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Taxonomy Regulation: EU Parliament objects to Complementary Climate Delegated Act on nuclear and gas activities

The EU Parliament's Committee on Economic and Monetary Affairs and Committee on the Environment, Public Health and Food Safety have adopted a draft objection to the Commission's proposed Delegated Regulation amending the Taxonomy Climate Delegated Act ((EU) 2021/2139) as regards nuclear energy and natural gas economic activities and the Taxonomy Disclosures Delegated Act ((EU) 2021/2178) as regards specific public disclosures for those economic activities (the Taxonomy Complementary Climate Delegated Act).

Among other things, the Committees express concerns that the proposal:

- increases the complexity of decision-making for institutional and retail investors;
- creates additional administrative burdens, fragmentation and confusion; and
- undermines the credibility of the Taxonomy as a guide for investments.

The Committees also urge the Commission to ensure that any new or amended delegated act adopted under the Taxonomy Regulation ((EU) 2020/852) be systematically subject to public consultation and impact assessment.

The draft objection is scheduled for a vote before the full EU Parliament at the plenary session on 4-7 July 2022. The Parliament and the Council have until 11 July 2022 to decide whether to veto the Commission's proposal. If an absolute majority objects to the proposal, the Commission will have to withdraw or amend it.

Banking Union: Eurogroup agrees to strengthen CMDI framework

The Eurogroup has issued a statement on the future of the Banking Union, with a focus on immediately strengthening the common framework for bank crisis management and national deposit guarantee schemes (CMDI framework).

The Eurogroup has agreed broad elements to underpin a strengthened CMDI framework, including:

- a clarified and harmonised public interest assessment;
- a broadened application of resolution tools in crisis management at European and national level, including for smaller and medium-sized banks, where the funding needed for effective use of resolution tools is available, notably through MREL and industry-funded safety nets;
- further harmonisation of the use of national deposit guarantee funds in crisis management, while ensuring appropriate flexibility for facilitating market exit of failing banks in a manner that preserves the value of the bank's assets; and
- harmonisation of targeted features of national bank insolvency laws to ensure consistency with the principles of the European CMDI framework.

The Eurogroup has invited the EU Commission to consider bringing forward legislative proposals for a reformed CMDI framework and to complete any legislative work in the current institutional cycle.

CRD/IFD: EU Commission adopts RTS on authorisation as a credit institution

The EU Commission has adopted a Delegated Regulation setting out regulatory technical standards (RTS) specifying the information to be provided for the authorisation of systemic investment firms as credit institutions under the Capital Requirements Directive (CRD).

The RTS relate to the information to be provided to competent authorities for authorisation in accordance with the new definition of credit institutions introduced by the Investment Firms Directive (IFD). In particular, the RTS concern authorisation applications by undertakings performing activities of dealing on own account and underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis subject to certain quantitative thresholds and consist of a subset of the information to be provided under separate RTS relating to authorisation applications by deposit-taking credit institutions.

If the EU Parliament and Council do not object to the Delegated Regulation, it will enter into force on the twentieth day following its publication in the Official Journal.

CRR: EU Commission adopts RTS on risk factor models and back-testing and profit and loss attribution

The EU Commission has adopted two delegated regulations under the Capital Requirements Regulation (CRR).

The first contains RTS on the criteria for assessing the modellability of risk factors under the internal model approach (IMA) and the frequency of that assessment under the CRR. The RTS specify, among other things:

- two different criteria that institutions are allowed to use to assess the modellability of a risk factor;
- the requirements that a price should satisfy to be considered verifiable and the requirements under which verifiable prices are considered representative for risk factors;
- the criteria for assessing the modellability of risk factors belonging to specific typologies;
- specific provisions for risk factors belonging to curves, surfaces, cubes and for parametric functions; and
- the frequency under which the modellability assessment should be performed by institutions.

The second delegated regulation contains RTS on the technical details of back-testing and profit and loss attribution requirements under the CRR. The RTS specify, among other things:

- the technical elements to be included in the actual and hypothetical changes in the value of the portfolio of an institution for the back-testing performed at both trading desk and institution levels;
- that the Kolmogorov Smirnov test metric and the Spearman correlation coefficient constitute the basis for determining the criteria ensuring that the theoretical changes are sufficiently close to the hypothetical changes for the purposes of the profit and loss attribution requirement; and
- the frequency of the profit and loss attribution tests and the aggregation formula that institutions are to use for calculating the own funds requirements for market risk in line with the provisions set out in international regulatory standards.

Both regulations will enter into force on the twentieth day following their publication in the Official Journal.

Data reporting service providers: Delegated Regulation on supervisory fees published in Official Journal

Commission Delegated Regulation (EU) 2022/930, which specifies the fees that the European Securities and Markets Authority (ESMA) may charge in relation to its supervision of data reporting service providers has been published in the Official Journal.

As prescribed under the Markets in Financial Instruments Regulation (MiFIR), Delegated Regulation (EU) 2022/930 includes provisions on:

- the calculation and payment of application, authorisation and annual supervisory fees;

- the method of, and timeline for, payments;
- the interest for late payments; and
- the reimbursement of national competent authorities in instances where they have undertaken supervisory tasks on behalf of ESMA.

The Delegated Regulation entered into force on 20 June 2022.

EMIR REFIT: EU Commission adopts reporting technical standards

The EU Commission has adopted six implementing and delegated regulations setting out implementing technical standards (ITS) and RTS on reporting, data quality, data access and registration of trade repositories (TRs) under European Market Infrastructure Regulation (EMIR) Refit.

In particular, the Commission has adopted:

- ITS with regard to the standards, formats, frequency and methods and arrangements for reporting;
- RTS specifying the minimum details of the data to be reported to TRs and the type of reports to be used;
- RTS specifying the procedures for the reconciliation of data between TRs and the procedures to be applied to verify compliance by the reporting counterparty or submitting entity with reporting requirements and to verify the completeness and correctness of the data reported;
- amending RTS further specifying the procedure for accessing details of derivatives as well as the technical and operational arrangements for their access;
- amending ITS as regards the format for applications for registration or extensions of registration as a TR; and
- amending RTS as regards the details of applications for registration, or the extension of registration, as a TR.

If the EU Parliament and Council do not object within three months, the implementing and delegated regulations will enter into force on the twentieth day following their publication in the Official Journal.

ESAs propose to extend temporary exemptions regime for intragroup contracts during EMIR review

The European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and ESMA, have published a statement proposing to extend the EMIR implementation timelines for intragroup contracts with third-country group entities.

The ESAs have also published a final report with draft RTS proposing to amend Commission Delegated Regulation (EU) 2016/2251 on risk mitigation techniques for over-the-counter (OTC) derivatives not cleared by a central clearing counterparty (CCP) under EMIR.

The proposed amendments relate to the temporary regime for intragroup OTC derivative contracts where one counterparty is established in a third country and the other counterparty is established in the EU. This temporary regime is

due to expire on 30 June 2022. The ESAs are of the view that a review of the EMIR framework for intragroup exemptions for contracts with third countries, and its interaction with the CRR, would be desirable, and the scheduled upcoming review of EMIR offers this opportunity. As the current temporary exemptions regime expires on 30 June 2022, the draft RTS propose extending the temporary regime by three years to 28 June 2025.

ESMA has also published a final report with new draft RTS proposing to amend accordingly the Commission Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 on the clearing obligation under EMIR.

The ESAs have submitted these draft RTS to the EU Commission for endorsement. Following this, they are subject to non-objection by the EU Parliament and the EU Council.

From 1 July 2022 until the end of the approval process of these RTS, the ESAs expect competent authorities not to prioritise their supervisory actions with respect to the related requirements applicable to intragroup transactions.

EMIR: ESMA issues statement on implementation of clearing obligation for pension scheme arrangements

ESMA has published a statement on the implementation of the clearing obligation for pension scheme arrangements (PSAs) under the EMIR.

On 9 June 2022, the EU Commission adopted a Delegated Regulation, which would extend the transitional period for implementation from 18 June 2022 to 18 June 2023, the final extension possible under the current EMIR framework.

ESMA notes that the Delegated Regulation is unlikely to have entered into force by the time the current exemption expires. It has therefore issued a statement setting out its expectations of competent authorities in the period between 19 June 2022 and the enactment date of the Delegated Regulation. Namely, it requests that authorities do not prioritise their supervisory actions in relation to the clearing obligation for PSAs and that they generally apply their risk-based supervisory powers in their day-to-day supervision of applicable legislation in this area in a proportionate manner.

Capital Markets Union: ECB publishes opinion on ESAP proposals

The European Central Bank (ECB) has published an opinion on the EU Commission's proposed regulation to establish a European Single Access Point (ESAP) for public financial and sustainability-related information about EU companies and investment products.

The ECB broadly welcomes the proposal and sets out specific observations and some recommendations, such as:

- clarifying that the entities providing information should use the specified legal entity identifier (LEI) or, in the absence of a LEI, other means to ensure unique identification;
- including the possibility for the future development of a data quality framework, with a delayed entry into force;
- establishing a clear and explicit compliance framework to ensure entities submit accurate information;

- applying an automatised system to disseminate the data required under ESAP, such as on the basis of pre-defined mapping rules; and
- encouraging the inclusion of historical data where feasible.

EBA publishes guidelines on responsibilities of AML/CFT compliance officer

The EBA has published guidelines specifying the role and responsibilities of the anti-money laundering and countering the financing of terrorism (AML/CFT) compliance officer and of the management body of credit or financial institutions.

The guidelines aim to ensure a common interpretation and adequate implementation of AML/CFT internal governance arrangements across the EU in line with the requirements of the EU Directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

In particular, the guidelines set out provisions on the:

- role and responsibilities of the management body in the AML/CFT framework and of the senior manager responsible for AML/CFT;
- role and responsibilities of the AML/CFT compliance officer: and
- organisation of the AML/CFT compliance function at group level.

The guidelines will apply from 1 December 2022.

SRB updates operational guidance on bail-in tool

The Single Resolution Board (SRB) has published an updated version of its operational guidance documents on the implementation of the bail-in tool. The documents are intended to provide guidance to banks on the main elements they are expected to consider for the enhancement of their bail-in playbooks and when using the bail-in tool in resolution.

The SRB has updated the documents to:

- provide further detail on its expectations regarding intra-group loss transfer, recapitalisation mechanisms between the resolution entity and its subsidiaries, and the entities' management information systems (MIS) capabilities; and
- introduce a new section dedicated to the testing of bail-in playbooks and MIS capabilities, with targeted amendments based on the SRB's experience in this area since the guidance was first published in August 2020.

EPC consults on SEPA payment account access scheme rulebook

The European Payments Council (EPC) has launched a consultation on the draft rulebook of its new SEPA payment account access (SPAA) scheme and a related document on a possible premium functionality.

The SPAA scheme covers the set of rules, practices and standards that will allow the exchange of payment accounts related data and facilitates the initiation of payment transactions in the context of value-added, or 'premium', services provided by asset holders.

According to the EPC, the key benefits of the SPAA scheme are, among other things:

- it builds on investments done in the context of the revised Payment Services Directive (PSD2);
- it is managed as a scheme and has been developed collaboratively by the retail payment industry (supply and demand) as represented in the Euro Retail Payments Board (ERPB);
- it enables premium payment services beyond PSD2 in a way ensuring harmonisation, interoperability and reachability across Europe;
- it takes into account the input from major European standardisation initiatives active in the field of PSD2 application programming interfaces (APIs); and
- it could be a stepping-stone towards open finance beyond payments and open data beyond finance.

Comments are due by 12 September 2022.

Sustainable finance: Basel Committee issues principles for effective management and supervision of climate-related financial risks

The Basel Committee on Banking Supervision (BCBS) has published principles for the effective management and supervision of climate-related financial risks, following a consultation launched in November 2021. The BCBS aims to promote a principles-based approach to improving both banks' risk management and supervisors' practices related to climate-related financial risks. The paper sets out 18 principles covering corporate governance, internal controls, risk assessment, management and reporting. They seek to achieve a balance in improving practices and providing a common baseline for internationally active banks and supervisors.

The BCBS expects implementation of the principles as soon as possible and intends to monitor progress across member jurisdictions.

OECD recommendation on blockchain and DLT adopted

Ministers have adopted the OECD Recommendation of the Council on Blockchain and Other Distributed Ledger Technologies (DLT) at the 2022 OECD Ministerial Council Meeting.

The recommendation seeks to provide a clear and coherent policy framework for responsible blockchain innovation and adoption to prevent and mitigate risks, while preserving incentives to innovate, collaborate and compete. While international policy standards have thus far focussed on financial market issues, this recommendation recognises the wider impacts of and uses for the technology, and is the first cross-sectoral international policy standard for blockchain.

The recommendation addresses:

- compliance and coherence;
- governance, transparency, and accountability;
- interoperability;

- digital security and privacy;
- education and skills development; and
- environmental impact.

The recommendation also contains policy recommendations for governments when they are establishing or implementing policy measures related to blockchain innovation and adoption, including to:

- develop co-ordinated policy approaches concerning blockchain;
- foster investment in blockchain research and development;
- strive to build human capacity on blockchain;
- support an enabling policy environment for blockchain; and
- co-operate internationally on blockchain.

The Economic Crime (Transparency and Enforcement) Act 2022 (Commencement No. 2 and Saving Provision) Regulations 2022 made

The Economic Crime (Transparency and Enforcement) Act 2022 (Commencement No. 2 and Saving Provision) Regulations 2022 (SI 2022/638) have been made. The regulations bring into force three provisions of the Economic Crime (Transparency and Enforcement) Act 2022 relating to financial sanctions.

The relevant provisions are:

- section 54, which amends section 146 of the Policing and Crime Act 2017 (PCA) to allow HM Treasury (HMT) to impose civil monetary penalties on individuals for breaches of financial sanctions, without having to prove that the person had knowledge or reasonable cause to suspect their activity breached sanctions;
- section 55, which amends section 147 of the PCA to remove the requirement that decisions made by HMT to impose a monetary penalty must be personally reviewed by a Minister of the Crown; and
- section 56, which amends section 149 of the PCA to allow HMT to publish notices detailing individuals' violations of financial sanctions committed after 15 June 2022, even if HMT has decided not to impose a penalty.

The provisions entered into force on 15 June 2022.

House of Commons European Scrutiny Committee consults on post-Brexit regulatory divergence

The UK House of Commons European Scrutiny Committee has launched an inquiry and call for evidence on the benefits and challenges to business and the UK economy of post-Brexit regulatory divergence.

In relation to financial services, which is a priority sector highlighted by the Committee, evidence is sought on where and how the UK should diverge from EU rules, including:

- specific examples of retained EU law that should be kept, revoked or replaced; and

- the likely cost and resource implications of divergence and how these can be effectively managed.

Comments are due by 22 July 2022.

Northern Ireland Protocol Bill 2022 introduced

The UK Government has introduced a draft Northern Ireland Protocol Bill to the House of Commons intended to amend the operation of the Protocol on Ireland/Northern Ireland included in the EU-UK Withdrawal Agreement in UK domestic law.

Noting practical issues caused by the Protocol and a need to safeguard the Belfast (Good Friday) Agreement, the Bill:

- disapplies specific areas of the Protocol in domestic law, in particular those relating to the movement and regulation of goods, and subsidy control;
- provides Ministers with powers to make appropriate new provision for those disapplied areas;
- provides Ministers with powers to disapply further areas according to specific purposes, and to make law as appropriate in connection with this; and
- provides a power to implement a new agreement with the EU concerning the Protocol, should one be reached.

The Bill also provides HMT with powers to make provision related to VAT and excise in connection with the Protocol and, in relation to governance arrangements, provides that domestic courts and tribunals are not bound by the jurisprudence of the Court of Justice of the EU (CJEU) in proceedings concerning the Protocol or Withdrawal Agreement and cannot refer cases to the CJEU, while providing Ministers with the power to establish a procedure for referring questions on the interpretation of EU law to the CJEU.

The Government has also published a statement summarising its legal position on the lawfulness of the Bill under international law, and a policy paper on the proposals.

Treasury Committee publishes future of financial services regulation report

The UK House of Commons Treasury Committee has published a second report as part of its inquiry into the future of financial services regulation.

The report follows the Committee's 2021 report on the Government's proposals relating to its Future Regulatory Framework (FRF) Review and broadly examines issues affecting the financial services industry, including inherited EU legislation, the framework for regulation, and matters already governed by domestic law, such as the scope and mandate of the regulators.

The Committee's conclusions and recommendations on priorities for regulatory changes include that:

- simplifying financial regulation and tailoring it appropriately to the UK market must be approached with care, and without compromising regulatory independence;
- regulators should make every effort to limit the costs of compliance without sacrificing resilience;

- owing to the significance of co-operation between regulators for ensuring reciprocal market access, the Government should strive to make progress on mutual recognition as an element in any free trade agreement;
- the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) be given a secondary objective to promote long-term economic growth;
- the FCA be required to have regard for financial inclusion in its rule-making and to provide an annual report on the state of financial inclusion in the UK;
- HMT and regulators publish a forward-looking schedule of when they expect each EU financial regulatory file to move across to the regulatory rulebooks, including timelines for consultation and when they expect the overall project to conclude; and
- the FCA write to the Committee following its next update on service standards, outlining any areas where it is still not meeting its statutory and voluntary timelines, and setting out its strategy for closing any gaps.

The report also covers specific areas of regulation, focussing on:

- capital requirements for banks and insurers, including the Government's review of Solvency II;
- measures to support innovation at both start-ups and more established firms; and
- innovative developments in payments systems, such as crypto-assets, stablecoins and a central bank digital currency (CBDC).

HM Treasury announces reform of Consumer Credit Act

HMT has announced an intention to replace provisions of the Consumer Credit Act 1974 (CCA) with FCA rules or guidance.

The reforms are intended to modernise and simplify the consumer credit regulatory regime and will build on recommendations set out in the FCA's 2019 review of retained provisions of the CCA and the 2021 Woolard Review of the unsecured credit market.

HMT notes that due to the complexity of the reforms, it is expected to take place over an extended timeframe.

A consultation outlining proposals is expected to be published by the end of the year.

HM Treasury publishes consultation response and draft SI amending MLRs

HMT has published the outcome of its consultation on amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

The document summarises views from responses to the consultation and sets out the findings and the decisions the Government has taken as a result. The amendments proposed in the consultation were designed to ensure that the UK continues to meet the international standards set by the Financial Action Task Force (FATF) and to clarify certain areas in light of feedback received

following the implementation of the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020.

HMT has also published the draft Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022, along with an explanatory note and a draft explanatory memorandum. The draft Regulations implement the changes the Government is introducing in response to the consultation.

PRA removes temporary PRA buffer adjustment

PRA has announced that the temporary increase of the PRA buffer for firms that received Pillar 2A (P2A) reduction under policy statement (PS) 15/20 will be removed with effect from end-December 2022.

As a response to the COVID-19 pandemic, the PRA has been setting firm-specific PRA-buffer adjustments from 2020, aligning these to 56.25% of the firm-specific total P2A reduction, which is the minimum amount of CET1 the PRA requires for firms to meet P2A requirements. The PRA has decided that this regulatory measure is no longer necessary.

According to the PRA, supervisors will be in contact with firms either through their Supervisory Review and Evaluation Process (SREP) where that is planned in 2022, or separately to communicate firms' updated PRA buffers.

FCA consults on proposed updates to guidance on changes to firms' branch and ATM services

The FCA has launched a consultation (GC22/2) on proposed revisions to its guidance for firms on branch and ATM closures and conversions (FG20/3).

Under FG20/3, firms are required to carefully consider the impact of a planned closure of a branch or ATM, or the conversion of a free-to-use ATM to pay-to-use, on their customers' everyday banking and cash access needs. The guidance also sets out the FCA's expectations around alternative access arrangements, in instances where firms do decide to close or convert these sites.

In GC22/2, the FCA is seeking feedback on proposed revisions to this guidance in light of its experience supervising firms' closure and conversion plans over the last two years. In particular, it is proposing to:

- extend the application of the guidance so that it covers 'partial closures' (i.e. significant reductions in opening hours or branch services) in the same way as it does for full closures;
- clarify that firms should consider whether non-dedicated venues used to offer in-person banking services, such as banking hubs or other community sites, fall under the guidance's broad definition of a branch, and would therefore be subject to the same requirements as a branch with regard to proposed closures or changes in service;
- require firms to include usage trends and overall transaction volumes in their analyses of whether a branch should be closed or not;
- require firms to proactively contact a wider range of stakeholders with information about proposed closures or conversions, including relevant consumer groups and local councils; and
- clarify the interaction of the guidance in FG20/2 with that set out in FG21/1, which covers the fair treatment of vulnerable customers.

Responses are due by 26 July 2022.

AED issues guide on AML/CFT for RAIFs

The Luxembourg Registration Duties, Estates and VAT Authority, the Administration de l'enregistrement et des domaines et de la TVA (AED), has published a guide on professional obligations regarding AML/CFT with a view to better supporting reserved alternative investment funds (RAIFs), which are supervised by the AED for AML/CFT purposes, with their implementation of AML/CTF legal requirements.

The guide is given on an indicative basis, however it nonetheless describes the minimum requirements to be complied with by RAIFs. The AED specifies that RAIFs must adapt their internal procedures in terms of AML/CTF depending on their size, activities and type of investors. A simple reproduction of the guide as internal procedure will not be considered as compliant by the AED.

In the context of its AML/CTF supervision, the AED expects to receive the following documents from every RAIF, using templates or following instructions available in the guide:

- a RAIF RR RC Identification Form, to be provided when the RR and RC are appointed and following any change of information included in the form, along with the corresponding board minutes or written resolutions taken by the management body of the RAIF;
- a risk AML/CTF questionnaire, to be filled in without modifying the excel file framework or removing its embedded protection and to be provided annually with information available on 31 December of each year; and
- the RC report, which must contain at least the information listed on page 37 of the guide and had to be submitted by 31 May 2022.

Three major AML/CTF obligations are also developed in the guide:

- the obligation of vigilance, which comprises the identification of the fund's clients, the persons acting on their behalf and their beneficial owners, and the corresponding storing of information and documents;
- the obligation of internal organisation, which comprises the training of the RAIF's staff, the appointment of a RR and a RC, and the implementation of a risk procedure tailored to risk criteria based on the client and the RAIF; and
- the obligation to cooperate, which comprises the transmission of any suspicious operations to the Cellule de Renseignement Financier (CRF) through its platform goAML and the obligation to provide upon request any information to the CRF or the AED.

In addition, the guide provides information on the sanctions incurred in the event of non-compliance with AML/CFT professional obligations and the means of appeal against such administrative sanctions. It also includes a useful minimum checklist to follow when establishing a new business relationship, a list of risk factors and templates of identification forms (as examples).

CNMV publishes communication on pricing process in collective investment schemes and venture capital entities

The Spanish National Securities Market Commission, the Comisión Nacional del Mercado de Valores (CNMV), has published a communication on the pricing process in collective investment schemes and venture capital entities.

The communication follows ESMA's 2021 common supervisory action (CSA) with national competent authorities on the supervision of cost and fees of undertakings for the collective investment in transferable securities (UCITS) funds. The aim of the CSA was to assess the compliance of supervised entities with key cost-related provisions in the UCITS framework and with the June 2020 ESMA supervisory briefing on the supervision of costs in UCITS and AIF.

Considering ESMA's conclusions on the CSA, the CNMV considers as good practice that management entities of collective investment schemes and venture capital entities develop and periodically review (at least once per year) a structured and formal pricing process that takes into consideration the elements set out in point 19 of the supervisory briefing.

NAFMII publishes master agreement for CIBM bond lending and borrowing business

The National Association of Financial Market Institutional Investors (NAFMII) has issued an announcement introducing the 'Master Agreement of China Interbank Market Bond Lending and Borrowing Transactions' (2022 version), which has been successfully filed with the People's Bank of China (PBOC) and will be used by market participants for bond lending/borrowing transactions on China's interbank bond market (CIBM). It is believed that the publication of this standard Bond Lending Master Agreement will drive forward the development of China's bond lending market.

The formulation of the Bond Lending Master Agreement is a requirement of the Measures for the Administration of CIBM Bond Lending and Borrowing Business published by PBOC and to be effective from 1 July 2022. These PBOC bond lending measures provide that bond lending and borrowing transactions shall be carried out by way of signing a master agreement by market participants.

The following key aspects about the announcement and Master Agreement are worth noting:

- the Bond Lending Master Agreement (including general provisions and applicable special provisions) adopts an open-ended 'multi-party' execution model, where the Bond Lending Master Agreement will take effect among multiple market participants who duly execute it. Upon execution of the Bond Lending Master Agreement, any two of those parties may further sign a supplemental agreement/schedule on a bilateral basis to carry out bond lending/borrowing transactions;
- market participants shall submit to NAFMII in a timely manner the executed Bond Lending Master Agreement, any supplemental agreement and any further revisions (if any) for filing purposes. All documents for filing shall be written in Chinese;

- non-NAFMII members shall obtain written authorisation from NAFMII before using the Bond Lending Master Agreement and provide a written undertaking of accepting supervision by NAFMII; and
- any dispute arising from the Bond Lending Master Agreement or occurrence of an event of default under the Bond Lending Master Agreement shall be reported to NAFMII.

CSDCC revises margin calculation methodology under Stock Connect (Southbound Trading Link)

The China Securities Depository and Clearing Corporation Ltd. (CSDCC) has published a revised version of the Implementation Rules for Registration, Deposit and Settlement Business under the Stock Connect Scheme between Mainland China and Hong Kong Stock Markets, which took effect on 13 June 2022.

The revisions have been made to align with the adjustment made by the Hong Kong Securities Clearing Company Ltd. (HKSCC) to its methodology for calculating margin of Hong Kong shares for the relevant settlement participants, which has changed from a fixed margin rate at 22% on all securities over the market to being based on parameters such as outstanding positions, securities collateral and risk parameter files (RPF).

According to the Revised CSDCC Rules, among other things, RPF provided by HKSCC on a daily basis to reflect the risk value corresponding to price fluctuations of each security under various risk scenarios, as well as additional margin charging rates under certain trigger conditions as specified by HKSCC, will be taken into consideration for the purpose of calculating margins for settlement participants under the Stock Connect (Southbound Trading Link).

SFC consults on enforcement-related amendments to Securities and Futures Ordinance

The Securities and Futures Commission (SFC) has published a consultation paper on proposed amendments to the Securities and Futures Ordinance (SFO) to enable the SFC to take more effective enforcement actions.

In particular, the SFC proposes the following amendments under three parts of the consultation paper:

- Part 1 – the SFC proposes that section 213 of the SFO (Injunctions and other orders) be amended to provide a cause of action to enable the SFC to apply to the Court of First Instance for injunctions and other orders under section 213 of the SFO after having exercised any of its powers under section 194 or 196 of the SFO against a regulated person;
- Part 2 – the SFC proposes that the exemption to section 103(1) of the SFO (Offence to issue advertisements, invitations or documents relating to investments in certain cases) set out in section 103(3)(k) be amended so that the ambit of the exemption would accord with the original intended purposes, and that consequential amendments be made to section 103(3)(j); and
- Part 3 – the SFC proposes that the scope of the insider dealing provisions of the SFO be broadened to cover: (i) insider dealing perpetrated in Hong Kong with respect to securities listed on overseas stock markets or their derivatives; and (ii) insider dealing perpetrated outside of Hong Kong, if it

involves any securities listed on a recognised stock market, i.e. a stock market operated by The Stock Exchange of Hong Kong Limited, or their derivatives.

Comments on the consultation are due by 12 August 2022.

HKEX launches new VaR Platform for clearing participants

The Hong Kong Exchanges and Clearing Limited (HKEX) has announced the launch of its new Value-at-Risk (VaR) Platform for post-trade clients and the introduction of a new portfolio margining approach in its securities market.

The new VaR Platform introduces margin requirements based on individual stock volatility, instead of the previously applied flat margin rate across all securities. The new risk-adjusted way of calculating the initial margin and stress testing market default fund aims to strengthen the resilience of the securities clearing house, in line with evolving international regulatory standards.

The VaR Platform is available to all clearing participants for securities transactions in the HKEX's markets.

Singapore and OECD sign MoU to strengthen cooperation on issues of mutual interest

Singapore's Ministry of Trade and Industry (MTI) and the Organisation for Economic Co-operation and Development (OECD) have signed a memorandum of understanding (MoU) to deepen cooperation and collaboration between both organisations.

The MoU primarily aims to strengthen cooperation between MTI and OECD at expert level on issues of mutual interest, including on digital trade, supply chain resilience, and trade and sustainability. This will take the form of regular joint research and analysis, cross learning of research knowledge and skills, and secondment of MTI officers to OECD Directorates.

Singapore Government publishes green bond framework

The Singapore Government has published the Singapore Green Bond Framework, a governance framework for sovereign green bond issuances by the public sector under the Significant Infrastructure Government Loan Act 2021 (SINGA).

The framework details the Government's:

- intended use of green bond proceeds;
- governance structure for the evaluation and selection of eligible projects;
- operational approach for the management of green bond proceeds; and
- commitment to post-issuance allocation and impact reporting.

Among other things, the framework is designed to align with the Government's commitment that any green bonds issued by public sector agencies adhere to market best practices. It incorporates the following principles:

- alignment with internationally recognised market principles and standards;
- stringent governance and oversight of project selection and allocation of proceeds; and

- technical screening to evaluate and identify green projects.

In addition, following the Government's announcement at Budget 2022 that the public sector will issue up to SGD 35 billion of green bonds by 2030 to finance public sector green infrastructure projects, the Government will be issuing its inaugural sovereign green bond under SINGA in the coming months. Known as 'Green SGS (Infrastructure) bonds', these issuances will be used to finance nationally significant infrastructure which meets the green criteria under the framework.

The Monetary Authority of Singapore (MAS) will undertake the issuance and management of SGS bonds on behalf of the Government, further details on which will be announced closer to the issuance date.

ASIC publishes information sheet on greenwashing

The Australian Securities and Investments Commission (ASIC) has published Information Sheet 271 to help issuers avoid 'greenwashing' when offering or promoting sustainability-related products. Additionally, the publication also intends to assist issuers to provide investors with the information they require to make informed decisions.

ASIC had previously undertaken a 'greenwashing' review of a sample of superannuation and investment products and identified some areas for improvement. Among other things, ASIC identified that issuers in their disclosure and promotions need to use clear labels, define the sustainability terminology they use and clearly explain how sustainability considerations are factored into their investment strategy.

Information Sheet 271 is for responsible entities of managed funds, corporate directors of corporate collective investment vehicles, and trustees of registrable superannuation entities. In particular, it outlines:

- what greenwashing is and why it is a concern;
- the current regulatory setting for communications about sustainability-related products; and
- questions to consider when offering or promoting sustainability-related products.

ASIC has further clarified that, although Information Sheet 271 focuses on sustainability-related products issued by funds, its principles may apply to other entities that offer or promote financial products that consider sustainability-related factors. Examples include companies listed on a securities exchange or entities issuing green bonds.

ARRC issues recommendations for contracts linked to USD LIBOR ICE Swap Rate

The Alternative Reference Rates Committee (ARRC) has published recommendations for contracts linked to the USD LIBOR ICE Swap Rate (ISR). These recommendations include a suggested fallback formula that can be used for USD LIBOR ISR fixings after three-month USD LIBOR has been discontinued or becomes non-representative. The ARRC notes that these contracts are not covered by federal LIBOR legislation and that counterparties may need to take proactive steps to address the end of USD LIBOR ISR.

The ARRC recommends that market participants should inventory any of their contracts tied to the USD LIBOR ISR and identify the fallback provisions that

they contain. They should then, if necessary, take proactive steps to address the impact of the cessation of USD LIBOR ISR on their legacy positions (e.g. USD LIBOR swaptions, USD LIBOR constant-maturity swap (CMS) linked derivatives and debt instruments) by:

- converting these positions to their SOFR or SOFR ISR equivalent; or
- incorporating hardwired fallbacks consistent with the approach suggested by the ARRC; and
- considering calling or buying back debt instruments with problematic fallback provisions.

ARRC states that if a legacy position cannot be proactively converted to SOFR or the SOFR ISR and its contractual fallbacks cannot be amended, once 3-month USD LIBOR has ceased to be published as a representative rate, the fallback formula suggested would accurately represent the at-the-money rates of standard interest rate swaps which are tied to it and which incorporate the fallback provisions introduced in the ISDA 2020 IBOR Fallbacks Protocol. As a result, if the contractual fallbacks involve calculation agent determination, the ARRC recommends that calculation agents consider the ARRC's suggested fallback formula in determining a successor rate.

RECENT CLIFFORD CHANCE BRIEFINGS

Solvency UK – the liability valuation package and mobilisation regime for insurers

In June 2020, the UK Government announced an overhaul of insurance regulation dubbed 'Solvency UK' in a bid to increase flexibility and unlock capital for investment by insurers. Despite a Call for Evidence in October 2020 and a Feedback Statement in July 2021, no further details emerged. This was until a speech to the Association of British Insurers (ABI) in February 2022 in which the Economic Secretary to the Treasury & City Minister, John Glen, announced the UK's direction of travel towards greater regulatory divergence from the EU in the following areas:

- the risk margin;
- the matching adjustment; and more generally
- a reduction in reporting and administrative requirements.

This briefing discusses the proposed reforms.

Clifford Chance website version

https://www.cliffordchance.com/briefings/2022/06/solvency-uk--the-liability-valuation-package-and-mobilisation-re.html

European green bond regulation

Since the EU Commission published its proposal for a Regulation on European green bonds (EU GBS) in July 2021 as part of its agenda on sustainable finance to meet the goals of the Paris Agreement and the European Green Deal, the draft EU GBS has been widely discussed and commented on. The EU GBS is focused on the alignment of the use of proceeds of European green bonds with the EU Taxonomy, additional reporting requirements for issuers of European green bonds (pre- and post-issuance) as well as regulating the external review process.

At the end of May 2022, the Committee on Economic and Monetary Affairs (ECON) published its long-awaited report which, among other things, includes proposals to increase disclosure requirements and to extend the scope of the EU GBS to all issuers of 'bonds marketed as environmentally sustainable' in the EU. It further touches on aspects of securitisation and calls for increased liability and sanctions in case of non-compliance with the EU GBS.

This briefing discusses the Regulation.

Clifford Chance website version

https://www.cliffordchance.com/briefings/2022/06/european-green-bond-regulation-.html

FCA publishes discussion paper on UK listing regime reforms

On 26 May 2022, the FCA published a discussion paper (DP 22/2) seeking views on replacing the existing premium and standard listing segments with a proposed regime for a single listing segment for equity shares in commercial companies. The proposals include a single set of eligibility requirements, mandatory continuing obligations and optional supplementary continuing obligations. The discussion paper also provides the FCA's views on the effectiveness of the sponsor regime.

The FCA's proposals in DP 22/2, if implemented, would mark a significant change to the existing UK listing regime. This briefing provides a contextual overview of the proposals and their impact.

Clifford Chance website version

https://www.cliffordchance.com/briefings/2022/06/-fca-publishes-discussion-paper-on-uk-listing-regime-reforms.html

Spain – revolving credit cards

On 4 May 2022 the Supreme Court issued its third judgment on revolving credit cards, and the first in favour of banks. The flood of reactions in the media prompted a press release from the Supreme Court's Technical Cabinet, which sought to contain the controversy surrounding the ruling. The press release asserts that the judgment does not make any alterations to existing case law on the matter.

This briefing discusses the Supreme Court Judgment of 4 May 2022 and the press release.

Clifford Chance website version

https://www.cliffordchance.com/briefings/2022/06/spain--revolving-credit-cards.html