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screening practices SING

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EU Commission consults on retail investment package

The EU Commission has launched a call for evidence on an impact assessment of its intended retail investment package.

The call for evidence builds on consultations conducted over 2021 and 2022 and seeks to inform the Commission's evaluation of whether the current retail investor protection framework, as contained in MiFID2, the PRIIPs Regulation and the Insurance Distribution Directive (IDD), should be amended in order to facilitate cross-border retail investor participation in the EU.

The types of measures that the Commission could explore include:

- improving current disclosure regimes;
- addressing conflicts of interest in the advisory and non-advisory process and improving professional standards of advisors;
- reducing the administrative burden for retail investors;
- shifting the focus of current suitability and appropriateness regimes from a product-centric to client-centric approach;
- adapting rules to embrace digital technology; and
- streamlining and ensuring consistency of rules across the different sectoral legislative instruments.

Comments are due by 31 May 2022.

The Commission expects to adopt proposals in Q4 2022.

ESAs publish PRIIPs review recommendations

The Joint Committee of the European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), has published its technical advice to the EU Commission on the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation.

Intended to feed into the Commission's retail investment strategy, and in particular the PRIIPs review, the ESAs' technical advice broadly encourages the co-legislators to consider a broader review of the PRIIPs framework and to undertake appropriate consumer testing before proposed changes are made.

The ESAs also recommend changes intended to achieve optimal outcomes for retail investors, including:

- harnessing the opportunities of digital disclosure, such as by allowing information to be presented in a 'layered' format;
- not extending the scope of the PRIIPs Regulation to additional financial products at this stage, but further specifying the existing scope;

- allowing different approaches for different types of products where this is necessary to ensure the appropriate understanding of retail investors;
- allowing more flexibility on the information provided in the performance section of the key information document (KID) including the indication of past performance;
- changing the rules for multi-option products (MOPs) to better facilitate comparison between different investments; and
- introducing a new section in the KID to give prominence to sustainable objectives.

The technical advice complements sector specific advice on retail investor protection published by ESMA and EIOPA on 29 April 2022.

ESAs consult on sustainability disclosures for STS securitisations

The ESAs have launched a consultation on draft regulatory technical standards (RTS) on the content, methodologies and presentation of information in respect of the sustainability indicators for simple, transparent and standardised (STS) securitisations.

The proposed draft RTS are intended to:

- facilitate disclosure by the originators of the principal adverse impacts of assets financed by STS securitisations on environmental, social and governance-related factors;
- supplement the single rulebook under the Securitisation Regulation as amended by the Capital Markets Recovery Package (CMRP); and
- draw upon the ESAs' work in respect of sustainability-related disclosures in the financial services under the Sustainable Finance Disclosure Regulation (SFRD).

Comments are due by 2 July 2022.

EBA publishes recommendations on macroprudential framework

The EBA has published its response to the EU Commission's call for advice on the review of the macroprudential framework.

In its response, the EBA has proposed a set of recommendations to simplify the procedures around some of the existing macroprudential tools and to increase harmonisation for others, including:

- to rebuild regulatory capital buffers to sufficient levels so that they can be released when needed again in the future;
- to undertake a comprehensive evaluation of the interaction of macroprudential measures with other capital requirements, such as leverage ratio, own funds and eligible liabilities (MREL) requirements;
- to maintain clear roles and responsibilities of the different authorities involved in microprudential and macroprudential policy as well as close coordination between them;

- to include a legal mandate in the Capital Requirements Directive (CRD) to develop methodologies covering both the identification of other systemically important institutions (O-SIIs) and the setting of buffer rates;
- to simplify the text of the CRD and the Capital Requirements Regulation (CRR) around governance procedures for some macroprudential measures;
- to perform further assessments on the ability of current macroprudential tools to address environmental, crypto assets and cyber security risks; and
- to establish an oversight and monitoring system for non-bank lenders and enlarge the scope of the macroprudential framework to cover non-bank lenders.

EBA publishes discussion paper on environmental risk in prudential framework

The EBA has published a discussion paper on the role of environmental risks in the prudential framework for credit institutions and investment firms. The paper:

- explores whether and how environmental risks are to be incorporated into the Pillar 1 prudential framework;
- launches a discussion on the potential incorporation of a forward-looking perspective in the prudential framework; and
- stresses the importance of collecting relevant and reliable information on environmental risks and their impact on institutions' financial losses.

Comments are due by 2 August 2022.

EBA updates guidelines on assessing equivalence of professional secrecy regimes of third country authorities

The EBA has published updated guidelines for assessing equivalence of professional secrecy and confidentiality regimes of third country authorities, to widen the scope and the purpose of the assessment.

The EBA has updated its guidelines to allow for:

- a wider scope of the assessment, i.e. to include all relevant provisions in the CRD, the revised Payment Services Directive (PSD2), the Bank Recovery and Resolution Directive (BRRD) and the Anti-Money Laundering Directive (AMLD), as applicable to the specific third country authorities); and
- a wider purpose, i.e. to support cooperation arrangements and facilitate participation in supervisory, resolution and AML colleges.

The EBA has also updated the document showing how the principles that govern the EU confidentiality regime are reflected in the EU framework as defined by the relevant provisions in the CRD, BRRD, AMLD and PSD2.

CRR: EBA publishes amended final draft ITS on mapping ECAIs for securitisation

The EBA has published its final draft implementing technical standards (ITS) amending the Implementing Regulation on the mapping of credit assessments of external credit assessment institutions (ECAIs) for securitisation purposes.

The changes reflect the amendments to the Capital Requirements Regulation (CRR) brought in by the new Securitisation Framework, particularly the amendments to Chapter 5 of the CRR. The ITS set out a hierarchy of approaches to calculate capital requirements for positions in a securitisation, whereby institutions using the securitisation external ratings-based approach (SEC-ERBA) shall calculate risk-weighted exposure amounts based on credit quality steps (CQSs) set out in the CRR. The ITS reflect 18 CQSs for long-term external credit assessments, which aims to ensure enhanced granularity and risk sensitivity with respect to the approaches previously considered.

The ITS also reflect one additional ECAI that has been established in the EU with methodologies and processes in place for producing credit assessments for securitisation instruments, two existing ECAIs which have extended their credit assessments to cover securitisations, and ESMA's withdrawal of the registration of an ECAI. These changes have all occurred since the adoption of the Implementing Regulation and have been reflected in the mapping tables accordingly.

In addition, the EBA has published individual draft mapping reports illustrating how the methodology was applied to produce the mappings.

EBA updates ITS on 2023 internal approaches benchmarking exercise

The EBA has published an update to its ITS on data collection for the 2023 supervisory benchmarking exercise of the internal approaches used in market and credit risk and IFRS9 accounting.

The updated ITS include all benchmarking portfolios and metrics that will be used for the 2023 exercise. The exercise is intended to monitor and enhance the quality of internal models which are relevant for the assessment of an institution's capital adequacy.

The exercise covers approved internal ratings-based (IRB) approaches used for own funds requirements calculation of credit and market risk, as well as internal models used for IFRS9.

For market risk, the data collection has been extended to include the collection of new instruments and portfolios. For credit risk, minor changes were made to the benchmark portfolios and no changes to the data fields for reporting purposes. No changes have been made to the IFRS 9 templates.

The EBA has indicated that the 2023 benchmarking exercise will focus on disentangling deviations from the benchmarks which may be due to the COVID-19 pandemic or other business-related developments from those which may be due to the internal approaches.

MAR: ESMA publishes opinions on proposed changes to draft technical standards on SME growth markets

ESMA has published two opinions on amendments proposed by the EU Commission to draft ITS on insider lists and draft RTS on liquidity contracts for SME growth market (GM) issuers under the revised Market Abuse Regulation (MAR) as amended by the SME Regulation ((EU) 2019/2115).

In relation to the ITS on insider lists, ESMA disagrees with the Commission's proposal to exempt SME GM issuers from the obligation to create different sections of the insider list for each piece of inside information and with the

deletion of personal phone numbers from these insider lists, on the basis that these changes could provide limited relief to SME GM issuers while significantly reducing the usefulness of insider lists in market abuse investigations. However, ESMA agrees with the Commission's proposal to introduce a permanent insider section for the insider lists of SME GM issuers subject to the special regime. The draft ITS have been amended by ESMA to reflect its opinion.

In relation to the RTS on liquidity contracts, ESMA agrees with the Commission's proposals to include clauses that:

- further specify the price limits in the performance of the liquidity contract; and
- specify the circumstances under which the liquidity provider is not obliged to place orders on both sides of the order book.

The draft RTS have therefore been amended as proposed by the Commission.

BoE consults on RTGS tariff and roadmap

The Bank of England (BoE) has published two consultations on real-time gross settlement (RTGS) in connection to its current renewal of the services.

The first consultation seeks views on a new framework for the RTGS and CHAPS tariffs, including recovering the costs of building the renewed RTGS service and running RTGS and CHAPS.

The second consultation seeks industry views on features for investment for the next stage of the roadmap for RTGS beyond 2024, after the move to enhanced ISO 20022 messages in April 2023 and new core settlement engine due to be introduced in Spring 2024. The BoE is seeking feedback from existing and future users of the RTGS service on features that could change interaction with and connection to the service, such as new ways to connect, maintaining and enhancing resilience and extending operating hours, as well as feedback on new services such as synchronisation and application programming interfaces (APIs).

Comments on both consultations are due on 30 June 2022.

PRA consults on definition of simpler-regime firms under proposed prudential framework for non-systemic banks and building societies

The Prudential Regulation Authority (PRA) has published a consultation paper (CP5/22) on its proposals to introduce a definition for simpler-regime firms under its 'strong and simple' regime.

In April 2021, the PRA proposed creating a simpler prudential framework for banks and building societies that are not deemed to be systemically important or internationally active. The framework would comprise a series of layered prudential regimes, over which requirements would expand and become more sophisticated as the size and/or the complexity of firms increases. In CP5/22, the PRA is seeking feedback on its definition of the smallest firms first, as they are most likely to experience the 'complexity problem' (i.e. be subject to prudential requirements that are disproportionately complex or burdensome).

Among other things, the PRA proposes to define simpler-regime firms as those:

- with a maximum of GBP 15 billion total assets;
- with an on- and off-balance sheet trading book business equal to or less than 5% of the firm's total assets and GBP 44 million;
- that do not use an internal ratings based approach for regulatory capital calculation purposes;
- that do not provide certain services to other banks and building societies, such as clearing, settlement, custody or correspondent banking services, or that operate payment systems; and
- whose activity is primarily based in the UK and focused on UK-based customers or counterparties.

Comments are due by 22 July 2022. The PRA intends to publish its final policy in late 2022 or early 2023, and to consult on other aspects of the strong and simple framework in early 2023.

PRA publishes policy on trading activity wind-down

The PRA has published a policy statement (PS4/22) setting out its expectations of firms engaged in trading activities that may affect financial stability and their ability to carry out a full or partial orderly wind-down of these activities.

PS4/22 includes the PRA's statement of policy, final supervisory statement on trading activity wind-down (TWD) (SS1/22) and final amendments to its supervisory statement on recovery planning (SS9/17). The policy concerns firms that have been identified by the PRA as an 'other systemically important institution' (O-SII), have the full or partial TWD as a recovery and post-resolution restructuring option, and have either been notified by the Bank of England (BoE) that their preferred resolution strategy is BoE-led bail-in or that they are a 'material subsidiary' of an overseas-based banking group for the purposes of setting internal MREL in the UK.

The PRA's expectations broadly concern the TWD option, capabilities and templates. Changes made to the final policy following consultation (CP20/21) include:

- further clarification on the projection of risk-based losses (RBLs);
- clarifying its expectations for TWD firms that intend to adopt their own format of TWD templates; and
- providing additional details for TWD firms that are part of third-country groups concerning their compliance with recovery and resolution requirements.

The new policy is effective from 3 March 2025. The PRA intends to engage with TWD firms throughout the period until the TWD policy expectations come into force.

PRA publishes statement on EBA guidelines on non-performing and forborne exposures

The PRA has published a statement setting out its approach to the EBA guidelines relating to the management of non-performing exposures (NPEs) and forborne exposures (FBEs).

This follows feedback received from firms that the status of the guidelines in the UK is currently uncertain.

The PRA acknowledges that the prudential aspects of the EBA guidelines broadly represent good credit risk management standards and may be helpful reference material for firms' management of NPEs and FBEs. However, the PRA notes that the guidelines are not applicable to or in the UK. In particular:

- the guidelines apply detailed requirements for firms with a gross NPE ratio of at least 5%. The PRA has not adopted the 5% threshold and the associated additional obligations when a firm exceeds this threshold; and
- the guidelines require competent authorities to define a common threshold for the individual valuation and revaluation of the collaterals used for NPEs. The PRA has not set a common threshold and the approach to valuation and revaluation is at the discretion of individual firms.

German Federal Council introduces draft law to facilitate information transfer between stock exchanges and tax authorities in wake of cum-ex scandal

The German Federal Council (Bundesrat) has introduced a draft law amending the German Stock Exchange Act (Börsengesetz, BörsG) in order to improve the transfer of information between tax authorities and stock exchanges.

The aim of the draft law is to facilitate earlier detection of tax crimes on the capital markets and to protect trust in the integrity of securities trading, in particular in light of the recent cum-ex scandal.

For this purpose, the draft law proposes an amendment to section 10 of the Stock Exchange Act, which stipulates a duty of confidentiality. In its explanatory statement, the Bundesrat notes that the very strict requirements in the current provision impede the transfer of relevant information from stock exchanges or their supervisory authorities in the federal states to the tax authorities, and thereby massively impair the subsequent taxation and prosecution in cum-ex cases.

The proposed amendments in the draft law would lower the prerequisites for such an exchange of information. The German Federal Government has, in its response to the draft law, affirmed the importance of information exchange to combat tax evasion, but also notes that it will need to examine to what extent the proposed amendments could be implemented in compliance with EU legislation on which the current duty of confidentiality is partly based.

Italian Ministry of Economy and Finance consults on shareholders requirements under Italian Consolidated Banking Act and Italian Consolidated Financial Act

The Italian Ministry of Economy and Finance, Department of the Treasury, has launched a public consultation on two draft decrees concerning the

requirements of integrity and the criteria of competence and fairness of shareholders of:

- credit institutions, financial intermediaries, confidi minori, electronic money institutions and payment institutions pursuant to Legislative Decree no. 385/93 (the Italian Consolidated Banking Act); and
- Italian investment firms (SIM), Italian asset managers (SGR), Sicav and Sicaf, as provided for by Legislative Decree no. 58/98 (the Italian Consolidated Finance Act).

The two draft decrees introduce significant innovations, for example with regard to the criteria of correctness (in addition to integrity) and competence, and significantly strengthen the standards of suitability of shareholders, enlarging the requirements already provided for by the applicable regulations currently in force.

The consultation will end on 27 May 2022.

CRR: CSSF issues circular on application of EBA guidelines on criteria for use of data inputs in risk-measurement model

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued Circular 22/809 on the application of the European Banking Authority (EBA) guidelines on criteria for the use of data inputs in the risk-measurement model referred to in Article 325bc of the CRR, which were published on 13 July 2021 (EBA/GL/2021/07).

The circular is addressed to all credit institutions designated as Less Significant Institutions under the Single Supervisory Mechanism (SSM), to all CRR investment firms, and to all Luxembourg branches of credit institutions and of CRR investment firms having their registered office in a third country.

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 guidelines are available on the EBA's website.

The guidelines specify one of the three different components of the newly introduced alternative internal model approach when complying with capital requirements for market risk, i.e. the expected shortfall risk measure.

The CSSF expects that all in-scope entities assess the modellability of the risk factors of positions assigned to the trading desk included in the scope of the alternative internal model approach to ensure that the risk factors are sufficiently liquid and observable. As a general expectation, the CSSF also notes that the data inputs for all risk factors must be accurate, appropriate, frequently updated, and complete.

The circular applies with immediate effect.

CSSF issues circular on application of EBA guidelines on recovery plan indicators under BRRD

The CSSF has issued Circular 22/808 on the application of the European Banking Authority (EBA) guidelines on recovery plan indicators under Article 9 of the BRRD, which were published on 9 November 2021 (EBA/GL/2021/11) and replaced the EBA guidelines of 23 July 2015 (EBA-GL-2015-02).

The circular is addressed to all BRRD institutions submitting a recovery plan to the CSSF.

The purpose of the circular is to inform these institutions 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. All BRRD institutions submitting a recovery plan to the CSSF shall duly comply with them. The circular provides an overview of changes introduced by the revised guidelines, which are attached to the circular.

The circular further explains that the guidelines:

- specify the minimum list of quantitative and qualitative recovery plan indicators to be included in the recovery plans; and
- set expectations regarding, amongst other things, the appropriate arrangements for the regular monitoring of such indicators, the points at which actions referred to in the recovery plans may be taken, and the action to be taken in relation to these indicators.

Finally, the CSSF specifies that for BRRD institutions subject to simplified obligations pursuant to Article 59-26 of the Luxembourg amended financial sector law of 5 April 1993, the minimum list of recovery plan indicators detailed in Annex II of the guidelines is not applicable.

The circular applies with immediate effect.

Spanish regulatory authorities sign master MoU on cooperation to address financial fraud

The Spanish National Securities Market Commission (CNMV), the Bank of Spain (BoS), the General Directorate for Insurance and Pension Funds (DGSPF) and the Executive Service of the Anti-Money Laundering and Monetary Infringements Committee (SEPBLAC), together with 15 other public and private institutions and organisations have signed a Master MoU agreeing to enhance their cooperation to address financial fraud (MoU).

The MoU is the latest step taken by the Spanish public administrations in a series of actions and statutory initiatives focused on increasing surveillance and control over:

- the offer of online financial services addressed to retail investors and consumers;
- the provision of payment services; and
- the wider digital economy as a whole.

Although the MoU does not create additional legal obligations for its signatories, it is intended to:

- increase and improve the cooperation between signatories, so as to ensure early identification and intervention;
- limit or eliminate online advertisements and wide-scale promotional efforts carried out by unauthorised, non-registered entities;
- ensure direct and swift information exchanges between signatories;
- create information sharing systems which allow signatories to easily verify whether an entity is authorised and registered;

- enhance public awareness of this threat; and
- publicly evidence the signatories' existing commitment to tackle the increasing threat of wide-scale financial fraud.

MAS publishes information paper on strengthening AML/CFT name screening practices

The Monetary Authority of Singapore (MAS) has published an information paper on strengthening anti-money laundering and countering the financing of terrorism (AML/CFT) name screening practices.

The MAS conducted thematic inspections on selected financial institutions' (FIs') name screening processes in 2021, based on the requirements of its Notices 626, 1014 and 824 on Prevention of Money Laundering and Countering the Financing of Terrorism for Banks, Merchant Banks, and Finance Companies respectively, as well as the corresponding Guidelines to the Notices. The inspections were conducted to assess the robustness of FIs' name screening frameworks and controls, relative to their risk profiles and business operations in Singapore. The information paper sets out the MAS' supervisory expectations and good practices, areas for improvement, and illustrative examples observed from these thematic inspections.

The MAS expects FIs to benchmark themselves against the practices and supervisory expectations set out in the information paper in a risk-based and proportionate manner. In this regard, FIs have been advised to give due regard to the risk profile of their business activities and customers. FIs are also expected to identify and implement specific remediation or enhancement measures in a timely manner, where they observe any gaps in their frameworks and controls.

While the information paper is primarily targeted at FIs to improve their risk awareness and controls, some observations in the paper, particularly those on screening parameters and databases, are similarly relevant to vendors of name screening solutions or systems. The MAS recognises that the screening solutions or systems are based on proprietary information developed by the vendors. Hence, the MAS encourages vendors to work closely with the FIs, to balance the FIs' need for information to effectively evaluate the screening solutions or systems, even as vendors protect the proprietary information of their solutions or systems.

Contributed by Clifford Chance Asia, a Formal Law Alliance in Singapore between Clifford Chance Pte Ltd and Cavenagh Law LLP.

APRA sets out initial risk management expectations and policy roadmap for crypto-assets

The Australian Prudential Regulation Authority (APRA) has issued a letter setting out its initial risk management expectations for all regulated entities that engage in activities associated with crypto-assets. In particular, APRA expects all regulated entities to:

- conduct appropriate due diligence and a comprehensive risk assessment before engaging in activities associated with crypto-assets, and ensure that they understand, and have actions in place to mitigate, any risks that they may be taking on in doing so;

- consider the principles and requirements of the Prudential Standard CPS 231: Outsourcing or the Prudential Standard SPS 231: Outsourcing when relying on a third party in conducting activities involving crypto-assets;
- apply robust risk management controls, with clear accountabilities and relevant reporting to the Board on the key risks associated with new ventures; and
- ensure they comply with all conduct and disclosure regulation administered by the Australian Securities and Investments Commission (ASIC).

The letter also sets out a policy roadmap for the period ahead. APRA has indicated that it is developing the longer-term prudential framework for crypto-assets and related activities in Australia in consultation with other regulators internationally, to ensure consistency in approach. In the period ahead, APRA plans to:

- consult on requirements for the prudential treatment of crypto-asset exposures in Australia for authorised deposit-taking institutions, following the conclusion of the Basel Committee on Banking Supervision's June 2021 consultation on the same subject matter – the consultation in Australia is expected to be undertaken in 2023, and APRA will consider the need for initial prudential guidance in the interim;
- progress new and revised requirements for operational risk management, covering control effectiveness, business continuity and service provider management – while these requirements will apply to the entirety of an entity's operations, many will be directly relevant to the management of operational risks associated with crypto-asset activities. The draft prudential standard in this regard will be released for consultation in mid-2022; and
- consider possible approaches to the prudential regulation of payment stablecoins – these stablecoin arrangements bear similarities with stored-value facilities (SVFs) and APRA, in conjunction with peer agencies on the Council of Financial Regulators (CFR), is developing options for incorporating them into the proposed regulatory framework for SVFs. Subject to the development of the broader legislative and regulatory framework, APRA envisages consulting on prudential requirements for large SVFs in 2023.

ASX consults on enhancing investment product offering

The Australian Securities Exchange (ASX) Limited has launched a consultation on enhancements that could be made to the ASX investment product offering, particularly with a view to identifying areas where the different rules governing those products (the Listing Rules, the AQUA Rules and the Warrant Rules) could be improved and brought into closer alignment.

The consultation paper seeks submissions from all interested stakeholders on a range of policy issues, including:

- admission requirements and processes;
- product names;
- investment mandates;
- permitted investments;

- portfolio disclosure;
- management agreements;
- management fees and costs;
- performance reporting;
- liquidity support;
- the mFund Settlement Service; and
- improving the information available to investors about investment products.

The current consultation is phase one of a two-stage consultation process intended to ensure that ASX's investment product offering is supported by a clear and consistent rule framework that safeguards the interests of investors, while at the same time providing issuers with the flexibility to innovate and bring new products to market, and without imposing undue compliance costs or burdens. The consultation paper for phase two is likely to be issued in early 2023.

Subject to the receipt of the necessary regulatory approvals, ASX envisages that the final changes to its rules, procedures and guidance for investment products will be released in mid-late 2023, with a view to them coming into effect no earlier than 1 January 2024.

Comments on the current consultation are due by 24 June 2022.