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Capital Markets Union: EU Commission proposes legislative package on clearing, corporate insolvency and company listing

The EU Commission has [proposed](#) a legislative package on clearing, insolvency and listing, intended further to develop the EU's Capital Markets Union (CMU).

The clearing proposals are intended to make EU clearing services more resilient and encourage clearing in the EU. To achieve this, the package includes:

- a Communication on the path towards a stronger EU clearing system;
- a proposed Regulation amending the European Market Infrastructure Regulation (EMIR), the Capital Requirements Regulation (CRR) and the Money Market Funds Regulation (MMFR) as regards measures to mitigate excessive exposures to third-country central counterparties (CCPs) and improve the efficiency of EU clearing markets (EMIR 3); and
- a proposed Directive amending the Undertakings for Collective Investment in Transferable Securities Directive (UCITS), the Capital Requirements Directive (CRD), and the Investment Firms Directive (IFD) as regards the treatment of concentration risk towards CCPs and the counterparty risk on centrally cleared derivative transactions.

The insolvency proposals are intended to harmonise certain corporate insolvency rules across the EU and to help promote cross-border investment through the creation of a new Insolvency Directive, including measures to ensure that creditors recover the maximum value from liquidation estates and a simplified winding-up procedure for insolvent microenterprises.

Finally, the Listing Act proposals are intended to make capital markets in the EU more attractive by alleviating the administration burden for companies of all sizes, in particular SMEs, so that they can better access public funding by listing on stock exchanges. To this end, the package includes:

- an amending Regulation amending the Prospectus Regulation, Market Abuse Regulation (MAR) and the Markets in Financial Instruments Regulation (MiFIR);
- an amending Directive amending the Markets in Financial Instruments Directive (MiFID2) and repealing the Listing Directive; and
- a Directive on multiple-vote shares, which will allow company owners to list on SME growth markets using multiple-vote share structures.

The six legislative proposals will now be considered by the EU Parliament and Council.

EU Council adopts position on AMLD6 and AMLR1

The EU Council has agreed its position on legislative proposals for a [sixth directive on anti-money laundering and counter the financing of terrorism](#) (AML/CFT) (AMLD6) and an [AML regulation](#) (AMLR1).

Key elements of the proposed AMLD6 and AMLR1 include:

- expanding the scope of EU AML/CFT rules to cover the entire crypto sector, including due diligence obligations on cryptoasset service providers (CASPs);
- introducing an EU-wide limit of EUR 10,000 for cash payments (national limits under EUR 10,000 can remain in place);
- clarifying beneficial ownership by introducing more detailed rules; and
- establishing black and grey lists of third countries identified by the Financial Action Task Force (FATF) as posing significant money laundering risks and applying mitigating measures as appropriate.

The two measures are part of the Commission's July 2021 AML/CTF legislative package, which includes the recently agreed proposal for a recast Regulation on information accompanying transfers of funds intended to improve the traceability of cryptoasset transfers and the identification of suspicious transactions.

The co-legislators are expected to enter trilogue negotiations in order to agree on a final version of the two texts in due course.

EU Council confirms provisional agreement on ELTIF2

The EU Council's Committee of Permanent Representatives (Coreper) has [endorsed](#) the final compromise text for the proposed Regulation amending the European Long-Term Investment Funds Regulation (ELTIF2), as provisionally agreed with the EU Parliament in trilogue negotiations.

The amendments are intended to remove supply-side and demand-side limitations and include clarifying:

- the scope of eligible assets and investments;
- the portfolio composition and diversification requirements;
- the conditions for borrowing and lending of cash; and
- other fund rules, including sustainability aspects.

The package also includes rules intended to make it easier for retail investors to invest in ELTIFs while ensuring strong investor protection.

The Council has also indicated that, should the EU Parliament adopt its position at first reading in line with the agreed text, the Council would approve the Parliament's position.

CRR: ITS on mapping of ECAIs credit assessments for securitisation published in OJ

[Commission Implementing Regulation \(EU\) 2022/2365](#) has been published in the Official Journal.

The Implementing Regulation lays down implementing technical standards (ITS) amending Implementing Regulation (EU) 2016/1801 as regards the mapping tables correspondence of credit assessments of external credit assessment institutions (ECAIs) for securitisation purposes.

The ITS update the mapping table correspondence to reflect the new structure of credit quality steps set out in the CRR as amended by the Securitisation Regulation.

The Implementing Regulation will enter into force on 25 December 2022.

PSD2: Delegated Regulation amending RTS on strong customer authentication as regards 90-day exemption for account access published in OJ

[Commission Delegated Regulation \(EU\) 2022/2360](#) amending the regulatory technical standards (RTS) on strong customer authentication (SCA) and common and secure open standards of communication set out in Commission Delegated Regulation (EU) 2018/389 as regards the 90-day exemption for account access has been published in the Official Journal of the European Union.

In particular, the amended RTS:

- introduce into Commission Delegated Regulation 2018/389 a new mandatory exemption from the requirement to apply SCA. Under the exemption, account providers must not apply SCA when customers use an account information service provider to access their payment account information if certain conditions are met to ensure the safety and security of the payment service user's data. This includes that data must be limited in scope, the account service payment service provider (ASPSP) has to apply SCA for the first access and periodically renew it, and the ASPSP may at any time decide to apply SCA if it has objectively justified and duly evidenced reasons for unauthorised or fraudulent access;
- limits the scope of application of the voluntary exemption in Article 10 of Commission Delegated Regulation (EU) 2018/389 to instances where the customer accesses the account information directly; and
- extends the timeline for the renewal of SCA from every 90 days to every 180 days where these exemptions apply.

Delegated Regulation (EU) 2022/2360 will enter into force on 25 December 2022 and will apply from 25 July 2023.

ESMA reports on Brexit relocation process

The European Securities and Markets Authority (ESMA) has published a [peer review report](#) on national competent authorities' (NCAs') handling of firms' relocation to the EU in the context of the UK's withdrawal from the EU.

ESMA worked closely with NCAs during the Brexit transition to provide guidance to assist market participants and deal with relocation in an aligned way across the EU27.

The report provides an insight into the supervisory approaches adopted by NCAs when authorising relocating firms in the context of Brexit. In particular, the peer review focused on the governance and substance requirements set for relocating firms.

ESMA's key findings include that:

- in certain cases NCAs allowed for an extensive use of outsourcing/delegation arrangements; and
- several firms relocated with limited technical and human resources in the EU. In particular, NCAs applied different interpretations of proportionality when it came to substance requirements. In certain cases this led to some smaller firms relocating with only very minimal set-ups.

As a result of the review, ESMA has made a number of recommendations for future ESMA work to achieve greater convergence at EU level on the application of the risk-based approach, the proportionality principle and on outsourcing/delegation arrangements.

In addition, ESMA has also encouraged NCAs to improve their assessment of the adequacy of the internal control function, the extent of outsourcing and delegation, and the appropriateness of governance arrangements, to ensure a strong set up of the EU entity already at the authorisation stage.

ESMA intends to carry out a follow-up assessment in two years to see how the situation has evolved.

EBA consults on draft ITS on benchmarking ahead of 2024 exercise

The European Banking Authority (EBA) has launched a [consultation](#) on draft ITS amending the Implementing Regulation on benchmarking of internal models.

The amendments relate to the benchmarking of credit risk, market risk and IFRS9 models for the 2024 exercise as required by Article 78 of the CRD4.

The most significant change proposed by the EBA is the roll out of the data collection for the benchmarking of accounting metrics (IFRS9) to high default portfolios (HDP). The draft RTS include changes to the annexes ITS to specify the new portfolios that will fall under the scope of the 2024 exercise and the set of quantitative templates that will be used to collect all the relevant quantitative information.

For market risk benchmarking, the draft ITS add new templates for the collection of additional information, notably the default risk charge (DRC) and the residual risk add-on (RRAO). For credit risk, only minor changes are proposed including adding a limited number of HDP to ensure the credit risk and the IFRS9 templates relate to a common list of portfolios for which the metrics specified in the different templates should be reported.

The EBA is holding a [public hearing](#) on the consultation on 9 February 2023 and comments are due on 28 February 2023.

EBA proposes new money laundering guidelines to tackle de-risking

The EBA has launched a [consultation](#) on two new sets of guidelines on the effective management of money laundering and terrorist financing (ML/TF) risks when providing access to financial services.

The first set is adding a new section to the EBA's ML/TF risk factors guidelines (EBA/2021/02), which set out what financial institutions should do to identify and tackle ML/TF risk. The purpose of the new section is to help financial

institutions understand how not-for-profit organisations (NPOs) are organised, how they can be different from other customers and what they can do to manage ML/TF risks associated with such customers effectively, instead of denying them access to financial services.

The second set tackles the issue of effective management of ML/TF risks by financial institutions when providing access to financial services. The guidelines aim to clarify the interaction between the access to financial services and institutions' AML/CFT obligations, including in situation where customers, including the most vulnerable, have legitimate reasons to be unable to provide traditional forms of identity documentation. In addition, they set out the steps institutions should take when considering whether to refuse or terminate a business relationship with a customer based on ML/TF risk or AML/CFT compliance grounds.

Comments on the draft guidelines are due by 6 February 2023.

Banking Union: MEPs call for progress on EDIS

The Chair of the EU Parliament's Economic and Monetary Affairs Committee (ECON) and the MEP coordinators of six political groups (EPP, S&D, RenewEurope, Greens, ECR and The Left) have [written](#) to the Economic and Financial Affairs Council (ECOFIN) President Zbyněk Stanjura, Eurogroup President Paschal Donohoe, EU Commission Vice-President Valdis Dombrovskis and Commissioner Mairead McGuinness to call for a renewed push to reach an agreement on the proposal for a European Deposit Insurance Scheme (EDIS).

In the letter, the MEPs call for:

- the EU Commission not to retract its 2015 EDIS proposal, which they argue should remain on the table as the basis for restarting discussions;
- the Commission to table an ambitious review of the Crisis Management and Deposit Insurance (CMDI) framework – the MEPs argue that a more harmonised framework may help to overcome some of the hurdles to the establishment of EDIS, but also emphasise that the review of the CMDI framework should not be considered as a replacement for EDIS; and
- the EU Council to work with the Parliament to reach an agreement on EDIS.

The letter further argues that an agreement on EDIS could contain the following elements:

- a targeted assessment of bank asset quality, paying particular attention to the less significant institutions that are not part of the regular EBA and European Central Bank (ECB) stress tests;
- a step-by-step approach, starting with the pooling of liquidity and a gradual build-up of a European fund that enables loss-sharing based on concrete criteria;
- further risk reduction and risk sharing to go hand in hand, including on the optimal composition of bank balance sheets. There should be regular updates on the progress made;
- banks' contributions to the European fund should be risk-based and calibrated taking into account their idiosyncratic risk within the Banking Union; and

- the agreement should take into account the current economic situation and the discussions regarding the revision of the Stability and Growth Pact and the European implementation of Basel III.

FSB publishes 2022 resolution report, calling for urgent work to address cross-border resolution challenges in non-bank sector

The Financial Stability Board (FSB) has published its [2022 resolution report](#), ‘Completing the agenda and sustaining progress’.

The report takes stock of progress made by FSB members in implementing resolution reforms and enhancing resolvability across the banking, financial market infrastructure, and insurance sectors. It notes that while progress in resolvability has been made, there are still multiple challenges, and that the largest cross-border resolution challenges that need to be addressed remain in the non-bank sector.

Amongst other things, the report notes that:

- progress in implementing the G20 reforms agreed after the 2008-09 financial crisis has promoted the use of CCPs but has also increased their systemic importance. While various efforts have been made to enhance the resilience and resolvability of CCPs, further work is needed on CCP resolution and resolvability, including the adequacy of resources for CCP resolution;
- there is still work to be done to make resolution plans for insurers fully operational. The report highlights the importance of ensuring the continued effective application of the Key Attributes, should the identification of global systemically important insurers (G-SIIs) be discontinued and replaced by the International Association of Insurance Supervisors (IAIS) Holistic Framework for the assessment and mitigation of systemic risk in the global insurance sector; and
- global systemically important banks (G-SIB) resolution planning is maturing, and the focus is increasingly shifting to fine-tuning and testing resolution preparedness. The report states that G-SIBs’ progress towards resolvability has been incremental since last year, reflecting the level of advancement of resolution policy implementation in many jurisdictions. Funding in resolution remains an area of focus for both firms and authorities. The FSB has also focused on assisting home and host authorities in having a clear understanding of approaches to unallocated total loss-absorbing capacity (TLAC), and work has been conducted on issues relating to resolution planning of banks other than G-SIBs that could be systemic in failure.

The report also sets out the FSB’s resolution priorities in 2023, which will include a continued focus on completing the resolution frameworks for CCPs and insurers and consolidating the FSB’s work on bank resolution preparedness.

Edinburgh Reforms: UK Government announces financial services package

The UK Government has [announced](#) an extensive package of reforms to the UK’s regulatory framework for financial services aimed at maintaining and building the competitiveness of the UK as a global financial centre.

The package, which builds on the 2021 Chancellor's Mansion House speech, seeks to take forward the implementation of a Financial Services and Markets Act 2000 (FSMA) model of regulation through powers established in the Financial Services and Markets (FSM) Bill.

Measures set out in the package include:

- reforming the ring-fencing regime for banks;
- issuing new remit letters for the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) with targeted recommendations on growth and international competitiveness;
- publishing the plan for repealing and reforming EU law using powers within the FSM Bill;
- overhauling the UK's regulation of prospectuses;
- reforming the Securitisation Regulation;
- repealing the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation, and consulting on a new direction for retail disclosure;
- intending to repeal EU legislation on the European Long-Term Investment Fund (ELTIF), reflecting that the new UK Long-Term Asset Fund (LTAF) provides a better fund structure for the UK market;
- launching a call for evidence on reforming the Short Selling Regulation;
- publishing a draft statutory instrument (SI) to demonstrate how the new powers being taken forward in the FSM Bill will be used to ensure that the FCA has sufficient rulemaking powers over its retained EU payments legislation;
- consulting on removing burdensome customer information requirements set out in the Payment Accounts Regulations 2015;
- welcoming the PRA consultation on removing rules for the capital deduction of certain non-performing exposures (NPEs) held by banks;
- bringing forward secondary legislation to implement Wholesale Markets Review (WMR) reforms;
- establishing an Accelerated Settlement Taskforce;
- committing to establish the independent Investment Research Review;
- commencing a review into reforming the Senior Managers & Certification Regime (SM&CR) in Q1 2023;
- committing to having a regime for a UK consolidated tape in place by 2024;
- consulting, in early 2023 on issuing new guidance on Local Government Pension Scheme asset pooling;
- increasing the pace of consolidation in Defined Contribution pension schemes;
- from April 2023, improving the tax rules for Real Estate Investment Trusts (REITs);
- announcing changes to the Building Societies Act 1986;
- delivering the outcomes of the Secondary Capital Raising Review;

- consulting on reform to the VAT treatment of fund management;
- publishing an updated Green Finance Strategy in early 2023;
- consulting in Q1 2023 on bringing Environmental, Social, and Governance (ESG) ratings providers into the regulatory perimeter;
- consulting on a UK retail central bank digital currency (CBDC) alongside the Bank of England in the coming weeks;
- publishing a response to the consultation on expanding the Investment Manager Exemption to include cryptoassets;
- implementing a Financial Market Infrastructure Sandbox in 2023;
- working with the regulators and market participants to trial a new class of wholesale market venue which would operate on an intermittent trading basis;
- consulting on Consumer Credit Act Reform;
- laying regulations in early 2023 to remove well-designed performance fees from the pensions regulatory charge cap; and
- committing to work with the FCA to examine the boundary between regulated financial advice and financial guidance.

In a policy statement on the reforms, the Government has set out its approach to its implementation programme, including underpinning principles and the following proposed phased approach to retained EU law policy areas:

- tranche 1, which is already underway, covering the WMR, Lord Hill's Listing Review, the Securitisation Review and review of Solvency II; and
- tranche 2, which will cover the above and other measures, including the Taxonomy Regulation, MMFR, Payment Services Directive and the E-Money Directive, Insurance Mediation and Distribution Directives, CRR and Directive and Long-Term Investment Funds (LTIF) Regulation.

The Government intends to make significant progress on both tranches by the end of 2023.

A core list of EU financial services files in scope of the implementation programme is set out in an annex to the policy statement.

The Government has also published three illustrative SIs and accompanying notes alongside the policy statement to demonstrate its intended approach, and a ministerial statement has been submitted to Parliament.

For more information and resources on the FSM Bill and the implementation of the future regulatory framework (FRF), see the Topic Guide on the Clifford Chance Financial Markets Toolkit.

Markets in Financial Instruments (Investor Reporting) (Amendment) Regulations 2022 published

[The Markets in Financial Instruments \(Investor Reporting\) \(Amendment\) Regulations 2022](#) (SI 2022/1297) been made and laid before Parliament according to the negative procedure.

SI 2022/1297 amends UK Delegated Regulation (EU) 2017/565 as regards organisational requirements and operating conditions for investment firms (UK

MiFID Org Regulation) to implement changes to the investor reporting regime as part of the WMR.

In particular, SI 2022/1297 extends the following changes made by SI 2021/774 in respect of professional or sophisticated clients to retail clients:

- makes electronic communications the default method for investment firms when communicating with their clients; and
- removes obligations for investment firms providing portfolio management services to a retail client to inform the client when the overall value of the portfolio depreciates.

SI 2022/1297 was announced in the Ministerial statement on 9 December 2022 as part of the UK Government's package of reforms to the UK's regulatory framework for financial services.

Unless annulled by Parliament, SI 2022/1297 comes into force on 7 June 2023, except changes to the loss reporting rules, which come into force on the fortieth day after the day on which they were laid before Parliament.

FCA consults on financial promotions gateway

The FCA has launched a [consultation](#) on how to operationalise a gateway for firms approving financing promotions (CP22/27).

CP22/27 follows the introduction of the Financial Services and Markets Bill (FSM Bill), which includes provisions to introduce a gateway requiring all firms to apply to the FCA for permission to approve financial promotions for unauthorised firms.

As the FCA intends to operationalise the gateway as soon as is reasonably possible once the Bill receives Royal Assent and the relevant provisions commence, views are sought on, among other things:

- the FCA's approach to assessing, granting and refusing applications;
- a bi-annual reporting requirement for firms given permission to approve financial promotions; and
- a requirement for eligible firms to notify the FCA within seven days when they approve, amend, or withdraw approval of a financial promotion.

The FCA notes that CP22/27 is not generally relevant to authorised firms approving the financial promotions of their appointed representatives (ARs) or of unauthorised firms within their corporate group.

Comments are due by 7 February 2023. Subject to the progress of the FSM Bill, the FCA intends to publish a policy statement and final rules in H1 2023.

FCA writes Dear CEO letter to financial advisers and intermediaries

The FCA has written a [portfolio strategy letter](#) to the directors of firms setting out its expectations relating to financial advisers and intermediaries.

In the letter the FCA provides an updated view of the key harms in the sector and summaries the work it intends to do in the area.

The letter also sets out the FCA's expectation of firms in relation to:

- providing suitable advice;

- pension and investment scams;
- firm failure and phoenixing;
- ongoing services; and
- other areas of interest including diversity and sustainability.

Digital Regulation Cooperation Forum launches call for input to 2023-24 workplan

The Digital Regulation Cooperation Forum (DRCF), which comprises representatives from the Competition and Markets Authority (CMA), the Office of Communications (Ofcom), Information Commissioner's Office (ICO) and the FCA, has launched a [call for input](#) on its work plan for 2023-24.

The call for input invites views about issues that the DRCF should take into consideration as it develops its plan of work for 2023 to 2024.

The DRCF reports that it is on track to deliver all of its 2022/23 work plan commitments. The DRCF intends to develop a programme of work for 2023/24 that further builds on the progress made, and identify new areas where there would be a benefit in the DRCF co-ordinating further work.

Comments are due by 6 January 2023.

Several ordinances on outsourcing notification obligation enter into force

In addition to two amending ordinances relating to notification obligations regarding material outsourcings under the German Banking Act (Kreditwesengesetz) and the Payment Services Supervision Act (Zahlungsdiensteaufsichtsgesetz), the following two ordinances have been [published](#) in the Federal Law Gazette and entered into force on 29 November 2022:

- the Ordinance on Notifications by Insurance Companies and Pension Funds on the Outsourcing of Functions and Insurance Activities under the Insurance Supervision Act (VAG); and
- the Ordinance on Notifications and the Submission of Documents pursuant to section 36 of the Capital Investment Code (KAGB).

With these ordinances it has become mandatory to submit outsourcing notifications pursuant to supervisory regulations electronically via BaFin's Reporting and Publication Platform. For this purpose, the new specialised procedure 'Notification of Outsourcing' is available in the portal. BaFin is also offering completion aids that are specifically tailored to the various ordinances.

Further information on the relevant areas of supervision and technical details can be found in BaFin's letters to the respective industry associations. These also contain the links to the completion aid and information on the reporting route for serious incident notifications.

Together with the aforementioned ordinances, the First Ordinance Amending the Investment Firm Notification Ordinance (Wertpapierinstituts-Anzeigenverordnung) had also been consulted on. As this ordinance will not enter into force until 2023, no notifications need to be submitted and the new specialised procedure is not available to investment firms yet.

BaFin consults on draft ordinance on electronic communication under German Capital Investment Code

The German Federal Financial Supervisory Authority (BaFin) has launched a [consultation](#) on a draft ordinance on electronic communication under the KAGB.

With this ordinance, BaFin intends to specify the terms of use for the electronic communication procedure which it provides for submissions and retrievals under the KAGB to the following target groups: management companies, investment companies, depositaries, interested acquirers as defined in section 19 para 1 sentence 1 KAGB and holders of significant shareholdings.

Comments are due by 2 January 2023.

Bank of Italy complies with EBA guidelines on remuneration of banks and investment firms

The Bank of Italy has [notified](#) the EBA of its intention to comply with the EBA guidelines 2022/06, 2022/07 and 2022/08 on the collection and processing of information on remuneration systems of banks and investment firms.

In particular:

- EBA/GL/2022/08 require supervisory authorities to collect information on high earners in banks and firms (save for limited exceptions);
- EBA/GL/2022/06 require supervisory authorities to conduct a survey for benchmarking purposes on remuneration trends and practices on a sample of reference banks. They also require the same authorities to disclose the gender pay gap on said sample of banks; and
- EBA/GL/2022/07 require supervisory authorities to provide for the disclosure of remuneration practices on a sample of investment firms.

CSSF announces details of 2022 AML/CTF survey

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has [announced](#) the details of its 2022 survey relating to the fight against money laundering and terrorism financing.

The CSSF will start the annual online survey for the year 2022 on 15 February 2023.

The objective of the survey is to collect standardised key information concerning money laundering and terrorism financing (ML/TF) risks to which professionals under CSSF supervision are exposed and the implementation of measures to mitigate these risks. The cross-sector survey contributes to the CSSF's ongoing assessment of ML/TF risks present in the financial sectors under its supervision and forms part of the AML/CFT risk-based supervision approach put in place by the CSSF.

The CSSF further notes that the 2022 survey remains mostly unchanged compared to the previous year. However, some questions have been removed, added or amended. The new and amended questions have been highlighted in the survey.

Answers to the survey questions will have to be submitted through the CSSF [eDesk portal](#) by 31 March 2023 (at the latest).

The survey must be initiated and submitted within the CSSF eDesk portal by:

- the compliance officer in charge of the control of compliance with the professional obligations (responsable du contrôle du respect des obligations professionnelles, RC); or
- the person responsible for compliance with the professional obligations (responsable du respect des obligations professionnelles, RR).

However, the completion of the survey may be assigned within the CSSF eDesk portal to another employee of the entity or a third party, although the ultimate responsibility for the adequate completion of the survey will remain with the RC or the RR.

In terms of logistics, this implies that the aforementioned persons and their potential delegates must have an eDesk account, which requires a LuxTrust authentication.

In order to avoid connection problems when the survey is launched, the CSSF has invited all entities it supervises for AML/CFT purposes to ensure that they have an account. Reference is made to the 'Authentication and user account management' user guide in the dedicated section of the CSSF eDesk portal for further details.

Polish Financial Supervisory Authority sets out position on Anti-Money Laundering Officer

The Polish Financial Supervisory Authority (KNF) has published a [statement](#) which sets out good practices with regard to the fulfilment of the obligations arising under the Act on Combating Money Laundering and Countering the Financing of Terrorism related to the role and tasks of:

- AMLRO – the employee responsible for ensuring compliance with the provisions AML/CFT;
- the management authority or member of senior management responsible for ensuring compliance with provisions on AML/CFT; and
- the supervision authority.

The statement also relates to policies (internal strategies), the control system and the procedures contained in Directive 2015/8495, in obliged institutions under the supervision of KNF (supervised entities).

Polish Financial Supervision Authority sets out dividend policy

The Polish Financial Supervision Authority (PFSA) has adopted its [standpoint](#) with regard to the dividend policy of commercial, cooperative and associated banks, insurance companies, reinsurance companies, insurance and reinsurance companies, investment fund management companies, pension fund management companies and brokerage houses in 2023.

The objective of the PFSA's dividend policy is to ensure the stability of the Polish financial sector by adjusting the capital base of supervised entities to the level of their risk exposure and to protect the recipients of financial services provided by these entities.

CNMV consults on additional intervention measures on marketing of CFDs

The Spanish Securities Market Commission, the Comisión Nacional del Mercado de Valores (CNMV), has [launched](#) a consultation on proposed intervention measures intended to impose additional restrictions on advertising in the marketing, distribution or sale of financial contracts for differences (CFDs) to Spain-based retail investors. The proposed measures are intended to achieve greater investor protection and would be additional to those already put in place by the CNMV in 2019 by virtue of the Resolution of 27 June 2019.

The key objective of the proposal is to adopt more extensive measures in relation to these products, as is already the case in other EU Member States. Broadly, the measures would consist of the prohibition of the advertising of these instruments to Spain-based retail investors, the prohibition of sponsorships and brand advertising of entities whose principal activity is the distribution of CFDs, additional restrictions on the remuneration structure of sales forces (in particular when based on techniques which incentivise the sale of these products to retail investors) and, ultimately, a direct prohibition of OTC CFDs trading through electronic platforms.

The measures, which would be adopted by way of a CNMV Resolution, would apply to entities authorised to provide investment services in Spain, including entities authorised in another EEA Member State duly passported into Spain, on either a ‘right of establishment’ (i.e., through a Spanish branch or a Spain-based tied-agent) or a ‘freedom to provide services’ basis (i.e. without a permanent establishment in Spain), in respect of all marketing / distribution activities and investment services vis à vis Spain-based retail investors.

The consultation ends on 31 January 2023 and is addressed primarily to investment firms and credit institutions providing investment services in Spain and to investors’ associations.

Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022 passed

The Government of Hong Kong has [announced](#) the passage of the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022 to enhance Hong Kong’s regulatory regime for combating money laundering and terrorist financing (AML/CTF). The amended Anti-Money Laundering and Counter-Terrorist Financing Ordinance introduces:

- a licensing regime for virtual asset service providers; and
- a two-tier registration regime for dealers in precious metals and stones.

The Government has also taken this opportunity to make a number of miscellaneous amendments to ensure alignment with the latest international standards set by the Financial Action Task Force. In this regard, the Hong Kong Monetary Authority (HKMA) has issued a [circular](#) to inform authorised institutions of the miscellaneous amendments that are relevant to the banking sector, including the following:

- amending the definition of ‘politically exposed person’ (PEP) to align with the Financial Action Task Force’s requirements;
- facilitating a risk-based approach in determining the degree of customer due diligence (CDD) that former PEPs are subject to;

- supporting the use of technology by clarifying that a recognised digital identification system can be used for the purposes of CDD and satisfying the additional requirements where a customer is not physically present for identification purposes; and
- clarifying that, where a trust is concerned, a beneficial owner includes a trustee of the trust, a beneficiary, and a class of beneficiaries of the trust entitled to a vested interest in the trust.

The HKMA plans to consult the banking sector on corresponding changes to the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism applicable to authorised institutions as well as specific guidance on topical issues.

The amended Ordinance, including the registration regime for dealers in precious metals and stones, will take effect on 1 April 2023, and the licensing regime for VA service providers as well as other amendments on AML/CTF requirements, will take effect on 1 June 2023.

SGX launches initiative to recognise sustainable fixed income

The Singapore Exchange (SGX Group) has [launched](#) a new initiative to identify green, social and sustainability fixed income securities listed on the Singapore Exchange (SGX-ST).

To be recognised under the newly named SGX Sustainable Fixed Income initiative, securities must:

- align with recognised green, social or sustainability standards for fixed income securities;
- receive confirmation by an external reviewer that the fixed income securities are aligned to the recognised standards; and
- publish publicly available reports setting out the fixed income securities' alignment with the recognised standards.

The Singapore Exchange Regulation estimates that some 200 SGX-listed fixed income securities already meet the SGX Sustainable Fixed Income criteria and they will be onboarded over the next few months.

RECENT CLIFFORD CHANCE BRIEFINGS

Crypto regulation - the introduction of MiCA into the EU regulatory landscape

Just over two years after it was first proposed, the agreed text of the new Markets in Crypto-assets Regulation (MiCA) has been released. MiCA aims to create an EU regulatory framework for the issuance of, intermediating and dealing in, cryptoassets. It will introduce licensing and conduct of business requirements as well as a market abuse regime with respect to cryptoassets.

This briefing paper discusses what issuers of stablecoins and other cryptoassets, custodians and other crypto service providers need to know now.

<https://www.cliffordchance.com/briefings/2022/12/crypto-regulation--an-introduction-of-mica-into-the-eu-regulator.html>

Singapore to tighten rules on cryptocurrency trading

Once touted as ‘crypto paradise’, Singapore is now moving ahead with its plans to tighten rules on cryptocurrency trading by retail customers. The Monetary Authority of Singapore (MAS) has proposed a suite of measures aimed at reducing the risk of consumer harm from cryptocurrency trading.

This briefing paper summarises these proposals and briefly considers how they compare with developments in Hong Kong, the EU and the UK. Cryptocurrency players should review their business plans and structures to see if they might be impacted.

<https://www.cliffordchance.com/briefings/2022/11/singapore-to-tighten-rules-on-cryptocurrency-trading.html>

Corporate Transparency Act imposes new requirements on US businesses

Starting 1 January 2024, more than an estimated 32 million legal entities will be required to file certain information with the US Government about their beneficial owners, as a requirement of the Corporate Transparency Act. The requirement is part of a broader effort to make it easier for law enforcement to investigate illicit activities and associated money laundering through the use of companies and other legal structures. Implementation of the rule may be relatively straightforward in some circumstances, but not in others, including certain situations involving REITs and other legal structures that may be used to hold real property.

This briefing paper provides an overview detailing the reporting obligations of the Act including a practical example.

<https://www.cliffordchance.com/briefings/2022/12/corporate-transparency-act-imposes-new-requirements-on-u-s--busi.html>

FTC publishes sweeping changes to policy statement on Section 5 of the FTC Act, potentially opening door to challenge ‘roll-ups’ outside current antitrust law

On 10 November 2022, the Federal Trade Commission (FTC) issued ‘Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the FTC Act’. In this Policy Statement, the FTC indicates that it can use Section 5 of the Federal Trade Commission Act to pursue cases that ‘reach beyond the Sherman and Clayton Acts to encompass various types of unfair conduct that tend to negatively affect competitive conditions.’ The FTC also moved away from using a rule of reason analysis as required under the Sherman Act and US courts. It will instead look to whether the conduct at issue tends to ‘foreclose or impair the opportunities of market participants, reduce competition between rivals, limit choice, or otherwise harm consumers.’ Following the release of this new statement, firms, including financial investors, should expect to see the FTC pursue investigations and enforcement actions using Section 5 in situations that do not fit within more traditional antitrust precedents.

This a briefing paper discusses the changes.

<https://www.cliffordchance.com/briefings/2022/12/ftc-publishes-sweeping-changes-to-policy-statement-on-section-5-.html>

Do industry climate alliances violate US antitrust law?

After a meteoric rise in corporate, investor, and public attention, ESG faces a backlash from conservative politicians and regulators, especially in the United States. From its beginnings as a term for assessing an enterprise's control over environmental, social, and governance factors, ESG has become a widely used but poorly-defined umbrella term encompassing a wide variety of environmental and social issues. As a result, ESG is now a target for those opposing 'leftist politics' and the 'woke agenda'. One argument has been that industry climate alliances violate US antitrust law.

This briefing paper discusses the anti-ESG movement in the US and its argument that industry climate commitments are illegal group action that violate the antitrust laws.

<https://www.cliffordchance.com/briefings/2022/12/do-industry-climate-alliances-violate-u-s--antitrust-law.html>

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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