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Digital finance: Regulation on pilot regime for market infrastructures based on DLT published in Official Journal

[Regulation \(EU\) 2022/858](#) on a pilot regime for market infrastructures based on distributed ledger technology (DLT) has been published in the Official Journal. The Regulation permits market infrastructures to experiment with restricted uses of DLT under exemptions from the requirements of certain financial services legislation, including the Markets in Financial Instruments Directive and Regulation (MiFID2/MiFIR), and the Central Securities Depositories Regulation (CSDR).

The Regulation will enter into force on 22 June 2022 and will apply from 23 March 2023, except for Articles 8(5), 9(5), 10(6) and 17, which will apply from 22 June 2022, and Article 16, which will apply from 4 July 2021.

EMIR: Implementing Decisions on CCP equivalence for Chile, Malaysia, Indonesia and South Africa published in OJ

Commission Implementing Decisions on the equivalence of the regulatory framework for central counterparties (CCPs) in five non-EU jurisdictions under

the European Market Infrastructure Regulation (EMIR) have been published in the Official Journal, as follows:

- [Commission Implementing Decision \(EU\) 2022/903](#) on the equivalence of the regulatory framework for CCPs in Chile to the requirements of EMIR;
- [Commission Implementing Decision \(EU\) 2022/899](#) on the equivalence of the regulatory framework for CCPs in Indonesia to the requirements of EMIR as regards CCPs under the supervision of the Indonesia Financial Services Authority (Otoritas Jasa Keuangan);
- [Commission Implementing Decision \(EU\) 2022/902](#) on the equivalence of the regulatory framework for CCPs in Malaysia to the requirements of EMIR;
- [Commission Implementing Decision \(EU\) 2022/901](#) amending Implementing Decision (EU) 2016/2269 as regards CCPs under the supervision of the International Financial Services Centres Authority in India; and
- [Commission Implementing Decision \(EU\) 2022/900](#) amending Implementing Decision (EU) 2015/2039 as regards the evolution of the regulatory framework of South Africa for CCPs.

The Implementing Decisions relating to India and South Africa entered into force on 10 June 2022. The Implementing Decisions relating to Chile, Indonesia and Malaysia will enter into force on 29 June 2022.

EMIR: EU Commission adopts Delegated Regulation extending clearing obligation exemption for pension scheme arrangements

The EU Commission has adopted a [Commission Delegated Regulation](#) extending the transitional period for pension scheme arrangements (PSAs) referred to in Article 89(1)(1) of the EMIR by an additional year.

The temporary exemption was first extended by Regulation (EU) 834/2019 (EMIR REFIT) until 18 June 2021 and extended a second time by a Delegated Act until 18 June 2022. The proposed extension would be the final extension possible under the current EMIR framework and would extend the transitional period until 18 June 2023.

The Regulation would enter into force on the day following its publication in the Official Journal.

EMIR: ESMA publishes final draft RTS on commodity derivatives clearing threshold

The European Securities and Markets Authority (ESMA) has published a [final report](#) setting out draft regulatory technical standards (RTS) proposing to increase the clearing threshold for commodity derivatives under EMIR to EUR 4 billion.

The report sets out the implications of exceeding clearing thresholds, details of feedback received to ESMA's November 2021 discussion paper on clearing thresholds and draft amending RTS that seek to alleviate temporarily the impact of current energy prices on non-financial counterparties.

ESMA notes that the final report takes into account proposed amendments to EMIR set out in its April 2022 high-level response to the Commission's

targeted consultation on the review of the EU central clearing framework, including the need for structural changes in the way thresholds are calculated.

The draft RTS have been submitted to the EU Commission for endorsement. ESMA intends to continue monitoring the coverage of the thresholds, in line with its EMIR mandate.

CSDR: ESMA publishes final RTS on postponing buy-in regime

ESMA has published its [final report](#) on draft RTS amending the RTS on settlement discipline in order to postpone the application of the CSDR mandatory buy-in regime for three years.

The proposed amendment is based on the expected changes to the CSDR buy-in regime contained within the proposal for the CSDR Review and on the amendment made to the CSDR contained in the EU Regulation on a DLT pilot regime, which allows ESMA to propose a later start date for the CSDR buy-in regime.

The CSDR settlement discipline regime has applied since 1 February 2022.

ESMA's expectation that national competent authorities will not prioritise supervisory actions in relation to the application of the buy-in regime will remain in place until the buy-in regime is formally suspended.

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

SFDR: EU Commission letter on amendments to RTS

The European Commission has published a [letter](#) from John Berrigan, FISMA, to the European Supervisory Authorities (ESAs) discussing the amendments to the RTS under the Sustainable Finance Disclosure Regulation (SFDR) 2019/2088 relating to product exposure to gas and nuclear activities.

The Commission has invited the ESAs to propose amendments in relation to the information that should be provided in pre-contractual documents, on websites, and in periodic reports about the exposure of financial products to investments in fossil gas and nuclear energy activities.

Amendments are to be submitted by 30 September 2022.

Green finance: ESAs publish statement clarifying disclosure requirements under draft SFDR RTS

The Joint Committee of the ESAs has published a [statement](#) providing clarifications on the draft RTS issued under the SFDR, which include the financial product disclosures under the Taxonomy Regulation.

The statement is intended to clarify various aspects of the draft RTS in relation to the content, methodologies and presentation of disclosures under the SFDR. In particular, it covers:

- the use of sustainability indicators;
- principal adverse impact disclosures;
- financial product disclosures;
- direct and indirect investments;
- taxonomy-related financial product disclosures;

- ‘do not significantly harm’ disclosures; and
- disclosures for products with investment options.

EU Council adopts negotiating mandate on proposal to replace Consumer Credit Directive

The EU Council has agreed its [position](#) on the proposed directive on consumer credits repealing and replacing Directive 2008/48/EC (the Consumer Credit Directive). The EU Council has also published a [joint statement](#) by Estonia and Lithuania on the proposed directive.

The proposed directive broadens the scope of products that will need to comply with stricter credit rules, although the EU Council’s mandate proposes to exclude certain products. The EU Council’s mandate also suggests an optional partial derogation from certain provisions for certain of the less risky credit products that would fall within the scope of the directive.

The approval of the mandate allows the Council Presidency to launch further discussions with the EU Parliament.

The EU Council has published a joint statement by Estonia and Lithuania that welcomes the final compromise text but urges the Council Presidency and EU Parliament to consider their argument to exclude credits free of interest from the scope of the directive in future negotiations.

ESMA updates trends, risks and vulnerabilities report

ESMA has updated its risk assessment to account for the impacts on financial markets of Russia’s invasion of Ukraine and the deteriorating economic environment.

According to the [report](#), the risk to ESMA’s overall remit remains at the highest level, with political event risk, surging inflation and jumps in market volatility negatively impacting the outlook. The main factors considered in the report include:

- valuation issues faced by funds and investors with exposures to Russian assets, including significant asset repricing and a fall in the value of equities, corporate bonds and emerging market debt;
- increasing prices of commodities and related derivatives adding to pre-existing inflation pressures, resulting in increasing market expectations of higher interest rates and growing likelihood of far-reaching rebalancing of portfolios;
- concerns around cyber risk, as attacks targeting infrastructures and firms could be very disruptive; and
- sharp falls in the value of crypto assets, which ESMA believes highlights the importance of the recently published ESAs joint warning on crypto assets reminding consumers of the highly volatile and speculative nature of many crypto markets.

Solvency II: ECON Committee publishes draft report on proposed directive

The EU Parliament’s Committee on Economic and Monetary Affairs (ECON Committee) has published a [draft report](#) on the proposal for a directive of the European Parliament and of the Council amending Directive 2009/138/EC

(Solvency II) as regards proportionality, quality of supervision, reporting, long-term guarantee measures, macro-prudential tools, sustainability risks, group and cross-border supervision.

The draft report sets out proposed amendments and an explanatory statement by the rapporteur focusing on the following areas:

- the purpose of insurance regulation;
- proportionality in insurance regulation;
- supporting the recovery and other EU policy objectives;
- level 1 versus level 2;
- cooperation between supervisors;
- reporting and audit requirements;
- group supervision;
- macroprudential supervision; and
- sustainability risks.

ECB publishes opinion on MiFIR Review proposals

The European Central Bank (ECB) has published an [opinion](#) on the EU Commission's proposed regulation amending the Markets in Financial Instruments Regulation (MiFIR).

The ECB broadly welcomes the introduction of a consolidated tape for trade data and the proposed changes to the EU pre- and post-trade transparency rules. The ECB also takes the opportunity to propose changes to other MiFIR provisions which are not the subject of the proposed regulation relating to ECB/European System of Central Banks (ESCB) market transactions, including:

- broadening the exemption of ESCB policy transactions from pre- and post-trade transparency requirements to expressly cover all Eurosystem activities involving transactions concluded pursuant to the Statute of the ESCB;
- expressly introducing an exhaustive list of the types of investment transactions entered into by ESCB members that should be subject to disclosure by the counterparty;
- clarifying that reporting requirements for operators of trading venues do not cover ESCB central banks' transactions; and
- maintaining the full exemption of ESCB securities financing transactions (SFTs) from the supervisory reporting obligation.

The ECB's specific drafting proposals and explanatory text are set out in a separate technical working document at the end of the opinion.

CRD4/CRR3: ECON Committee publishes draft reports on proposed directive and regulation

The ECON Committee has published two draft reports on the EU Commission's proposals for a directive and regulation [amending the Capital Requirements Directive](#) (CRD4) and [the Capital Requirements Regulation](#) (CRR) respectively.

The Commission's original legislative proposals contain amendments to CRD4 and CRR which represent the EU's work to implement the final Basel III standards and other EU-specific reforms.

The draft reports, dated 23 May 2022, set out amendments proposed by the rapporteur. The reports do not contain explanatory statements on the reasoning for these amendments. The ECON Committee is scheduled to vote on the draft reports on 5 December 2022.

CRR: EBA consults on draft RTS on connected clients

The EBA has published a [consultation](#) on draft RTS on the identification of a group of connected clients (GCC).

The objective of the definition of a GCC is to identify two or more natural or legal persons who are so closely linked by idiosyncratic risk factors that it is prudent to treat them as a single risk.

The draft RTS revise and partially replace the EBA guidelines on connected clients and are intended to create a clear and harmonised specification of the circumstances in which the conditions set out in the CRR to form a GCC are met.

The draft RTS aim to set out clear circumstances where interconnections by means of a control and/or an economic dependency relationship can lead to a single risk and thus a grouping requirement. In addition, the draft RTS set out rebuttable provisions for the assessment of situations where control and economic dependencies coexist and thus one overall GCC, as opposed to two or more separate GCC, needs to be formed.

A [public hearing](#) on the draft RTS will take place on 13 July 2022. Comments are due by 8 September 2022.

EBA launches consultation on draft guidelines for bail-in tool

The EBA launched a [public consultation](#) on its draft guidelines addressed to resolution authorities for the publication of their approach to implementing the bail-in tool.

Under the draft guidelines, all resolution authorities that have not yet published their bail-in mechanic are expected to start publishing high-level documents from January 2024, setting out key aspects of their preferred approach. All resolution authorities that have already published bail-in information have to check their publications comply with the EBA draft guidelines.

A public hearing on the draft guidelines will take place on 19 July 2022. Comments are due by 7 September 2022.

Banking Union: SRB publishes updated MREL policy

The Single Resolution Board (SRB) has [updated](#) its minimum requirements for own funds and eligible liabilities (MREL) policy for the 2022 resolution planning cycle.

The SRB notes that limited changes have been made to the policy, which has been updated to take into account stakeholder feedback and new regulatory changes, including:

- the end of the ECB's supervisory leverage relief measures; and

- changes to the CRR recently agreed by the EU co-legislators on the indirect holding of internal MREL (iMREL) and the MREL calibration for banks with a multiple point-of-entry resolution strategy.

The updated policy also further enlarges the coverage of entities under iMREL, aims to make the subordination more dynamic, taking into account evolving balance sheets before resolution, and includes a new annex setting out complementary information on iMREL waivers.

Basel Committee issues statement on climate-related financial risks, prudential treatment of cryptoassets and G-SIB assessment

The Basel Committee on Banking Supervision (BCBS) has issued a [statement](#) summarising the discussions held at its recent meeting. The BCBS met to discuss climate-related financial risks, the prudential treatment of cryptoassets, and the assessment methodology for global systemically important banks (G-SIBs).

In its statement, the BCBS announces that it has:

- agreed a finalised set of principles for the management and supervision of climate-related financial risks, following its consultation in November 2021;
- made progress on its workstream on the prudential treatment of banks' cryptoasset exposures, following an initial consultation in June 2021. The BCBS plans to publish a second consultation paper in June 2022, and to finalise its rules around the end of the year; and
- completed its review of the treatment of cross-border exposures within the European banking union (EBU) on the G-SIB assessment methodology. In light of its review, the BCBS intends to calculate a parallel set of scores for EBU-headquartered G-SIBs, which will reflect the score reduction that would result from treating intra-EBU exposures as domestic exposures, and which will be used to adjust the G-SIBs' bucket allocations.

The statement also sets out the BCBS's view of the current risks and vulnerabilities facing the global banking system, including the direct and indirect impact of the ongoing conflict in Ukraine.

UK Government responds to consultation on SM&CR for FMIs

HMT has published the [Government's response](#) to its consultation on creating a Senior Managers and Certification Regime (SM&CR) for financial market infrastructures (FMIs) supervised by the Bank of England (BoE), with the aim of enhancing the accountability of individuals and improving governance arrangements at FMIs.

When parliamentary time allows, the Government intends to legislate to create a new SM&CR 'gateway' for certain systemic financial services entities, which will enable HM Treasury to lay statutory instruments to apply the regime to CCPs and central securities depositories (CSDs), with detailed aspects of the regime set out in secondary legislation and regulators' rules, where appropriate.

The Government notes the possibility of potentially extending the SM&CR to credit rating agencies (CRAs) and recognised investment exchanges (RIEs) in

the future, and an intention to legislate separately to implement an SM&CR for recognised payment systems and specified service providers.

The Government intends to set out further details on implementing the SM&CR for CCPs and CSDs in due course and does not plan to launch any further consultations on the underlying SM&CR framework.

UK EMIR: BoE consults on clearing obligation modifications to reflect USD benchmark reform

The BoE has published a [consultation](#) on proposals to modify the scope of contracts subject to the clearing obligation under the UK EMIR to reflect the discontinuation of the USD Libor benchmark in June 2023.

The BoE seeks views on amending onshored binding technical standards (BTS 2015/2205) to:

- add overnight index swaps (OIS) that reference the secured overnight financing rate (SOFR), with an original maturity of 7 days to 50 years, to the clearing obligation on Monday 31 October 2022; and
- remove contracts referencing USD Libor from the clearing obligation around the same time as when CCPs are due to contractually convert these contracts and remove the USD Libor benchmark from their list of contracts eligible for clearing.

The consultation closes on 21 July 2022. Subject to approval by HM Treasury, the BoE intends to make and publish the amendments in September 2022.

BoE reports on resolvability of UK banks

The BoE has published its [first assessment](#) of the resolvability of eight major UK firms as part of the Resolvability Assessment Framework.

The BoE's assessment of resolvability shows that even if a major UK bank were to require resolution, customers would be able to keep accessing their accounts and business services as normal. Shareholders and investors, not taxpayers, would be first in line to bear banks' losses and the costs of recapitalisation.

The BoE states that maintaining a credible and effective resolution regime that is fit and ready for use is a continuous process with the authorities and the banks responding as the financial system and regulatory landscape evolve. Their findings are also specific to individual firms, their business models and resolution strategies, and cannot be compared directly with one another.

The BoE, as resolution authority, and the Prudential Regulation Authority (PRA) have made resolvability a continuing obligation for banks and require them to publish their own summaries of their preparations for resolution. Major UK banks will need to address the outstanding actions identified as part of the BoE's assessment.

The BoE intends to repeat its assessment of the major UK banks in 2024 and every two years thereafter.

HMT publishes policy paper on proposed approach to critical third parties in UK finance sector

HMT has published a [policy paper](#) setting out its proposed approach to addressing the risks posed by third parties that provide key services or functions, such as cloud-based computing, to the UK finance sector.

Firms' reliance on a small number of cloud service providers and other critical third parties was identified as a potential financial stability risk by the BoE's Financial Policy Committee in 2021. Since then, HMT has been collaborating with the BoE, the PRA and the Financial Conduct Authority (FCA) to establish a framework that will allow them to directly oversee the services that critical third parties provide to the finance sector.

Under the proposed regime set out in the policy paper:

- HMT will be able to designate certain third parties as 'critical', following consultation with the financial regulators and other bodies;
- designation will be based on high-level criteria, including the number, type and materiality of the services the third parties' provide to firms;
- the financial regulators will be able to exercise a range of powers over any material services provided by critical third parties, including making rules relating to the provision of these services, requesting information from the third parties, setting minimum resilience standards and assessing whether they have been met, and taking formal action when required; and
- the financial regulators will also be granted a range of statutory powers, including being able to direct or forbid third parties from taking specific actions, and prohibiting them from providing future services as an act of last resort.

The Government intends to legislate for this regime when parliamentary time allows. Once the legislation is introduced, the BoE, PRA and FCA expect to consult on how their powers under the legislation might be exercised, their role in the designation process, and how they can coordinate with overseas financial regulators and UK regulators outside the financial services sector. HMT intends to begin identifying critical third parties under the new regime, once the financial regulators' final rules.

HMT publishes policy statement on cash ratio deposit scheme

HMT has published a [policy statement](#) relating to its [consultation](#) on the review of the cash ratio deposit (CRD) scheme.

The statement details HMT's plans for replacing the current CRD scheme with a new BoE levy for funding the BoE's policy functions. The levy-based arrangement is intended to deliver a more reliable and stable funding scheme for the BoE's policy functions, so the BoE will no longer need to fund the income shortfall, brought on by unpredictable gilt yields, through its own capital or reserves.

The levy is intended to cover the BoE's policy-related activities, but should not include:

- its remunerated activities including its banking services, services to HMT such as the management of the note issue and the Exchange Equalisation Account, and lending operations for the BoE's own account;
- operations acting as the PRA which are funded by the PRA levy; and
- supervision of Financial Market Infrastructures (FMIs) which are funded by the FMI levy.

According to the policy statement, the levy will be paid into by the same cohort that currently pay into the CRD scheme. The BoE will determine the total policy levy annually to match budgeted expenditure and will notify industry of the aggregate costs that it has set. As with the current CRD scheme, it is intended that secondary legislation will allocate policy costs to payers in proportion to their eligible liability base.

The BoE will notify eligible institutions of the amount of the levy that they are liable to pay and the time and method by which the levy must be paid. In the event of an eligible institution's failure to pay the levy, the outstanding amount will be recoverable as a debt due to the BoE.

Once the new levy scheme is introduced, the BoE intends to publish a standalone framework document outlining its approach to levying policy costs, which will be consulted on prior to being finalised. The UK Government intends to legislate on the new levy scheme when Parliamentary time allows.

UK and Japan publish joint statement following UK-Japan Financial Regulatory Forum

The United Kingdom (UK) and Japan have signed an [exchange of letters](#) operationalising key financial services provisions under the UK-Japan Comprehensive Economic Partnership Agreement at the inaugural Financial Regulatory Forum.

The exchange of letters formally establishes the Financial Regulatory Forum and sets out how the parties intend to use the forum to progress their shared priorities for financial services. It includes provisions for the exchange of information, consultation, deference, technical mediation and cooperation on diversity in finance, sustainable finance and other emerging issues.

At the first forum, the UK and Japan also discussed approaches for supporting access to their markets by international firms, cross-border data flows, diversity in financial services and opportunities in the insurance, asset management and fintech sectors.

MAR: BaFin applies revised ESMA guidelines on delayed disclosure of inside information

The German Federal Financial Supervisory Authority (BaFin) has [announced](#) that it complies with, and applies without limitation, the [revised ESMA guidelines](#) on the delay in the disclosure of inside information and interactions with prudential supervision under the Market Abuse Regulation (MAR). The German version of the revised MAR guidelines was published on 13 April 2022.

The MAR guidelines were amended to reflect the interaction between the MAR transparency obligations on inside information and the prudential supervisory framework. They clarify, among other things, that:

- the existing list of cases where immediate disclosure of inside information is likely to prejudice the issuers' legitimate interests within the meaning of MAR article 17(4)(a) has been extended to include cases where institutions intend to carry out redemptions, reductions and repurchases of own funds pending regulatory authorisation, and cases of draft Supervisory Review and Evaluation Process (SREP) decisions or related preliminary information;
- Pillar 2 Capital Requirements (P2R) are highly likely to meet the definition of inside information under MAR; and
- Pillar 2 Capital Guidance (P2G) may be inside information under MAR, whenever assessed as price sensitive.

BaFin publishes guidance note on licence procedure for operation of crypto-securities register

BaFin has published a [guidance note](#) on the licence application process for the operation of crypto-securities registers. The note is intended to highlight to companies the aspects of the licensing procedure that BaFin deems particularly important. It is targeted at companies that wish to apply for a licence to operate a crypto-securities register within the meaning of section 1 para.1a sentence 2 no.8 of the German Banking Act (KWG).

The note has been published following the enactment of the Law on the Introduction of Electronic Securities (eWpG), which establishes the operation of crypto-securities registers as a new financial service under the KWG. Since eWpG entered into force on 10 June 2021, companies wishing to provide this service require a licence from BaFin. Under the transitional provision of section 65 KWG, the licence is deemed to have been granted provisionally if the respective company started its activities by 10 December 2021 and had notified BaFin of its intention to do so two months prior to commencing operations. Companies must then submit a complete application for a licence no later than six months after commencing operations.

The granting of a licence requires among other things:

- an initial capital of at least EUR 150,000;
- reliable company owners and reliable and professionally qualified management board members; and
- adequate IT security.

Amendments to Dutch Financial Supervision Act passed by Dutch Parliament

A [Bill](#) to amend the Dutch Financial Supervision Act (Wijzigingswet financiële markten 2022) has been passed by the Dutch Parliament.

Among other things, the Bill introduces a new possibility for investment firms, payment institutions, electronic money institutions and payment processing service providers (afwikkelondernemingen) to make use of a bank account which will be segregated by law from the relevant institution's own assets.

The introduction of the segregated bank account aims to simplify the way in which client money may be safeguarded and take away certain regulatory hurdles and corporate administrative requirements.

The segregated bank account is intended to offer highly practical improvements for relevant institutions in respect of safeguarding funds in the Netherlands. Expectations are that the use of the segregated bank account will be widely adopted once the Bill has entered into force.

The Bill is expected to enter in force as of 1 July 2022.

PBoC, CSRC and SAFE issue circular on facilitating overseas investment in China's bond market

The People's Bank of China (PBoC), the China Securities Regulatory Commission (CSRC) and the State Administration of Foreign Exchange (SAFE) have jointly issued a [circular](#) (Circular No. 4) on matters relating to the further facilitation of overseas institutional investors' (OIs') investment in China's bond market.

The circular aims to further support investment and participation by OIs in China's bond market, particularly the exchange bond market (EBM), by offering more convenient forms of market access and custody arrangements. Key measures set out in the circular include:

- simplified procedures to access the EBM: OIs permitted to invest in the China Interbank Bond Market (CIBM) may invest in the EBM directly or through the interconnectivity mechanism between CIBM and EBM without additional filing or approval procedures;
- expanded scope of products: OIs may invest in cash bonds, open-ended bond-index securities investment funds and other types of products permitted by PBoC and CSRC, and enter into bond lending and borrowing as well as derivatives transactions for the purpose of risk management;
- multi-layer custody structure: in addition to the traditional settlement agency model where an OI directly opens an account in the CIBM, the circular provides that an OI may appoint, directly or indirectly through its overseas custodian bank, a qualified onshore custodian bank to hold the bonds on the OI's behalf, whereby the relevant bonds will be recorded under the name of the domestic custodian bank with the beneficial ownership of such OI protected under PRC law; and
- transfer of bonds/cash with qualified foreign investor (QFI) accounts: an OI may transfer bonds (on a non-trade transfer basis) and cash between its account opened under the QFI regime and an account opened pursuant to the circular.

The circular will come into effect from 30 June 2022.

HKEX consults on revisions to position limits and large open position reporting requirements

The Hong Kong Exchanges and Clearing Limited (HKEX) has published a [consultation paper](#) on its proposed revisions to:

- the position limit regime for single stock options (SSOs) and single stock futures (SSFs); and

- the additional position limits and large open position (LOP) reporting requirements for mini-Hang Seng Index (HSI) and mini-Hang Seng China Enterprises Index (HSCEI) derivatives contracts.

The current position limit regime for SSOs has been in place since 2017 and there have been no revisions to the position limit regime of SSFs since its introduction in 1995. The HKEX is therefore proposing a series of revisions intended to support the continuous growth of Hong Kong's derivatives market.

Part 1 of the consultation paper focuses on SSOs traded on The Stock Exchange of Hong Kong Limited and SSFs traded on Hong Kong Futures Exchange Limited. In particular, the HKEX seeks comments on its proposal to introduce additional tiers for 200,000 and 250,000 contracts to the SSO exchange-level position limit model, and to introduce a tiered exchange-level position limit model for SSFs.

Part 2 of the consultation paper seeks comments on proposed changes to exchange-level position limits for mini-HSI and mini-HSCEI futures and options contracts and the exchange-determined LOP reporting requirements.

Comments on the consultation are due by 30 June 2022.

SFC reminds investors of risks associated with non-fungible tokens

The Securities and Futures Commission (SFC) has issued a [reminder](#) to investors on the risks associated with investing in non-fungible tokens (NFTs). As with other virtual assets, NFTs are exposed to heightened risks including illiquid secondary markets, volatility, opaque pricing, hacking and fraud. Where an NFT is a genuine digital representation of a collectible, the activities related to it do not fall within the SFC's regulatory remit.

However, the SFC has recently observed NFTs which cross the boundary between a collectible and a financial asset. One such example provided by the SFC is fractionalised or fungible NFTs structured in a form similar to 'securities', or in particular, interests in a collective investment scheme (CIS).

The SFC notes that where an NFT constitutes an interest in a CIS, marketing or distributing it may constitute a regulated activity. Parties carrying on a regulated activity, whether in Hong Kong or targeting Hong Kong investors, are required to be licensed with the SFC unless an exemption applies. In addition, where an arrangement in relation to an NFT involves an offer to the Hong Kong public to participate in a CIS, authorisation requirements under the Securities and Futures Ordinance may also be triggered.

FSA publishes English translation of major banks supervision guidelines

The Japan Financial Services Agency (FSA) has published an [English translation](#) of the 'Comprehensive Guidelines for Supervision of Major Banks'. These guidelines systematically show the key principles in financial supervision, the points to note during administrative processes, and supervisory evaluation points, serving as a guide for staff members assigned to the duties of supervising major banks. Japanese branches or offices of non-Japanese banks are also subject to the FSA's supervision under these guidelines.

In recent years, as Japanese financial institutions have been expanding their business overseas, the FSA has been making efforts to accurately communicate the policies and focal points of the supervision of major banks to overseas authorities and foreign financial institutions and has also been working to strengthen the cooperation with overseas authorities on supervisory measures. To further this objective, the FSA has published the English translation (preliminary version) of these guidelines.

MAS and ABS announce additional measures on digital banking security

The Monetary Authority of Singapore (MAS) and the Association of Banks in Singapore (ABS) have [announced](#) additional measures intended to further safeguard customers from digital banking scams.

These measures build on those announced in January 2022 and:

- require additional customer confirmations to process significant changes to customer accounts and other high-risk transactions identified through fraud surveillance;
- set the default transaction limit for online funds transfers to SGD 5,000 or lower;
- provide an emergency self-service 'kill switch' for customers to suspend their accounts quickly if they suspect their bank accounts have been compromised;
- facilitate rapid account freezing and fund recovery operations by co-locating bank staff at the Singapore Police Force (SPF) Anti-Scam Centre; and
- enhance fraud surveillance systems so that they consider a broader range of scam scenarios.

In addition, to further support sustained investment in the industry's anti-scam initiatives, an ABS Standing Committee on fraud, comprising the seven domestic systemically important banks, will take forward the work began by the Anti-Scam Taskforce, which was established in 2020. A draft framework aimed at achieving an equitable loss sharing between consumers and financial institutions is also being finalised and will be published shortly for public consultation as part of the revised e-payments user protection guidelines.

The MAS notes that banks have been progressively implementing the additional measures in consultation with itself and the SPF. The measures will be fully effective from 31 October 2022.

MAS publishes information papers on environmental risk management

The Monetary Authority of Singapore (MAS) has published a [set of information papers](#) on environmental risk management (ERM) for financial institutions (FIs), including banks, insurers and asset managers.

The papers are based on a thematic review conducted by the MAS in 2021 on selected FIs. They are intended to provide an overview of the FIs' progress in implementing the MAS guidelines on ERM, highlight emerging and/or good practices by FIs, and identify areas where further work is needed.

In particular, the MAS expects FIs to:

- refer to the industry practices shared in the papers, and assess the applicability of the practices to their efforts to strengthen their resilience to environmental risk in a way that is commensurate to their size, nature of activities and risk profile;
- pay attention to the impact of their efforts on business strategies and risks, as well as on the financial system and the broader transition to a sustainable economy; and
- set tangible and ambitious targets to address environmental risk as a matter of urgency.

The MAS notes it will continue to collaborate with FIs to accelerate their efforts in turning their environmental risk strategy and risk appetite into concrete milestones and tangible targets for action.

MAS revises guidelines on business continuity management

The MAS has issued [revised Guidelines on Business Continuity Management](#) (BCM) for FIs, to help FIs strengthen their resilience against service disruptions arising from IT outages, pandemic outbreaks, cyber-attacks and physical threats.

The revised BCM Guidelines incorporate feedback received from two rounds of public consultations launched in March 2019 and October 2021 respectively. These guidelines supersede the previous version published in June 2003, as well as the circular titled 'Further Guidance on BCM' that was issued in January 2006. The MAS has also published its response to the feedback received for its second consultation launched in October 2021.

In particular, the revised BCM Guidelines expect FIs to:

- adopt a service-centric approach through timely recovery of critical business services facing customers;
- identify end-to-end dependencies that support critical business services, and address any gaps that could hinder the effective recovery of such services; and
- enhance threat monitoring and environmental scanning, and conduct regular audits, tests and industry exercises.

FIs are expected to meet the BCM Guidelines within 12 months following its issuance. They should establish their BCM audit plan within 12 months, and the first BCM audit should be conducted within 24 months of the issuance of the BCM Guidelines.

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

ASIC highlights focus areas for 30 June 2022 financial reporting by companies

The Australian Securities and Investments Commission (ASIC) has [highlighted](#) its key focus areas for financial reporting by companies for the reporting period ending 30 June 2022.

In particular, ASIC requires directors, preparers of annual and half-year reports and auditors to focus on the reporting of asset values, provisions, solvency and going concern assessments, events occurring after year end and before the completion of the financial report, and disclosures in the financial report and operating and financial review.

ASIC notes that companies may continue to face some uncertainties regarding future economic and market conditions and the impact on their businesses. It advises companies that assumptions underlying estimates and assessments for financial reporting purposes should be reasonable and supportable. It also requires directors and management to assess how the current and future performance of a company, the value of its assets and its provisions, and business strategies may be affected by changing circumstances, uncertainties and risks such as:

- COVID-19 conditions and restrictions during the reporting period;
- changes in customer preferences and online purchasing trends;
- the discontinuation of financial and other support from governments, lenders and lessors;
- the impact of rising interest rates on future cash flows and on discount rates used in valuing assets and liabilities;
- geopolitical risks, including the Ukraine/Russia conflict;
- commitments and policies on climate and carbon emissions by governments;
- technological changes and innovation;
- legislative and regulatory changes; and
- other economic and market developments.

RECENT CLIFFORD CHANCE BRIEFINGS

Decoding distress – Cryptoassets, restructuring, and insolvency under English law

The cryptoasset market has grown enormously since Bitcoin was launched in 2009, reaching an estimated aggregate value of USD 3 trillion by November 2021, according to the ECB. But in recent months investors have weathered losses estimated by the ECB at USD 1.3 trillion, with the failure of the TerraUSD stablecoin, and the Tether stablecoin that underpins much other trading in cryptocurrencies falling (at least for a time) below its USD 1 peg. Market participants, regulators and other stakeholders therefore need to pay close attention to how cryptoassets may be treated in a distressed scenario.

This briefing discusses the current status of English law as it relates to cryptoassets, restructurings and insolvency.

Clifford Chance website version

<https://www.cliffordchance.com/briefings/2022/05/decoding-distress-cryptoassets-restructuring-and-insolvency-under-english-law.html>

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