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ESMA publishes annual peer review of CCP supervision

The European Securities and Markets Authority (ESMA) has published its [annual peer review report](#) on the supervision of EU central counterparties (CCPs) by national competent authorities (NCAs).

The review measures the effectiveness of NCA supervisory practices in assessing CCP compliance with the requirements in the European Market Infrastructure Regulation (EMIR) on business continuity, in particular in remote access mode.

The report concludes that the participating NCAs broadly met the supervisory expectations and shows that some aspects of business continuity in remote access mode were not always specifically assessed. In most cases, this is explained by the fact that at many CCPs remote working was already common practice or part of existing business continuity arrangements and therefore remote working did not introduce any new major risks to be re-assessed.

The report identifies ten best practices from NCAs' supervisory activities and approaches with respect to business continuity in remote access mode. It also details the following observations on remote access:

- NCAs could better clarify, when defining their risk-based approach, how operational risks related to remote access are addressed;
- from a supervisory perspective, CCPs could better clarify the risk-based scope of penetration testing and how risks related to remote access are addressed as part of this; and

- business continuity management (BCM) plans could be improved by taking into account other extreme scenarios, where remote working arrangements could serve to ensure business continuity.

On the functioning of CCP colleges, the review of colleges' activities during the reporting period remains overall positive.

ESMA intends to follow up on the report's findings to identify, where relevant, the most appropriate tools to further enhance supervisory convergence.

Investment firms: ESMA and EBA publish SREP guidelines and Pillar 2 add-ons RTS under IFD

ESMA and European Banking Authority (EBA) have published [joint final guidelines](#) on common procedures and methodologies for the supervisory review and evaluation process (SREP) under the Investment Firms Directive (EU) 2019/2034) (IFD).

The final guidelines (EBA/GL/2022/09) set out the process and criteria for the following main SREP elements:

- business model analysis;
- assessment of internal governance and investment firm-wide control arrangements;
- assessment of risks to capital and adequacy of capital to cover these risks; and
- assessment of risks to liquidity and funding and adequacy of liquidity resources to cover these risks.

The guidelines also provide clarifications on the monitoring of key indicators, on the application of SREP to cross-border groups and on the use of supervisory measures.

The EBA has also published final draft [regulatory technical standards](#) (RTS) on Pillar 2 add-ons under the IFD.

The RTS on the determination of additional own funds requirements (EBA/RTS/2022/07), which were developed in consultation with ESMA and should be read together with the recently published SREP guidelines, set out a number of indicative qualitative metrics to support competent authorities in the identification, assessment and quantification of material risks and elements of risks not covered or not sufficiently covered by own funds requirements set out in Article 11 of the Investment Firms Regulation (IFR). The proposed metrics seek to reflect the size, complexity of activities and business models of the various investment firms across the EU.

The RTS have been submitted to the EU commission for endorsement. The EBA notes that the RTS should be in force when the SREP guidelines become applicable.

Mansion House speech: Chancellor sets out Government's priorities

The Chancellor of the Exchequer, Nadhim Zahawi, has delivered a [Mansion House speech](#) setting out the Government's priorities for the UK economy and financial sector in the coming months.

The Government's priorities are to:

- deliver a coordinated approach to controlling inflation;
- create the conditions for private sector recovery and growth; and
- deliver the Government's vision for financial services, such as through the introduction of the Financial Services and Markets Bill.

The speech also sets out other Government initiatives and intentions, including:

- the publication of a joint report with the City of London Corporation on the state of the UK financial and professional services sector;
- to publish later this year a second Economic Crime Bill setting out new powers to encourage better private sector information sharing;
- an intention to reform regulations to attract green finance to the UK;
- a review of how distributed ledger technology (DLT) could be applied to a UK sovereign debt instrument;
- new anti-fraud responsibilities for tech companies to be included in the Online Safety Bill;
- acceptance in full of the recommendations on secondary market fund raising, including a proposal to establish a new taskforce to modernise the UK's shareholding framework;
- to respond later this year to the report on ring-fencing; and
- welcoming the establishment of the independent Capital Markets Industry Taskforce.

Financial Services and Markets Bill introduced to Parliament

The [Financial Services and Markets Bill](#) has been introduced to Parliament.

As noted in the Chancellor of the Exchequer's [Mansion House speech](#) and in the Government's response to its [Future Regulatory Framework \(FRF\) Review](#), provisions in the Bill include:

- repeal of certain retained EU law;
- providing the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) with a new secondary objective of facilitating growth and competitiveness;
- introducing new measures to increase the regulators' accountability and relationships with Government and stakeholders;
- reform of Solvency II;
- reform of the Prospectus Regime; and
- implementation of the outcomes of the Wholesale Capital Markets review, including removal of the double volume cap and share trading obligation.

The Government's response to the FRF Review also includes an intention to create a legislative framework for a designated activities regime (DAR) which will enable HM Treasury (HMT) to bring activities related or connected to financial markets within the FSMA model.

Alongside its response to the FRF Review, the Government has also published its [response](#) to its January 2022 consultation on proposals relating to the Bank of England's (BoE's) regulation of CCPs and central securities depositories (CSDs).

UK Secondary Capital Raising Review published

The UK Secondary Capital Raising Review has published its [report](#) on how to improve the efficiency of secondary capital raisings by UK listed companies.

The report sets out a series of recommendations to the Government, the FCA and the Pre-Emption Group (PEG), including:

- protecting the rights of existing shareholders by maintaining and enhancing the UK pre-emption regime;
- reducing regulatory involvement in fundraisings, including by raising the threshold at which a prospectus should be required for a further issuance, removing the requirement for a sponsor to be appointed by an issuer, and reconsidering the FCA's approach to working capital statements;
- making existing fundraising structures quicker and cheaper by making changes to the Companies Act;
- increasing the range of choice of fundraising structures for companies, including by replicating the key principles and structure of Australian offer processes for smaller fundraisings; and
- establishing a Taskforce on Shareholding Digitisation to consider digitising and reforming the UK shareholding ownership framework.

Government announces launch of Digitisation Taskforce to support modernisation of shareholding framework

The Government has announced the launch of a [new Digitisation Taskforce](#), which will be responsible for supporting the modernisation of the UK's shareholding framework. Its establishment was one of a series of recommendations made in the UK Secondary Capital Raising Review.

The taskforce will be led by Sir Douglas Flint, the chair of ABRDN Plc, and will work with stakeholders across the financial services sector to:

- identify immediate and longer term means of improving on the current intermediated system of share ownership;
- eliminate the use of paper share certificates for traded companies and mandate the use of additional options to cheques for cash remittances; and
- consider whether the arrangements for digitisation can be extended to newly formed private companies and can be added as an optional route for existing UK private companies.

It has been asked to provide a public report on its progress and initial findings by spring 2023, and to publish its final recommendations and an implementation plan by spring 2024.

Government publishes artificial intelligence policy paper and action plan

The Department for Digital Culture, Media and Sport (DCMS), the Department for Business, Energy and Industrial Strategy (BEIS), and the Office for Artificial Intelligence (AI) have published a [policy paper](#) and action plan on the regulation of AI in the UK.

The policy paper sets out the Government's national strategy for governing and regulating AI over the next ten years. The paper builds on the national AI strategy which was published by the Government in September 2021. It is intended to support innovation and position the UK as a competitive and leading jurisdiction for AI development, while also addressing the challenges and risks the technology can pose. Key elements include:

- establishing a proportional regime, which regulates AI based on its use and the impact it has on individuals, groups and businesses;
- delegating the detailed design and implementation of AI regulation to the relevant regulators, with a focus on the areas identified as particularly high-risk;
- encouraging regulators to follow a set of cross-sectoral principles established by the Government, which are tailored to the particular characteristics of AI and which should be adapted and prioritised depending on the needs of the regulators' sectors and domains; and
- encouraging regulators to consider lighter touch options, such as guidance or voluntary measures, in the first instance. The cross-sectoral principles will also be non-statutory in nature, with the Government keeping both approaches under review.

The paper requests stakeholder feedback on the strategy, with comments due by 26 September 2022. The responses will be used to inform a Government white paper on the subject.

Alongside the paper, DCMS, BEIS and the Office for AI have also published an [AI action plan](#), which outlines the activities the departments have undertaken to support the September 2021 national AI strategy, as well their plans under the new strategy.

State of the sector: annual review of UK financial services 2022 report published

HMT and the City of London Corporation have published the [first annual review report](#) on the state of the UK financial services sector.

The report is the result of a recommendation from Lord Hill's UK Listing Review to publish an annual review on the international attractiveness of the sector and is intended to inform policymaking and debate by:

- monitoring and commenting on key performance indicators;
- providing an overview of the steps Government and regulators are taking to improve the sector and wider ecosystem; and
- identifying potential areas for further reform.

The report is divided into chapters focused on the following themes:

- an open and global financial hub;

- an integrated ecosystem driving growth across the UK;
- a sector at the forefront of technology and innovation;
- a world leader in green finance; and
- a competitive marketplace promoting effective use of capital.

Key findings include that:

- the UK should remain aligned with global standards and seek outcomes-based trading relationships with global markets, and introduce regulation better tailored to its domestic markets;
- the UK should consider a route that would allow international workers to enter the UK for short-term, productive activity without requiring a visa; and
- that regulators should be adequately resourced and have efficient supervisory processes, including the need to improve the speed of FCA authorisation turnaround times.

A table of the actions the UK Government is taking is set out in Annex 2.

HM Treasury consults on reforms to payments regulation and systemic payments perimeter of BoE

HMT has launched a [consultation and a call for evidence](#) on the Government's proposed approach to reforming the payments regulatory landscape, including amendments to the systemic payments perimeter of the BoE.

Following its review of the payments landscape in 2020, the Government committed to consulting on bringing systemically important entities operating within payment chains into the BoE's regulatory perimeter. This was in response to feedback received during the review, which suggested that innovation, new services and greater interconnectivity have substantially changed the way that risks are spread across payment systems, and that the current scope of the BoE's supervisory powers under the Banking Act 2009 is no longer adequate.

In particular, the consultation seeks feedback on:

- the Government's rationale for expanding the BoE's perimeter beyond payment systems and associated service providers;
- the principles it would apply to the expansion of the perimeter, including a focus on a 'same risk, same regulatory outcome' approach;
- specific proposals regarding how risk would be regulated throughout the payment chain, what criteria would apply to recognising new entities under the expanded perimeter, and what role HMT would play in identifying these entities;
- the changes that would be required to ensure the BoE is able to deploy its supervisory powers effectively and proportionately; and
- how accountability could be enhanced as part of the expansion of the BoE's regulatory remit.

Separately, the consultation also sets out:

- the Government's proposed approach to applying the findings of the Financial FRF Review, and the Senior Managers and Certification Regime, to the wider payments regulatory landscape; and

- proposed changes to clarify the regulatory framework of the Payment Systems Regulator under the Financial Services (Banking Reform) Act 2013.

Comments are due by 11 October 2022.

Financial Services Act 2021 (Prudential Regulation of Credit Institutions and Investment Firms) (Consequential Amendments and Miscellaneous Provisions) Regulations 2022 made

[The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2022](#) have been made.

The Regulations include consequential amendments following the introduction of the Investment Firms Prudential Regime (IFPR) by the Financial Services Act 2021 (FS Act) and the Basel III standards. The Regulations:

- repeal the Banking Act 2009 (Exclusion of Investment Firms of a Specified Description) Order 2014;
- make transitional provision in respect of risk retention requirements for certain securitisations;
- make amendments to ensure that short-term liabilities owed to investment firms regulated by the PRA or the FCA with permission to underwrite or deal on own account will continue to be exempt from bail-in; and
- address further deficiencies arising from the withdrawal of the UK from the EU.

The Regulations will come into force on 17 August 2022.

Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022 made

[The Money Laundering and Terrorist Financing \(Amendment\) \(No. 2\) Regulations 2022](#) (SI 2022/860) have been made.

Amongst other things, SI 2022/860 amends the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the MLRs) to:

- implement, in respect of cryptoasset transfers, a recommendation of the Financial Action Task Force and insert a new Part 7A (cryptoasset transfers) into the MLRs, which, amongst other things, requires a cryptoasset business to include with the transfer of a cryptoasset to another cryptoasset business, specified information about the originator and beneficiary of the transfer;
- extend the obligation on relevant persons to report discrepancies to the registrar of companies between information they hold on the beneficial ownership of a customer and information on the register;
- widen the meaning of a trust or company service provider (TCSP) by amending regulation 12 of the MLRs so that it covers the formation of all forms of business arrangement, not just companies and other legal persons. By extending this to the formation of a 'firm', which is defined in

regulation 3 of the MLRs, this will also now cover limited partnerships which are registered in England and Wales or Northern Ireland;

- remove from the MLRs the requirements in Part 5A for a centralised automated mechanism to identify persons holding or controlling bank accounts or safe deposit boxes through a bank account portal;
- allow the FCA to object to an acquisition or change in control of a registered cryptoasset business before the acquisition takes place, and to publish notices relating to such objection. The regulation also makes provision for the FCA and HMRC to publish notices of refusals to register applicants for registration;
- make clear that supervisory authorities can request suspicious activity reports from their members, to assist in meeting their supervisory functions; and
- remove account information service providers (or AISPs) from the scope of the MLRs.

UK supervisory authorities consult on resilience of critical third parties

The BoE, PRA and FCA have published a [discussion paper](#) on assessing and strengthening the resilience of services provided by critical third parties (CTPs) (DP3/22).

DP3/22 sets out potential measures the supervisory authorities could introduce using their proposed powers in the Financial Services and Markets (FSM) Bill, including:

- a framework for identifying potential CTPs and recommending their designation to HMT based on the proposed designation criteria in the FSM Bill;
- minimum resilience standards that CTPs could be required to meet in respect of material services they provide to firms and financial market infrastructure firms (FMIs); and
- resilience testing of CTPs set by the supervisory authorities and focused on the material services provided to firms and FMIs.

Comments are due by 23 December 2022.

FCA publishes annual report 2021/22

The FCA has published its [2021/22 annual report](#), setting out the work it has done towards achieving its priorities.

Among other things, the report highlights that the FCA:

- developed a new Consumer Duty, to require firms to focus on delivering good outcomes for consumers;
- launched an InvestSmart campaign to help consumers understand the risks presented by a high-risk investment;
- provided guidance to introduce changes to buy now pay later (BNPL) firms' contract terms;
- introduced general insurance pricing practices rules to stop firms overcharging loyal customers;

- carried out its first criminal prosecution under anti-money laundering legislation;
- updated the listing regime to ensure that the UK remains a trusted and attractive place to list companies; and
- demonstrated a more robust approach to authorisations, with 80% of crypto firms applying to be registered by the FCA for anti-money laundering purposes either dropping their application or being declined after the FCA had reviewed their anti-financial crime systems and controls and found them wanting.

BoE and FCA publish response to data transformation programme recommendations

The BoE and FCA have published their [joint response](#) to the [phase one recommendations](#) by the joint transformation programme on data collection.

The BoE and FCA announced in February 2021 their intention to make major reforms to data collection in order to give regulators better quality data while minimising the burden of data collection on firms. In July 2021 the joint transformation programme was set up by the BoE and FCA to help deliver these reforms.

The joint transformation programme has made seven recommendations to the BoE and the FCA relating to phase one use cases on:

- the quarterly derivatives statistical return 'Form DQ', aiming to design improvements to data on the derivative asset and liability positions of the UK financial sector; and
- the financial resilience survey, aiming to formalise a post-pandemic ad-hoc collection of select data points from FCA firms used for prudential risk monitoring.

The BoE and FCA have agreed to accept all of the recommendations in principle. For some recommendations, the BoE and FCA are keen to move to delivery of solutions immediately. For other recommendations, the joint transformation programme will need to explore the solutions further to understand how they might be delivered and the associated business case.

The joint transformation programme expects to make recommendations relating to the commercial real estate (CRE) data use case at a later date.

BoE and PRA publish prudential and resolution policy index

The BoE and PRA have jointly published an [index of prudential and resolution policies](#).

The index is intended to help firms identify which policies are relevant for their particular areas of business and provides lists of currently applicable policies grouped into sectors and topic areas relating to:

- the prudential regulation of financial services firms by the PRA; and
- firms in scope of the UK resolution regime.

Sources covered by the index include:

- the PRA rulebook (including waivers and modifications);

- UK legislation and technical standards;
- PRA supervisory statements, statements of policy and approach documents;
- publications issued by the BoE as resolution authority; and
- other relevant materials, such as guidelines issued by the European Supervisory Authorities (ESAs) and applicable at the end of the transition period.

The index does not include materials relating to the development of new policy, such as discussion papers, consultation papers and policy statements.

PRA consults on methodology for identifying O-SII

The PRA has published a [consultation paper](#) on proposed changes to the criteria and scoring methodology used to identify other systemically important institutions (O-SIIs).

The proposals are intended to streamline the PRA's approach to identifying O-SIIs following the UK's withdrawal from the EU by removing the EBA's scoring methodology from the identification process and deleting the EBA guidelines. This would remove the need to carry out two parallel scoring methodologies and reduce the complexity of the process.

The proposed approach should more accurately identify firms whose distress or failure would have a systemic impact on the UK economy or financial system by ensuring that the methodology captures, and puts sufficient weight on, key activities for the real economy, such as retail banking and payments.

In addition, the PRA believes that the proposals would reduce the cost of the annual O-SII identification process, promote the efficient use of resources, and enhance proportionality for regulated firms.

The proposals would result in changes to the statement of policy (SoP) on the PRA's approach to identifying O-SIIs and an amendment to the SoP titled 'Interpretation of EU Guidelines and Recommendation: Bank of England and PRA approach after the UK's withdrawal from the EU'.

Comments are due by 22 September 2022.

FRC sets out reforms to audit and corporate governance framework

The Financial Reporting Council (FRC) has published a [position paper](#) setting out the next steps for reform of the UK's audit and corporate governance framework.

This follows the Government response to the consultation on strengthening the UK's corporate governance, corporate reporting and audit systems, including the creation of the Audit, Reporting and Governance Authority (ARGA) to replace the FRC.

The paper sets out the FRC's plans for reform to be delivered ahead of Government legislation, including:

- revising existing codes;
- strengthening auditing and accounting standards;

- setting expectations to drive behavioural change ahead of statutory powers; and
- the development of guidance to address issues set out in the Government response.

In particular, the FRC sets out proposed changes to the UK Corporate Governance Code. The proposed changes are intended to provide a stronger framework for reporting on the effectiveness of internal controls and board responsibilities for expanded sustainability and environmental, social and governance (ESG) reporting, and new guidance on enhanced resilience statements and fraud reporting by directors.

Central bank digital currency: Banque de France announces launch of second phase of experimentation

François Villeroy de Galhau, the Governor of the Banque de France, has [announced](#) the launch of the second phase of the Banque de France's experimentation programme on a 'wholesale' CBDC at the Paris Europlace International Financial Forum, with four or five additional experiments starting this semester.

Last year, the Banque de France successfully completed the first stage of its 'wholesale' CBDC experimentation programme, comprising nine experiments, in close partnership with the private sector and other public actors. As a result of its experiments, the Banque de France has developed direct technical expertise including two key innovative assets created in the Banque de France:

- a proprietary DLT technology, called DL3S; and
- an automated market maker platform inspired by the DeFi markets, which could serve as the basis of a multi-CBDC platform where different central banks come together to enable settlement across currencies.

The Governor has indicated that the Banque de France wants to get closer to a viable prototype, testing it in practice with more private actors and more foreign central banks in the second half of 2022 and in 2023, in order to be ready to introduce central bank money as a settlement asset from 2023, with the implementation of the European pilot regime.

Regarding a 'retail' CBDC, the Governor reiterated that the Eurosystem has decided on a two-year investigation phase on the issuance of a digital euro, before taking a decision about whether to go further by the end of 2023 / early 2024, and that the Eurosystem is currently looking at the possible scope and design of a digital euro.

AMF and ARPP strengthen cooperation for clear and responsible advertising of financial products including crypto assets

The Autorité des marchés financiers (AMF) and the Autorité de régulation professionnelle de la publicité (ARPP) have agreed on an [amendment to their partnership agreement](#) on communications in the financial services sector. This agreement now covers crypto-assets and related services.

The two authorities have also drawn up a joint work programme for 2022-2023, including:

- the creation of an ARPP recommendation on communications on crypto-assets and token offerings;
- the update of the ARPP's recommendations on communications about financial and investment products and services (so as to cover the AMF's policy on sustainable finance communications), on communications regarding leveraged financial contracts and products (Forex, binary options), and on atypical investments and related services (miscellaneous assets such as wine, precious metals, etc.); and
- the creation of a specific module in the Responsible Influence Certificate launched in 2021 by the ARPP, dedicated to the financial sector, intended to present the best practices and rules that apply in this area.

ACPR replaces its position on PSD2 notions of 'limited network' and 'limited range of goods and services'

The Autorité de Contrôle Prudentiel et de Résolution (ACPR) has published a [position](#) replacing its former position 2017-P-01 on the PSD2 notions of 'limited network' and 'limited range of goods and services'.

The new version of the position is intended to take into account recent market developments and the EBA's guidelines on the limited network exclusion under PSD2 published in February 2022.

The purpose of the position is to clarify the criteria enabling to assess:

- the exemptions from licensing requirements as a payment institution or electronic money institution for the provision of payment instruments used within a limited network, or for the acquisition of a limited range of goods or services, pursuant to articles L. 521-3, L. 525-5 et L. 525-6 of the French Code monétaire et financier; and
- the waiver to the prohibition of cash loading of an electronic money instrument, when it is used for the acquisition of goods and services in a limited network, or for the acquisition of a limited range of goods and services, in the context of anti-money laundering regulations.

BaFin applies updated ESMA guidelines on stress test scenarios under MMF Regulation

The German Federal Financial Supervisory Authority (BaFin) has [announced](#) that it will apply the [guidelines on stress test scenarios for money market funds](#) (MMFs) published by ESMA in early May with immediate effect.

The ESMA guidelines are intended to ensure an EU-wide common, uniform and consistent application of Article 28 of Regulation (EU) 2017/1131 (MMF Regulation). They establish common reference parameters of the stress test scenarios, as required by Article 28(7) MMF Regulation.

According to Article 28(7) MMF Regulation, ESMA is to update these guidelines at least every year, considering the latest market developments. ESMA's guidelines include e.g. specifications on the types of stress tests and their calibration. MMF managers require this information to fill in the corresponding fields in the reporting template as specified by Commission

Implementing Regulation 2018/708 with respect to reporting obligations under Article 37 MMF Regulation.

CSSF issues communiqué on EBA guidelines on role and responsibilities of AML/CTF compliance officer

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued a [communiqué](#) on the publication by the EBA on 14 June 2022 of the [guidelines](#) on the role, tasks and responsibilities of the anti-money laundering and counter terrorism financing (AML/CTF) compliance officer, the management body and senior manager in charge of AML/CTF compliance as well as internal policies, controls and procedures as referred to in Articles 8, 45 and 46 of Directive (EU) 2015/849.

The CSSF notes that the guidelines apply to credit and financial institutions as defined in Article 3(1) and (2) of Directive (EU) 2015/849.

Important provisions set out in the guidelines include the:

- clarification of the role of the management body in its management function and supervisory functions;
- proportionality criteria for the appointment of a separate AML/CTF compliance officer;
- assessment prior to the appointment, by the credit or financial institutions, of the suitability, skills and expertise that the AML/CTF compliance officer should possess;
- clarification of expectations regarding the role, tasks and responsibilities of the AML/CTF compliance officer and management, including in particular reporting expectations, information transmitted to the Financial Intelligence Unit, training and cooperation with other functions;
- clarification of the list of strategic decisions to comply with AML/CTF obligations that should not be outsourced; and
- organisation of the AML/CTF compliance function at group level with the appointment of a group AML/CTF compliance officer and the tasks and responsibilities assigned.

The guidelines will apply from 1 December 2022 and the CSSF is currently analysing their impact on different regulatory texts.

Luxembourg law of 20 July 2022 implementing EU Regulation on CCP recovery and resolution published

The [Law of 20 July 2022](#) implementing Regulation (EU) 2021/23 on a framework for the recovery and resolution of CCPs has been published in the Luxembourg official journal (Mémorial A).

The Law amends several laws relating to the financial sector, including, among others:

- the Law of 15 March 2016 on OTC derivatives, CCPs and trade repositories (as amended), which will notably be completed by a new Chapter 1bis on the resolution of CCPs which designates the competent ministry and resolution authority and attributes sanction powers to such authorities to ensure compliance with Regulation (EU) 2021/23; and

- the Law of 23 December 1998 establishing a financial sector supervisory commission, the CSSF (as amended), which sets out the new competences of the resolution board.

The CSSF and the resolution board are each attributed new competences regarding the recovery and resolution of CCPs respectively.

The Law also amends the Law of 5 August 2005 on financial collateral arrangements (as amended) by introducing more detailed provisions regarding the enforcement of pledges by public sale as well as the enforcement of pledges over UCI shares or insurance agreements.

The Law entered into force on 24 July 2022.

Luxembourg law of 20 July 2022 creating monitoring committee for restrictive measures in financial matters published

The [Law of 20 July 2022](#) creating a monitoring committee for restrictive measures in financial matters and amending Article 506-1 of the Criminal code (Code pénal) and the Law of 19 December 2020 on the implementation of restrictive measures in financial matters has been published in Mémorial A.

The Law is intended to establish an interinstitutional committee to ensure the active and systematic monitoring that is essential to ensure consistent and effective implementation of financial sanctions, in compliance with the applicable international and national requirements.

The term 'monitoring' is composed of a reactive and a proactive component. The reactive component consists of the examination, analysis and evaluation of quantitative and qualitative data relating to the implementation of financial sanctions. The proactive component consists, in particular, of active and systematic communication, consultation and coordination between all the competent authorities, and aims to formulate proposals for improvement, to set priorities and to decide on measures to be implemented.

The Law also defines the tasks, composition and functioning of the committee.

The committee is composed of a representative of the Minister of Finance, who chairs it, as well as one representative each of the Minister of Foreign and European Affairs, the Minister of Justice, the financial sector supervisory commission (Commission de Surveillance du Secteur Financier), the insurance sector supervisory authority (Commissariat aux Assurances), the tax authority (Administration de l'Enregistrement, des Domaines et de la TVA), and the financial intelligence unit (Cellule de Renseignement Financier).

The Committee will meet as often as its tasks require and at least twice a year.

The Law further amends Article 506-1 of the Criminal code (Code penal) in order to include infringements of Article 10 of the law of 19 December 2020 on the implementation of restrictive measures in financial matters as a money laundering predicate offence.

CNMV updates Q&A on sustainability regulations applicable to financial products

The Comisión Nacional del Mercado de Valores (CNMV) has updated its [Q&A document](#) on sustainability regulations applicable to financial products, in

particular Regulation (EU) 2019/2088 (SFDR) and Regulation (EU) 2020/852 (Taxonomy Regulation) to reflect:

- the entry into force on 2 August 2022 of Level 2 measures to integrate sustainability risks and factors into the Alternative Investment Fund Managers Directive (AIFMD) and the UCITS Directive;
- the Commission Decision of 13 May 2022 on the adoption of answers to the ESAs' questions related to the interpretation of the SFDR and the Taxonomy Regulation; and
- ESMA's supervisory briefing on sustainability risks and disclosures in the area of investment management, published on 31 May 2022.

Japan FSA publishes technical committee's report and draft code of conduct for ESG evaluation and data providers

Following the November 2021 International Organization of Securities Commissions (IOSCO) report on achieving consistent and comparative ESG disclosures, the Japan Financial Services Agency (FSA) established a focused technical committee, which has now released a [report](#) based on which the FSA has published a draft of code of conduct covering the provision and use of ESG evaluation and data.

Focussing on fostering sustainable finance, the report mainly summarises the current issues and recommendations concerning ESG evaluation and data providers as well as investors and companies with the aim of ensuring that ESG evaluation and data are used reliably throughout the investment chain.

With respect to the draft of the code of conduct, which contains all the recommendations of the report on ESG evaluation and data providers, the FSA has launched a [public consultation](#) seeking industry feedback on the draft. The draft also includes some suggestions to investors and companies who refer to, utilise, or rely on ESG data.

The code of conduct is expected to be implemented as soft law and not as legally binding regulations. The in-scope data providers are not expected to become subject to monitoring by the authorities.

Comments on the consultation are due by 5 September 2022.

ABS and SC-STs finalise key settings of MAS Recommended Rate and supplementary guidance for active transition of legacy wholesale market SOR contracts to SORA

The Association of Banks in Singapore (ABS) and the Steering Committee for Singapore Dollar Swap Offer Rate (SOR) & Singapore Interbank Offered Rate (SIBOR) Transition to Singapore Overnight Rate Average (SORA) (SC-STs) have [finalised](#) the key settings of the MAS Recommended Rate (MRR) that will apply as a contractual fallback reference rate in wholesale SOR contracts after 31 December 2024.

The finalised key settings of the MRR and its supplementary guidance for active transition of legacy wholesale SOR contracts are as follows:

- the MRR for the respective tenors will be computed as the sum of compounded SORA-in-arrears and an MRR adjustment spread for the respective Overnight, 1-month, 3-month and 6-month tenors;
- the applicable MRR adjustment spread will be determined using the historical median of the spread between SOR and compounded SORA-in-arrears for the respective tenor, using a 5-year lookback period ending 18 July 2022;
- the SC-STs' supplementary guidance will apply to active transition of SOR corporate loans, bonds, and derivatives contracts to SORA until 31 December 2024. The applicable adjustment spread for interest rate periods until 31 December 2024 should be computed from a linear interpolation between the reference spot spread and the applicable MRR adjustment spread for interest rate periods after 31 December 2024; and
- the SC-STs' supplementary guidance is to be applied directly to the transition of unhedged loans (i.e., without need for further negotiations on pricing), and can serve as a reference starting point for counterparty discussions on the transition of bilateral derivatives and hedged loans.

The SC-STs has also published its [response](#) to the feedback received to its [May 2022 consultation](#) relating to adjustment spreads for the conversion of legacy SOR contracts to SORA. In its response, the SC-STs has finalised the approach for:

- setting the adjustment spreads within the MRR in ISDA IBOR 2020 Fallbacks Protocol, Supplement number 70 to the 2006 ISDA Definitions and the 2021 ISDA Interest Rate Derivatives Definitions, as well as the SC-STs' recommended contractual fallbacks for bilateral and syndicated corporate loans;
- supplementary guidance on adjustments spreads for the period until 31 December 2024, which would support the industry's active transition from SOR; and
- application of the SC-STs supplementary guidance to active transition across various product types.

The SC-STs notes that the outcome of the consultation provides further guidance for the industry to complete its transition from SOR as:

- the SC-STs' supplementary guidance will be immediately useful to further support active transition from legacy wholesale SOR contracts to SORA, particularly for complex and syndicated transactions;
- the setting of the MRR will serve as a point of reference for clearing houses' automatic conversion of cleared SOR derivatives to SORA, which will take place before 30 June 2023; and
- the MRR provides contractual and valuation certainty for wholesale SOR contracts that may remain outstanding after 31 December 2024 when the Fallback Rate (SOR) will be discontinued.

The SC-STs has confirmed that it will publish further guidance on technical and implementation issues by end-September 2022 and introduce an online spread adjustment calculator.

In addition, the SC-STC has published an [‘Addendum: Timelines to cease issuance of SOR and SIBOR-linked financial products’](#), which includes updated information on wind-down targets for banks’ SOR exposures to corporates and new annexures outlining the updated guidance to banks on transition and contract remediation targets for SOR exposures to corporates for loans and derivatives.

MAS and People’s Bank of China renew bilateral currency swap arrangement

The Monetary Authority of Singapore (MAS) and the People’s Bank of China (PBC) have [announced](#) the renewal of the bilateral currency swap arrangement (BCSA) for a further term of five years, until 2027. The BCSA was originally established in 2010 and renewed in 2013, 2016, and 2019.

Under the arrangement, the MAS and the PBC can access liquidity in each other’s currencies to support the financing of trade and investment, and to stabilise financial markets. Up to CNY 300 billion in Chinese Yuan liquidity and SGD 65 billion in Singapore Dollar liquidity will be available to financial institutions operating in Singapore and China respectively.

The BCSA renewal is effective from 13 July 2022.

Federal Reserve Board proposes regulations to implement LIBOR Act

The Board of Governors of the US Federal Reserve System (Federal Reserve Board) has proposed [regulations to implement the Adjustable Interest Rate \(LIBOR\) Act](#). The Federal Reserve Board is proposing to select the following benchmark rates to replace one-, three-, six-, or 12-month tenors USD LIBOR in covered legacy contracts that cannot be easily amended and lack adequate fallback provisions:

- Compound SOFR, in arrears, identified as the ‘Fallback Rate (SOFR)’ in ISDA’s 2020 IBOR Fallbacks Protocol, for derivative transactions;
- Forward-looking Term SOFR having the equivalent tenor, administered by CME Group Benchmark Administration, Ltd., for cash transactions, other than for certain mortgage loans and related securities involving US Government sponsored enterprises (GSE contracts); and
- 30-day Average SOFR, published by the Federal Reserve Bank of New York, for GSE contracts.

The static credit spread adjustments specified in the LIBOR Act will be added to the Board-selected benchmark replacement, subject to a phase-in for consumer loans.

The LIBOR Act will provide certain safe harbor protections from litigation for determining persons who voluntarily use the Board-selected replacement benchmark to replace USD LIBOR.

The Federal Reserve Board is seeking public comment on these proposed implementing regulations. The comment period ends 30 days after the release is published in the Federal Register, which is expected to occur soon.

RECENT CLIFFORD CHANCE BRIEFINGS

Tax treatment of Additional Tier 1, Restricted Tier 1 and corporate hybrids

This technical briefing includes a summary table intended to provide an overview of the tax treatment of Additional Tier 1 (AT1) issued by banks, Restricted Tier 1 (RT1) issued by insurers and corporate hybrids by corporates in certain European jurisdictions (Belgium, Germany, Italy, Netherlands, the UK and Spain).

It discusses the classification, corporate tax deductibility, withholding tax treatment and other important topics of AT1, RT1 and corporate hybrid instruments.

<https://www.cliffordchance.com/briefings/2022/07/tax-treatment-of-additional-tier-1--restricted-tier-1---corporat.html>

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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