
# INTERNATIONAL REGULATORY UPDATE 12 – 16 SEPTEMBER 2022

- **EU Commission President delivers State of the Union address**
- **Energy crisis: EU Commission sets out work streams relating to financial markets**
- **CRR: EU Parliament adopts daisy chain proposal**
- **Basel Committee oversight body reaffirms Basel III implementation expectations and provides direction on work priorities**
- **Basel Committee discusses work on evaluating Basel III reforms and addressing climate-related financial risks, and approves annual G-SIB assessment**
- **FSB launches survey on framework for information from FMI intermediaries**
- **Joint Money Laundering Steering Group consults on amendments to guidance**
- **DNB publishes report on preventing and combating financial crime**
- **AFM conducts further investigation into compliance with SFDR and Taxonomy Regulation by fund managers**
- **FSA publishes draft guidelines providing details on creating, recordkeeping and reporting of transaction information in respect of derivatives transactions**
- **MAS publishes circular on enhancing anti-money laundering and countering financing of terrorism controls in VCC sector**
- **APRA outlines plans to modernise prudential architecture**
- **Recent Clifford Chance briefings: UK Wholesale Markets Review and innovation in the UK capital markets. Follow this link to the briefings section.**

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## EU Commission President delivers State of the Union address

The President of the EU Commission, Ursula von der Leyen, has delivered her 2022 State of the Union address to the EU Parliament at Strasbourg.

Among other things, the speech set out:

- an intention to maintain sanctions relating to Russia's invasion of Ukraine and to provide Ukraine with access to the Single Market; and

- measures relating to the energy supply crisis, including a cap on energy company revenues, developing a more representative benchmark for the gas market and amending the rules on collateral under EMIR to limit intra-day price volatility.

The speech also covered the Commission's plans to create a new European Hydrogen Bank, to introduce an SME relief package, to introduce a European Critical Raw Materials Act and a call for a European Convention to renew the founding EU Treaties.

## Energy crisis: EU Commission sets out work streams relating to financial markets

The EU Commission has published details of the financial system measures it is working on in relation to the energy crisis.

The Commission is concerned that high energy prices are causing energy companies to post increasing amounts of cash collateral to central counterparties as margin calls have risen in line with prices, resulting in liquidity problems for some energy companies. The Commission has detailed its plans to address these issues.

The first proposal is to temporarily amend the rules applying to gas and electricity derivatives under the European Market Infrastructure Regulation (EMIR) on the type and amount of collateral that energy companies have to provide. The Commission has invited the European Securities and Markets Authority (ESMA) to consider and present appropriate amendments to EMIR by 22 September 2022 and to assess the appropriateness of increasing the clearing threshold for commodities and other derivatives under EMIR to EUR 4 billion. It has also invited the European Banking Authority (EBA) to assess how banks provide collateral transformation services by 29 September 2022.

The Commission's other plan relates to circuit breakers, which would allow energy exchanges to interrupt trading in the case of significant price movements. The Commission notes that rules regarding circuit breakers are not harmonised at EU level and none of the European energy exchanges have applied circuit breakers in response to the volatility in gas and electricity prices. It has tasked ESMA to investigate why circuit breakers have not been triggered during the current energy crisis and whether rules need to be aligned across the EU. ESMA is expected to report with proposals by 29 September 2022.

In addition, the Commission intends to create an alternative benchmark to more accurately reflect the market for gas imports and reduce reliance on futures markets for 'entry-paid' gas as the main reference price for gas imports. This benchmark would not reflect internal bottlenecks in the EU's pipeline network. The Commission intends to conduct a feasibility assessment, tender the provision of the benchmark to an EU authorised benchmark administrator, and promote a futures market referencing the new benchmark in the coming days and weeks.

## CRR: EU Parliament adopts daisy chain proposal

The EU Parliament has adopted at first reading the EU Commission's proposal for a Regulation amending the Capital Requirements Regulation (CRR) relating to total loss absorbing capacity (TLAC) and the minimum requirement for own funds and eligible liabilities (MREL), referred to as the daisy chain proposal.

The EU Council and EU Parliament reached political agreement on the proposed regulation on 28 April 2022. The Council must now formally adopt the proposed regulation, which will enter into force on the twentieth day following that of its publication in the Official Journal and will apply from the same date.

## Basel Committee oversight body reaffirms Basel III implementation expectations and provides direction on work priorities

The Group of Central Bank Governors and Heads of Supervision (GHOS) that oversees the Basel Committee on Banking Supervision (BCBS) has published a press release on its meeting held on 12 September 2022.

Among other things, GHOS members:

- reaffirmed their expectation that all aspects of the Basel III framework will be implemented in a full and consistent manner as soon as possible;
- reaffirmed the scope of the BCBS's work on climate-related risks and endorsed its holistic approach to developing and assessing potential measures related to disclosure, supervision and regulation; and
- reiterated the importance of designing a robust and prudent regulatory framework for banks' exposures to cryptoassets, which the BCBS is expected to finalise by the end of 2022.

## Basel Committee discusses work on evaluating Basel III reforms and addressing climate-related financial risks, and approves annual G-SIB assessment

The BCBS has published a press release on its meeting held on 14-15 September 2022.

Among other things, the Committee:

- discussed the implications for the global banking system of economic and financial market developments, including resurgent inflation and the deteriorating growth outlook;
- discussed medium-term structural changes and vulnerabilities affecting the banking system, including banks' interconnections with non-bank financial intermediation (NBFI);
- took note of the recent direction provided by the Group of Governors and Heads of Supervision with regard to finalising a prudential framework for banks' cryptoasset exposures;
- agreed to publish further evaluation reports on buffer usability and cyclicality in the Basel framework, and approved the assessment reports on Japan's implementation of the net stable funding ratio and large exposures framework;
- discussed ongoing work relating to potential disclosure, supervisory and regulatory measures aimed at addressing climate-related financial risk; and
- approved the results of the annual assessment exercise for globally systemically important banks (G-SIBs), which will be submitted to the Financial Stability Board (FSB) before it publishes the 2022 G-SIBs list.

## FSB launches survey on framework for information from FMI intermediaries

The FSB is conducting a survey to gather feedback on its framework for information from financial market infrastructure (FMI) intermediaries to support resolution planning.

The framework aims to help FMI intermediaries better understand which information clients and their resolution authorities may need from them preceding and during a firm's resolution.

The survey forms part of the FSB's outreach strategy with external stakeholders relating to continuity of access to FMIs for firms in resolution.

The survey is of interest to FMI service providers as well as firms subject to a resolution planning requirement and bank resolution authorities.  The FSB intends to use the responses it receives to support the efforts of its member authorities to ensure the framework remains relevant and accessible and improve the quality of information gathering for firms on this topic.

Comments are due by 9 October 2022.

## Joint Money Laundering Steering Group consults on amendments to guidance

The Joint Money Laundering Steering Group (JMLSG) has launched a consultation on proposed amendments to Part I of its guidance on the prevention of money laundering and combating terrorist financing.

The proposed revisions take into account The Money Laundering and Terrorist Financing (Amendment) (High-risk Countries) Regulations 2022 and The Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022.

The proposed amendments affect:

- paragraph 5.5.11 and Annex 5-IV, as relating to high-risk third countries (HRTC) EDD;
- paragraph 5.3.129A and paragraphs 5.3.258-5.3.282, as relating to trusts; and
- chapters 4 and 7, as relating to proliferation financing.

Comments are due by 17 October 2022.

## DNB publishes report on preventing and combating financial crime

The Dutch Central Bank (DNB) has published a report entitled 'From recovery to balance' (Van herstel naar balans), in which it looks ahead to a more risk-based approach to preventing and combating money laundering and terrorist financing.  The report discusses the scope of money laundering and terrorism financing and how it can best be prevented, the gatekeeper role of banks, DNB's supervision of such gatekeepers' role, the use of data and new technologies for AML due diligence, and the need for all parties involved to cooperate.  In the coming months, DNB will be holding a series of round table sessions with representatives from the financial sector and other stakeholders to discuss the main bottlenecks and areas where additional guidance can help.

## AFM conducts further investigation into compliance with SFDR and Taxonomy Regulation by fund managers

The Netherlands Authority for the Financial Markets (AFM) has announced that it will investigate the state of compliance with a number of Sustainable Finance Disclosure Regulation (SFDR) requirements by investment fund managers in autumn 2022. The AFM will examine, among other things, whether managers have tightened the SFDR classification of (sustainable) funds as a result of previous AFM investigations. The AFM will also examine to what extent administrators have made information available on their website about the policies relating to sustainability and the integration of sustainability into their remuneration policies. Finally, the AFM will examine to what extent managers comply with the transparency requirements that have been in force since 1 January 2022 on the basis of the Taxonomy Regulation. Providers of 'sustainable' financial products, which have an environmental objective or which have environmental characteristics, must report to what extent they invest in activities that fall under the two environmental objectives from the taxonomy that relate to climate change. The AFM's investigation into compliance with the SFDR technical standards will be postponed to 2023.

## FSA publishes draft guidelines providing details on creating, recordkeeping and reporting of transaction information in respect of derivatives transactions

The Financial Services Agency (FSA) has published a draft version of the 'Guidelines for Creating, Recordkeeping and Reporting of Transaction Information specified in Article 4(1) of the Cabinet Office Order on the Regulation of Over-the-Counter Derivatives Transactions, etc'.

On 5 August 2022, following a public consultation, the FSA published the finalised version of this cabinet office order along with the 'regulatory notice for matters that specify other unavoidable reasons pursuant to the provisions of Article 3-2 (iv) and Article 7-2 (iv)' of this order.

Amongst other things, the draft guidelines aim to provide the trade repository (TR), the Financial Instruments Clearing Organisation, and the Financial Instruments Business Operator etc., with details of matters required to be provided by them in respect of certain derivatives transactions.

Comments on the draft guidelines are due by 12 October 2022.

## MAS publishes circular on enhancing anti-money laundering and countering financing of terrorism controls in VCC sector

The Monetary Authority of Singapore (MAS) has published a circular on enhancing anti-money laundering and countering the financing of terrorism (AML/CFT) controls in the variable capital companies (VCCs) sector.

Following an industry-wide survey of VCCs and a series of thematic engagements of eligible financial institutions (EFIs), the circular sets out the MAS' key observations and supervisory expectations for effective AML/CFT frameworks and controls that VCCs and their appointed EFIs should note.

In particular, the circular elaborates the MAS's observations around:

- insufficient oversight by VCCs of appointed EFIs;

- inadequate customer ML/TF risk assessment frameworks and processes; and
- failures to implement enhanced customer due diligence measures.

The MAS has urged VCCs to read the circular in conjunction with MAS Notice VCC-N01 and Guidelines to Notice VCC-N01. It has also clarified that even though the circular is premised on the MAS' observations in the VCC sector, the lessons are applicable and relevant to other types of financial institutions as well, but with the appropriate calibrations.

## APRA outlines plans to modernise prudential architecture

The Australian Prudential Regulation Authority (APRA) has published an information paper outlining plans for its multi-year programme to modernise the architecture of prudential standards and guidance for banks, insurers, and superannuation funds.

The information paper sets out what banks, insurers and superannuation licensees can expect from the programme over the coming years, which includes an upcoming new guide for directors on bank boards. Over the period ahead, APRA will deliver a series of initiatives focused on:

- better regulation, improving the design of the framework to ensure the prudential standards and guidance are easier to navigate, understand and implement;
- digital first approach, exploring how to make use of suptech (supervisory technology) and regtech (regulatory technology) to support better regulation; and
- new risks, new rules, developing APRA's approach to the regulation of new risks, and new business models on the prudential perimeter.

APRA has been building the foundations for the program and starting to develop longer-term plans. As a next step, APRA intends to engage with regulated entities and other key stakeholders to understand any issues with the current framework and assess the appetite for change. To support this, APRA has welcomed any initial feedback on the challenges and opportunities outlined in the information paper by 30 November 2022.

# RECENT CLIFFORD CHANCE BRIEFINGS

## Implementation of the UK Wholesale Markets Review — Progress Report

The Wholesale Markets Review (WMR) was established to improve the UK's regulation of secondary markets following Brexit by making these rules better calibrated for UK markets.

This briefing paper discusses how the UK is delivering the WMR, including via the new Financial Services and Markets Bill, and how these reforms are diverging from EU wholesale markets regulation.

https://www.cliffordchance.com/briefings/2022/09/implementation-of-the-uk-wholesale-markets-review.html

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## Innovation in the UK Capital Markets — The FMI sandbox takes shape

The UK Financial Services and Markets Bill 2022 (FSMA Bill) includes proposals to grant HM Treasury the power to create sandboxes which would allow financial market infrastructures (FMI) and other designated persons, to test and adopt new technologies and practices (such as distributed ledger technology) by temporarily disapplying, modifying or even applying certain legislation for specific purposes.

This is an important step towards ensuring that financial market infrastructures in the UK are able to fully embrace technological innovation as part of a wider effort to ensure that the UK financial system, including capital markets, continues to be an attractive option for the full spectrum of market actors (e.g. operators of financial market infrastructures, technology developers, issuers, investors and financial intermediaries).

This briefing paper provides an initial look at the parallels between the FMI sandbox and its EU equivalent, the EU Pilot Regime.

https://www.cliffordchance.com/briefings/2022/09/innovation-in-the-uk-capital-markets---the-fmi-sandbox-takes-sha.html