposure of clearing participants of ASX Clear (Futures) (ASXCLF) and ASX Clear to US settlement banks arising from the inclusion of variation margin exposures in ASXCLF's overnight (2 am) margin calls.

The proposed changes are intended to ensure that only clearing participants of ASXCLF will be exposed to the insolvency of the US settlement banks. The extent of that exposure will depend on three components, which recognise that:

- all ASXCLF clearing participants benefit from the overnight margin process;
- the mutualisation of settlement bank losses will avoid the risk of concentration of loss allocation to a small number of clearing participants; and
- there should be a 'user pays' element under which clearing participants whose activities directly result in exposure incur a higher share of any loss.

As a result, while all ASXCLF clearing participants will be exposed to a US settlement bank loss, those clearing participants that are in scope for overnight margining, and those clearing participants who have also paid USD

funds to ASXCLF in the prior default fund commitment period, will bear a greater proportion of any loss.

Subject to consultation feedback and regulatory clearance, the ASX expects to implement the amendments to its Recovery Rules and Handbook by the end of Q2 of 2022.

Comments on the consultation are due by 25 March 2022.

SEC proposes new rules to enhance regulation of private fund advisers

The Securities and Exchange Commission (SEC) has [proposed](#) new rules and amendments under the Investment Advisers Act of 1940, which are intended to strengthen the regulation of private fund advisers.

The proposals would:

- require SEC-registered private fund advisers to provide investors with quarterly statements on private fund performance, fees, and expenses;
- require registered private fund advisers to obtain an annual audit for each of their private funds and prompt the private fund's auditor to notify the SEC if certain events occur;
- require registered private fund advisers, in connection with an adviser-led secondary transaction, to distribute to investors a fairness opinion and a written summary of certain material business relationships between the adviser and the opinion provider;
- prohibit all private fund advisers, registered and non-registered, from engaging in certain activities and practices that are deemed by the SEC to be contrary to the public interest and the protection of investors;
- prohibit all private fund advisers from providing certain types of preferential treatment that deemed by the SEC to have a material negative effect on other investors;
- require all private fund advisers to disclose all other types of preferential treatment to current and prospective investors; and
- require all SEC-registered advisers to document the annual review of their compliance policies and procedures in writing.

The public comment period for the rule will remain open 30 days after it is published in the Federal Register or until 11 April 2022 (whichever is later).

RECENT CLIFFORD CHANCE BRIEFINGS

Full UK Securitisation rules kick in soon – are you ready?

On 31 March 2022, the Temporary Transitional Power (TTP) will cease to provide transitional relief for UK firms by permitting them to comply with the old EU versions of some obligations under the UK Securitisation Regulation.

Firms need to be ready to comply by then.

This briefing paper discusses the upcoming change.

<https://www.cliffordchance.com/briefings/2022/02/full-uk-securitisation-rules-kick-in-soon--are-you-ready-.html>

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

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