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## **EU Council adopts position on ELTIFs review**

The EU Council has [agreed its position](#) on the EU Commission's proposed amendments to the European Long-Term Investment Funds (ELTIFs) Regulation.

The proposed amending regulation was announced as part of the Commission's November 2021 capital markets package and aims to:

- make the creation of ELTIFs more attractive for asset managers, by updating the scope of eligible assets and investment, the portfolio composition and diversification requirements, the borrowing of cash and other fund rules, and the authorisation, investment policies and operating conditions requirements; and
- make it easier for retail investors to invest in ELTIFs, such as by removing the minimum EUR 10,000 investment threshold, while ensuring strong investor protection.

Once the EU Parliament adopts its position, the EU Council and Parliament can enter trilogue negotiations in order to agree on a final version of the text.

## **EU Commission reports on operation of ESAs**

The EU Commission has published a [report](#) on the operation of the European Supervisory Authorities (ESAs), comprising the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA).

The report summarises broadly positive findings from the Commission's March 2021 targeted consultation and focuses on supervisory convergence, governance, direct supervision, funding and the single rulebook.

The Commission considers that the overall architecture of the European System of Financial Supervision, as improved by the 2019 ESA review, is largely adequate and works well, and does not propose changes to the ESA Regulations. However, it recognises issues, such as those concerning governance of the ESAs, and will continue to propose targeted amendments in upcoming reviews of sectoral legislation as necessary. The Commission also invites the ESAs to assess further improvements via non-legislative measures that can be implemented in the short term.

## **CRD 4: EU Commission adopts amendments to ITS on benchmark portfolios, reporting templates and reporting instructions**

The EU Commission has adopted an [Implementing Regulation](#) amending the implementing technical standards (ITS) on benchmark portfolios, reporting templates and reporting instructions for reporting under the Capital Requirements Directive (CRD 4).

The adoption of International Financial Reporting Standard 9 (IFRS9) introduced new rules for the measurement of credit losses and directly impacted the amount of own funds and regulatory ratios reported. The original ITS included templates for reporting the IFRS9 impact.

The amending ITS include annexes to replace those in the original ITS and add the benchmarking of the loss given default (LGD) parameters.

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

## **CRR: EBA publishes final draft RTS on identifying shadow banking entities**

The EBA has published its [final draft regulatory technical standards](#) (RTS) specifying the criteria to identify shadow banking entities for the purposes of reporting large exposures under the Capital Requirements Regulation (CRR).

The draft RTS clarify that entities carrying out banking activities or services and which have been authorised and supervised in accordance with the EU prudential framework shall not be considered as shadow banking entities.

For those entities established in a third country, the final draft RTS differentiate between institutions and other entities and concludes that:

- institutions are not identified as shadow banking entities provided they are authorised and supervised by a supervisory authority that applies banking regulation and supervision based on at least the Basel core principles for effective banking supervision; and
- other entities are not identified as shadow banking entities provided they are subject to a regulatory regime recognised as equivalent to the one applied in the EU for such entities in accordance with the equivalence provisions of the relevant EU legal act.

The EBA considers undertakings included in the consolidated supervision of an institution to be out of the scope of the RTS.

The draft RTS also clarify that central clearing counterparties (CCPs) are not identified as shadow banking entities when performing only clearing as defined in the European Market Infrastructure Regulation (EMIR).

## **Data reporting service providers: Delegated Regulation on fines and penalties published in Official Journal**

[Commission Delegated Regulation \(EU\) 2022/803](#) specifying the rules of procedure for the exercise by ESMA of its power to impose fines or periodic penalty payments on data reporting service providers (DRSPs) has been published in the Official Journal.

As prescribed under the Markets in Financial Instruments Regulation (MiFIR), Delegated Regulation (EU) 2022/803 includes 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 entered into force on 27 May 2022.

### **EPC updates SEPA payment scheme rulebooks**

The European Payments Council (EPC) has [published](#) both version 1.2 of the 2021 EPC Single Euro Payments Area (SEPA) payment scheme rulebooks and version 1.0 of the 2023 EPC SEPA payment scheme rulebooks.

The version 1.2 2021 rulebooks will be effective from 25 April 2023, while the version 1.0 2023 rulebooks will be effective from 19 November 2023 and are applicable up to and including 25 November 2025.

The rulebooks published include:

- the SEPA Credit Transfer: Scheme Rulebook;
- the SEPA Instant Credit Transfer: Scheme Rulebook;
- the Maximum Amount for Instructions under the SCT Inst: Scheme Rulebook;
- the SEPA Direct Debit Core: Scheme Rulebook; and
- the SEPA Direct Debit Business-To-Business: Scheme Rulebook.

The EPC has also published the SEPA Payment Scheme Management Rules (Version 4.5), which come into effect on 25 April 2023 and will remain effective until further notice.

Along with the rulebooks, the EPC has published guidance on the migration to the 2019 version of the ISO 20022-based XML messaging standard and guidance to improve transparency for retail payment end-users.

### **Benchmarks Regulation: Delegated Regulations on fees, fines and penalties for benchmark administrators published in Official Journal**

Two Delegated Regulations specifying fees and rules of procedure for measures applicable to the supervision of certain benchmark administrators by ESMA have been published in the Official Journal.

[Commission Delegated Regulation \(EU\) 2022/804](#) sets out the procedure ESMA needs to follow to impose fines or penalties on benchmark administrators under its supervision.

[Commission Delegated Regulation \(EU\) 2022/805](#) lays down rules on fees that ESMA can charge to benchmark administrators in relation to authorisation, recognition and supervision.

The Delegated Regulations entered into force and applied from 27 May 2022.

## **Benchmarks Regulation: EU Commission consults on benchmarks administered in a third country**

The EU Commission has launched a [targeted consultation](#) to aid a review of the rules for financial benchmarks administered outside the EU.

The EU Benchmarks Regulation (BMR) includes rules on the use in the EU of benchmarks provided outside the EU. The EU Commission is seeking views on potential improvements in the functioning of the BMR, specifically as regards the rules applicable to non-EEA benchmarks (third-country benchmarks) and the impact on market participants of the full entry into application of the third country regime as of 1 January 2024.

The EU Commission also states that other aspects of the BMR are subject to ongoing reflection, particularly in the area of sustainability.

Comments are due by 12 August 2022. The EU Commission intends to publish its proposal to review the BMR in Q4 2022.

## **MiFID2: ESMA publishes final report on best execution reports by investment firms**

ESMA has published its [final report](#) on its review of the MiFID2 framework on best execution reports by investment firms.

In particular, ESMA proposes:

- enhancing the RTS 28 reports' quality of information (amongst other things, by proposing to delete a specific reporting obligation for firms on the features of executed orders which has not proven effective under the current reporting framework); and
- facilitating the use of RTS 28 reports (for example, via the suggestion that firms are required to publish the reports' quantitative information in the simple CSV format to facilitate end-users' access and comparison of this data).

Some of ESMA's proposals concern potential changes to the Level 1 legislation (Article 27(6) of MiFID2) and, as a consequence, subsequent potential changes to RTS 28 (Level 2) could only be considered against any future changes of the Level 1 legislation.

ESMA will share its report with the EU Commission.

## **G7 Finance Ministers and Central Bank Governors publish communiqué**

G7 Finance Ministers and Central Bank Governors have published a [communiqué](#) following their meeting on 18-20 May 2022 in Petersberg, Germany. Representatives from the International Monetary Fund (IMF), the World Bank Group, the Organisation for Economic Cooperation and Development (OECD), and the Financial Stability Board (FSB) also attended the meeting.

The communiqué sets out actions and priorities agreed at the meeting, including:

- reasserting the group's support for Ukraine, including through coordinated sanctions against Russia;

- continuing to monitor markets closely to mitigate the effects of the current global volatility and rising inflation rates;
- following a stability and growth oriented medium-term macroeconomic policy;
- highlighting the opportunities and implications of central bank digital currencies (CBDCs) and calling on jurisdictions exploring CBDC initiatives to consider, in particular, their international and cross-border dimensions;
- encouraging the FSB to accelerate efforts to implement a regulatory framework for cryptoassets and their service providers, which would hold all cryptoassets (including stablecoins) to the same standards as the rest of the financial system, and supporting the prompt enactment of the Financial Action Task Force's (FATF's) 'travel rule' for cryptoassets;
- continuing to collaborate on climate mitigation policies, including through the establishment of a 'Climate Club' to support the implementation of the Paris Agreement;
- committing to various priority actions under FATF's report on money laundering from environmental crime, including assessing risks as part of national risk assessments and fostering international cooperation; and
- continuing to support the implementation of the G20 Common Framework for debt treatments beyond the Debt Service Suspension Initiative (DSSI).

## UK regulators publish fifth edition of regulatory initiatives grid

The Financial Services Regulatory Initiatives Forum has published the fifth edition of its [regulatory initiatives grid](#), which sets out the planned regulatory initiatives for the next 24 months. The grid is intended to strengthen coordination between regulators and to provide stakeholders with time to plan for the initiatives.

The grid includes a number of payments related initiatives including access to cash legislation and authorised push payment (APP) scam prevention. Other initiatives include climate-related work, and those relating to cryptocurrencies.

The grid also contains sector-specific chapters covering upcoming initiatives in:

- banking, credit and lending;
- pensions and retirement income;
- insurance;
- retail investments; and
- wholesale financial markets.

The grid has been published in the form of an [interactive dashboard](#) and an [Excel spreadsheet](#) to help users interact with the underlying data.



## BoE publishes results of 2021 Biennial Exploratory Scenario on financial risks from climate change

The Bank of England (BoE) has published the [results](#) of the Climate Biennial Exploratory Scenario (CBES) which explores the financial risks posed by climate change for banks and insurers operating in the UK.

The objectives of the CBES were to:

- improve banks' and insurers' climate risk management;
- size the risks that participants in the exercise face; and
- better understand potential responses of banks and insurers to climate-related risks.

The key findings of the CBES suggest that:

- projections of climate losses are uncertain and more needs to be done to understand and manage banks and insurers exposure to climate risks;
- UK banks and insurers should be able to absorb costs of transition that fall on them and some of these costs will ultimately be passed on to their customers; and
- banks and insurers have a collective interest in managing climate related financial risks in a way that supports transition over time.

The BoE intends to continue working in support of its objective to protect and enhance the stability of the UK financial system, including working with banks and insurers to improve climate risk management by disseminating best practice and supporting initiatives to help fill data gaps.

## BoE and FCA consult on money market funds

BoE and Financial Conduct Authority (FCA) have published a [joint discussion paper](#) (DP22/1) on money market fund (MMF) policy reform.

DP22/1 follows the FSB's 2021 report on policy proposals to enhance MMF resilience following the March 2020 market turmoil and seeks views on the FSB's policy options in the context of UK financial stability.

Feedback is intended to inform the UK authorities' development of potential policy changes to asset liquidity requirements and MMF redemption terms that address systemic risk whilst taking into account potential impacts on the provision of services to investors.

The FCA has also published finalised, non-Handbook guidance on the UK MMF Regulation (FG22/3) relating to:

- the liquidity requirements for public debt constant net asset value (CNAV) MMFs and low volatility net asset value (LVNAV) MMFs; and
- portfolio requirements for short-term MMFs and standard MMFs.

Comments on the discussion paper are due by 23 July 2022.

## **Primary Markets Effectiveness Review: FCA consults further on listing regime**

FCA has published a [discussion paper](#) (DP22/2) setting out its response to feedback on its July 2021 consultation (CP21/21) regarding the structure of the listing regime and seeking further feedback on specific possible reforms.

Views are sought on establishing one listing segment for equity shares of commercial companies, which would feature a single set of eligibility criteria based upon disclosures, and mandatory and supplementary continuing obligations. Feedback is also sought on the significant transaction regime thresholds, whether depositary receipts should also be eligible to list on the single segment, whether the current regime for listing closed ended investment funds is fit for purpose, and possible improvements to the sponsor regime.

Comments are due by 28 July 2022.

## **Amendments to AMF General Regulation on asset management companies' commissions published in Official Journal**

A [Ministerial Order](#) amending Books II and III of the Autorité des marchés financiers' (AMF's) General Regulation has been published in the Official Journal. The Order amends provisions on commissions to companies carrying out management of alternative investment funds (AIFs) or undertakings for the collective investment in transferable securities (UCITS).

As of 1 January 2026, French asset management companies of AIFs or UCITS, companies having received delegation management of AIFs or UCITS and affiliated companies conducting only AIF or UCITS management business, reception and transmission of orders and execution of orders services, principally on behalf of AIFs or UCITS managed by the asset management company or by an affiliated company as part of its AIF or UCITS management activity, may no longer benefit from the turnover commission.

By way of derogation, after 31 December 2025, they may continue to benefit from the turnover commission in their operations regarding:

- real estate as well as furnishings, equipment or movable property allocated to such real estate and necessary for the operation, use or exploitation of the latter, real rights relating to such property and rights held as lessee relating to leasing contracts concerning such property; and
- units or shares of entities that are not admitted to trading on a market mentioned in Articles L. 421-1, L. 422-1 and L. 423-1 of the French Monetary and Financial Code and whose assets are mainly made up of the assets mentioned above or direct or indirect holdings in entities that themselves meet the conditions of this paragraph or current account advances granted to such entities.

The Order also amends provisions applicable to organised multilateral trading facilities in the framework of major shareholdings so that any individual or legal entity is now required to inform the AMF if more than half or 90% (instead of 95% previously) of the capital or voting rights are exceeded.



## **MAR: CSSF issues circular on application of ESMA guidelines on delayed disclosure of inside information**

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued [Circular 22/813](#) on the application of the ESMA guidelines under the Market Abuse Regulation (MAR) on delay in the disclosure of inside information and interactions with prudential supervision (ESMA70-159-4966), amending the current ESMA guidelines on delay in the disclosure of inside information (ESMA/2016/1478).

The circular is addressed to all issuers who have requested or approved admission of their financial instruments to trading on a regulated market in a Member State or, in the case of instruments only traded on an MTF or on an OTF, to all issuers who have approved trading of their financial instruments on an MTF or an OTF or have requested admission to trading of their financial instruments on an MTF in a Member State.

The circular applies to all issuers bound to comply with the inside information disclosure requirements set out in Article 17 of MAR.

The purpose of the circular is to inform them that the CSSF applies the guidelines and has integrated them into its administrative practice and regulatory approach in order to promote supervisory convergence in this field at European level.

The circular states that the guidelines:

- set out examples to assist issuers in conducting their assessment as to whether they meet the conditions to delay the public disclosure of inside information in accordance with Article 17(4) of MAR; and
- introduce clarifications on institutions' case-by-case assessment as to whether they would be in possession of inside information according to Article 7(1)(a) of MAR in relation to the institution-specific Supervisory Review and Evaluation Process (SREP) decisions received from their prudential competent authority, with particular reference to the Pillar 2 Capital Requirements (P2R) and Capital Guidance (P2G).

The circular applies from 13 June 2022 and repeals Circular CSSF 16/646 as of the same date. The guidelines are attached to the circular and indicate the changes made to the old guidelines.

## **CSSF issues circular on notification obligation of limited network exclusion of law on payment services**

CSSF has issued a [new circular](#) (22/812) on the notification obligation of the limited network exclusion of the law on payment services.

The circular confirms the adoption and integration of EBA's guidelines on the limited network exclusion in the CSSF's administrative practice and regulatory approach. The circular will enter into force on 1 June 2022, the application date of the EBA guidelines.

The CSSF draws the attention of the issuers of specific payment instruments that may only be used in a limited manner (e.g. gift cards, lunch vouchers, fuel cards, etc.) to their obligation to notify the application of the exemption related to the use of a limited network in accordance with the provision of the Law of 10 November 2009 on payment services, as amended.

The CSSF states that ‘specific payment instruments that may only be used in a limited manner’ should be understood as an instrument that only allows for:

- the acquisition of goods or services at the location(s) of the issuer or within a limited network of merchants; or
- the acquisition of a very limited number of goods or services.

The CSSF considers, among others, the following to be examples of such instruments: gift cards, fuel cards, shopping centre cards, lunch vouchers, transport cards, membership cards with payment functionality, or other similar instruments.

The obligation to notify the CSSF applies when such an instrument can be used from and in Luxembourg and the total value of the payment transactions executed over the last twelve months exceeds EUR 1 million. It should be noted that this obligation applies to any issuer of such an instrument fulfilling the conditions regardless of whether it is an entity subject to the supervision of the CSSF or not or whether it is part of the financial sector or not.

The circular further provides that within one month from the moment when the conditions are met, a notification must be sent to the Innovation, Paiements, Infrastructures des marchés et Gouvernance (IPIG) service of the CSSF via the form available on the CSSF website. As of 1 June 2022, this notification shall take into account all the provisions foreseen in the guidelines.

Entities benefiting from an exclusion and that already submitted a notification to the CSSF in the past shall, as soon as possible and at the latest by 1 September 2022, submit a new notification taking into account the provisions of the guidelines.

## **CNMV adopts EBA guidelines on prudential supervision of investment firms**

The Spanish Securities Market Commission, the Comisión Nacional del Mercado de Valores (CNMV), has [adopted](#) the EBA guidelines on internal governance under the Investment Firms Directive (EU) 2019/203 (IFD).

The guidelines specify:

- the tasks, responsibilities and functioning of the management body;
- the organisation of investment firms, including the need to create transparent structures; and
- requirements aimed at ensuring the sound management of risks, including detailed requirements in relation to the compliance function, independent risk management and the internal audit function, where applicable.

## **ASIC consults on extending binary options product intervention order**

The Australian Securities and Investments Commission (ASIC) has launched a [public consultation](#) (CP 362) on the extension of its product intervention order banning the issue and distribution of binary options to retail clients, until it is revoked or sunsets on 1 October 2031.

ASIC had previously banned the sale of binary options to retail clients, which took effect from 3 May 2021. The product intervention order is set to expire on 7 October 2022 unless it is extended with the approval of the Minister. CP 362 highlights ASIC’s analysis of the impact of the product intervention order

and its view that the ban has been effective in reducing the risk of significant detriment to retail clients resulting from binary options.

ASIC will continue to monitor for scams and prohibited offers of binary options in its jurisdiction and take disruptive action as appropriate.

Comments on the consultation are due by 20 June 2022.

### **MAS and SIF issue joint statement of intent regarding data connectivity for financial services**

The Monetary Authority of Singapore (MAS) and the Swiss State Secretariat for International Finance (SIF) have issued a [joint statement](#) of intent on facilitating a sound regulatory and policy framework which would be conducive for cross-border transmission, storage, processing, access to and protection of data in the financial sector.

Both MAS and SIF aim to explore policies and rules that facilitate the following goals with respect to financial institutions:

- enabling data flows (including personal information) within financial groups or with business partners, across borders by electronic means provided this activity is for the conduct of the business within the scope of their license, authorisation, or registration;
- supporting the free choice of location for the storage and processing of data as long as financial regulators or supervisors have appropriate access to data necessary to fulfil their regulatory or supervisory mandate. If such access cannot be granted to financial regulators or supervisors, alternative means should be explored to remediate such lack of access before financial institutions are required to use or locate computing facilities locally; and
- protecting confidentiality of customers' data and privacy.

Through regular consultation and exchanges, SIF and MAS wish to identify areas of collaboration and opportunities in international bodies for financial markets to further pursue the intended goals.

### **MAS and SC-STS jointly announce consultation on adjustment spreads for transition of legacy SOR contracts in wholesale markets**

MAS and the Steering Committee for Singapore Dollar Swap Offer Rate (SOR) & Singapore Interbank Offered Rate (SIBOR) Transition to Singapore Overnight Rate Average (SORA) (SC-STS) have [jointly announced an SC-STS consultation](#) on adjustment spreads that will apply to legacy SOR business loans and derivatives. The consultation covers the setting of the MAS Recommended Rate to provide contractual certainty for SOR contracts that remain outstanding after 31 December 2024, and supplementary guidance to support the on-going transition of legacy SOR contracts in wholesale markets.

The consultation is seeking feedback on proposals relating to:

- adjustment spreads for setting of the MAS Recommended Rate in ISDA IBOR 2020 Fallbacks Protocol, Supplement number 70 to the 2006 ISDA Definitions and the 2021 ISDA Interest Rate Derivatives Definitions, as well as the SC-STS' recommended contractual fallbacks for bilateral and

syndicated corporate loans. These fallbacks will apply after SOR is discontinued after 31 December 2024;

- supplementary guidance on adjustment spreads for the period before and including 31 December 2024, which would be necessary to support the industry's active transition from SOR; and
- application of the SC-STs supplementary guidance to active transition across various product types.

The consultation focuses on the setting of adjustment spreads for the conversion of institutional SOR contracts (i.e. bilateral and syndicated corporate loans, bonds, and derivatives), and does not affect earlier SC-STs guidance on the setting of adjustment spreads for the conversion of legacy SOR retail loans to compounded-in-advance SORA.

The SC-STs welcomes feedback on the four questions outlined in the consultation (at Section 3). Feedback is due to be submitted by 10 June 2022.

## **MAS publishes circular on reporting of significant redemption, gating and suspension of funds**

MAS has published a [circular](#) setting out the reporting requirements for significant redemption, gating, and suspension of funds by MAS-regulated fund management companies (FMCs). The circular was previously issued on 31 May 2021 to FMCs only.

The circular sets out the following key points:

- for authorised collective investment schemes (CIS), the MAS will require FMCs to report net redemptions exceeding the reporting threshold (i.e. single-day net redemptions > 5% AUM and weekly aggregate net redemptions > 10% AUM) within the reporting timeline (i.e. within 1 business day and within 3 business days);
- for open-ended CIS managed by the FMC that are offered in Singapore in reliance on sections 305, 302B, 302C and 304 of the Securities and Futures Act 2001, the MAS will require FMCs to report net redemptions in such CIS exceeding reporting thresholds within corresponding reporting timelines. These reporting thresholds and timelines vary according to the dealing frequency of such CIS;
- FMCs are also required to submit reports to the MAS within 3 business days in the event of a fund gating or suspension of dealing in relation to any CIS that FMCs manage, advise, acts as a representative of and/or offers; and
- the MAS has also introduced a new format for reporting significant redemptions and fund gating and suspension through online submission platforms.

The new reporting requirements in the circular took effect from 14 June 2021.

## RECENT CLIFFORD CHANCE BRIEFINGS

### **US Government advises heightened caution regarding operations in Sudan**

The US Departments of State, Treasury, Commerce, and Labor have issued a new Advisory urging American businesses and investors to exercise caution when engaging with Sudanese State-Owned Enterprises (SOEs) and military-controlled companies. According to the Advisory, recent actions by Sudan's Sovereign Council and security forces put US businesses, individuals, and investors at risk in the country and the region. The Advisory strongly recommends renewed vigilance including due diligence with respect to human rights, KYC controls, and other compliance measures.

This briefing discusses the Advisory.

<https://www.cliffordchance.com/briefings/2022/05/us-government-advises-heightened-caution-regarding-operations-in.html>

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