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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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ECON Committee adopts report on proposed European green bond standard

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has [adopted](#) its report on the proposed regulation on a European green bond standard (EuGBS). The Parliament has indicated that its amendments envisage:

- a widened scope to regulate the entire green bond market with new transparency requirements;
- new requirements on benefitting entities to prevent 'brown' companies using the EuGBS label;
- a requirement for all EuGBS to have verified transition plans;
- stronger supervision including external reviewers and stronger market-pressure; and
- increased transparency requirements for gas and nuclear related activities.

The EU Parliament and the EU Council will begin trilogue negotiations on the proposed regulation in the coming weeks.

AIFMD2: ECON Committee publishes draft report on proposed directive

The ECON Committee has published a [draft report](#) on the Commission's proposal for a directive amending the Alternative Investment Fund Managers Directive (AIFMD) and the Collective Investment in Transferable Securities (UCITS) Directive (AIFMD2).

The draft report sets out amendments proposed by the rapporteur, with the explanatory statement noting changes in the following main areas:

- delegation and supervisory reporting, with the aim of striking a balance not to burden the delegation process while granting competent authorities comprehensive reporting powers;
- liquidity management tools (LMTs), including clarifying that the use of LMTs is primarily a task for the manager;
- loan origination funds, with the aim of removing unnecessary risk retention and to caution against creating product specific rules;
- depository services, including a depository passport, with the aim of making services among Member States more efficient; and
- transparency, data collection and disclosure, with the aim of improving and simplifying cooperation between competent authorities and the European Securities and Markets Authority (ESMA).

RTS on clearing and derivative trading obligations and benchmark transition published in Official Journal

Two Delegated Regulations amending RTS under EMIR and MiFIR as regards the transition to new benchmarks references in certain OTC derivatives contracts have been published in the Official Journal.

[Commission Delegated Regulation \(EU\) 2022/749](#) and [Commission Delegated Regulation \(EU\) 2022/750](#) amend the scope of the clearing and derivatives trading obligations for OTC interest rate derivatives denominated in EUR, GBP, JPY and USD, as part of the transition to alternative benchmarks.

The Delegated Regulations entered into force on 18 May 2022.

CRR: Amendments to LCR Delegated Regulation published in Official Journal

[Commission Delegated Regulation \(EU\) 2022/786](#) amending the Liquidity Coverage Ratio (LCR) Delegated Regulation under the Capital Requirements Regulation (CRR) has been published in the Official Journal.

Commission Delegated Regulation (EU) 2022/786:

- clarifies some of the existing rules and makes changes intended to better allow credit institutions issuing covered bonds to comply, on the one hand, with the general liquidity coverage requirement for a 30-calendar day stress period and, on the other hand, with the cover pool liquidity buffer requirement of holding liquid assets to cover net liquidity outflows over the next 180 days;
- introduces a new amendment to the encumbrance criterion under the general liquidity coverage requirement;
- introduces amendments to allow in some specific situations to recognise as unencumbered the assets held in the cover pool, in order to meet nonmandatory over collateralisation requirements;
- lays down monetisation rules for the assessment of liquid assets held in a cover pool liquidity buffer; and
- gives all types of bonds issued or guaranteed by Member States' central governments and central banks, as well as those issued or guaranteed by multilateral development banks and international organisations, level one status.

The Regulation will enter into force on 9 June and apply from 8 July 2022.

CRR: EU Commission adopts RTS specifying emerging markets and advanced economies

The EU Commission has adopted a [Delegated Regulation](#) setting out RTS on emerging markets and advanced economies under the CRR.

The RTS identify countries that are considered advanced economies for the purpose of identifying the appropriate risk weight to capture equity risk under the market risk framework. Markets not considered as advanced economies should be regarded as emerging markets.

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

CRR: EU Commission adopts amendments to RTS on credit risk adjustments

The EU Commission has adopted a [Delegated Regulation](#) amending the RTS on the specification of the calculation of specific and general credit risk adjustments under the CRR.

The amendments follow the EU Commission's action plan on tackling non-performing loans (NPLs) in the aftermath of the COVID-19 pandemic, which indicated the need for a revision of the treatment of defaulted exposures under the standardised approach of credit risk to remove any impediment to the creation of secondary markets for defaulted exposures. The Commission notes that the misalignment identified in the risk weight applied to those exposures by institutions selling them and the risk weight applied to those exposures by institutions purchasing them could create undue obstacles for credit institutions to move their defaulted exposures off their balance sheets.

Subject to scrutiny by the EU Council and Parliament, the Delegated Regulation will enter into force on the twentieth day following its publication in the Official Journal.

EBA publishes final draft RTS on requirements for crowdfunding service providers

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

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

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

The draft RTS will now be submitted to the EU Commission for its endorsement.

NPLs: EBA consults on standardised information requirement ITS

The EBA has launched a [public consultation](#) on the draft common standard for NPL transactions across the EU enabling cross implementing technical standards (ITS) specifying the requirements for the information that sellers of non-performing loans (NPL) shall provide to prospective buyers.

The draft ITS aim to provide a country comparison, thus reducing information asymmetries between the sellers and buyers of NPLs and improving the

functioning of NPL secondary markets. They also take into account the proportionality principle by setting different information requirements depending on the size of NPL.

The draft ITS include [common templates](#), including data fields with their definitions and characteristics, which would facilitate the sales of NPLs on secondary markets, increase efficiency of those markets and reduce entry barriers for small credit institutions and smaller investors wishing to conclude transactions.

The templates, which are built on previous voluntary templates and consider the experience of market participants from the sell and buy side, are complemented by a [data glossary and instructions for completing the templates](#).

Comments are due by 31 August 2022. A public hearing on the draft ITS will take place on 15 June 2022.

EBA reports on supervision of management of non-performing exposures

The EBA has published a [report](#) on how prudential and consumer protection authorities supervise the management of non-performing exposures (NPE) by institutions and have implemented the EBA guidelines on the management of NPE.

As part of its peer review work plan for 2020-2021, the EBA conducted a peer review on the supervision of management of NPE. The peer review findings suggest that EU competent authorities have applied a risk-based approach to the supervision of NPE management by institutions, where the rigour and comprehensiveness of the supervisory review and supervisory resources allocated to these tasks by authorities is in line with the magnitude of the NPE level in the jurisdiction or institutions.

The findings also suggest that the EBA guidelines on management of non-performing and forborne exposures have been largely implemented by the prudential and consumer protection competent authorities and applied in their supervisory practices. No significant concerns regarding NPE supervision practices have been identified, but the EBA makes a number of general recommendations for further improvements. The peer review also includes recommendations to the EBA to incorporate a number of identified best practices into the guidelines on management of non-performing and forborne exposures, when the latter will be reviewed in the future.

CCP resolution regime: ESMA publishes final RTS and guidelines and consults on additional guidelines

ESMA has [published](#) six final reports on the central counterparties (CCPs) resolution regime under the CCP Recovery and Resolution Regulation (CCPRRR).

The final reports set out proposals for RTS on:

- the content of CCP resolution plans;
- resolution colleges;
- valuation of CCPs' assets and liabilities in resolution; and
- safeguards for clients and indirect clients.

They also cover guidelines on the circumstances under which a CCP is deemed to be failing or likely to fail as well as on the methodology to value each contract prior to termination.

The proposed RTS and guidelines provide further details of the CCPRRR that are aimed at guiding resolution authorities in developing effective resolution plans.

ESMA has submitted the final reports to the EU Commission which now has three months to decide whether to endorse the proposed standards.

ESMA has also [published](#) four consultation papers on its proposed guidelines for the regime.

The consultations cover:

- guidelines on the assessment of resolvability by resolution authorities;
- guidelines on the type and content of the provisions included in the cooperation arrangements between Member States and third-country authorities;
- guidelines on the summary of the resolution plan to be shared with CCPs; and
- a template for the standard written arrangement referred to in the RTS for resolution colleges.

The consultations are intended further to advance the recovery and resolution regime for CCPs where the proposed guidelines complement the new CCPRRR and provide further guidance on cooperation, as well as providing EU regulators with the necessary tools to ensure supervisory convergence across the EU.

Comments are due by 1 August 2022. ESMA will consider the feedback it receives to the consultation with a view to publishing the final reports by Q4 2022.

ESMA publishes final advice on extending transitional period under Crowdfunding Regulation

ESMA has published a [final report](#) containing its technical advice to the EU Commission on various aspects of Regulation (EU) 2020/1503 on ECSPs. In particular, ESMA was asked to advise on:

- the application of the regulation to ECSPs that provide crowdfunding services on a national basis only;
- the impact of the regulation on the development of national crowdfunding markets and on access to finance; and
- the benefit of extending the regulation's transitional period beyond the current date of 10 November 2022.

In its response, ESMA:

- notes that it cannot advise on the impact of the regulation, as no ECSP has, to date, been authorised and begun operating under it;
- notes that not extending the transitional period is likely to have a considerable impact on the EU crowdfunding market, and that many ECSPs will be required to halt their business activities as they will not be

authorised under the Crowdfunding Regulation in time for the 10 November 2022 deadline; and

- recommends that the EU Commission considers extending the transitional period specifically for those ECSPs that are currently operating under national law and which have applied for authorisation under the Crowdfunding Regulation prior to the end of the transitional period.

ESMA issues public statement on fund managers' obligations in context of crisis in Ukraine

ESMA has issued a [public statement](#) on the implications of Russia's invasion of Ukraine on investment fund portfolios and fund managers' obligations to investors.

The statement provides high-level guidance on:

- the actions that should be taken in relation to exposures to Russian, Belarusian and Ukrainian assets, in light of the valuation and liquidity uncertainties;
- the process fund managers should follow when evaluating these assets; and
- when it may be appropriate to use side pockets or similar arrangements to segregate these assets.

ESMA calls on fund managers with exposures to effected assets to assess whether a fair value can still be determined and to adapt the valuation promptly, if necessary.

Cross-border distribution of funds: ESMA consults on marketing and management notifications

ESMA has published a [consultation paper](#) on draft technical standards in relation to the cross-border marketing and management of funds in the EU under the Undertakings for the UCITS Directive and AIFMD.

Views are sought on:

- draft RTS specifying the information to be notified by management companies and AIFMs to carry out their activities, either directly or through a branch, in Member States other than their home Member State; and
- draft implementing technical standards (ITS) with regard to the form and content of notification letters for cross-border marketing and management of AIFs and UCITS.

Comments are due by 9 September 2022.

Green finance: NGFS publishes new documents on climate-related risk differentials and credit ratings

The Network for Greening the Financial System (NGFS) has published two documents to aid central banks and regulators in their oversight of the financial sector and in their central bank operations.

The first, a report entitled [Capturing risk differentials from climate-related risks](#), provides an update on existing analyses and practices in relation to green/non-green classification frameworks and methodologies used by

financial institutions (FIs), credit rating agencies (CRAs) and supervisors. It identifies three key strands of work for the supervisory community:

- furthering understanding of the range of potential risk differentials as manifested through scenario analysis and stress testing;
- enhancing management and monitoring of transition risk by examining the relevance and extent to which FIs should consider counterparties' transition plans; and
- advancing understanding of the impact of environmental and climate-related risks on credit ratings and internal credit risk modelling at FIs.

The second report, entitled [Credit ratings and climate change – challenges for central bank operations](#) states that:

- monetary policy implementation at many central banks relies on credit ratings to assess creditworthiness of issuers and other financial market entities;
- there is a lack of consistent, high quality, granular and comparable climate-related data for credit rating agencies when assessing credit risks; and
- there is a lack of transparency surrounding methodologies used by rating agencies to incorporate climate risk factors and how those factors contribute to the final rating.

FCA publishes policy on new cancellation and variation power

The Financial Conduct Authority (FCA) has published a [policy statement](#) (PS22/5) on its new cancellation and variation power.

This follows a consultation (CP21/28) launched in September 2021. The FCA has made the changes consulted on in CP21/28 with some minor modifications and has included its response to the feedback received in PS22/5.

The FCA's new power allows it to cancel or vary firms' permissions without their consent when it appears to the FCA that they are carrying on no FCA-regulated activities and when certain additional conditions are met. PS22/5 makes changes to the Handbook and Enforcement Guide to:

- describe the new Schedule 6A power to cancel or vary, as well as the process that the FCA is required to follow when it uses it; and
- provide guidance on the FCA's approach in doing so, particularly on the circumstances in which the FCA may consider that a firm is not carrying on any FCA-regulated activities.

The FCA will provide a firm with two warnings if it believes it is not using its regulatory permission. The FCA will then be able to cancel the permission, or change it, 28 days after the first warning if the firm has not taken appropriate action.

Where a firm fails to pay its regulatory fees, submit returns or complete annual declarations, the FCA may view these as indicators of a lack of regulated activity which may lead to permission being removed through use of this new power.

BMF and BaFin agree on new principles of cooperation

The German Federal Financial Supervisory Authority (BaFin) and the German Federal Ministry of Finance (BMF) have agreed on [new principles for their cooperation](#). Cooperation between the BMF and BaFin is to be principle-led, goal-oriented and risk-oriented with a view to the common objective of a stable, functioning, and trustworthy financial market.

In 2021, BaFin and the BMF had agreed fundamentally to revise the previous ‘Principles for the exercise of legal and technical supervision by the BMF over BaFin’. The new principles strengthen the operational independence of BaFin in individual supervision as well as the cooperation between BaFin and the BMF in national, European, and international regulation. This reflects the fact that BaFin has special expertise in individual decisions regarding financial market participants, while the setting of general market standards requires close cooperation between BaFin and the BFM.

BaFin reports to the BMF in a risk-oriented manner and with a view to the agreed objectives. The BMF may additionally request ad hoc reports (also on individual companies) or assessments, e. g. in case of a potential broad impact on the financial market, a sector, critical infrastructure or if there is a risk of significant damage to investors or consumers.

Industry taskforce consults on second version of Green and Transition Taxonomy

The Green Finance Industry Taskforce (GFIT), convened by the Monetary Authority of Singapore, has launched a [public consultation](#) seeking industry feedback on detailed thresholds and criteria for economic activities in the energy, transport, and real estate sectors towards developing a second version of the taxonomy for Singapore-based financial institutions, with particular relevance to those active across ASEAN.

The proposed thresholds build on GFIT’s earlier proposed taxonomy in January 2021 and also incorporate a user guide containing detailed guidance on the reporting of a company’s revenue, capital expenditures and operating expenditures that are aligned with the taxonomy criteria.

The second version’s consultation covers three sectors which are part of the eight focus sectors that collectively account for close to 90% of ASEAN greenhouse gas emissions. It builds on the broad support for the development of the Taxonomy reflected in the feedback received for the first consultation, as well as key developments in the sustainability space. It further expands on the ‘traffic light’ approach and adds granularity to the application and thresholds for classification, supported by science and data.

GFIT aims to release the criteria and thresholds for the remaining five sectors for public consultation in late 2022 and finalise the full taxonomy in 2023.

Comments on the consultation are due by 23 June 2022.

MAS revises notice on unsecured credit facilities to individuals

The Monetary Authority of Singapore (MAS) has [revised](#) its existing Notice 635, which sets out the requirements a bank has to comply with when granting an unsecured non-card credit facility to an individual.

Among other things, the Notice has been revised mainly to:

- specifically require credit bureaus to be 'licensed' in order to meet some of the key requirements;
- insert paragraph 17A on specifications pertaining to certain borrowers whose cumulative total outstanding unsecured amount exceeds six times their monthly income;
- insert paragraph 18A(4) listing situations when a bank in Singapore would not be considered to be contravening paragraph 17A(2)(a) even if it increases the credit limit of an unsecured non-card credit facility;
- insert paragraph 18B(3A) clarifying that subject to sub-paragraph 6, 17A(2)(a) will not be applicable to an increase of the credit limit of an unsecured non-card credit facility if the increase is solely to enable a debt consolidation amount to be drawn down on the unsecured non-card credit facility granted to the Singapore borrower; and
- delete paragraph 23 pertaining to the applicability of paragraph 17 in situations where a Singapore borrower, at any time between 30 November 2013 and 31 May 2015 (both dates inclusive), happens to have a cumulative total outstanding unsecured amount with a bank in Singapore that is more than the Singapore borrower's annual income.

The amendments to the Notice are compared against the version of MAS Notice 635 last revised on 6 November 2020. The revised MAS Notice 635 is effective from 14 May 2022.

RECENT CLIFFORD CHANCE BRIEFINGS

Connecticut Data Privacy Act becomes nation's fifth state privacy law – setting stricter standards

On 10 May 2022, Connecticut Governor Ned Lamont signed An Act Concerning Personal Data Privacy and Online Monitoring into law, making Connecticut the fifth state to pass a comprehensive consumer privacy law. The Act is the latest stitch in the patchwork of state and federal privacy laws that is growing ever more complex. And as has become a trend, while the law shares many similarities with its counterparts in other states, the Act also has certain unique provisions that companies that do business in Connecticut will need to carefully consider before the law goes into effect on 1 July 2023.

This briefing discusses the Act.

Clifford Chance website version

<https://www.cliffordchance.com/briefings/2022/05/connecticut-data-privacy-act-becomes-nation-s-fifth-state-privac.html>

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

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