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- **MAS revises compliance toolkit for real estate investment trust managers**
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CRR: RTS on assessment of risk weights and appropriateness of minimum LGD values for exposures secured by immovable property published in OJ

[Commission Delegated Regulation \(EU\) 2023/206](#) on regulatory technical standards (RTS) which supplement the Capital Requirements Regulation (CRR) have been published in the Official Journal.

The RTS specify the types of factors to be considered to assess risk weights for exposures secured by immovable property and the conditions to be taken into account for the assessment of the appropriateness of minimum loss given default (LGD) values for exposures secured by immovable property.

For institutions applying the standardised approach (SA), the RTS set out the types of factors to be considered during the appropriateness assessment of risk weights on the basis of the loss experience and forward-looking immovable property market developments.

For institutions applying the internal ratings based (IRB) approach to retail exposures secured by residential or commercial immovable property, the RTS set out the conditions to be considered when assessing the appropriateness of minimum LGD values.

The Delegated Regulation will enter into force on 21 February 2023.

MiFID2: EU Commission adopts RTS 11 amendments on date of tick size calculations

The EU Commission has [adopted](#) a Delegated Regulation making a technical amendment to RTS on the tick size regime for shares, depository receipts and exchange-traded funds (RTS 11) under MiFIR.

The amendment aligns the application date of calculations of the average daily number of transactions (ADNT) set out in RTS 11 with the application date of other transparency calculations set out in revised RTS 1 to the first Monday of April each year, rather than on the 1 April each year.

The Regulation will enter into force 20 days following its publication in the Official Journal.

MiFID2: ESMA publishes trading venue perimeter opinion

The European Securities and Markets Authority (ESMA) has published a [final report](#) setting out its opinion on the trading venue authorisation perimeter.

The opinion follows the publication of the MiFID2 final review report on the functioning of organised trading facilities (OTFs) in April 2021 and seeks to harmonise interpretations on, among other things, new technology providers and request for quote systems that may, in some instances, operate a de facto multilateral system without proper authorisation. The opinion therefore:

- clarifies the definition of multilateral systems; and

- provides guidance on when systems should be considered as multilateral systems and, in consequence, seek authorisation as trading venues.

ESMA intends to work with national competent authorities (NCAs) to ensure that firms assess their systems against the opinion and expects NCAs to require firms to swiftly apply for authorisation where necessary.

ESAs consult on guidelines on information exchange system relevant to fit and proper assessments

The European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and ESMA, have launched a [consultation](#) on their draft joint guidelines on the system for the exchange of information when assessing the fitness and propriety requirements for holders of qualifying holdings, directors and key function holders of financial institutions and financial market participants.

The draft guidelines apply to competent authorities (CAs) under the ESA's remit and are intended to increase the efficiency of the information exchange between sectoral supervisors by harmonising practices and clarifying how CAs should use the information system developed by the ESAs. The guidelines are divided into two main parts focussing on:

- how CAs should input the data and use the ESAs' information system, including how to search for the fit and proper assessments of persons of interest that have already been made by other CAs; and
- clarifying how CAs should co-operate to exchange information when it is established that a relevant assessment has already been made by another CA.

Comments are due on 2 May 2023. The ESAs expect to finalise the guidelines and the ESAs information system with a view to making it available to CAs by the end of 2023.

EBA consults on draft amending ITS on supervisory reporting for IRRBB

The EBA has launched a [public consultation](#) on draft implementing technical standards (ITS) on supervisory reporting with respect to the Interest Rate Risk in the Banking Book (IRRBB).

The draft amending ITS are intended to provide quality data to supervisors to monitor institutions' IRRBB. The EBA believes that the draft ITS are particularly relevant in the current environment of high inflation combined with growing interest rates.

According to the EBA, proportionality has been a key consideration when developing the draft ITS, in order to make reporting requirements better suited to the size and risk of the institutions. Building on the evidence and recommendations drawn from the EBA cost of compliance study, the consultation paper includes simplified templates for the reporting by small and non-complex institutions (SNCIs) and asks for specific feedback on proportionality for medium institutions.

Comments are due by 2 May 2023.

ESMA publishes final draft RTS amending scope of clearing and derivative trading obligations

ESMA has published its [final report](#) setting out draft RTS which amend the scope of the clearing (CO) and derivative trading (DTO) obligations for over-the-counter (OTC) interest rate derivatives (IRD) denominated in EUR, GBP, JPY, and USD.

The report is part of the transition away from EONIA and LIBOR and onto alternative benchmarks, primarily risk-free rates such as €STR, SOFR, SONIA and TONA.

The proposals include introducing the TONA OIS (with maturities up to 30 years) class and extend the SOFR OIS class (up to 50 years) for the CO and introducing certain €STR OIS classes for the DTO.

The draft RTS have been submitted to the EU Commission for endorsement. ESMA intends to continue to monitor the benchmark transition in the OTC interest rate derivative market and may further review the scope of the CO and/or the DTO.

IOSCO reports on investment funds industry

The Board of the International Organization of Securities Commissions (IOSCO) has published the second edition of the [Investment Funds Statistics Report](#) (IFSR), which aims to provide insights into the global investment funds industry.

The report is based on a comprehensive collection of IOSCO members' supervisory data as of end-2021 and is an annual exercise. The report provides trend analysis on open-ended funds and closed-ended funds and finds that:

- leverage levels across investment funds are similar to those of the previous year, with some variations depending on the type of fund (for example, reported metrics suggest declines in the leverage of hedge funds);
- at an aggregate level, hedge funds' portfolio liquidity appears to exceed considerably the liquidity normally offered to investors;
- similar to last year, open-ended funds are not highly leveraged in terms of both derivatives use and financial leverage; and
- open-ended funds' portfolio liquidity as reported appears managed in line with the liquidity normally offered to investors.

IOSCO revises principles on regulating and supervising commodity derivatives

IOSCO has published a [revised version](#) of its 2011 Principles for the Regulation and Supervision of Commodity Derivatives Markets.

The revised principles are intended to provide a resilient framework for the regulation and oversight of the commodity derivatives markets as a response to its continued evolution over the past decade, particularly in light of recent market developments and international events, such as the COVID-19 pandemic and the Russian invasion of Ukraine.

The revisions seek to support the physical commodity derivatives markets in providing their fundamental price discovery and hedging functions, while operating free from manipulation and abusive trading schemes. The revisions focus on:

- market surveillance;
- transparency;
- price discovery;
- the correlation with physical markets;
- addressing disorderly markets;
- responding to market abuse; and
- strengthening the enforcement powers of trading venues against end-user behaviours.

The new Principle 16 on unexpected disruptions is intended to guide regulators in restoring orderly markets in the case of an unexpected disruption and ensure market participants have a process and adequate plans to address these events.

IOSCO expects market authorities to review their policies and regulation to ensure that the revised principles are put into effect.

HM Treasury consults on financial services regulatory regime for cryptoassets

HM Treasury (HMT) has launched a [consultation](#) on its proposals for the UK's financial services regime for cryptoassets and published a policy statement on cryptoasset financial promotions.

The consultation builds on a series of HM Treasury publications on cryptoassets, including publications focused on stablecoins and the financial promotion of cryptoassets published in April 2022.

The Government's view is that cryptoassets and the activities underpinning their use should follow the standards expected of other similar financial services activities.

The proposals set out in the consultation are centred around a number of cryptoasset activities which the Government is intending to bring into the regulatory perimeter for financial services, including:

- activities related to issuance, offering and admission to trading of in-scope cryptoassets;
- activities facilitating the trading in cryptoassets, specifically brokerage activities such as dealing and arranging transactions in cryptoassets;
- custody of cryptoassets;
- operating a platform that facilitates the exchange of cryptoassets for other cryptoassets or for cash; and
- operating a cryptoasset lending platform.

For each activity, the consultation sets out key design features of the regime covering themes such as prudential requirements, data reporting, consumer protection, location policy and operational resilience.

HMT also proposes to strengthen the rules around financial intermediaries and custodians by developing a crypto market abuse regime.

Comments on the consultation are due by 30 April 2023.

HMT has also published a [policy statement](#) to introduce a bespoke, time limited exemption from the financial promotion restriction in section 21 of Financial Services and Markets Act 2000 (FSMA) for certain financial promotions relating to qualifying cryptoassets. Cryptoasset businesses that are registered with the FCA for anti-money laundering purposes will be allowed to issue their own promotions while the broader cryptoasset regulatory regime is being introduced.

PRA consults on removing SM&CR forms from PRA Rulebook

The Prudential Regulation Authority (PRA) has launched a [consultation](#) (CP2/23) on its proposals to remove certain Senior Managers and Certification Regime (SM&CR) forms from the PRA Rulebook and to extend the length of employment history required in the long form A.

The PRA's proposal to remove certain SM&CR forms from the PRA Rulebook would mean that when the PRA needs to make administrative or other non-material changes to these forms it would not be required to follow the statutory consultation process for rule changes. These forms would be available on the Connect system in the same manner as other regulatory transaction forms.

The PRA's proposal to increase the length of employment history requested in long form A from five years to ten years, is intended to bring the form in-line with MiFID requirements and to ensure a consistent user experience with all Senior Managers Function (SMF) applicants providing the same minimum length of employment history.

The PRA proposes that the implementation date for the changes resulting from CP2/23 would be May 2023.

Comments are due by 28 February 2023.

UK Government publishes second iteration of retained EU law dashboard

The UK Government has published a [second iteration of its dashboard](#) providing a catalogue of and statistics on over 3,700 pieces of retained EU law (REUL) covering 400 policy areas.

Originally published on 22 June 2022, the updated dashboard contains new data collected by departments between July 2022 and January 2023 on over 1,000 additional pieces of REUL as part of an ongoing cross-government exercise to identify REUL that did not otherwise have a clear departmental owner.

The Government notes that this second iteration is not intended to provide a comprehensive account of REUL in general nor REUL that sits within the competence of the Devolved Governments.

The Government intends to update the dashboard on a quarterly basis, including with REUL identified by The National Archives.

BaFin publishes FAQs on major payment security incidents reporting

The German Federal Financial Supervisory Authority (BaFin) has published a set of [frequently asked questions](#) (FAQs) relating to its [circular](#) on major payment security incidents reporting (Circular 03/2022 (BA)), in particular regarding the notification of major payment security incidents pursuant to section 54 para 1 of the German Payment Services Supervision Act (ZAG).

Pursuant to section 54 para 1 sentence 1 ZAG, a payment service provider must notify BaFin immediately of a major operational or security incident.

Polish Council of Ministers approves bill amending Act on Bonds, Act on Investment Funds and Management of Alternative Investment Funds and Act on Bank Guarantee Fund, Deposit Guarantee Scheme and Compulsory Restructuring

The Council of Ministers has [approved](#) a bill amending the Act on Bonds, the Act on Investment Funds and Management of Alternative Investment Funds and the Act on the Bank Guarantee Fund, the Deposit Guarantee Scheme and Compulsory Restructuring. Under the bill, banks, brokerage houses, insurance companies and reinsurance companies will be able to issue capital instruments equipped with a loss absorption mechanism. Capital instruments are an introduction of Additional Tier 1 (AT1) capital into Polish law.

Among other things, the amendment introduces the rules for issuing capital bonds and sets out a list of institutions that will be able to issue these bonds (Polish banks, brokerage houses, Polish insurance companies and Polish reinsurance companies).

In addition, it will be possible to increase share capital by converting capital bonds into shares. In line with EU rules, an instrument to cover capital shortfalls will also be introduced to support institutions that apply to the State Treasury for assistance in meeting the applicable capital adequacy requirements, which would involve the temporary acquisition by the State Treasury of shares or bonds of such institutions.

Polish Financial Supervision Authority issues bulletin on activities of cryptocurrency exchanges and exchange offices in Poland

The Polish Financial Supervision Authority (KNF) has issued a [bulletin](#) stating that it does not license, register or supervise cryptocurrency exchanges or exchange offices. The PFSA also notes that it does not approve of this type of activity, nor is it equipped with the tools to help people harmed as a result of any collapse of a cryptocurrency exchange.

The PFSA has also emphasised that cryptocurrency exchanges and exchange offices are not obliged to introduce specific legal and organisational solutions that guarantee the security of clients' funds. In addition, cryptocurrency exchanges and exchange offices in their core business do not provide the protection of clients' funds that is provided for by banks, payment institutions, and others against possible claims of creditors of these entities, and are not excluded from the bankruptcy estate.

FINMA publishes guidance on developments in management of climate risks

The Swiss Financial Market Supervisory Authority (FINMA) has [published](#) new guidance which draws attention to relevant developments in the area of climate-related financial risk management.

The guidance reiterates FINMA's expectation that supervised institutions establish an adequate framework for managing climate risks that is adapted to the respective risk profile of the institution. In this context, FINMA expects supervised financial institutions to engage proactively with the recommendations and guidance provided by international bodies as well as relevant best practices in the market and to further develop their tools and processes where necessary.

FINMA intends to continue developing its supervisory practice for assessing the management of climate-related financial risks. In doing so, it will take into account the work of the standard-setting bodies. Where it deems this appropriate and necessary, FINMA will specify what it expects from supervised institutions in terms of climate risk management.

APRA releases policy and supervision priorities for 2023

The Australian Prudential Regulation Authority (APRA) has [released](#) its policy and supervision priorities for 2023, which incorporate a series of goals for the next 12 to 18 months.

Consistent with the strategic objectives in APRA's latest corporate plan, the papers outline APRA's key focus areas to protect financial stability and the interests of bank depositors, insurance policyholders and superannuation members.

APRA's key policy priorities for 2023 include:

- completing key reforms to strengthen the financial and operational resilience of APRA-regulated entities, and improve outcomes for superannuation members;
- progressing APRA's plan to modernise the prudential architecture, a core strategic initiative designed to make the framework clearer, simpler and more adaptable; and
- reviewing core standards, including governance and the regulation of conglomerate groups.

APRA's key supervisory priorities for 2023 include:

- heightened supervision on cyber resilience through detailed assessments and rigorous pursuit of breaches;
- embedding the capital reforms for banks and insurers;
- continuing to hold trustees to account to improve superannuation member outcomes; and
- ongoing work to address challenges in the availability, affordability, and sustainability of insurance.

APRA's policy priorities are fewer than in prior years, which is intended to help APRA-regulated entities to focus on implementing prior policy reforms and managing risks and challenges in the operating environment in the period

ahead. As regards supervisory priorities across all industries, APRA will further increase scrutiny of operational and cyber risk-management practices and has heightened expectations of entities' ability to rapidly detect weaknesses and to implement remediation plans.

Australian Government consults on token mapping framework

The Australian Government has launched a [consultation](#) seeking feedback on a token mapping framework, which is a foundational step in its multi-stage reform agenda to develop appropriate regulatory settings for the crypto sector.

Announced on 22 August 2022, token mapping seeks to build a shared understanding of cryptoassets in the Australian financial services regulatory context. Amongst other things, the consultation seeks feedback on:

- the role of Government in the regulation of the crypto ecosystem;
- potential safeguards for consumers and investors;
- scams, in order to explore solutions to apply to safeguard consumers that choose to use cryptoassets and policy or regulatory levers to be used to ensure crypto token exchanges do not offer scam tokens or more broadly, prevent consumers from being exposed to scams involving cryptoassets;
- the concept of 'exclusive use or control' of public data and its applicability on cryptoassets;
- the regulatory framework for a bespoke cryptoasset taxonomy;
- necessary reforms for wrapped real world assets;
- defining intermediated cryptoassets and services as financial products according to the Corporations Act;
- appropriate measures for assessing the suitability of a specific public crypto network to host wrapped real world assets;
- limits, restrictions or frictions on the investment by consumers in relation to any crypto token arrangements not already covered by the financial services framework;
- having a framework to address the marketing and promotion of products within the crypto ecosystem; and
- developments of smart contracts, and their compliance with existing regulatory frameworks.

In addition, the Government will release a consultation paper proposing a licensing and custody framework for cryptoasset service providers in mid-2023 to allow for sufficient consultation prior to the introduction of legislation.

Comments on the consultation are due by 3 March 2023.

HKMA concludes consultation on discussion paper on cryptoassets and stablecoins

The Hong Kong Monetary Authority (HKMA) has published the [consultation conclusions](#) to its January 2022 discussion paper on cryptoassets and stablecoins. The discussion paper set out the HKMA's thoughts on giving priority to the development of a regulatory framework for 'payment-related stablecoins', i.e. stablecoins that may have the potential to develop into a

widely acceptable means of payment, while providing flexibility in the regime to make adjustments to the scope of stablecoins that may be subject to regulation as needed in the future.

According to the HKMA's consultation conclusions, a more detailed consultation will be conducted in due course. Amongst other things, the HKMA will conduct further assessments in respect of certain issues, e.g. whether to introduce new legislation or amend existing laws to implement the proposed regulatory regime, how to minimise possible regulatory overlaps, addressing risks that may be posed by the provision of multiple or bundled financial services by affiliated entities, and the local incorporation requirement. The HKMA plans to set out the assessment outcomes and proposed way forward in the more detailed consultation.

In parallel, the HKMA will continue to work with the Hong Kong Government, local financial regulators as well as other relevant stakeholders to implement the regulatory regime through an appropriate legislative exercise. The HKMA envisages that the draft legislation will set out key issues such as:

- defining the structures and activities that would be regulated or not regulated (e.g. the latter through exclusions or carve out) under the legislation;
- the range of effective and proportionate powers that should be granted to the HKMA to implement the regulatory regime;
- the key regulatory requirements;
- the range of powers (as well as the relevant framework) that should be given to the authority to allow for the timely update of the regulatory regime to scope in additional structures or activities; and
- the relevant guiding factors that the authority should have regard to in exercising the aforementioned powers.

Singapore and EU sign digital partnership

The Republic of Singapore and the European Union have [signed](#) the EU-Singapore Digital Partnership (EUSDP).

The EUSDP is an overarching framework for all areas of bilateral digital cooperation between the EU and Singapore, which include:

- core issues in the cross-border digital economy such as digital trade facilitation, trusted data flows, electronic payments, and standards and conformance; and
- new and emerging areas such as artificial intelligence, digital identities, and 5G/6G.

The EUSDP will also support and enable broader participation in the digital economy through cooperation on digital upskilling for workers, and the digital transformation of businesses as well as public services. Collaborations on different issues will be advanced through various modalities, including memoranda of understanding (MOUs), technical workshops, and legally binding commitments.

As a first deliverable of the EUSDP, Singapore signed the EU-Singapore Digital Trade Principles, which is the first step towards a legally binding digital trade agreement between the EU and Singapore. The EU and Singapore

have also established a Digital Partnership Council at the Minister-level to steer the EUSDP's progress and implementation, as well as identify new areas of cooperation in future.

MAS revises compliance toolkit for real estate investment trust managers

The Monetary Authority of Singapore (MAS) has published a revised version of its [compliance toolkit](#) to guide real estate investment trust (REIT) managers on the various MAS approval and reporting requirements and timelines under the Securities and Futures Act (SFA) and its subsidiary instruments.

The revisions in the compliance toolkit have been made to reflect correct methods of submission and appropriate MAS-Tx categories, as applicable, in connection with the introduction of the MAS-Tx financial institutions transactions platform. Earlier known as FITx, the MAS-Tx consolidates FI regulatory transactions data across different MAS systems in a single place, thereby allowing FIs to view their upcoming tasks, retrieve past transactions, and navigate to submission channels from a single place.

RECENT CLIFFORD CHANCE BRIEFINGS

Fintech in 2023 – five trends to watch

Last year was a tough one for fintech with the collapse of a number of high-profile industry players, as well as wider economic pressures including the war in Ukraine, supply chain challenges and high inflation.

Following the predictions made [last year](#), this briefing paper highlights five key trends for fintech in 2023. From where the crypto markets will go next, to upcoming digital capital markets and sustainability developments, to what we'll see for AI and financial services in the metaverse, our experts share their predictions.

https://www.cliffordchance.com/insights/thought_leadership/2023-trends/2023-fintech-trends.html

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