INTERNATIONAL REGULATORY UPDATE 22 – 26 AUGUST 2022

- **Capital Markets Union: EBA publishes opinion on amendments to CSDR**
- **ESMA updates ESEF reporting manual**
- **UK EMIR: BoE sets out final policy on modifying derivatives clearing obligation to reflect USD LIBOR reform**
- **FCA establishes new advisory committee to help shape work on ESG issues**
- **FCA launches Diversity, Equity and Inclusion Spotlight initiative for innovative firms**
- **BaFin updates risk warning on investments in crypto values**
- **BMF presents key elements of reform package to combat financial crime**
- **CSSF issues circular on adoption of ESMA guidelines on standardised procedures and messaging protocols under CSDR**
- **MAS publishes information paper on strengthening AML/CFT practices for external asset managers**
- **Recent Clifford Chance briefings: Luxembourg Circular Letter on the outsourcing of CIFA, UCC digital asset amendments and more. Follow this link to the briefings section.**

Capital Markets Union: EBA publishes opinion on amendments to CSDR

The European Central Bank (ECB) has published an opinion on the EU Commission's proposal for a regulation amending the Central Securities Depositories Regulation (CSDR).

The ECB supports the general aim of further facilitating capital markets integration by reducing barriers to the cross-border provision of settlement services. In the opinion, the ECB sets out its observations and proposes a number of amendments to the proposed regulation, which, amongst other things:

- include free-of-payment securities transfers in the exemption from the application of the settlement discipline regime;
- broaden the scope of the definition of default to align it with the definition laid down in the principles for financial market infrastructures (PFMIs);

Clifford Chance's International Regulatory Update is a weekly digest of significant regulatory developments, drawing on our daily content from our Alerter: Finance Industry service.

To request a subscription to our Alerter: Finance Industry service, please subscribe to our Client Portal, where you can also request access to the Financial Markets Toolkit and subscribe to publications, insights and events.

If you would like to know more about the subjects covered in this publication or our services, please contact:

International Regulatory Group Contacts

Marc Benzler +49 69 7199 3304

Caroline Dawson +44 207006 4355

Steven Gatti +1 202 912 5095

Lena Ng +65 6410 2215

Gareth Old +1 212 878 8539

Mark Shipman + 852 2826 8992

Donna Wacker +852 2826 3478

International Regulatory Update Editor

Joachim Richter +44 (0)20 7006 2503

To email one of the above, please use firstname.lastname @cliffordchance.com

Clifford Chance LLP,
10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

- give the non-failing party the flexibility to decide whether or not to trigger the buy-in process;
- exclude securities financing transactions from the scope of any mandatory buy-ins;
- restrict the provision by CSDs and designated credit institutions to other CSDs of banking-type ancillary services to settlement in foreign currencies, exclusively;
- extend the frequency of the regular review and evaluation of banking-type ancillary services to at least every two years, and involve central banks, acting as relevant authorities, in the regular review and evaluation process;
- require all CSDs to monitor and manage risk stemming from netting arrangements, irrespective of whether those CSDs provide banking-type ancillary services or not; and
- afford CSDs and financial market participants sufficient time to adjust their systems when the details of the scope of the settlement discipline regime are specified in Commission delegated acts.

ESMA updates ESEF reporting manual

The European Securities and Markets Authority (ESMA) has published the annual update of its reporting manual on the European Single Electronic Format (ESEF).

The update includes:

- new guidance in relation to the ESEF regulatory technical standards (RTS) requirement to mark up the notes to the IFRS consolidated financial statement following the block tagging approach, including a new section providing guidance on ESMA's expectations on how to perform such block-tagging;
- a new section on ESMA's expectations when issuers publish annual financial reports in other formats than the ESEF and further guidance when publishing annual financial reports in several languages; and
- new technical guidance such as the construction of a block tag or ESMA's expectation to also tag dashes or empty fields in figures even if they are not considered numbers.

ESMA expects issuers to follow the guidance provided in the ESEF reporting manual when preparing their 2022 annual financial reports and software firms when developing software used for the preparation of annual financial reports in Inline XBRL.

FCA establishes new advisory committee to help shape work on ESG issues

The Financial Conduct Authority (FCA) is establishing a new advisory committee to work on environmental, social and governance (ESG) issues. The committee's role will be to provide advice on:

- how the FCA Board executes oversight of ESG issues relevant to the FCA;
- relevant emerging ESG topics or issues; and

- how the FCA should develop its ESG strategy, in keeping with the organisation's statutory objectives and regulatory principles.

The committee's membership will include a small number of external experts with in depth knowledge of ESG issues in the financial sector. The committee is expected to meet for the first time in Q4 2022, and quarterly from then onwards.

Stakeholders that are interested in joining the Committee have been invited to contact the ESG Advisory Committee with a copy of their CV by 16 September 2022.

UK EMIR: BoE sets out final policy on modifying derivatives clearing obligation to reflect USD LIBOR reform

The Bank of England (BoE) has published a policy statement setting out its final policy on its proposal to modify the scope of contracts that are subject to the derivatives clearing obligation (DCO) under the retained EU Regulation on OTC derivative transactions, central counterparties and trade repositories (UK EMIR).

The final policy upholds the proposal to add overnight index swaps (OIS) contracts that reference the Secured Overnight Financing Rate (SOFR) with an original maturity between seven days and 50 years to the DCO from 31 October 2022 and subsequently to remove contracts referencing USD LIBOR. Contracts referencing USD LIBOR will be removed from the DCO on 24 April 2023.

The policy statement also includes an appendix containing the Bank Standards Instrument: The Technical Standards (Clearing Obligation) Instrument 2022 amending Binding Technical Standards (BTS) 2015/2205, which is the onshored version of the EU regulatory technical standards (RTS) on the clearing obligation for G4 rates.

According to the BoE, these amendments are the last of the planned amendments to the DCO in the light of the transition to risk-free rates (RFRs), although it will continue to keep the wider DCO under review.

FCA launches Diversity, Equity and Inclusion Spotlight initiative for innovative firms

The FCA has announced the launch of a new Diversity, Equity and Inclusion (DEI) Spotlight initiative, which is intended to support firms developing innovative products focused on the DEI space.

Under the initiative, the FCA encourages relevant firms to engage with its innovation services, including its regulatory sandbox (which provides an environment for firms to test innovative products and services in a live environment) and its innovation pathways (which provide guidance for those firms that are not yet ready to test their products but that wish to further understand the FCA regulatory regime).

The FCA is seeking applications from a diverse group of founders and from firms with business models that seek to improve financial inclusion and target underserved or unrepresented customers. It is particularly interested in innovative products and services focused on consumer credit, debt advice, investment advice, robo-advice, insurance, pensions, financial education and the enhancement of consumer journeys.

BaFin updates risk warning on investments in crypto values

The German Federal Financial Supervisory Authority (BaFin) has updated its risk warning of 7 February 2022 about the risks associated with investments in crypto values such as, for example, Bitcoin or Ether.

In the updated risk warning, BaFin notes in particular that investments in crypto values are not secured by deposit guarantee schemes and investors generally also do not benefit from investor-compensation schemes. In the insolvency of service providers such as crypto custodians, the position of the customer is therefore determined by insolvency law and thus depends on whether the customer has a right to segregation based on the structure and implementation of the underlying contractual relationship.

BMF presents key elements of reform package to combat financial crime

The German Federal Ministry of Finance (BMF) has presented the key elements of a planned reform package to combat financial crime and enforce sanctions more effectively in Germany. These consist of three measures:

- concentration of core competences in a new federal authority;
- training of highly qualified financial investigators; and
- advancing the digitisation and interconnectedness of registers.

The first key measure is the intended creation of a new federal authority, the Higher Federal Authority for combating Financial Crime (BBF), under the umbrella of which all important competencies will be concentrated in three independent pillars:

- a new Federal Financial Criminal Police Office (BFKA) to be created to investigate complex cases of financial crime and to provide the clear structure needed to enforce sanctions effectively;
- the Financial Intelligence Unit (FIU), as central national unit for receiving and analysing suspicious transaction reports, will be integrated under the umbrella of the BBF to leverage further efficiency potential and be continued as an independent analysis unit in accordance with EU and international requirements; and
- a new Money Laundering Supervision Unit to be created as central coordinating unit for the supervision of the very broad non-financial sector in Germany.

As additional key measures, there is an intention to build up more expertise and digitally to connect all relevant registers to facilitate efficient checks of ownership structures and beneficial owners, especially for the purposes of investigations and sanctions enforcement.

CSSF issues circular on adoption of ESMA guidelines on standardised procedures and messaging protocols under CSDR

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has issued Circular 22/820 on the adoption of the ESMA guidelines (ESMA70-151-2906) regarding standardised procedures and messaging protocols under Article 6(2) of CSDR.

The circular is addressed by the CSSF as competent authority to all investment firms and credit institutions providing investment services or exercising investment activities in particular for transactions in financial instruments referred to in Article 5(1) of CSDR.

The purpose of the circular is to inform the concerned entities of the publication of the guidelines and that they apply to them. The CSSF will integrate the guidelines, issued with a view to promoting supervisory convergence in this field at EU level, into its administrative practice and regulatory approach.

The requirements laid down in Article 6(2) CSDR, and further specified in Article 2 of Commission Delegated Regulation (EU) 2018/1229, are focussed on the preparation of the settlement process. Concerned entities should ensure that they have all the necessary settlement details as much as possible on the business day on which the transaction takes place. Such entities are further expected to take measures to limit the number of settlement fails.

The objective of the guidelines is to clarify the scope of Article 6(2) CSDR and to provide guidance on the standardised procedures and messaging standards to be used.

The circular applies with immediate effect.

MAS publishes information paper on strengthening AML/CFT practices for external asset managers

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

The information paper sets out the MAS' supervisory expectations of effective AML/CFT frameworks and controls for EAMs. The MAS has further clarified that while the information paper is premised on the inspections and engagements of EAMs, all fund management companies should incorporate learning points from the information paper where relevant.

Amongst other things, the MAS has included the following observations in the information paper:

- EAMs are inherently vulnerable to money laundering / terrorism financing (ML/TF) risks given the nature of their business model where they provide asset management services to high-net-worth customers. Hence, it is important that EAMs remain vigilant to ML/TF risks at every stage of the customer's lifecycle;
- board and senior management play a key role in establishing an appropriate risk culture and putting in place necessary frameworks and controls to promote the right conduct among their staff;
- EAMs should ensure that their staff are equipped with the necessary knowledge, skills and resources to implement the AML/CFT frameworks and controls effectively to prevent the EAMs from being used by criminals for ML/TF purposes; and
- EAMs should continuously enhance their AML/CFT frameworks and controls to ensure they are commensurate with the scale, nature, and complexity of their business.

The MAS has indicated that it will continue to provide guidance and share its supervisory expectations and observations from its inspections and engagements to improve industry practices.

RECENT CLIFFORD CHANCE BRIEFINGS

New circular letter on outsourcing issued by the Luxembourg insurance regulator CAA

On 19 August 2022, the Luxembourg insurance sector supervisory authority Commissariat aux Assurances (CAA) issued its Circular Letter 22/16 on the outsourcing of critical or important operational functions or activities (CIFA). The new CAA Circular Letter, which applies to all Luxembourg (re)insurance undertakings supervised by the CAA, clarifies the requirements for the outsourcing of CIFA and their notification to the CAA. The Circular Letter will apply to all outsourcing agreements newly concluded or amended as of 1 November 2022.

This briefing paper provides an overview of the new rules and key issues.

https://www.cliffordchance.com/briefings/2022/08/new-circular-letter-on-outsourcing-issued-by-the-luxembourg-insu.html

UCC digital asset amendments – implications for crypto markets

This briefing paper provides a high-level summary of certain key aspects of the 2022 Amendments under the UCC related to digital assets.

https://www.cliffordchance.com/briefings/2022/08/ucc-digital-asset-amendments---implications-for-crypto-markets.html

NYDFS flexes enforcement muscle in crypto markets with USD 30 million AML, cybersecurity fine and draft cybersecurity amendments

On 1 August 2022, the New York Department of Financial Services (NYDFS) levied a hefty USD 30 million penalty on Robinhood Crypto, LLC, citing what the agency identified as persistent and pervasive transaction monitoring and cybersecurity compliance failures. NYDFS also required Robinhood Crypto to retain an independent compliance consultant for 18 months. Although NYDFS has investigated other virtual currency businesses and other New York state authorities have brought significant enforcement actions, the consent order marks NYDFS's first cryptocurrency enforcement action containing a monetary penalty and extensive other remedies.

In addition, NYDFS recently released draft amendments to its Cybersecurity Regulation. NYDFS virtual currency business licensees should proactively review these amendments and ensure that their compliance programs are sufficient to ensure compliance.

This briefing paper discusses the consent order and draft amendments.

https://www.cliffordchance.com/briefings/2022/08/nydfs-flexes-enforcement-muscle-in-crypto-markets-with--30-milli.html

CLIFFORD
CHANCE