

INTERNATIONAL REGULATORY UPDATE 31 OCTOBER – 4 NOVEMBER 2022

- FCA updates modifications by consent in relation to non-investment insurance contracts
- Ordinance on requirements for electronic securities registers published
- Dutch Finance Minister updates Parliament on UBO register
- Trend View 2023: AFM publishes analysis of trends and risks in financial sector
- APRA publishes minor amendments to capital framework for authorised deposit-taking institutions
- ASIC announces enforcement priorities for 2023
- SFC issues circular on virtual asset futures exchange traded funds
- FSA finalises partial amendment of regulatory notice relating to registration applications and document submissions in English
- Singapore and China strengthen cooperation in green finance and capital market linkages
- MAS publishes whitepaper on Project Orchid on retail CBDC
- MAS launches expanded initiative to advance cross-border connectivity in wholesale CBDCs
- SGX RegCo proposes changes to Central Depository's margin and clearing fund frameworks
- SGX RegCo proposes changes to independent director tenure and remuneration disclosures
- Recent Clifford Chance briefings: Hong Kong virtual assets and US fund advertising. Follow this link to the briefings section.

FCA updates modifications by consent in relation to non-investment insurance contracts

The Financial Conduct Authority (FCA) has published a [new webpage](#) on, and new forms for, modifications by consent for EEA insurers and intermediaries operating a branch in the UK with a Part 4A permission to carry out regulated activities relating to non-investment insurance contracts.

The modification disapplies certain requirements for applicant firms that meet certain conditions with the aim of reducing the regulatory burden. Summary

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conditions include that the regulated activities carried on by the UK branch are solely those:

- necessary to assist with activities within the scope of the Insurance Distribution Directive (IDD) in relation to non-investment insurance contracts by the EEA office of the firm; and
- relating to insurance risks where the state of the risk or state of commitment is in the EEA, and where the customer is also habitually resident in the EEA.

Further summary conditions are set out on the webpage and full details are set out in the modification directions.

The modification is valid until 27 October 2027.

Ordinance on requirements for electronic securities registers published

The [Ministerial Ordinance on Requirements for Electronic Securities Registers](#) (eWpRV) has been published in the German Federal Law Gazette.

The Act on Electronic Securities Registers (eWpG) sets out requirements for the maintenance of electronic securities registers, namely central registers and crypto securities registers. The eWpRV specifies these requirements on the basis of the ordinance authorisations stipulated in sections 15 and 23 eWpG in order to increase legal certainty for potential registrars. In addition, further specification of the requirements also serves the interests of the participants in electronic securities registers, in particular the investors.

The eWpRV entered into force on 29 October 2022.

Dutch Finance Minister updates Parliament on UBO register

The Dutch Finance Minister, Sigrid Kaag, has provided an [update](#) to Parliament on the current state of the Dutch register of Ultimate Beneficial Owners of legal entities (UBO register). The register is intended to ensure transparency around the ultimate stakeholders behind legal entities and help the fight against money laundering and the financing of terrorism.

The number of UBO registrations shows that 32.5% of all entities that are obliged to submit a UBO declaration have not yet submitted a declaration. With the expiry of the deadline (27 March 2022), enforcement has started. This (predominantly risk-based) enforcement is carried out by the Economic Enforcement Office (BEH) of the Tax and Customs Administration. Legal entities against which enforcement takes place first receive a letter, with a deadline to submit a statement. If this is not followed up, sanctions such as fines or orders subject to periodic penalty payments can be imposed.

Under the Money Laundering and Terrorist Financing (Prevention) Act (Wwft), institutions subject to the Wwft (including most financial institutions) may not enter into a new business relationship with a client whose UBO registration is missing. In order to prevent this rule in combination with the longer processing times by the Chamber of Commerce (the executor of the UBO register) from leading to disruption of new services, a temporary arrangement was announced in a letter to Parliament dated 14 April 2022, including that it is temporarily sufficient if new clients can demonstrate that they have submitted a UBO declaration, even though the statement has not yet been processed by

the Chamber of Commerce. This scheme initially applied until 1 September 2022 but has since been extended until 1 January 2023.

In her letter, the Minister also informs Parliament that the specific UBO register for trusts and similar legal constructions entered into force on 1 November. Trusts and similar legal arrangements, such as investment funds for joint account, must have registered their UBOs in this particular UBO register for trusts no later than three months after this date.

Trend View 2023: AFM publishes analysis of trends and risks in financial sector

The Dutch Authority for the Financial Markets (AFM) has published [Trend View 2023](#), which addresses important trends and risks in the financial sector and provides background information and insights on relevant supervisory topics. According to the AFM, the early identification and understanding of changes in the sector contributes to a risk-based, forward-looking and preventive supervisory approach.

Chapter 1 discusses trends in macroeconomics, sustainability, digitalisation and internationalisation. Macroeconomic developments include high inflation, geopolitical developments, worsening macroeconomic conditions and rising interest rates. Trends in sustainability include sustainability information in the financial sector, sustainable investing and pricing of CO2 emissions. Trends in digitalisation include regulations in the field of digital resilience (the EU Digital Operational Resilience Act, DORA), regulation of crypto assets (MiCA) and the rise of Decentralised Finance (De-Fi) in the areas of credit, trading, payments, insurance and investment (assets and derivatives). Trends in internationalisation include the emergence of neo-brokers, as well as (the need for) central information on price formation on capital markets.

On the basis of the trends identified, the AFM describes important issues within its supervision and, where possible, indicates solutions. In Chapter 2, 'risk maps' for the four AFM supervisory areas indicate the main risks for each supervisory area from their interaction with the trends in Chapter 1. The supervisory areas comprise financial services, capital markets, asset management, and external reporting and audit firms.

Developments in the gas derivatives market and the sustainable investment market receive particular attention in Chapters 3 and 4.

APRA publishes minor amendments to capital framework for authorised deposit-taking institutions

The Australian Prudential Regulation Authority (APRA) has [released](#) the final prudential standards and guidance with consequential amendments from the updated capital adequacy and credit risk capital requirements for authorised deposit-taking institutions (ADIs).

This release follows the publication in November 2021 of APRA's new bank capital framework, and the final accompanying prudential practice guides in July 2022. In July 2022, APRA consulted on two proposals for consequential amendments to ensure consistency of APRA's broader prudential framework with the capital reforms. With this release, APRA has also issued a letter that outlines its response to the July 2022 consultation submissions and summarises the consequential amendments, relating mainly to cross referencing in the ADI prudential framework.

APRA has listed 11 prudential standards and 2 prudential practice guides that have been amended, namely:

- Prudential Standard APS 110 Capital Adequacy;
- Prudential Standard APS 111 Capital Adequacy: Measurement of Capital;
- Prudential Standard APS 116 Capital Adequacy: Market Risk;
- Prudential Standard APS 120 Securitisation;
- Prudential Standard APS 121 Covered Bonds;
- Prudential Standard APS 180 Capital Adequacy: Counterparty Credit Risk;
- Prudential Standard APS 210 Liquidity;
- Prudential Standard APS 220 Credit Risk Management;
- Prudential Standard APS 221 Large Exposures;
- Prudential Standard CPS 226 Margining and risk mitigation for non-centrally cleared derivatives;
- Prudential Standard APS 310 Audit and Related Matters;
- Prudential Practice Guide APG 112 Capital Adequacy: Standardised Approach to Credit Risk; and
- Prudential Practice Guide APG 223 Residential Mortgage Lending.

In addition, APRA has also made changes to the following six reporting standards:

- Reporting Standard ARS 110.0 Capital Adequacy;
- Reporting Standard ARS 113.0 Capital Adequacy: Internal Ratings-based Approach to Credit Risk;
- Reporting Standard ARS 120.1 Securitisation – Regulatory Capital;
- Reporting Standard ARS 120.2 Securitisation – Supplementary Items;
- Reporting Standard ARS 180.0 Counterparty Credit Risk; and

Reporting Standard ARS 210.0 Liquidity.

APRA has clarified that the changes included in the letter will take effect from 1 January 2023, in line with the effective date of the broader capital reforms. APRA will continue to engage with ADIs on the implementation of the ADI capital framework in the lead-up to this date, bilaterally and through relevant industry associations.

ASIC announces enforcement priorities for 2023

The Australian Securities and Investments Commission (ASIC) has [announced](#) its enforcement priorities for 2023, with a focus on the need to protect consumers from financial harm and uphold the integrity of Australia's financial markets through enforcement actions on greenwashing and predatory lending, as well as on disrupting investment scams.

ASIC's enforcement priorities for the year include actions targeting:

- poor design, pricing and distribution of financial products;

- misleading conduct in relation to sustainable finance including greenwashing;
- misconduct involving high risk products including cryptoassets;
- combating and disrupting investment scams;
- protecting financially vulnerable consumers;
- misleading and deceptive conduct relating to investment products;
- misconduct in the superannuation sector;
- failures by providers of general insurance;
- misconduct that involves misinformation through social media;
- governance and director's duties failures;
- manipulation in energy and commodities derivatives markets; and
- unfair contract terms.

In addition, ASIC has highlighted the following five enduring priorities which will remain its focus areas regardless of the changing priorities every year:

- misconduct damaging to market integrity;
- misconduct impacting First Nations people;
- misconduct involving a high risk of significant consumer harm;
- systemic compliance failures by large financial institutions; and
- new or emerging conduct risks within the financial system.

SFC issues circular on virtual asset futures exchange traded funds

The Securities and Futures Commission (SFC) has issued a [circular](#) setting out the requirements under which it would consider authorising exchange traded funds (ETFs) that obtain exposure to virtual assets (VAs) primarily through futures contracts (VA Futures ETFs) for public offering in Hong Kong.

In view of the recent market developments, the SFC has been actively looking into a regime that would enable the authorisation of investment products providing exposure to VAs and also meet investor demands with appropriate investor protection. The SFC has indicated that it is prepared to accept applications for authorisation of VA Futures ETFs, whilst keeping in view and closely monitoring the development of the VA market and its regulatory landscape regarding the appropriateness of authorisation of ETFs that invest directly in spot VAs.

VA Futures ETFs that seek SFC authorisation for public offering in Hong Kong are expected to meet the applicable requirements in the Overarching Principles Section and the Code on Unit Trusts and Mutual Funds in the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products, as well as the additional requirements in the circular. Amongst others, the requirements noted in the circular include the following:

- the management company of a VA Futures ETF is expected to have a good track record of regulatory compliance and demonstrate at least three years' proven track record in managing ETFs, adopt an active investment

strategy to allow flexibility in portfolio composition, rolling strategy and handling of any market disruption events, and carry out extensive investor education before launching the VA Futures ETF in Hong Kong;

- only VA futures traded on conventional regulated futures exchanges are allowed, subject to the management company demonstrating that the relevant VA futures have adequate liquidity for the operation of the VA Futures ETF and the roll costs of the relevant VA futures contracts are manageable and how such roll costs will be managed;
- the product key facts statement of a VA Futures ETF should contain upfront disclosure of the investment objective and key risks associated with investment in VA futures; and
- intermediaries are subject to the applicable requirements under the 'Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission' and other relevant requirements or conditions, including the joint circular on intermediaries' virtual asset-related activities issued by the SFC and Hong Kong Monetary Authority in January 2022.

FSA finalises partial amendment of regulatory notice relating to registration applications and document submissions in English

The Financial Services Agency (FSA) has [finalised](#) the partial amendment of its regulatory notice relating to registration applications and document submissions in English to further encourage foreign firms to enter the Japanese fund market.

In January 2021, the FSA established the Financial Market Entry Office to expand its capacity to deal with foreign applicants for Japanese markets in order to expand Japan's role as an international financial centre. Through this amendment, the FSA is allowing an applicant that meets the following conditions to submit written applications for registration and other subsequent documents in English:

- an applicant who will sell only interests in collective investment schemes managed by group companies of the applicant;
- an applicant whose clients in Japan will be professional investors (tokutei tushika) only; and
- an applicant (or its group company) who is authorised to conduct investment advisory business or investment management business in a foreign jurisdiction.

The regulatory notice is effective as of 31 October 2022.

Singapore and China strengthen cooperation in green finance and capital market linkages

The Monetary Authority of Singapore (MAS) has [announced](#) new initiatives to expand cooperation in green finance and deepen capital market linkages with China. These initiatives were discussed at the 18th Joint Council for Bilateral Cooperation in Singapore, co-chaired by the representatives from both countries.

The key initiatives discussed were:

- the China-Singapore Green Finance Taskforce, wherein the MAS and the People's Bank of China will establish a taskforce to deepen bilateral cooperation in green finance and facilitate greater public-private sector exchanges to better mobilise private capital for the region's sustainable development needs;
- the ETF Product Link, wherein the Singapore Exchange (SGX) and the Shenzhen Stock Exchange (SZSE) will welcome the first three participating ETFs under the ETF Product Link by year-end, aiming to allow investors in China and Singapore to access ETF investment opportunities in each other's markets; and
- the Low Carbon Index Family by Chinese and Singapore Exchanges, wherein the SGX, the Shanghai Stock Exchange and the SZSE will jointly launch a Low Carbon Index Family by year-end, that will serve as a benchmark for fund managers to launch new green funds focused on China, ASEAN and other countries in Asia.

The MAS plans to continue working closely with the central bank and regulatory counterparts in China to deepen the financial cooperation and unlock new growth drivers for both the economies.

MAS publishes whitepaper on Project Orchid on retail CBDC

The MAS has published a [whitepaper on Project Orchid](#), an exploratory project examining the various design and technical aspects pertinent to a retail central bank digital currency (CBDC) system for Singapore.

While the MAS has assessed that the case for a retail CBDC in Singapore is not compelling for now, Project Orchid aims to build the foundational technology infrastructure and technical competencies necessary to issue a retail CBDC (i.e., a digital version of Singapore dollar cash), should Singapore decide to do so in the future. The whitepaper highlights the successful completion of Phase 1 of Project Orchid, which focussed on exploring the concept of purpose-bound money (PBM).

Amongst other things, the whitepaper:

- introduces the concept of PBM and the potential benefits of programmable digital currency through illustrative use cases contributed by industry participants and government agencies;
- studies interoperability with other forms of digital assets through PBM as the common interface layer;
- discusses solution approaches for implementing PBM through a common interface and how it might work with various underlying medium of exchanges, mainly CBDCs, tokenised deposits and stablecoins;
- discusses the design considerations for implementing PBM and features four case studies based on ongoing trials that have been initiated to support the experiments of PBM and a digital Singapore Dollar; and
- concludes by providing a summary of lessons learnt and a roadmap for future work under Project Orchid.

The MAS has clarified that in subsequent phases, Project Orchid will engage with a broader set of stakeholders and investigate a greater set of capabilities. Future research areas will include the integration of a common QR code system, the fungibility of digital currencies amongst different issuers, transactional privacy, offline payments, digital wallet integration, and future trials where individuals could have options to define conditions for transfers and be PBM Creators in effect.

MAS launches expanded initiative to advance cross-border connectivity in wholesale CBDCs

The MAS has [launched](#) Ubin+, an expanded collaboration with international partners on cross-border foreign exchange (FX) settlement using wholesale CBDC.

The Ubin+ initiative builds on the foundation started with Project Ubin (2016-2020) and learnings from the MAS' participation in Project Dunbar. It will mainly focus on:

- studying business models and governance structures for cross-border FX settlement;
- developing technical standards and infrastructure; and
- establishing policy guidelines.

In addition, as part of Ubin+, certain projects will be undertaken with international partners, mainly relating to:

- FX and liquidity management, wherein Project Mariana is a collaborative initiative that explores the exchange and settlement of Swiss franc, Euro and Singapore Dollar wholesale CBDCs with an automated market maker arrangement;
- interoperability between distributed ledger technology (DLT) and non-DLT payment systems, towards which the MAS is participating in SWIFT's CBDC Sandbox, together with more than 17 central banks and global commercial banks, to explore cross-border interoperability across digital currencies based on DLT and non-DLT payment systems; and
- connectivity across heterogeneous digital currency networks.

SGX RegCo proposes changes to Central Depository's margin and clearing fund frameworks

The Singapore Exchange Regulation (SGX RegCo) has launched a [consultation](#) on proposed refinements to the Central Depository (CDP)'s margin frameworks, the CDP Clearing Fund, and consequential amendments to the CDP Clearing Rules.

In particular, the proposals on the CDP margin frameworks are to:

- offer differentiated margin rates for groups of securities with different risk profiles so that margins will correspond more closely with the level of risk brought to the system;
- introduce margin offsets for greater efficiency; and
- enhance anti-procyclicality measures to better temper sudden margin increases.

The proposals on the CDP Clearing Fund are to:

- change the approach for sizing the CDP Clearing Fund and CDP Clearing Members' contribution so that they will move more dynamically in tandem with the level of risk brought to the clearing system;
- defer the use of CDP Clearing Members' contingent contributions until after all other sources of the CDP Clearing Fund have been used; and
- place a cap on CDP Clearing Members' Clearing Fund liability to give them certainty on their maximum exposure.

Consequential amendments to the CDP Clearing Rules will include clarifying:

- that insurance monies do not form part of the CDP Clearing Fund; and
- CDP's entitlement to claim all default losses from a defaulting CDP clearing member as a debt even if the losses have been mutualised through the CDP Clearing Fund.

Comments on the consultation are due by 5 December 2022.

SGX RegCo proposes changes to independent director tenure and remuneration disclosures

The SGX RegCo has launched a [consultation](#) on its proposal to amend its listing rules by adopting a hard nine-year limit on the tenure of independent board directors (IDs) and removing the current two-tier voting mechanism for long-serving IDs.

In particular, the SGX proposals cover the following:

- hard limit on ID tenure amending the listing rules to require a nine-year tenure limit for IDs beyond which specified directors will no longer be considered independent, removing the two-tier vote mechanism for long-serving IDs, and directors who want to serve more than nine-years can continue to serve on the board but will no longer be considered independent; and
- remuneration disclosure requiring companies to disclose the exact amount and breakdown of remuneration of each director and the CEO in the annual report on a named basis and applying the same remuneration disclosure requirements contemplated for listed companies to real estate investment trusts and business trusts.

The SGX RegCo has also suggested that companies be given a one-year transition period to find suitable ID candidates before the hard tenure limit becomes effective. It notes that the Monetary Authority of Singapore already imposes a hard nine-year tenure cap on IDs of Singapore-incorporated banks, insurers, and managers of real estate investment trusts.

Comments on the consultation are due by 17 November 2022.

RECENT CLIFFORD CHANCE BRIEFINGS

Hong Kong to allow retail access to virtual asset exchange traded funds and considering legalising retail virtual asset exchanges

The Hong Kong Government issued a policy statement on 31 October 2022 in conjunction with the city's flagship Hong Kong Fintech Week conference, which unveiled several key changes to the city's regulatory stance towards VA, in particular allowing retail access to VA futures ETFs and launching a consultation on the degree of retail access to VA, among other updates.

This RegTalk blog post discusses the new policy.

<https://financialmarketstoolkit.cliffordchance.com/en/financial-markets-resources/resources-by-type/blogs/reg-radar/hong-kong-to-allow-retail-access-to-virtual-asset-exchange-trade.html#undefined>

SEC adopts amendments to fund shareholder reports and fee-and expense-related disclosure in fund advertising

On 26 October 2022, the US Securities and Exchange Commission (SEC) unanimously voted to adopt Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements (the 'Adopting Release') which is designed to provide mutual fund and exchange-traded fund investors with clear and concise information in shareholder reports. According to the Adopting Release, the new requirements will require layered disclosure in shareholder reports, with a summary highlighting important information, such as expenses, performance and portfolio holdings, with more detailed disclosures to be provided either online or in physical form, as requested by shareholders, and filed with the SEC on a semi-annual basis on Form N-CSR. The Adopting Release also excludes mutual funds and ETFs from Rule 30e-3 under the Investment Company Act of 1940, as amended, requiring paper delivery of shareholder reports in order to satisfy delivery requirements.

In addition, the SEC decided to amend certain fund advertising rules to require that investment company advertisements and sales materials include fees and expenses in a manner consistent with the applicable prospectus.

This briefing paper discusses the report.

<https://www.cliffordchance.com/briefings/2022/11/sec-adopts-amendments-to-fund-shareholder-reports-and-fee-and-ex.html>

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