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EU Commission reports on functioning of Securitisation Regulation

The EU Commission has published its [report](#) on the implementation and functioning of the Securitisation Regulation.

The EU Commission emphasises that the legally mandated review is a good opportunity to take stock on a preliminary basis, but that more time is needed to get a full picture of the impact of the new securitisation framework, considering full implementation of the framework is ongoing.

The report focuses on the functioning of:

- the risk retention requirement;
- the due diligence and transparency requirements;
- the rules and definition for private securitisations;
- the case for a simple, transparent and standardised (STS) equivalence regime;
- a regime for sustainable securitisation;
- the function of the third-party verification of STS; and
- the case for establishing a system of limited-licence banks to replace the current structure of true-sale securitisation built around securitisation special purpose entities (SSPEs).

The report also provides legal interpretations around the jurisdictional scope of the Securitisation Regulation, following issues raised in the European Supervisory Authorities' (ESAs') opinion of 25 March 2021.

The EU Commission believes that the Securitisation Regulation has contributed significantly to achieving an EU securitisation market that helps finance the economy without creating risks to financial stability. Overall, the EU Commission considers the market to be working reasonably well, even though expectations for a highly dynamic market with increasing volumes and a growing number of participants do not yet seem to have been fulfilled.

Among other things, the EU Commission has:

- launched a call for advice to the Joint Committee of the ESAs to analyse the prudential treatment of securitisations in more depth;
- invited the European Securities and Markets Authority (ESMA) to revisit the regulatory and implementing technical standards (ITS) that set out the details of the transparency regime, and in particular, to draw up a dedicated template for private securitisation transactions; and
- invited co-legislators to accommodate securitisation in the ongoing negotiations on the creation of an EU Green Bond Standard, as recommended by the European Banking Authority (EBA) report on sustainable securitisation.

CRR: EU Commission adopts amending RTS on own funds

The EU Commission has adopted a [Delegated Regulation](#) laying down regulatory technical standards (RTS) regarding the prior permission to reduce own funds and the requirements related to eligible liabilities instruments.

The RTS amend Commission Delegated Regulation (EU) No 241/2014 containing RTS specifying some of the eligibility criteria for own funds under the Capital Requirements Regulation (CRR). The amending RTS reflect the changes to the CRR introduced by CRR2, which revised the own funds eligibility criteria and the rules relating to the own funds permission regime and introduced new mandates for the Commission to adopt RTS specifying some of the criteria for eligible liabilities instruments to constitute high quality loss absorbing capacity.

The Delegated Regulation will enter into force 20 days after its publication in the Official Journal of the European Union.

CRR: SRB and ECB reach agreement in principle on margin for redeeming eligible liabilities

The Single Resolution Board (SRB) has [announced](#) that it has reached an in principle agreement with the European Central Bank (ECB) on the margin for redeeming eligible liabilities under the CRR.

The margin that institutions under the ECB's supervision will have to comply with in order to be authorised to redeem eligible liabilities will be set at the lower value of either the requested general prior permission (GPP) predetermined amount or the institution's Pillar 2 Guidance, although a different margin may be set depending on the circumstances.

The new agreement is applicable to authorisations granted as of 1 January 2023, including GPP renewals.

CRR: EBA repeals and amends disclosure guidelines on credit quality of exposures

The EBA has published a [press release](#) on the status of certain guidelines that overlap with the ITS on Pillar 3 disclosures (Implementing Regulation (EU) 2021/637) under the CRR.

The following guidelines have been replaced by the ITS and therefore repealed:

- guidelines on disclosure requirements under Part 8 of CRR;
- guidelines on liquidity coverage ratio (LCR) disclosure to complement the disclosure of liquidity risk management; and
- guidelines on disclosure of encumbered and unencumbered assets.

The EBA has also amended the scope of the application of the guidelines on disclosure of non-performing and forborne exposures to clarify that:

- the guidelines will not apply to large and other listed institutions that are covered by the disclosure requirements under the ITS; and
- the guidelines will continue to apply only to listed small- and non-complex institutions and to other institutions that are non-listed.

The amended guidelines apply from 31 December 2022.

CSDR: Amending RTS on buy-in regime published in Official Journal

[Delegated Regulation \(EU\) 2022/1930](#) amending the RTS as regards the date of application of the provisions related to the buy-in regime under the Central

Securities Depositories Regulation (CSDR) has been published in the Official Journal.

Delegated Regulation (EU) 2022/1930 amends Delegated Regulation (EU) 2018/1229 to insert transitional provisions and suspend the application of the mandatory buy-in regime for three years until 2 November 2025.

Delegated Regulation (EU) 2022/1930 enters into force on 2 November 2022.

Securitisation Regulation: ITS on STS notification templates for on-balance-sheet synthetic securitisations published in Official Journal

[Commission Implementing Regulation \(EU\) 2022/1929](#) amending the ITS laid down in Implementing Regulation (EU) 2020/1227 as regards the templates for the provision of information in accordance with the STS notification requirements for on-balance-sheet synthetic securitisations has been published in the Official Journal.

The Securitisation Regulation was amended to extend the STS securitisation framework to on-balance sheet synthetic securitisations in April 2021. Implementing Regulation (EU) 2022/1929 amends the ITS to specify the STS notification template for the provision of information for on-balance sheet synthetic securitisations.

The Implementing Regulation will enter into force on 2 November 2022.

ESMA publishes 2023 Annual Work Programme

ESMA has published its [2023 Annual Work Programme](#), setting out its priority work areas for the next year to deliver on its mission to enhance investor protection and promote stable and orderly financial markets.

ESMA's work will focus on the following key deliverables for 2023:

- enabling sustainable finance;
- facilitating technological innovation and effective use of data;
- investors and issuers;
- markets and infrastructures;
- risk assessment; and
- supervision and convergence.

ESMA publishes strategy for 2023 – 2028

ESMA has published its [strategy for 2023-2028](#). In the strategy, ESMA details its long-term priorities and how it will use its competences and toolbox to respond to future challenges and developments.

ESMA's work will focus on the following five elements:

- strengthening supervision of EU financial markets;
- enhancing the protection of retail investors;
- fostering effective markets and financial stability;
- enabling sustainable finance; and
- facilitating technological innovation and effective use of data.

ESMA publishes call for evidence on SRD2 provisions

ESMA has published a [call for evidence](#) on the implementation of the revised Shareholders Rights Directive (SRD2). The call is addressed to persons or entities directly or indirectly affected by the SRD2, especially investors, issuers, intermediaries, proxy advisors as well as other entities such as consultants and service providers in the investor communication and voting industry. The feedback received will inform ESMA's input to the SRD2 review that will be delivered to the EU Commission by July 2023.

Responses to the call for evidence are due by 28 November 2022.

FSB consults on framework for international regulation of cryptoasset activities

The Financial Stability Board (FSB) has launched a [consultation](#) on a proposed framework for the regulation and supervision of cryptoasset activities and markets.

The proposals include complementary high-level recommendations on:

- regulatory, supervisory and oversight approaches to cryptoasset activities and markets; and
- regulation, supervision and oversight of global stablecoin arrangements.

The consultation document sets out questions on the proposals, as well as key issues and challenges, policy initiatives at jurisdictional and international levels, the FSB's proposed approach for establishing a framework and next steps.

Comments are due by 15 December 2022. The FSB intends to finalise the proposed recommendations by mid-2023 and to review implementation progress by end-2025.

The FSB has also published a [letter](#) to G20 Finance Ministers and Central Bank Governors ahead of their 12-13 October 2022 meeting on its key deliverables focusing on cryptoassets, cross-border payments, cyber risk and climate change. The FSB also notes an intention to report in November 2022 on its progress in strengthening resilience of non-bank financial intermediation (NBFi).

FSB reports on enhancing cross-border payments

The FSB has published two reports on the [progress made during the second year of the G20 roadmap for enhancing cross-border payments](#), and on the [priority themes for the next phase of work](#).

The FSB reports that work in 2021 and 2022 focused on establishing the foundational elements of the roadmap, and work is beginning to pivot from stocktaking, analysis and guidance to practical projects to improve existing systems and develop new ones. The FSB intends to publish an update on its planned framework for monitoring progress toward the G20 targets for cross-border payments in November 2022.

The FSB has identified three priority themes for the roadmap to focus on in the next phase:

- payment system interoperability and extension;
- legal, regulatory and supervisory frameworks; and

- cross-border data exchange and message standards.

Prioritisation of these themes is intended to help achieve the roadmap targets for enhancing the cost, speed, access and transparency of cross-border payments. The FSB hopes that by placing this at the centre of its planning, the public and private sector can direct resources toward the work most likely to have the biggest impact by the 2027 target date.

Accompanying the work priorities is a plan to expand the FSB's systematic engagement with the private sector and its engagement with a wider range of public authorities.

The two reports were delivered to G20 Finance Ministers and Central Bank Governors for their meeting in Washington DC on 12-13 October 2022.

FSB publishes recommendations for supervisory and regulatory approaches to climate-related risks

The FSB has published two reports as part of its work on addressing climate-related financial risks.

The [report on supervisory and regulatory approaches to climate-related risks](#) focuses on the following three areas:

- supervisory and regulatory reporting and collection of climate-related data from financial institutions as foundational elements in the identification and monitoring of climate-related risks;
- system-wide supervisory and regulatory approaches to assessing climate-related risks, including the use of analytical tools such as climate scenario analysis and stress testing; and
- assessing the extent to which current policies and tools address climate-related risks, and early consideration of other potential macroprudential policies and tools to address systemic risks that may not be addressed fully by current measures, based on the work of standard-setting bodies and authorities.

The [report on climate-related disclosures](#) focuses on:

- progress made by the International Sustainability Standards Board (ISSB) in developing its global baseline standard;
- actions undertaken by jurisdictions to require or promote climate-related disclosures; and
- firms' progress in making climate-related disclosures, as reported in the 2022 Task Force on Climate-related Financial Disclosures status report.

Task Force on Climate-Related Financial Disclosures publishes 2022 status report

The Task Force on Climate-Related Financial Disclosures (TCFD) has published its [2022 status report](#). The report focuses on developments and progress since the publication of the TCFD's final recommendations in 2017. Findings from the report include that:

- the percent of companies disclosing TCFD-aligned information has grown but only 4% of companies disclosed in line with all 11 recommended disclosures and 40% disclosed in line with at least five;

- public companies remain more likely to disclose information on their climate-related risks and opportunities than on any other recommended disclosure, with just over 60% of companies reviewed including such information in their 2021 fiscal year reports;
- disclosure of the resilience of companies' strategies under different climate-related scenarios continues to have the lowest level of disclosure across the 11 recommended disclosures; and
- all regions have significantly increased their levels of disclosure over the past three years.

IOSCO sets out regulatory measures to address risks and challenges from digitalisation of retail marketing and distribution

The International Organization of Securities Commissions (IOSCO) has published its [final report](#) on retail distribution and digitalisation, which sets out measures for IOSCO members to consider when determining their policy and enforcement approaches to retail online offerings and marketing.

The measures outlined in the report are intended to assist IOSCO members in adapting their regulatory and enforcement approaches, consistent with their legal and regulatory frameworks, to meet the challenges posed by rapidly evolving digitalisation and online activities.

The report sets out a toolkit of policy measures to help members address risks that may arise and a toolkit of enforcement measures that leverage a range of powers and technology-based investigatory techniques and enhanced collaboration with other authorities and providers of electronic intermediary services.

IOSCO launches survey on asset managers and index providers

The International Organization of Securities Commissions (IOSCO) Committee on Investment Management has launched a [survey](#) on the interaction between asset managers and index providers.

The survey is intended to generate a more granular understanding of certain conduct-related matters, such as:

- governance arrangements and policies for responding to regular and exceptional events;
- errors in the compilation of an index;
- conflicts of interest; and
- any further services or functions provided in addition to the core function of index provision or administration.

The survey is intended to assist the IOSCO's further study of:

- the role of asset managers in relation to indices and index providers, and the role and processes of index providers in the provision of indices;
- the potential impact of administrative errors on investment funds; and
- potential conflicts of interest that may exist at the index provider in relation to the fund.

Responses are due by 26 November 2022.

Overseas Funds Regime: UK Government commences EU and EEA equivalence assessment

HM Treasury has updated its [webpage](#) on the overseas funds regime (OFR) to note that it has commenced its equivalence assessment of the EU and EEA.

The OFR was introduced by the Financial Services Act 2021 to allow overseas collective investment schemes to be marketed to all investors in the UK market on appropriate terms, and for HM Treasury to make outcomes-based equivalence decisions for the purposes of the regime.

BoE, PRA and FCA consults on adoption of AI in financial services

The Bank of England (BoE), Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) have published a [joint discussion paper](#) (PRA DP5/22 | FCA DP22/4) requesting feedback on how artificial intelligence (AI) may affect their objectives.

The paper sets out the regulators' thoughts on:

- the potential benefits and risks related to the use of AI in financial services;
- how the current regulatory framework applies to AI;
- whether additional clarification of existing regulation may be helpful; and
- how policy can best support further safe and responsible AI adoption.

The consultation will be of interest to, among others, financial services firms regulated by the supervisory authorities and non-regulated financial services firms, professional services firms, law firms and trade associations and industry bodies.

The BoE and FCA have also published a [research note](#) setting out the findings and analysis of their 2022 survey into the state of machine learning in UK financial services.

Comments are due by 10 February 2023.

PRA consults on risks from contingent leverage

The PRA has launched a [consultation](#) (CP12/22) on proposals to update the PRA's supervisory expectations for firms undertaking an Internal Capital Adequacy Assessment Process (ICAAP) in relation to the risks from contingent leverage, and to introduce a new data reporting requirement for collecting data on trading exposures where these risks may most likely arise.

CP12/22 sets out policy proposals to:

- update the PRA's expectations of firms undertaking ICAAPs to introduce guidance on assessing risks from contingent leverage as part of their assessment of risks of excessive leverage; and
- introduce a new reporting rule for firms to report data on trading exposures that may be sources of contingent leverage risk, as part of their existing reporting framework for the UK leverage ratio.

The proposals would result in changes to the PRA's Supervisory Statement (SS31/15) 'The Internal Capital Adequacy Assessment Process (ICAAP)' (Appendix 1), the Reporting (CRR) Part of the Rulebook (Appendix 2), and the 'Instructions for reporting on leverage' (Appendix 4).

The aim of these proposals is to help firms identify, monitor, and manage contingent leverage risk and to improve the PRA's ability to monitor the evolution of these risks with more granular data, helping it take targeted action where relevant.

Comments are due by 3 February 2023.

Swiss Federal Council commissions bill to increase transparency of legal entities

The Federal Council has [instructed](#) the Federal Department of Finance (FDF) to draft a bill on increased transparency and easier identification of the beneficial owners of legal entities by the second quarter of 2023. This is intended to strengthen prevention and prosecution in the area of financial crime, and in turn the integrity and reputation of Switzerland as a financial centre and business location.

The bill would introduce a central register for identifying beneficial owners and new obligations as regards the risk-based updating of information on effective ownership. The register will be accessible to the relevant authorities but not publicly available. The aim is to achieve a solution which is as effective and efficient as possible.

The Federal Council has also asked the FDF to incorporate measures to strengthen the current mechanisms for combating money laundering into the bill. In particular, it should be assessed, together with the relevant stakeholders, whether further adjustments should be made to the anti-money laundering toolkit, for instance in the area of legal professions.

The Federal Council has placed great emphasis on combating financial crime and this bill is a further step towards reinforcing the Swiss mechanisms in this regard. It also represents the implementation of one of the measures proposed in the Federal Council's anti-corruption strategy for 2021 to 2024.

HKMA consults on implementation of revised market risk and credit valuation adjustment risk frameworks

The Hong Kong Monetary Authority (HKMA) has launched a [soft consultation](#) to seek comments from the banking industry on its proposed amendments to the Banking (Capital) Rules (BCR) for the implementation of the revised market risk and credit valuation adjustment (CVA) risk frameworks. The proposed amendments will be subject to a further consultation based on the actual draft BCR amendments in 2023.

In addition, the HKMA is consulting on two related new supervisory policy manual modules (SPMs) on market risk capital charge and CVA risk capital charge. The SPMs aim to provide additional details to the BCR amendments and to integrate all the market risk and CVA risk requirements in a user-friendly format.

Comments on the consultation are due by 12 December 2022.

Singapore Government gazettes amendment regulations and orders in respect of certain foreign companies

The Singapore Government has gazetted the following amendment regulations and orders in relation to certain foreign companies:

- [Financial Advisers \(Amendment No. 2\) Regulations 2022](#) – to remove regulation 32CA of the Financial Advisers Regulations, which pertains to a licensing exemption for foreign companies providing financial advisory service under an arrangement with a related corporation in respect of specified investment products;
- [Financial Advisers Act 2001 \(Amendment of First Schedule\) Order 2022](#) – to remove paragraph 11 from the First Schedule to the Financial Advisers Act 2011, which includes a foreign company providing financial advisory services under certain approved arrangements with its related corporation in the list of excluded financial advisers;
- [Securities and Futures \(Licensing and Conduct of Business\) \(Amendment No. 2\) Regulations 2022](#) – to remove regulation 65 of the Securities and Futures (Licensing and Conduct of Business) Regulations (Rg 10), which pertains licensing exemptions for foreign companies dealing in specified OTC derivatives, specified FX contracts or units in a collective investment scheme immediately before 8 October 2018 under an arrangement with a related corporation; and
- [Securities and Futures Act 2001 \(Amendment of Third Schedule\) Order 2022](#) – to remove paragraph 9 from the Third Schedule to the Securities and Futures Act 2001, which includes a foreign company carrying on regulated activities under certain approved arrangements with its related corporation under the list of specified persons.

All the above amendment regulations and orders are effective from 9 October 2022.

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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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