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### ESMA responds to EU Commission on energy derivatives markets

The European Securities and Markets Authority (ESMA) has submitted its [response](#) to the EU Commission regarding the current level of margins and of excessive volatility in energy derivatives markets.

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ESMA's response sets out its high-level assessment concerning the areas where the Commission requested input, namely on measures to limit excessive volatility, such as circuit breakers, and central counterparties (CCP) margins and collateral. It has also made a number of further suggestions on commodity clearing thresholds, improving regulatory reporting on commodity derivatives, and regulating and supervising commodity traders.

According to the letter, ESMA and national competent authorities (NCAs) have been focusing and strengthening their respective market monitoring and surveillance activities on the energy derivatives markets. ESMA intends to continue this cooperation to counter possible threats to market integrity and ensure that any potential signal of market manipulation is followed up and investigated.

### **CCP recovery and resolution: ESMA consults on business reorganisation plans**

ESMA has launched a [consultation](#) on draft regulatory technical standards (RTS) on CCPs' business reorganisation plans. The draft RTS are part of the resolution regime under the CCP Recovery and Resolution Regulation (CCPRRR).

The draft RTS provide clarifications and cover the minimum elements to be included in the business reorganisation plans that CCPs are expected to implement as part of their resolution tools under CCPRRR, as well as the criteria to be fulfilled by them.

The objective of the proposed measures is to ensure that CCPs which are failing or likely to fail maintain continuity of their critical functions and core business lines, as well as to reduce the impact of any failure on the EU financial system.

Comments are due by 1 December 2022. ESMA intends to consider the feedback received with a view to publishing its final reports by Q1 2023.

### **ESMA publishes final guidelines on MIFID2 suitability requirements**

ESMA has published its [final report](#) on guidelines on certain aspects of the MiFID2 suitability requirements.

The main amendments introduced to the MIFID2 Delegated Regulation and reflected in the guidelines are:

- information to clients on the sustainability preferences – firms will need to help clients understand the concept of sustainability preferences and explain the difference between products with and without sustainability features in a clear manner and avoiding technical language;
- collection of information from clients on sustainability preferences – firms will need to collect information from clients on their preferences in relation to the different types of sustainable investment products and to what extent they want to invest in these products;
- assessment of sustainability preferences – once a firm has identified a range of suitable products for a client, in accordance with the criteria of knowledge and experience, financial situation and other investment objectives, the firm shall identify the product(s) that fulfil the client's sustainability preferences; and

- organisational requirements – firms will need to give staff appropriate training on sustainability topics and keep appropriate records of the sustainability preferences of the client (if any) and of any updates of these preferences.

The report also contains a feedback statement summarising the responses received to ESMA's consultation and highlighting the amendments and clarifications introduced in the final guidelines as a result of the feedback received.

The guidelines will apply six months after the date of the publication on ESMA's website in all EU official languages.

### **CRR: RTS on emerging markets and advanced economies published in Official Journal**

[Commission Delegated Regulation \(EU\) 2022/1622](#) supplementing the Capital Requirements Regulation (CRR) with RTS on emerging markets and advanced economies has been published in the Official Journal.

The RTS identify countries that are considered advanced economies for the purpose of identifying the appropriate risk weight to capture equity risk under the market risk framework. Markets not listed as advanced economies in the RTS constitute emerging markets.

The Regulation will enter into force on 5 October 2022.

### **Securitisation Regulation: EBA publishes final draft RTS on performance-related triggers for non-sequential amortisation systems in STS on-balance-sheet securitisations**

The European Banking Authority (EBA) has published its [final draft RTS](#) specifying the minimum performance-related triggers for simple, transparent and standardised (STS) on-balance-sheet securitisations that feature non-sequential amortisation.

The Capital Markets Recovery Package amended the Securitisation Regulation in several aspects, including creating a specific framework for STS on-balance-sheet securitisation to provide an additional tool to foster economic recovery in the aftermath of the COVID-19 crisis.

The amended Securitisation Regulation sets out that sequential amortisation shall be applied to all tranches of STS on-balance-sheet securitisations. However, as a derogation, STS on-balance-sheet securitisation might feature non-sequential amortisation to avoid disproportionate costs of protection, as long as some minimum performance-related triggers determine the application of sequential amortisation. This is intended to ensure that tranches providing credit protection have not already been amortised when significant losses occur at the end of the transaction.

The draft RTS further specify the minimum backward and forward-looking triggers and establish criteria to be fulfilled by the parties involved in the securitisation in order to set the level of the triggers. For this purpose, in the case of the minimum backward-looking triggers, the parties involved in the securitisation shall test the effectiveness of the trigger in a back-loaded loss distribution scenario taking into account the losses expected over the maturity of the transaction at inception.

The RTS also contain transitional provisions in respect of STS on-balance-sheet securitisations, which include triggers related to the performance of the underlying exposures in accordance with Article 26c (5) of the Securitisation Regulation.

The EBA will submit the RTS to the EU Commission for adoption. Following adoption, the RTS will be subject to scrutiny by the EU Parliament and the Council before being published in the Official Journal.

## **Growth Plan 2022: Chancellor sets out measures on financial services**

The Chancellor of the Exchequer, Kwasi Kwarteng, has delivered his [Growth Plan 2022](#) to Parliament. The plan makes growth the UK Government's central economic mission, setting a target of reaching a 2.5% trend rate, and includes tax cuts, tax reform and measures to tackle rising energy prices.

As part of the plan, the Chancellor has announced that:

- later this autumn, the Government will bring forward a deregulatory package for the UK financial services sector, which will include repealing EU law for financial services and replacing it with new rules, as well as discarding EU rules from Solvency II;
- the Prudential Regulation Authority (PRA) will remove the current cap on bankers' bonuses, which limits variable remuneration of certain bank staff to 100% of their fixed pay (or 200% with shareholder approval);
- a new GBP 40 billion [Energy Markets Financing Scheme](#) (EMFS), delivered with the Bank of England, will provide a backstop source of additional liquidity to energy firms to meet extraordinary variation margin calls. The scheme will provide liquidity to firms through a 100% guarantee, delivered via commercial banks, and will open to applications from 17 October 2022; and
- in line with the cancellation of the increase in the Corporation Tax rate, the scheduled change to the rate of the Bank Corporation Tax Surcharge will also be cancelled. From April 2023 banks and building societies will continue to pay an additional 8% rate of tax on their profits, rather than the reduced 3% rate that would have been the legislative default, leading to a combined rate of 27%.

## **Retained EU Law (Revocation and Reform) Bill introduced to Parliament**

The [Retained EU Law \(Revocation and Reform\) Bill](#) has been introduced to the House of Commons and given its first reading.

The Bill will end the special status of retained EU law in the UK statute book and sunset the majority of retained EU law so that it expires on 31 December 2023. All retained EU law contained in domestic secondary legislation and retained direct EU legislation will expire on this date, unless otherwise preserved. Any retained EU law that remains in force after the sunset date will be assimilated in the domestic statute book, by the removal of the special EU law features previously attached to it. This means that the principle of the supremacy of EU law, general principles of EU law, and directly effective EU rights will also end on 31 December 2023. The Bill includes an extension mechanism for the sunset of specified pieces of retained EU law until 2026.

This is intended to allow the Government additional time where necessary to assess whether some retained EU law should be preserved.

MPs will next consider the Bill at second reading. The date for second reading has not yet been announced.

## **Economic Crime and Corporate Transparency Bill introduced to Parliament**

The [Economic Crime and Corporate Transparency Bill](#) has been introduced to the House of Commons and given its first reading.

The Bill is the second part of a legislative package intended to prevent the abuse of UK corporate structures and tackle economic crime. It follows the Economic Crime (Transparency and Enforcement) Act 2022, which received Royal Assent on 15 March 2022.

Amongst other things, the Bill includes:

- reforms to Companies House, including giving the registrar of companies new powers to reject and query information provided in filings or already on the register;
- a new regime for identity verification (including via authorised corporate service providers);
- measures to improve the usefulness of information on company shareholders;
- reforms to prevent the abuse of limited partnerships, by strengthening transparency requirements and enabling them to be deregistered;
- additional powers to seize and recover suspected criminal cryptoassets;
- new exemptions from the principal money laundering offences to reduce unnecessary reporting by businesses and new powers for law enforcement to obtain information to tackle money laundering and terrorist financing;
- removing the need for a statutory instrument to be laid in order to update the UK's high risk third country list; and
- adding a regulatory objective to the Legal Services Act 2007 to affirm the duties of regulators and the regulated communities to uphold the economic crime agenda.

The Government has also published a series of [factsheets](#) providing details of the different measures contained in the Bill.

MPs will next consider the Bill at second reading on 13 October 2022.

## **BoE consults on FMI fee rates for 2022/23**

The Bank of England (BoE) has launched a [consultation](#) on the fees regime for financial market infrastructure (FMI) supervision for 2022/23.

The main features of the proposals are, among others:

- the total cost of the 2022/23 fee year of the BoE's FMI supervisory activity and supporting policy activity, as permitted by its fee-levying powers, is expected to increase by 9% compared to the 2021/22 fee year, at an expected cost of GBP 11.6 million; and

- a proposed reduction of fees on a case-by-case basis for payment systems based overseas in respect of which the BoE has deference-based co-operation arrangements with the relevant home authority.

The consultation also sets out the BoE's application of special project fees (SPF) for the 2022/23 fee year as well as the rebate payable on 2021/22 fees in the light of lower actual costs incurred by the BoE for that fee year.

The consultation is relevant to all FMIs that currently pay FMI supervisory fees to the BoE or are expecting to do so within the 2022/23 fee year, except for non-UK CCPs and non-UK central securities depositories (CSDs), the fees for which are subject to separate consultations.

Comments are due by 3 November 2022.

### **Wholesale Markets Review: FCA consults on trading venue perimeter guidance**

The Financial Conduct Authority (FCA) has launched a [consultation](#) (CP22/18) on its proposed guidance on the regulatory perimeter for trading venues, as part of the Wholesale Markets Review (WMR).

This follows feedback received to the WMR that firms can sometimes be uncertain of the regulatory permissions they need.

The FCA hopes that further guidance on the trading venue perimeter will provide greater certainty regarding models where the FCA does not intend trading venue requirements to apply.

The FCA does not intend to modify the perimeter, which would require legislative change. Instead, the FCA is seeking to clarify, through guidance in the FCA Handbook, the concept of a multilateral system and how this should be applied to specific types of arrangements in financial markets.

Comments are due by 11 November 2022.

### **AFM and DNB publish discussion paper on data mobility and financial sector**

The Netherlands Authority for the Financial Markets (AFM) and the Dutch Central Bank (DNB) have published a [discussion paper](#) on data mobility and the financial sector. According to the financial regulators, data and data mobility are having a growing impact on financial services. Moreover, new EU regulation is expected that aims to create an EU data market by 2030 by enhancing the ability of data holders to share their data. In light of these developments, the AFM and DNB believe that the way in which relevant data is shared with and accessed by financial entities requires the attention of financial regulators. Therefore, the AFM and DNB have set out a preliminary policy vision for data mobility in relation to the financial sector.

Stakeholders have been invited to respond by 11 November 2022 by filling out an [interactive pdf](#) in either English or Dutch and returning it to [consultatie@dnb.nl](mailto:consultatie@dnb.nl).

### **Business Trusts (Amendment) Bill 2022 moved for first reading in Singapore Parliament**

The [Business Trusts \(Amendment\) Bill 2022](#) (BT(A) Bill) has been moved for its first reading in the Singapore Parliament following a public consultation in November 2021.

The business trust (BT) regime was developed in 2004 to establish a new type of business structure for business enterprises. The Business Trusts Act 2004 (BTA) provides a framework for the governance of BTs registered under the BTA.

Since the BTA came into operation, there have been amendments made to the Companies Act 1967 (CA). There have also been changes made to the governance requirements in respect of real estate investment trusts (REITs) and to provisions under the Securities and Futures Act 2001 (SFA) that are relevant to the regulation of BTs. In view of these amendments, as well as feedback from the industry and the MAS' experience in administering the BT regime, the BT(A) Bill will amend the BTA to:

- align the provisions under the BTA with the relevant provisions under the CA where appropriate, taking into account the Companies (Amendment) Act 2014 and the Companies (Amendment) Act 2017;
- strengthen governance safeguards for BTs by taking reference from the REIT regime; and
- streamline certain regulatory requirements.

The BT(A) Bill comes into operation on a date that the Minister appoints by notification in the Government's Official Gazette.

### **MAS and IFSCA to pursue cross-border fintech innovation**

The Monetary Authority of Singapore (MAS) and the International Financial Services Centres Authority (IFSCA) have [signed](#) a fintech co-operation agreement (CA) to facilitate regulatory collaboration and partnership in fintech.

The CA builds on the Memorandum of Understanding on Supervisory Co-operation signed between the MAS and the IFSCA in July 2022. In particular, the CA aims to promote:

- regulatory sandbox collaboration, wherein the MAS and the IFSCA will leverage existing regulatory sandboxes in their respective jurisdictions to support experimentation of technology innovations and evaluate the suitability of use cases which could benefit from collaboration across multiple jurisdictions, and invite relevant jurisdictions to participate in a Global Regulatory Sandbox; and
- sharing of information, wherein the MAS and IFSCA will share non-supervisory related information and developments on innovation in financial products and services, facilitate discussions on emerging fintech issues and participate in joint innovation projects.

### **MAS and SGX Group launch ESGenome disclosure portal to streamline sustainability reporting and enhance investor access to ESG data**

The MAS and Singapore Exchange (SGX Group) have jointly [launched](#) SGenome, a digital disclosure portal for companies to report environmental, social and governance (ESG) data and for investors to access such data in a consistent and comparable format.

The MAS notes that at present, the proliferation of multiple sustainability reporting frameworks and guidelines across jurisdictions and the inconsistent

manner in which data is being collected, verified, and reported have created significant disclosure challenges and resulted in poor ESG data comparability.

ESGenome is a joint initiative by the MAS and the SGX Group under Project Greenprint, which aims to develop a common disclosure utility that will facilitate sustainability reporting for SGX-listed companies. It is a Software-as-a-Service (SaaS) solution operated by World Wide Generation (WWG) and intended to help SGX-listed companies simplify the disclosure process using a core set of metrics that is mapped across global standards and frameworks.

Amongst other things, through ESGenome:

- companies can carry out their baseline sustainability reporting based on a set of 27 SGX core ESG metrics;
- companies can make additional disclosures in line with globally recognised ESG reporting standards and frameworks across more than 3,000 ESG metrics, depending on materiality and their business needs;
- companies need only provide a one-time input for each ESG metric wherein these inputs can be automatically mapped across their selected standards and frameworks to cater to different investor requirements; and
- a sustainability report can be automatically generated from the inputs.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **Digital services regulation in the EU — an evolving landscape**

The regulatory landscape for digital services is being fundamentally redefined in the European Union, with a boom in the number of legislative initiatives being progressively introduced and increasing extraterritorial reach.

This briefing paper discusses some of the most recent adopted and pending proposals: the Digital Services Act, the Data Governance Act, the Digital Markets Act, the Data Act, the Cybersecurity Directive (NIS2), the Artificial Intelligence Act and the e-Privacy Regulation.

<https://www.cliffordchance.com/briefings/2022/09/-digital-services-regulation-in-the-eu--an-evolving-landscape.html>

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