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- **APRA consults on post-implementation review of Basel III liquidity reforms**
- **APRA issues letter on climate risk self-assessment survey**
- **Recent Clifford Chance briefings: Ukraine; the EU Data Act; and more. Follow this link to the briefings section.**

Eurogroup issues statement on digital euro project and ECB updates on progress

The Eurogroup has issued a [statement](#) on the work being done by the EU Commission and the Eurosystem on the central bank digital currency (CBDC) project, the 'digital euro'.

The Eurogroup notes that it supports the project and intends to work closely with the Commission and the European Central Bank (ECB) to provide its input. It has agreed to meet regularly to discuss various aspects of the project, with a particular focus on its political implications. Previous and planned discussion points include:

- the policy objectives and uses of a digital euro in the global competitive context (discussed in November 2021);
- the progress of the project so far (discussed in February 2022);
- key privacy considerations and their interaction with other policy objectives, such as countering money laundering, illicit financing and tax evasion (to be discussed in April 2022); and
- the impact of the digital euro on the financial system and the use of cash (to be discussed in June 2022).

The ECB has published the [presentation](#) it gave to the Eurogroup in February on the progress of the project so far. The presentation summarises the use cases for a digital euro and the planned next steps. These include:

- the governing council to endorse the prioritisation of the identified use cases; and
- the Eurosystem to continue assessing the key design features of a digital euro, with a focus on the needs of payers and payees in the prioritised use cases.

BRRD2: Commission Implementing Regulation (EU) 2022/365 on revised resolution planning reporting published in Official Journal

[Commission Implementing Regulation \(EU\) 2022/365](#), which sets out implementing technical standards (ITS) amending Implementing Regulation (EU) 2018/1624 on the provision of information for the purposes of resolution plans for credit institutions and investment firms, has been published in the Official Journal. The ITS:

- realign the standards following changes to the minimum requirement for own funds and eligible liabilities (MREL) introduced by the second Bank Recovery and Resolution Directive (BRRD2);
- remove certain identified obstacles to compliance;
- correct references; and

- update the list of Deposit Guarantee Schemes.

They enter into force on 24 March 2022.

CRR: EU Commission adopts RTS on liquidity horizons for alternative IMA

The EU Commission has adopted a [Delegated Regulation](#) setting out regulatory technical standards (RTS) on liquidity horizons for the alternative internal model approach (IMA) under the Capital Requirements Regulation (CRR).

The RTS set out methodologies for:

- mapping risk factors to the broad risk factor categories;
- homogenous index instruments;
- inflation, mono-currency and cross-currency basic risk factors; and
- repo and dividend risk factors.

The RTS also specify how to determine the most liquid currencies and currency pairs as well as containing a definition of small and large market capitalisation for the purposes of the equity price and volatility sub-category under Article 325bd of CRR.

The RTS will enter force on the twentieth day following their publication in the Official Journal.

EU Commission extends deadline of consultation on review of central clearing framework

The EU Commission has [extended](#) the deadline of its consultation on proposed measures aimed at enhancing the attractiveness of EU central counterparties (CCPs) and clearing activities. The consultation was due to close on 8 March 2022 but will now run until 22 March 2022.

Working Group on Euro Risk-Free Rates publishes 2022/23 work programme and call for expressions of interest on €STR-based forward-looking term structure

The Working Group on Euro Risk-Free Rates (WGRFR) has published its [work programme](#) for 2022/23. The WGRFR will undertake activities focusing on the following core objectives:

- fostering the use of €STR in a diverse range of financial products;
- assessing the level of implementation of EURIBOR fallback provisions by EU-supervised entities and identifying any potential challenges to adoption;
- identifying issues related to the impact of LIBOR discontinuation in the EU and recommending solutions;
- coordinating on cross-currency issues with similar working groups in other jurisdictions; and
- informing, raising awareness and educating users about interest rates reform in the EU.

Alongside the work programme, the WGRFR has published a new [call for expressions of interest](#) from administrators developing €STR-based forward-looking term structures as a fallback in EURIBOR-linked contracts, in light of the recommendation on EURIBOR fallback trigger events and €STR-based

EURIBOR fallback rates, which was published by the WGRFR in May 2021. Interested administrators are requested to respond by 8 April 2022.

Securitisation: EBA recommends adjustments to proposed EU Green Bond Standard

The European Banking Authority (EBA) has published a [report](#) which analyses the recent developments and challenges of introducing sustainability in the EU securitisation market. The report examines how sustainability could be introduced in the specific context of securitisation to foster transparency and credibility in the EU sustainable securitisation market and to support its sound development. The report explores the following aspects:

- whether and how the EU regulations on sustainable finance, including the EU Green Bond Standard, the EU Taxonomy, and the Sustainable Finance Disclosure Regulations could be applied to securitisation;
- the relevance of a dedicated regulatory framework for sustainable securitisation; and
- the nature and content of sustainability-related disclosures for securitisation products.

BEIS publishes white paper on corporate transparency and register reform

The Department for Business, Energy and Industrial Strategy (BEIS) has published a [white paper](#) setting out the Government's position on corporate transparency and reforms to the Companies House register.

In 2019, the Government consulted on a broad range of measures intended to improve corporate transparency and address challenges relating to the misuse of companies, the vulnerability of personal data, and the accuracy of company information on the Companies House register. In 2020, it announced high-level plans for reform and published three further consultations on particular aspects of its proposals, namely the powers of the registrar, the ban on corporate directors, and the improvement of the quality of financial information on Companies House. The white paper sets out the Government's response to the findings of those consultations, as well as its final plans for reform.

Key reforms include:

- expanding the remit of the Registrar of Companies to include responsibilities for maintaining the integrity of the register and the UK business environment, including powers to query and, in some cases, reject suspicious appointments or filings;
- increasing data sharing with law enforcement, other government bodies and the private sector in order to more quickly identify discrepancies between information on the register and information held by other bodies;
- requiring those setting up, managing and controlling companies to have a verified identity on Companies House or through an anti-money laundering supervised third-party agent;
- permitting anyone whose personal information has been made public on the register in the past to apply to have it removed if its publication puts them at risk of harm; and
- introducing various changes intended to improve the quality and value of financial information on the register.

The white paper is accompanied by a legislative proposal to introduce a register of overseas entities.

Economic Crime (Transparency and Enforcement) Bill 2022 published

The UK Government has published a [draft Economic Crime \(Transparency and Enforcement\) Bill](#) to introduce a register of overseas entities.

The register is intended to dissuade the use of UK property as a money laundering vehicle and will require overseas entities that own or wish to buy land in the UK to identify and register their beneficial owner(s) at Companies House, and to update this information on the register annually.

It is proposed that the register apply retrospectively to property bought up to 20 years ago in England & Wales and since December 2014 in Scotland.

The Bill also introduces offences for failures by overseas entities to comply with duties relating to the register, and proposes amendments aimed at strengthening unexplained wealth orders and financial sanctions legislation.

The Bill was announced in a statement to Parliament alongside a white paper on corporate transparency and register reform, and is expected to be introduced on 1 March 2022.

HM Treasury sets out reforms to capital markets regulation and listing rules

HM Treasury has [set out reforms](#) to capital markets regulation and listing rules in the UK, following the UK's withdrawal from the EU.

The Wholesale Markets Review was launched in July 2021 to help determine how HM Treasury should approach regulating secondary markets following the UK's withdrawal from the EU. Following the feedback received, the Government has set out a package of MiFID reforms with the aim of creating a simpler and less prescriptive regime, including:

- simplifying the systematic internaliser regime to provide clarity and remove unnecessary regulatory burdens;
- removing restrictions on firms' ability to execute transactions to ensure that market participants can get the best outcomes for investors;
- reconfiguring the transparency regime for fixed income and derivatives markets so that only appropriate instruments are subject to enhanced transparency requirements;
- reducing the scope of the commodities position limits regime and delegating it to trading venues to ensure that market activity is not unnecessarily restricted; and
- ensuring the FCA can support the provision of a consolidated tape, which will better enable participants to identify the best available pricing for instruments.

HM Treasury has also set out its response to the Prospectus Regime Review and its planned reforms to the UK's regime for the public issuance of securities and admission to trading on capital markets. The government intends to replace the regime currently contained in the UK Prospectus Regulation to:

- simplify the regulation of prospectuses;

- facilitate wider participation in the ownership of public companies, including for retail investors;
- improve the quality of information that investors receive; and
- ensure that the regulation of prospectuses will be better able to respond to innovation and change.

HM Treasury proposes approach on regulation of non-transferable debt securities

HM Treasury has set out its proposed approach and published its [response](#) to the feedback received to the consultation on the regulation of non-transferable debt securities (NTDS), also known as mini-bonds.

HM Treasury reports that the majority of consultation respondents agreed that NTDS should be brought into regulation, and that a number of responses asked for a joined-up approach to the regulation of transferable and non-transferable securities.

The Government has set out its intention to include NTDS and non-transferable securities more generally within the scope of the new public offerings regime that is being developed as part of the Prospectus Regime Review (described as Option 2 in the NTDS consultation). However, HM Treasury notes that there is still further work to develop this proposal, and if issues emerge relating to Option 2, the Government would return to exploring Option 1, to make the issuance of NTDS a regulated activity.

HM Treasury publishes draft SI on capital and liquidity rules for banks and investment firms

HM Treasury has published the [draft Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2022](#).

The draft SI forms part of the package of instruments aimed at updating the UK's regulatory framework with new capital and liquidity rules for banks and investment firms, following the UK's withdrawal from the EU and the introduction of the Investment Firms Prudential Regime (IFPR) and the Basel III standards.

The draft SI repeals the Banking Act 2009 (Exclusion of Investment Firms of a Specific Description) Order 2014 following the removal of Financial Conduct Authority (FCA) regulated investment firms from the UK resolution regime.

Finally, the draft SI makes amendments to ensure that short-term liabilities owed to Prudential Regulation Authority (PRA) designated and FCA-regulated investment firms with permission to underwrite or deal on own account are exempt from bail-in. HMT has also published its response following its consultation on amending the definition of 'investment firm' under section 48D of the Banking Act 2009 to reflect those amendments.

BaFin updates FAQs on MiFID2 rules of conduct

The German Federal Financial Supervisory Authority (BaFin) has updated its [FAQs](#) on the MiFID2 rules of conduct set out in sections 63 *et seq.* of the German Securities Trading Act (Wertpapierhandelsgesetz) by adding two additional FAQs.

In the first additional FAQ, BaFin explains which requirements apply to a comparative presentation of trading venues, in particular to the order in which

they are listed in the order mask. In the second additional FAQ, BaFin sets out that an investment services firm may not accept any benefits in connection with a terminated or inactive customer relationship.

CSSF updates instructions on legal reporting of credit institutions

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has published updated instructions on the legal reporting of credit institutions relating to tables [B 4.5](#) (shareholding structure) and [B 4.6](#) (responsible persons of certain functions and activities).

Regarding the table B 4.5 instructions, the CSSF has provided a number of clarifications to Luxembourg law credit institutions and branches of third-country credit institutions on the determination of the holders of and the amount of the direct and indirect qualified holdings in the credit institution concerned that it has to report on a yearly basis to the CSSF. The reporting instructions document further informs such entities of a change of the transmission method of the report.

Regarding table B 4.6, the aim of the updated instructions and the updated table is to take account of regulatory changes, namely to CSSF Circular 12/552 and CSSF Regulation 12-02, that occurred since the last update of the reporting table in July 2018, provide clarifications in the instructions document relating thereto and to inform the above-mentioned entities that a new transmission method has been implemented.

SFC issues supplemental circular on streamlined requirements for eligible exchange traded funds adopting a master-feeder structure

The Securities and Futures Commission (SFC) has issued a [circular](#) supplemental to its circular on streamlined requirements for eligible exchange traded funds (ETFs) adopting a master-feeder structure dated 16 December 2019. The December 2019 circular sets out the requirements under which the SFC will consider authorising an index tracking feeder ETF that invests in an overseas-listed master ETF without SFC authorisation.

The SFC conducted a recent review regarding applications of eligible ETFs adopting a master-feeder structure with a view to offering more investment choices to investors and facilitating the growth of the Hong Kong ETF market while maintaining an appropriate level of investor protection.

The supplemental circular notes that the SFC is prepared to relax the fund size and track record requirements for overseas-listed master ETFs. Under the revised requirements, an eligible master ETF must have a fund size of not less than USD 400 million and a track record of more than one year at the time of the feeder ETF's listing on the Stock Exchange of Hong Kong.

JPX publishes English version of first report from Sustainable Finance Platform Development Working Group

The Japan Exchange Group (JPX) has published an [English version](#) of the first report from the Sustainable Finance Platform Development Working Group.

In October 2021, the JPX established the Working Group, consisting of a range of related parties including issuers, institutional investors, and academics, to consider the practical issues around the creation of an information platform that gathers and provides a wide range of information on green bonds and similar products, alongside other related topics. The Working Group met four times between then and 21 January 2022 and published its first report in Japanese on 31 January 2022.

The first report summarises the Working Group's discussions so far. It also sets out practical aspects of what the platform should look like and the issues that will need to be tackled to ensure further enhancement and transparency of the market in the future, as well as possible responses to those issues, with the purpose of contributing to the sustainable development of the market and wider economy by spurring deeper dialogue on environmental, social and governance issues among all market players including issuers, investors, and review providers.

Bank of Japan announces establishment of Cross-Industry Forum on Interest Rate Benchmarks

The Bank of Japan has [announced](#) the establishment of the Cross-Industry Forum on Interest Rate Benchmarks following the reorganisation of the Cross-Industry Committee on Japanese Yen Interest Rate Benchmarks.

The Forum is intended to conduct the following, in order to facilitate smooth transactions referencing Japanese yen (JPY) interest rate benchmarks in the Japanese markets:

- exchanging opinions on the choice and usage of JPY interest rate benchmarks by market participants and interest rate benchmark users, as well as on specific challenges that may arise;
- exchanging information on trends in interest rate benchmarks in other jurisdictions and foreign currencies; and
- monitoring of market trends and contractual practices related to the choice and usage of JPY interest rate benchmarks.

The Bank of Japan has indicated that the Forum will meet approximately once every three months and its first meeting will be held after the beginning of fiscal 2022.

MAS further extends facility to support lending to small and medium-sized enterprises

The Monetary Authority of Singapore (MAS) has [announced](#) that it will further extend the 'MAS SGD Facility for ESG Loans' to complement the six-month extension of Enterprise Singapore's (ESG) Temporary Bridging Loan Programme (TBLP) from 1 April 2022 to 30 September 2022.

The MAS launched the facility in partnership with ESG in April 2020 to lend Singapore Dollars (SGDs) at an interest rate of 0.1% per annum to eligible financial institutions with a view to support their lending to small and medium-sized enterprises (SMEs) under the ESG Loan Schemes. The ESG Loan Schemes comprise the Enhanced Enterprise Financing Scheme - SME Working Capital Loan (EFS-WCL) and the TBLP. The facility was extended twice on 12 October 2020 and 5 July 2021, to complement ESG's two extensions of the TBLP, the latest of which was from 1 October 2021 to 31 March 2022.

Under this extension, the facility will continue to provide SGD funding to eligible financial institutions for a two year tenor. A revised interest rate of 0.5% per annum will be applicable for funding provided from the May 2022 application window onwards, to better reflect interest rates in Singapore, which have risen alongside the economic recovery.

MAS revises code on collective investment schemes

The MAS has issued a [revised version](#) of the Code on Collective Investment Schemes to revise paragraph 3.1(d) of the Code (and references thereto). Previously, paragraph 3.1(d) of the Code **provided that** managers of authorised schemes were to take all reasonable steps to obtain the best possible result for the scheme. With Notice SFA 04-N16 on Execution of Customers' Orders (Best Execution Notice) becoming effective on 3 March 2022, paragraph 3.1(d) of the Code was amended on the same day to require managers of authorised schemes to comply with the Best Execution Notice and eliminate duplication.

APRA consults on post-implementation review of Basel III liquidity reforms

The Australian Prudential Regulation Authority (APRA) has launched a [discussion paper](#) on its post-implementation review (PIR) of the Basel III liquidity reforms.

The PIR aims to determine how efficiently and effectively the Liquidity Coverage Ratio and Net Stable Funding Ratio are achieving their objectives. The outcomes of the PIR will be used to inform a broader review of APRA's liquidity requirements, scheduled for 2023.

In particular, APRA is seeking feedback from relevant stakeholders on:

- benefits to financial safety and system stability;
- compliance costs (upfront and ongoing);
- commercial costs (such as impacts on the cost of funding); and
- the impacts on competition.

Over the course of the PIR process, APRA also plans to undertake roundtable discussions and bilateral meetings with key stakeholders. Further, the APRA intends to release a report on the outcomes of the PIR by mid-2022.

Submissions on the discussion paper are due by 14 April 2022.

APRA issues letter on climate risk self-assessment survey

APRA has issued a [cross-industry letter](#) to advise on the purpose and timing of its voluntary climate risk self-assessment survey of medium-to-large APRA-regulated entities.

The survey is intended to improve both APRA's and industry's understanding of the approaches being taken by APRA-regulated entities to identify, assess and manage climate-related financial risks. In particular, the survey will gather insights on how APRA-regulated entities are currently managing these risks, using APRA's Prudential Practice Guide CPG 229 Climate Change Financial Risks, published in November 2021, as a benchmark.

Participation in the survey is voluntary. It is predominantly a multiple-choice question format. Entities choosing to participate in the survey will have six weeks from receiving the questionnaire to provide their responses.

RECENT CLIFFORD CHANCE BRIEFINGS

Interplay of EU merger control and FDI review – implementation of national FDI screening regimes have to comply with EU law

The EU Commission has concluded that Hungary breached Article 21 of the EU Merger Regulation (EUMR) by vetoing the acquisition of AEGON's Hungarian subsidiaries by VIG on the basis of its national foreign direct investment (FDI) screening framework. The Commission reaffirmed the primacy of EU law over national law and its exclusive competence to assess transactions with an EU dimension.

This briefing paper discusses the Commission's conclusions.

<https://www.cliffordchance.com/briefings/2022/03/interplay-of-eu-merger-control-and-fdi-review--implementation-of.html>

The Data Act – a proposed new framework for data access and porting within the EU

On 23 February the European Commission published a much-anticipated proposal for a regulation on harmonised rules on fair access to and use of data, commonly referred to as the Data Act. The content of the published proposal largely follows that of an earlier, leaked version, and confirms that the Commission is determined to push forward with its strategic vision on data, which it regards as an 'essential resource' for digital and green transitions.

This briefing paper discusses the new framework.

<https://www.cliffordchance.com/insights/resources/hubs-and-toolkits/talking-tech/en/articles/2022/03/the-data-act--a-proposed-new-framework-for-data-access-and-porti.html>

Ukraine – the latest global sanctions and export controls

The US, EU, UK, Japan, Singapore and Australia, have imposed sanctions and export controls on Russia. These new sanctions are complex, multilateral and continue to be incrementally changing in real time in response to the developments on the ground in Ukraine. Our team of sanctions experts is monitoring the situation closely and we will endeavour to keep our briefings up to date.

This briefing paper discusses these sanctions and export controls, as well as measures adopted in response by Russia, as of 9pm GMT, 3 March 2022.

<https://www.cliffordchance.com/briefings/2022/03/ukraine-the-latest-global-sanctions-and-export-controls.html>

New Italian register of crypto-operators launched – restrictions on operations from abroad

Published in the Gazzetta Ufficiale of 17 February 2022, the Ministerial Decree of 13 January 2022 established the register of providers of services related to the use of virtual currency and providers of digital wallet services. Once the

time limits set out in the Decree have expired, only entities entered in the register will be allowed to provide such services in Italy; in order to be registered, such entities must have their registered office and operational headquarters (or, in the case of EU entities, a permanent establishment) in Italy.

This briefing paper discusses the register.

<https://www.cliffordchance.com/briefings/2022/02/-new-italian-register-of-crypto-operators-launched---restriction.html>

Investor choice is not enough – Supreme Court expands risks for ERISA fiduciaries

In January 2022, the Supreme Court in *Hughes v Northwestern University, et al.*, unanimously held that an ERISA plan fiduciary does not satisfy the ERISA prudence requirements by just including some prudent investment options in an employee retirement plan. That holding rejects investor choice as a ‘categorical’ defense to claims of imprudence. For that reason, the *Hughes* decision may make it harder to dismiss private litigation by classes of plan participants.

This briefing paper discusses the implications of the decision.

<https://www.cliffordchance.com/briefings/2022/02/investor-choice-is-not-enough--supreme-court-expands-risks-for-e.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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