INTERNATIONAL REGULATORY UPDATE 8 – 12 AUGUST 2022

- **CCP resolution regime: EU Commission publishes report on write-down and conversion tool**
- **CRR: EU Commission adopts RTS on calculation of gross jump-to-default amounts and notional amounts for certain instruments**
- **EBA consults on RTS on calculating exposure value of synthetic excess spread in securitisations**
- **ESMA and South African regulators and central bank sign MoU on CCPs**
- **PRA publishes final policy following occasional consultation paper**
- **Ministerial Order on guarantee of services of asset management companies published in Official Journal**
- **BMF consults on draft ordinance to implement sustainability-related amendments to MiFID2 product governance obligations**
- **Luxembourg bill on implementation of EU regulation on a pilot scheme for market infrastructures based on distributed ledger technology published**
- **New Luxembourg law on AML/CTF matters published**
- **Grand-Ducal Regulation on integration of sustainability factors in applicable product governance requirements published**
- **Recent Clifford Chance briefings: The UK's national security and investment regime, the US LIBOR Act and more. Follow this link to the briefings section.**

CCP resolution regime: EU Commission publishes report on write-down and conversion tool

The EU Commission has published a report to the EU Parliament and Council on the treatment of central counterparty (CCP) equity in the write-down and conversion tool under the CCP Recovery and Resolution Regulation ((EU) 2021/23) (CCP-RRR).

While the Commission notes that further work is needed to ensure that the principle of CCP equity absorbing losses first and being fully loss absorbing in resolution can be applied, it concludes that, due to ongoing policy work and limited practical experience as the resolution planning rules of the CCP-RRR only apply from 12 August 2022, there is not currently a need for amendments to the application of the tool.

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

The Commission also notes that the ability of EU resolution authorities to consider and explore all the options set out in the Financial Stability Board (FSB) guidance on financial resources means there are no barriers in the CCP-RRR to allow an appropriate treatment of CCP equity in resolution.

CRR: EU Commission adopts RTS on calculation of gross jump-to-default amounts and notional amounts for certain instruments

The EU Commission has adopted a Delegated Regulation setting out regulatory technical standards (RTS) under the Capital Requirements Regulation (CRR), which specify:

- the calculation methods of gross jump-to-default (JTD) amounts for exposures to debt and equity instruments;
- the calculation methods of gross JTD amounts for exposures to default risk arising from certain derivative instruments; and
- the determination of notional amounts of any instruments that are not covered by Article 325w(4) of CRR.

The Delegated Regulation will enter into force on the twentieth day following its publication in the Official Journal.

EBA consults on RTS on calculating exposure value of synthetic excess spread in securitisations

The European Banking Authority (EBA) has launched a consultation on its draft RTS on the determination by originator institutions of the exposure value of synthetic excess spread (SES) in securitisations.

The Capital Markets Recovery Package (CMRP) amended the CRR in several aspects, including a preferential treatment for senior tranches of simple, transparent and standardised (STS) on-balance-sheet securitisations. It also introduced a provision on how to determine the exposure value of SES in synthetic securitisations.

The draft RTS specify the calculation of the exposure value of the elements that should be included in the exposure value of SES, taking into account the relevant losses expected to be covered by SES. These elements include:

- any income from the securitised exposures recognised by the originator institution in its income statement under the applicable accounting framework that the originator institution has contractually designated to the transaction as SES that is still available to absorb losses;
- any SES contractually designated by the originator institution in any previous periods that is still available to absorb losses or for the current period that is still available to absorb losses; and
- any SES contractually designated by the originator institution for future periods.

In particular, the focus is on the exposure value of SES of future periods, and on the so-called 'trapped and use-it-or-lose-it' mechanisms.

Comments are due by 14 October 2022.

ESMA and South African regulators and central bank sign MoU on CCPs

The European Securities and Markets Authority (ESMA) and the South African Reserve Bank, its Prudential Authority and the Financial Sector Conduct Authority (FSCA) have signed a memorandum of understanding (MoU) on the supervision of CCPs established in South Africa.

Under the MoU, the authorities agree to collaborate and to exchange information in order to fulfil their respective supervisory and regulatory responsibilities for CCPs established in South Africa that have applied, or that may apply, to ESMA for recognition as third-country CCPs under EMIR.

The MoU took effect on 3 August 2022. It fully replaces the agreement on the monitoring of the ongoing compliance with recognition conditions by CCPs established in South Africa, which was signed by ESMA and the FSCA in November 2015.

PRA publishes final policy following occasional consultation paper

The Prudential Regulatory Authority (PRA) has published a policy statement (PS7/22) setting out its final rules and feedback on Chapters 2 to 8 of its occasional consultation paper CP3/22.

CP3/20 set out proposals to:

- make minor updates to the PRA's approach to publishing Solvency II technical information;
- make minor amendments to supervisory statement (SS) 45/15 to address an inconsistency in relation to the leverage ratio framework;
- make consequential amendments relating to CRR rules;
- delete non-relevant policy material from various SS, legacy SS and a statement of policy (SoP);
- make consequential amendments to the PRA Rulebook and technical standards arising from the introduction of the Investment Firms Prudential Regime (IFPR);
- clarify elements of the Pillar 3 Liquidity disclosure template and instructions; and
- publish a CRR Rule Administration Instrument.

The PRA received no responses to the proposals set out in CP3/22 and is therefore publishing its final policy as consulted upon. The policy set out in Chapter 6 (consequential amendments to reflect the introduction of the IFPR) will enter into force on 12 August 2022. All other policy changes will enter into force on 1 September 2022.

Ministerial Order on guarantee of services of asset management companies published in Official Journal

The Ministerial Order to be adopted pursuant to article L. 322-9 of the French Code monétaire et financier (Financial Code) has been published in the Official Journal.

The Order, dated 5 August 2022, determines the modalities and timing for benefiting from the indemnification provided for under the guarantee scheme relating to services provided by asset management companies, such as the indemnification limit (EUR 2,000). The Order also specifies the rules for the information of clients on the guarantee.

BMF consults on draft ordinance to implement sustainability-related amendments to MiFID2 product governance obligations

The German Federal Ministry of Finance (BMF) has launched a consultation on a draft ordinance to transpose Commission Delegated Directive 2021/1269 amending Delegated Directive (EU) 2017/593 as regards the integration of sustainability factors into the product governance obligations into German law.

Commission Delegated Directive (EU) 2021/1269 serves to introduce sustainability-related factors and objectives into the manufacturing and distribution of financial instruments.

The draft incorporates the changes to be implemented one-to-one into the German Investment Services Conduct of Business and Organisation Ordinance (WpDVerOV).

The consultation ends on 26 August 2022.

Luxembourg bill on implementation of EU regulation on a pilot scheme for market infrastructures based on distributed ledger technology published

A Bill implementing Regulation (EU) 2022/858 on a pilot scheme for market infrastructures based on distributed ledger technology (DLT) (Bill No. 8055) has been lodged with the Luxembourg Parliament.

The purpose of the Bill is to expressly recognise DLT technology in the financial sector and to enable financial market participants to take full advantage of the opportunities offered by this new technology, with full legal certainty.

The Bill therefore proposes to amend several laws relating to the financial sector, including:

- the law of 5 April 1993 on the financial sector (as amended) (FSL), which will notably clarify that the definition of 'financial instrument' also includes financial instruments issued by means of DLT as defined in Article 2(1) of Regulation (EU) 2022/858;
- the law of 5 August 2005 on financial collateral arrangements (as amended), which will incorporate a technology neutral approach as already provided for in Article 18bis(2) of the law of 1 August 2001 on the circulation of securities, as amended, by clarifying that 'book-entry financial instruments' also include securities registered or existing in securities accounts maintained in or through secure electronic recording devices, including distributed electronic registers or databases; and
- the law of 30 May 2018 on markets in financial instruments (as amended) (MiFID Law), which will reflect the abovementioned amendment of the FSL.

The Bill follows up on two laws already in force for some time, namely a law of 1 March 2019 expressly recognising the use of electronic recording devices such as DLT for the custody of book-entry financial instruments and a law of 22 January 2021 concerning the issuance of dematerialised securities with issuance accounts using such devices, including DLT, for registering a dematerialised securities issuance.

The amendments to the FSL and the MiFID Law are intended to apply from 23 March 2023, as required under Article 18(2) of Regulation (EU) 2022/858.

The lodging of the Bill with the Luxembourg Parliament constitutes the start of the legislative procedure.

New Luxembourg law on AML/CTF matters published

A Law of 29 July 2022 amending the Code of criminal procedure, the amended Law of 8 August 2000 on international judicial assistance in criminal matters, the amended Law of 12 November 2004 on the fight against money laundering and terrorist financing, and the amended Law of 10 July 2020 on the central fiduciary register has been published in the Luxembourg official journal (Mémorial A).

The main purpose of the Law is to ensure consistency of the legal texts governing international mutual assistance in criminal matters and the fight against money laundering and the financing of terrorism (AML/CTF) as well as their compliance with AML/CTF international standards and publications of the Financial Action Task Force (FATF), and to rectify a material error in the Law of 17 December 2021 transposing the Directive (EU) 2018/1673 of 23 October 2018, through targeted amendments of various legal provisions.

The main changes introduced by the Law are the following:

- abolishing the possibility of refusing a request for mutual assistance which relates exclusively to tax, customs or exchange offences under Luxembourg law;
- clarifying that the obligation to identify the client and the ultimate beneficial owner is applicable regardless of the professionals' risk assessment, which excludes any risk-based discretion for professionals not to identify the client or the ultimate beneficial owner;
- clarifying that professionals are not obliged to duplicate copies of documents, information and data that are necessary to comply with customer due diligence obligations when they enter into or maintain several business relations, or carry out several occasional transactions, involving the same natural person or legal entity, of which a copy of the necessary documents, information and data has already been collected and kept, provided that the professionals are able to make the documents, data and information in question rapidly available to the authorities;
- clarifying that enhanced customer due diligence measures apply with regard to politically exposed persons, whether they are the client, a person purporting to act in the name and on behalf of the client, or a beneficial owner;
- allowing supervisory authorities to request their foreign counterpart authorities to carry out an investigation or inspection in the territory of that counterpart authority;

- allowing supervisory authorities to permit, under certain conditions, that foreign counterpart authorities carry out an investigation or inspection in AML/CTF matters at the premises of supervised persons in Luxembourg; and
- setting the maximum deadline at one month for fiduciaries and trustees subject to the amended Law of 10 July 2020 on the central fiduciary register to update the register with the information that they obtain on beneficial owners of a fiducie or of an express trust administered in Luxembourg.

The Law entered into force on 12 August 2022.

Grand-Ducal Regulation on integration of sustainability factors in applicable product governance requirements published

The Grand-Ducal Regulation of 27 July 2022 implementing Commission Delegated Directive (EU) 2021/1269 as regards the integration of sustainability factors in applicable product governance requirements has been published in the Luxembourg official journal (Mémorial A).

The Grand-Ducal Regulation amends certain provisions of the Grand-Ducal Regulation of 30 May 2018 on the protection of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any other monetary or non-monetary benefits.

The purpose of the Grand-Ducal Regulation is to add sustainability factors, within the meaning of Article 2(24) of Regulation (EU) 2019/2088, into product governance requirements for credit institutions and investment firms manufacturing financial instruments, as well as for distributors.

In particular, credit institutions and investment firms must now take into account any sustainability objectives when identifying types of clients for whose needs, characteristics and objectives a financial instrument is compatible, as well as the groups of clients for whom such financial instruments are not compatible.

Sustainability factors of financial instruments must be presented in a transparent manner and shall provide distributors with relevant information to enable them to take due account of any sustainability objectives pursued by the client or potential client.

Further, credit institutions and investment firms must ensure that products and services they intend to offer or recommend are compatible with the needs, characteristics and objectives, including any sustainability targets of an identified target market. They also have to assess on a regular basis whether such products or services remain consistent with the sustainability targets of the identified target market.

The Grand-Ducal Regulation will enter into force on 22 November 2022.

CLIFFORD
CHANCE

RECENT CLIFFORD CHANCE BRIEFINGS

FCA consults on permitting the long-term asset fund to be marketed to retail investors

On 1 August 2022, the FCA issued a consultation paper (CP22/14) in which it consulted on potentially permitting the long-term asset fund (LTAF) to be marketed to retail investors. The LTAF is a recently introduced type of UK authorised fund that is intended to enable investors to invest in long-term illiquid assets. This significant proposal could serve to broaden retail investors' access to a range of assets, including private equity, private debt, property and infrastructure.

This briefing paper discusses the proposal.

https://www.cliffordchance.com/briefings/2022/08/fca-consults-on-permitting-the-long-term-asset-fund-to-be-market.html

The UK's national security and investment regime – latest market guidance

The Department for Business, Energy & Industrial Strategy (BEIS) has published a suite of new market guidance as well as an Annual Report, providing increased clarity on the UK's national security and investment regime and insights into how it is working in practice.

This briefing paper discusses the new market guidance.

https://www.cliffordchance.com/briefings/2022/07/the-department-for-business--energy---industrial-strategy---beis.html

Federal Reserve Board proposes regulations implementing the US LIBOR Act

The Board of Governors of the US Federal Reserve System has proposed regulations to implement the Adjustable Interest Rate (LIBOR) Act. The purpose of this Act is to provide a federal framework that mitigates risks and provides continuity for 'tough legacy' contracts that reference the overnight, 1-, 3-, 6-, or 12-month tenors of US dollar LIBOR. ICE Benchmark Administration (IBA) has announced it will cease to publish these widely-used benchmark rates after 30 June 2023. The Board is seeking public comments on the proposed regulations, which should be submitted by 29 August 2022. The LIBOR Act authorizes the Board to select replacement benchmarks based on the Secured Overnight Financing Rate, or SOFR, for identified types of in-scope 'tough legacy' contracts. The proposed regulations include the Board's proposed benchmark replacement selections, to which the applicable tenor spread adjustment will be added. These selections vary by type of contract and will impact parties to in-scope contracts that will transition automatically pursuant to the LIBOR Act. In addition, market participants preparing to actively transition contracts by amendment will want to consider these selections because the LIBOR Act provides certain safe harbor protections from litigation in connection with the selection or use of a Board-selected benchmark replacement.

This briefing paper discusses the proposed regulations.

https://www.cliffordchance.com/briefings/2022/08/federal-reserve-board-proposes-regulations-implementing-the-us-l.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.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2022

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.