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## **Digital finance: ESMA publishes report on DLT pilot regime**

The European Securities and Markets Authority (ESMA) has published a [report](#) on the distributed ledger technology pilot regime (DLT Pilot).

The Regulation on a pilot regime for market infrastructures based on the DLT Pilot is intended to develop the trading and settlement for DLT financial instruments. The DLT Pilot entered into force on 23 June 2022 and will start applying on 23 March 2023.

In the report, ESMA provides guidance on certain technical elements and makes recommendations on compensatory measures on supervisory data to ensure a consistent application by DLT market infrastructures from the start of the regime.

The report includes feedback received following the call for evidence launched in January and a workshop organised in March 2022. ESMA concludes that there is no need to amend the RTS on transparency and data reporting requirements before the DLT Pilot starts applying.

ESMA will work on supervisory guidance clarifying the application of certain elements of the RTS. ESMA also intends to issue guidance on questions received by various stakeholders on the DLT Pilot to contribute to its convergent application.

## **SFDR: ESAs publish final RTS on gas and nuclear energy activities**

The European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), and ESMA, have published a [final report](#) setting out draft regulatory technical standards (RTS) on the disclosure of investments in taxonomy-aligned gas and nuclear economic activities under the Sustainable Finance Disclosure Regulation (SFDR).

The draft RTS amend the existing SFDR RTS to align them with the Taxonomy Complementary Climate Delegated Act, which includes specific nuclear and gas energy activities in the list of environmentally sustainable economic activities covered by the EU Taxonomy.

The draft amendments are intended as limited adjustments of the existing regulatory framework and include revised pre-contractual and periodic disclosure templates and minor technical revisions.

## **MiFID2: ESMA issues statement on impact of inflation on investor protection**

ESMA has published a [statement](#) reminding investment firms to consider inflation and inflation risk when applying relevant MiFID2 requirements relating to investor protection.

The statement notes the impact of inflation growth on retail investors and sets out ESMA's expectations that firms should:

- ensure that the information they address or disseminate to retail clients comprehensibly reflects the possible effect of inflation risks on the value and return of an investment;

- carefully consider, as part of the suitability assessment, the risk that inflation will undermine the performance and / or value of an investment;
- ensure their suitability policies and procedures enable them to provide investment advice and portfolio management services that take account of an appropriate degree of risk diversification, including differentiation with regard to inflation risk, and ensure that the client has an adequate understanding of the relationship between risk and return; and
- consider the effect of expected inflation in their product governance processes.

## **MiFID2: ESMA consults on market outages**

ESMA has published a [consultation paper](#) on proposed guidance on how trading venues should communicate with market participants in case of an outage.

The consultation follows the publication in September 2021 of ESMA's MiFID2 review report on algorithmic trading and seeks views on:

- guidance on trading venues' outage plans and communication protocols;
- guidance on trading venues' arrangements for closing auctions;
- the absence of guidance on a reference price; and
- specific guidance for non-equity instruments.

Comments are due by 16 December 2022. ESMA expects to publish a final report by Q1 2023.

## **EMIR: ESMA reports on review of clearing thresholds**

ESMA has published a [feedback report](#) on the review of the clearing thresholds (CTs) under the European Market Infrastructure Regulation (EMIR).

Regulation (EU) 2019/834 (EMIR Refit) introduced a mandate in EMIR for ESMA periodically to review the clearing thresholds and update them where necessary to ensure that the CTs remain appropriate.

The feedback report presents key aspects raised by the public consultation conducted on the basis of a [discussion paper](#) published on 21 November 2021 and ESMA's considerations and initiatives in relation to the CTs. It also includes updated statistics and simulations on the level of coverage in terms of notional and counterparties for certain changes to the levels of the CTs.

## **EMIR: CCP equivalence decisions for Colombia and Taiwan published in OJ**

[Commission Implementing Decision \(EU\) 2022/1683](#) and [Commission Implementing Decision \(EU\) 2022/1684](#) on the equivalence of the regulatory frameworks for central counterparties (CCPs) in Colombia and Taiwan respectively to the requirements of the EMIR have been adopted and published in the Official Journal.

The Implementing Decisions allow these CCPs to apply for recognition by ESMA. Once recognised, such CCPs will be able to provide central clearing services in the EU to EU clearing members and trading venues.

Commission Implementing Decision (EU) 2022/1683 on Colombia entered into force on 1 October 2022 and Commission Implementing Decision (EU) 2022/1684 on Taiwan will enter into force on 20 October 2022.

### **EMIR: Delegated Regulation extending clearing obligation exemption for pension scheme arrangements published in OJ**

[Delegated Regulation \(EU\) 2022/1671](#) extending the transitional period exempting pension scheme arrangements (PSAs) from the clearing obligation until 18 June 2023 has been published in the Official Journal.

The temporary exemption was first extended by Regulation (EU) 834/2019 (EMIR REFIT) until 18 June 2021 and extended a second time by a Delegated Act until 18 June 2022. This third extension is the final extension possible under the current EMIR framework.

Delegated Regulation (EU) 2022/1671 entered into force on 1 October 2022.

### **CRR: ITS on main indices and recognised exchanges published in Official Journal**

[Commission Implementing Regulation \(EU\) 2022/1650](#) amending the implementing technical standards (ITS) laid down in Implementing Regulation (EU) 2016/1646 regarding the main indices and recognised exchanges under the Capital Requirements Regulation (CRR) has been published in the Official Journal.

The main amendments to the ITS include:

- revising the methodology used to identify the main indices whose components can be used as collateral;
- amending the definition of 'recognised exchange' to include third country exchanges from jurisdictions where the Commission has adopted an equivalence decision under MiFID2; and
- excluding UK exchanges from the list of recognised exchanges as the Commission has not adopted an equivalence decision under MiFID2 for the UK.

The Regulation enters into force on 17 October 2022.

### **EBA publishes 2023 work programme**

The EBA has published its [work programme for 2023](#), which describes its key strategic areas of work for the coming year, as well as related activities and tasks.

The EBA's work is defined under the following five strategic areas:

- finalising Basel implementation in the EU;
- running an enhanced EU-wide stress test;
- providing data to all stakeholders;
- addressing the new challenges arising from the digitalisation of finance; and
- further contributing to the build-up of the capacity to fight money laundering and terrorist financing and to protect consumers in the EU.

The EBA also intends to continue to pay particular attention to the European ESG agenda, in its regulatory and risk assessment mandates, as well as in its own organisation, building on its recent EU Eco-Management and Audit Scheme (EMAS) registration.

### **BRRD: EBA publishes transferability guidelines**

The EBA has published a [final report](#) setting out guidelines for institutions and resolution authorities to complement the resolvability assessment for transfer strategies.

The transferability guidelines, which complement the EBA's resolvability guidelines, are intended to support the assessment of the feasibility and credibility of transfer strategies and include requirements relating to the implementation of transfer tools, covering:

- the methodology set by the resolution authorities for the institutions to define the transfer perimeter; and
- the operational implementation of the transfer.

Institutions and authorities are expected to comply with the guidelines by 1 January 2024.

### **Working Group on Euro Risk-Free Rates publishes recommendation on derivative products referencing €STR**

The Working Group on Euro Risk-Free Rates has published a [recommendation](#) relating to the availability of derivative products referencing €STR, particularly those that will be utilised for the purpose of calculating and publishing a forward-looking term €STR rate in order to support the adoption of EURIBOR fallback.

For market making institutions, the Working Group recommends that all reasonable steps are taken to make derivatives referencing the €STR benchmark available to customers, including:

- the adoption of derivative products onto relevant platforms and market infrastructure; and
- the provision of pricing referencing both €STR and EURIBOR when discussing product options with customers.

The Working Group also recommends that market participants transacting in derivatives referencing Euro denominated benchmarks to assess whether €STR would be a suitable benchmark for their needs and where relevant, take the necessary steps to be able to transact accordingly, including the adoption or development of the necessary infrastructure.

The Working Group reminds market participants that backward looking rates such as compounded €STR average rates are already available for all products including loans, bonds and other cash instruments.

### **ECB consults on guide to qualifying holding procedures**

The European Central Bank (ECB) has published for consultation a [draft guide](#) on the assessment of acquisitions and increases of qualifying holdings in credit institutions established in Member States participating in the Single Supervisory Mechanism (SSM).

The guide aims to clarify the supervisory approach taken by the ECB and national competent authorities (NCAs) to the assessment of applications to acquire qualifying holdings and covers:

- the scope of the persons required to undergo an assessment;
- how the assessment criteria are applied; and
- further guidance on key documentation required in the assessment.

The guide also provides information on complex acquisition structures, the application of proportionality and specific procedural aspects, and is intended to complement the ECB's guide on the supervisory approach to consolidation in the banking sector.

Comments are due by 9 November 2022.

## **BCBS, CPMI and IOSCO report on margining practices**

The Basel Committee on Banking Supervision (BCBS), the Bank for International Settlements' Committee on Payments and Market Infrastructures (CPMI) and the International Organization of Securities Commissions (IOSCO) have published a [report](#) on the review of margining practices.

The report presents a data-driven analysis examining margin calls during the high market volatility and 'dash for cash' in March and April 2020, and the extent to which market participants were prepared to meet them.

The report confirms areas for further policy work, including:

- increasing transparency in centrally cleared markets;
- enhancing the liquidity preparedness of market participants as well as liquidity disclosures;
- identifying data gaps in regulatory reporting;
- streamlining variation margin processes in centrally and non-centrally cleared markets;
- evaluating the responsiveness of centrally cleared initial margin models to market stresses, with a focus on impacts and implications for CCP resources and the wider financial system; and
- evaluating the responsiveness of non-centrally cleared initial margin models to market stresses.

This follows a consultative report published in October 2021, and a [summary of the feedback](#) received to that report has been published.

## **FCA announces cessation of 1- and 6-month synthetic sterling LIBOR at end of March 2023**

The Financial Conduct Authority (FCA) has [announced](#) its decision not to compel the publication of 1- and 6-month synthetic sterling LIBOR after the end of March 2023, after which these settings will permanently cease.

This follows a consultation launched by the FCA in June 2022. In line with the consultation, the FCA has decided to require continued publication of the 1- and 6-month synthetic sterling LIBOR settings for a further three months after the end of 2022, until 31 March 2023.



The FCA has reminded market participants to ensure that they are prepared for the permanent cessation of 1- and 6-month synthetic sterling LIBOR on 31 March 2023.

In a statement published in March 2021, the FCA had set out that market participants should be prepared for the publication of synthetic yen LIBOR to cease permanently at the end of 2022.

The FCA is still considering the appropriate date for the cessation of the 3-month synthetic sterling LIBOR, in light of the feedback received to its consultation. The FCA is also considering feedback received on exposures to US dollar LIBOR that might persist beyond the end of June 2023, and whether there is a case to compel ICE Benchmark Administration (IBA) to produce US dollar LIBOR using a synthetic methodology for a limited period. The FCA intends to publish a summary of the feedback on these points and its response later in the autumn.

### **PRA consults on depositor protection reforms**

The Prudential Regulation Authority (PRA) has published a [consultation paper](#) (CP9/22) on depositor protection. CP9/22 sets out proposed changes to the Depositor Protection (DP) part of the PRA Rulebook.

Among other things, the PRA intends to:

- revoke the rules in its DP part concerning continuity of access (CoA); and
- completely remove the Dormant Account Scheme Part and amend other rules to remove references to the dormant account scheme.

The consultation also aims to make changes to the PRA's:

- Supervisory Statement 18/15 on depositor and dormant account protection;
- Statement of Policy (SoP) on Deposit Guarantee Schemes; and
- SoP on calculating risk-based levies for the Financial Services Compensation Scheme deposits class.

The consultation period concerning the CoA rules and the dormant account scheme ends on 21 October 2022. The deadline for the remaining proposals is 16 December 2022.

### **PRA updates rules and supervisory expectations on definition of capital**

The PRA has [published](#) a policy statement (PS8/22) setting out its final policy on the definition of capital for CRR firms and providing feedback to responses received to its consultation (CP2/22).

PS8/22 sets out:

- amendments to the Own Funds and Eligible Liabilities (CRR) Part of the PRA Rulebook (Appendix 1); and
- updates to the supervisory statement SS7/13 'Definition of capital (CRR firms)' (Appendix 2).

This follows a consultation (CP2/22) launched in February 2022 on the PRA's draft rules and supervisory statement. Following the responses received, the PRA:

- amended the draft rules to require that, once permission is received, the general prior permission (GPP) amount should be deducted from own funds when there is sufficient certainty regarding the transaction; and
- introduced an expectation in the supervisory statement that firms should notify the PRA every quarter regarding transactions taken under the GRP.

The changes introduced to the rules and SS7/13 come into effect on 1 January 2023.

### **BaFin consults on amendments to MaRisk**

The German Federal Financial Supervisory Authority (BaFin) has [launched](#) a consultation on a revised version of its current Circular 10/2021 on the Minimum Requirements for Risk Management (MaRisk).

The [proposed MaRisk amendment](#) implements the EBA guidelines on loan origination and monitoring in accordance with BaFin's intention to comply, as previously notified to the EBA.

In addition, the amendment takes into account insights from BaFin's audit practice on institutions' own real estate transactions. It further includes, for the first time, requirements for the management of sustainability risks on the basis of BaFin's guidance note on dealing with sustainability risks. It also newly incorporates essential provisions that institutions must comply with when using models.

BaFin and Deutsche Bundesbank will accept comments until 28 October 2022.

### **Swiss Federal Department of Finance consults on revised Collective Investment Schemes Ordinance**

The Federal Department of Finance has [launched](#) a consultation on a revision of the Collective Investment Schemes Ordinance (CISO). The revision contains implementing provisions for the Limited Qualified Investor Fund (L-QIF), which was introduced in December 2021 and is exempt from authorisation by the Swiss Financial Market Supervisory Authority (FINMA). The revision also makes some other adjustments to CISO and other implementing ordinances, in particular the Financial Institutions Ordinance.

### **HKMA announces enhanced competency framework on compliance**

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) to announce the launch of the enhanced competency framework on compliance (ECF-Compliance).

The ECF-Compliance is a collaborative effort of the HKMA, the Hong Kong Institute of Bankers (HKIB) and the banking industry in establishing a set of common and transparent competency standards for raising the professional competence of relevant practitioners working in the compliance function of authorised institutions (AIs). Details of the ECF-Compliance, including its scope of application, competency standards, qualification structure, modular exemption, certification and grandfathering arrangements, as well as



continuing professional development (CPD) requirements are set out in the Guide to ECF-Compliance attached to the circular.

The importance of ensuring continuing competence of staff members is emphasised in the Supervisory Policy Manual module CG-6 'Competence and Ethical Behaviour'. In this respect, the HKMA strongly encourages AIs to adopt the ECF-Compliance as part of their efforts in supporting their employees' on-going professional development and expects AIs to adopt appropriate measures to monitor and maintain the competence levels of their staff.

As part of supporting trainings and examinations that meet the ECF certification, the HKMA advises AIs to keep proper records of the relevant training and qualification of their staff and to provide them with the necessary assistance in their applications for grandfathering and certification, and fulfilment of CPD training under the ECF-Compliance.

### **IMDA and MAS consult on strengthening participation in Singapore Quick Response Code Scheme**

The Infocomm Media Development Authority (IMDA) and the Monetary Authority of Singapore (MAS) have launched a [consultation](#) on strengthening participation in the Singapore Quick Response Code Scheme (SGQR).

The IMDA and the MAS, together with the SGQR Taskforce, introduced the SGQR in September 2018 as the world's first standard for a unified payment quick response (QR) code which allows multiple payment schemes to be combined into a single 'SGQR label'. The key objectives of the SGQR are to: solve payment QR code fragmentation; standardise payment QR code specifications; and promote payment QR code interoperability. Given these objectives, the IMDA and the MAS are seeking comments on:

- the introduction of a set of guidelines which cover the MAS' expectations of all 'Relevant Merchant Acquirers' through their participation in the SGQR;
- a proposal to add a new provision to the rules (the existing relevant governance, membership and operating rules, and branding and presentment protocols relating to the SGQR) to require 'SGQR Members' to provide the 'Relevant Merchant Acquisition Service' by way of an SGQR label only and not with proprietary static payment QR code labels;
- the proposals for the proposed guidelines as well as the revised rules to take effect on 1 December 2023, which equates to a transition period of at least three months from the publication of the response to the consultation, which is targeted for mid-2023; and for a transition period of at least six months from the date that the proposed guidelines and revised rules take effect for SGQR Members to remove all proprietary static payment QR code labels at their merchants' physical places of business and replace them with SGQR labels;
- the exclusion of standard payment institutions, as defined in the Payment Services Act 2019, from the scope of the proposed guidelines;
- the introduction of the proposed fee structure for SGQR Members, and the proposal to have Banking Computer Services Private Limited (BCS) perform a one-time fee collection on the date which the revised rules take effect (i.e., currently set as 1 December 2023); and

- the conduct of regular batched onboarding exercises for merchant acquirers who wish to join SGQR.

Comments on the consultation are due by 28 October 2022.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **CFIUS 2021 Annual Report reveals record filings and non-notified transactions and exposes encouraging trends**

On 2 August 2022, the US Department of the Treasury, as the Chair of the Committee on Foreign Investment in the United States, released the public version of its Annual Report to Congress for calendar year 2021. The Annual Report highlights key indicators of CFIUS' process and provides statistics on transactions that were filed with CFIUS in 2021 – the first full calendar year in which CFIUS operated pursuant to the new regulations implementing the Foreign Investment Risk Review Modernization Act of 2018.

This briefing paper discusses the CFIUS 2021 Annual Report.

<https://www.cliffordchance.com/briefings/2022/09/cfius-2021-annual-report-reveals-record-filings-and-non-notified.html>

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