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International Regulatory Group Contacts

[Marc Benzler](#) +49 69 7199 3304

[Caroline Dawson](#) +44 207006 4355

[Steven Gatti](#) +1 202 912 5095

[Lena Ng](#) +65 6410 2215

[Gareth Old](#) +1 212 878 8539

[Mark Shipman](#) + 852 2826 8992

[Donna Wacker](#) +852 2826 3478

International Regulatory Update Editor

[Joachim Richter](#) +44 (0)20 7006 2503

To email one of the above, please use firstname.lastname@cliffordchance.com

Clifford Chance LLP,
10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

- **Singapore and Brunei deepen cooperation in financial supervision**
- **Recent Clifford Chance briefing: China finalises standard contract on cross-border transfer of personal information. Follow this link to the briefings section.**

Sustainable finance: EU Parliament and Council reach political agreement on European Green Bond Standard

The EU Parliament and Council have [reached](#) a political agreement on the creation of European green bonds (EuGB).

The European Green Bond Regulation establishes uniform requirements for issuers of bonds that wish to use the designation EuGB for their environmentally sustainable bonds that are aligned with the EU taxonomy. It also establishes a registration system and supervisory framework for external reviewers of EuGB. Under the provisional agreement, all proceeds of EuGBs will need to be invested in economic activities that are aligned with the EU taxonomy, provided the sectors concerned are already covered by it. For those sectors not yet covered by the EU taxonomy and for certain specific activities there will be a flexibility pocket of 15%.

The national competent authorities of the home Member State designated (in line with the Prospectus Regulation) will be responsible for supervising that issuers comply with their obligations under the new standard.

The regulation still needs to be formally adopted by the Council and the Parliament. It will start applying 12 months after its entry into force.

EU Council agrees negotiating position on proposed Directive on distance financial services contracts

The EU Council has [agreed](#) on a negotiating mandate (general approach) on the EU Commission's proposal for a directive to repeal the Distance Marketing Directive (2002/65/EC) and to transfer the framework for consumer protections relating to financial services distance contracts to the Consumer Rights Directive (2011/83/EU). The proposed directive is broadly intended to create a level playing field in the EU internal market for distance financial services while raising the level of consumer protection.

In a press release, the Council has indicated that its general approach:

- proposes minimum harmonisation as regards pre-contractual obligations which allow Member States to have stricter national rules than those established by the directive, in order to ensure a high level of consumer protection and avoid any risk of lowering the level of protection for consumers in certain countries;
- clarifies the scope of application and the safety net-feature of the directive, in particular for financial services that are excluded from other sectoral legislation or only partially covered by it;
- adds further provisions of the Consumers Rights Directive, applying these to financial services contracts concluded at a distance, including provisions on telephone contracts, inertia selling, or the possibility for Member States to introduce language requirements in national law regarding pre-contractual information;

- seeks to improve the rules on information disclosure and to modernise pre-contractual information obligations;
- enables Member States to adapt the explanations that should be provided by financial services providers to the circumstances of the products and needs of the consumers; and
- extends the period of transposition of the directive, so that the industry will have an additional six months to make all the required changes to IT systems.

The general approach formalises the Council's negotiating position and provides the Council Presidency with a mandate for trilogue negotiations with the EU Parliament.

Benchmarks Regulation: EU Commission consults on scope and third country regime

The EU Commission has launched a [call for evidence](#) to aid its review of the scope and third country regime of the EU Benchmark Regulation (BMR).

The EU Parliament and Council have tasked the Commission with a full review of the rules for non-EU benchmarks by 15 June 2023.

The BMR contains rules on the use of non-EU benchmarks, which will apply from 1 January 2024. Under the rules, non-EU benchmarks can be used in the EU only if they comply with rules comparable to the BMR. However, very few jurisdictions have regulated benchmarks as extensively as the EU.

Non-EU (third country) benchmarks are used widely throughout the EU in the financial sector and the real economy to measure markets, hedge risks and create investment exposure. When the new rules on the use of non-EU benchmarks come into force, it would deprive market participants in the EU of access to the majority of the world's benchmarks.

Additionally, in light of potential modifications to the rules for the use of non-EU benchmarks, the supervisory status of non-EU benchmarks labelled as EU Climate Transition Benchmarks or EU Paris-Aligned Benchmarks may also need to be amended.

Comments are due by 29 March 2023.

RTS on CCP resolution and recovery published in OJ

Two Commission Delegated Regulations containing regulatory technical standards (RTS) on central counterparty (CCP) resolution and recovery have been published in the Official Journal.

[Commission Delegated Regulation \(EU\) 2023/450](#) supplements the EU Regulation on the CCP resolution framework with RTS specifying:

- the order in which CCPs are to pay the recompense referred to in Article 20(1) of the Regulation;
- the maximum number of years during which those CCPs are to use a share of their annual profits for such payments to possessors of instruments recognising a claim on their future profits; and
- the maximum share of those profits that is to be used for those payments.

[Commission Delegated Regulation \(EU\) 2023/451](#) specifies the factors to be taken into consideration by competent authorities and supervisory colleges

when assessing the recovery plan of CCPs. The factors to be assessed includes:

- the CCP's capital structure and financial risk;
- the CCP's default waterfall;
- the CCP's organisational structure;
- the sustainability of the CCP's activities;
- the CCP's risk profile; and
- the overall impact on certain entities of the CCP's communication and disclosure plan and its recovery plan.

The Delegated Regulations will enter into force on 23 March 2023.

ECON Committee adopts reports on MiFIR2/MiFID3

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has [adopted](#) its reports on the EU Commission's proposals for a Regulation and Directive amending the Markets in Financial Instruments Regulation and Directive (MiFIR2/MiFID3).

Proposed amendments approved by the ECON Committee include:

- introducing an EU-wide consolidated tape, including providing retail investors, academics and civil society organisations using data for research purposes access to the tape free of charge;
- establishing a single volume cap limiting the amount of dark trading in an equity instrument in the EU to 7% of total trading in that instrument;
- modifying the deferral times applicable to the publication of the details of transactions in bonds, structured products, emission allowances and derivatives;
- empowering the European Securities and Markets Authority (ESMA) to set the threshold and limits applicable to market transparency and to oversee market developments;
- introducing a prohibition on payment for order flows (PFOF), where brokers receive payments for forwarding client orders for execution; and
- mandating Member States to require regulated markets to be able to temporarily halt or constrain trading in emergencies or if there is a significant price movement in a financial instrument and, in exceptional cases, to be able to cancel, vary or correct any transaction.

The EU Council agreed its negotiating position in December 2022 and the co-legislators will enter trilogue negotiations in due course.

ECON Committee adopts position on CSDR Refit

The ECON has adopted its [report](#) on the EU Commission's proposal for a Regulation amending the Central Securities Depositories Regulation (CSDR), known as the CSDR Refit.

The proposed new rules introduce a number of measures including, among other things:

- making changes to the settlement regime to address settlement fails and have mandatory buy-in rules applied only as a last resort measure, as well as having exclusions for certain transactions;
- using alternative regulatory tools to prevent settlement fails and require the fulfilment of cumulative conditions and a thorough cost-benefit analysis by ESMA before the mandatory buy-in process can be triggered;
- minimising the administrative burden and cross-border obstacles for CSDs and expanding the recognition regime for CSDs established in a third country to cover securities settlement services;
- simplifying the Commission's proposals on the establishment of colleges of supervisors and strengthen ESMA's role in colleges; and
- permitting CSDs to access banking services so they could offer settlement services for a broader range of currencies and obtain financing from cross-border investors.

The EU Council and Parliament can now enter trilogue negotiations in order to agree on a final version of the text.

CRR2: EBA publishes no-action letter on boundary between banking book and trading book provisions

The European Banking Authority (EBA) has published a [no-action letter](#) stating that competent authorities should not prioritise any supervisory or enforcement action in relation to the new banking book – trading book boundary provisions.

Amendments to the Capital Requirements Regulation (CRR2) introduced certain elements of the Basel standards on the trading book/non-trading book boundary framework, which enters into application on 28 June 2023. As part of the on-going legislative process amending the CRR2, both the EU Council and Parliament proposed to postpone the application date of the boundary provisions to 1 January 2025. However, the legislators' effort to postpone the application date of the boundary provisions is void if the legislative process ends after 28 June 2023.

The EBA notes that the front-loaded application of the boundary provisions compared to the rest of the Fundamental Review of the Trading Book (FRTB) framework creates several significant operational issues, including that:

- institutions would be subject to an operationally complex and fragmented two-step implementation of the boundary framework;
- institutions would be subject to an operationally burdensome and costly fragmented application of the rules for the reclassification of positions and internal-risk transfer between the trading and non-trading books; and
- there are no jurisdictions at global level that envisaged such a two-step implementation of the boundary and internal-risk transfer frameworks, which would lead to global institutions being subject to very different regulatory requirements depending on where the risk management is performed, leading to fragmentation in the regulatory framework as well as potential unlevel playing field issues.

To alleviate the operational burden that institutions would face with a two-step implementation, the EBA has published an opinion stating that competent authorities should not prioritise any supervisory or enforcement action in relation to the new banking book – trading book boundary provisions.

ESMA reports on effect of market correction mechanism on gas derivatives markets

ESMA has [published](#) an assessment of the effects of the introduction of Council Regulation (EU) 2022/2578 on establishing a market correction mechanism (MCM) on gas derivative markets.

The results of the assessment confirm the findings of the preliminary data report that, to date, no changes in the EU gas derivatives trading that could be unequivocally and directly attributed to the MCM could be identified nor have there been noticeable changes in CCP risk management or in margin requirements that could be attributed to the MCM. The analysis uses granular market indicators regarding trading activity, liquidity and execution since the adoption of the MCM in December 2022.

ESMA notes that the absence of a significant impact on the trading and clearing environment should not be understood as the MCM not having any impact and instead reflects the current market environment characterised by low gas prices and high storage levels. It warns that the impact of the MCM could be different as the market environment changes. According to the report, market participants anticipate the activation of the MCM following the announcements by ICE Endex and EEX to offer the trading of title transfer facility (TTF) contracts in the UK and on an EU organised trading venue (OTF).

Cross-border payments: CPMI consults on ISO 20022 harmonisation requirements

The Committee on Payments and Market Infrastructures (CPMI) has published a [consultative report](#) on the harmonisation of ISO 20022 requirements for cross-border payments.

ISO 20022 is a global and open standard for exchanging financial information. It provides a common language that can be used in every kind of financial transaction, including cross-border payments and allows for richer and more structured data to be shared via standardised messages.

The proposed harmonisation requirements were developed by a joint task force (JTF) established by the CPMI and the SWIFT Payments Market Practice Group (PMPG). They consist of three main components:

- Block A – fundamentals;
- Block B – transparency; and
- Block C – structured and coded data.

Following the consultation period and expected finalisation of the requirements in mid-2023, the CPMI proposes that payment system operators and participants begin preparations to align their ISO 20022 usage guidelines with the finalised CPMI requirements to be effective in November 2025.

Comments are due by 10 May 2023.

UK regulators publish sixth edition of Regulatory Initiatives Grid

The Financial Services Regulatory Initiatives Forum has published the sixth edition of the [Regulatory Initiatives Grid](#), which sets out the planned timetable for key initiatives in the regulatory landscape with the aim of supporting greater regulatory coordination.

The latest version was delayed from November 2022 in order to take account of the Edinburgh Reform measures announced by the Government in December 2022 and other changes to be made by the Financial Services and Markets (FSM) Bill, such as the reform of the ring-fencing regime for banks and the replacement of the UK Prospectus Regulation.

The Grid also contains sector-specific chapters covering: banking, credit and lending; payment services and cryptoassets; insurance and reinsurance; investment management; pensions and retirement income; retail investments; and wholesale financial markets.

The Grid is expected to be published biannually, where possible. The Forum also intends to provide a short update on any important and imminent changes made once the FSM Bill receives Royal Assent.

The Forum includes representatives from the Bank of England (BoE), Competition and Markets Authority (CMA), Financial Conduct Authority (FCA), Financial Reporting Council (FRC), Information Commissioner's Office (ICO), Prudential Regulation Authority (PRA), Payment Systems Regulator (PSR), and the Pensions Regulator (TPR). HM Treasury (HMT) is an observer member.

PRA consults on first phase of simplifications to prudential framework

The PRA has launched a [consultation](#) (CP4/23) setting out the first phase of its proposed simplifications to the prudential framework that would apply to Simpler-regime firms.

The proposals are intended to mitigate the 'complexity problem' that can arise for smaller banks and building societies, which occurs when the same prudential requirements are applied to all firms, but the costs of understanding, interpreting, and operationalising those requirements are higher relative to the associated public policy benefits for smaller firms than for larger firms. The PRA's 'Strong and Simple' initiative seeks to simplify the prudential framework for small, domestic banks and building societies, while maintaining their resilience and reducing barriers to growth.

The PRA intends to develop and implement this change in prudential policy in stages over a number of years, beginning with developing a 'Simpler regime' for the smallest firms. The PRA proposes to split the development of the Simpler regime into:

- phase 1, focusing on non-capital related prudential measures; and
- phase 2, focusing on capital-related prudential measures.

CP4/23 sets out the first phase of proposed simplifications that would apply to Simpler-regime firms, including:

- new liquidity requirements for the application of the net stable funding ratio (NSFR);
- revisions to the application of Pillar 2 liquidity add-ons;

- a new, streamlined Internal Liquidity Adequacy Assessment Process (ILAAP) template;
- the removal of certain liquidity reporting templates;
- new Pillar 3 disclosure requirements for Simpler-regime Firms; and
- simplifications to certain proportionality approaches currently applicable in the PRA Rulebook.

Comments are due by 30 May.

PRA consults on remuneration requirements for small CRR firms

The PRA has launched a [consultation](#) (CP5/23) setting out proposed changes to the current rules and expectations to enhance the proportionality of the remuneration requirements which apply to small CRR firms and small third-country CRR firms.

CP5/23 includes proposals to:

- define small firms in line with the proposed Simpler-regime size threshold, and with reference to selected other Simpler-regime criteria under the 'Strong and Simple' framework (set out in CP5/22 'The Strong and Simple Framework: a definition of a Simpler-regime Firm' and chapter 2 of CP16/22 'Implementation of the Basel 3.1 standards');
- remove the requirement for small firms to apply rules on malus, clawback, and buyouts; and
- provide clarity on how disclosure requirements apply for all proportionality levels.

The proposals set out in CP5/23 would result in changes to the Remuneration Part of the PRA Rulebook (Appendix 1) and updates to supervisory statement (SS2/17) 'Remuneration' (Appendix 2).

The PRA's proposals aim to increase proportionality of the remuneration regime by reducing the regulatory burden on small firms to a level more appropriate to the benefits arising from lowering risks to these firms' safety and soundness and to the UK financial system.

Comments are due by 30 May 2023.

FCA publishes Quarterly Consultation No.39

The FCA has published its latest [quarterly consultation paper](#) (CP23/6) on proposed amendments to the FCA Handbook.

The FCA proposes additional guidance in SUP 16 for completing the Annual Claims Management Report form (CMC001) and minor amendments to the numbering of the fields in the form.

Comments are due by 27 March 2023.

FCA publishes observations on Investment Firms Prudential Regime implementation

The FCA has [published](#) its initial observations on how UK MiFID investment firms are implementing the Investment Firms Prudential Regime (IFPR).

The initial multi-firm review, which was focused on capital adequacy, liquidity adequacy and wind-down planning under the internal capital adequacy and

risk assessment (ICARA) process, led to the following key observations firms are expected to improve on:

- lack of adequate assessments of threshold requirements for individual investment firms within investment firm groups;
- in relation to ICARA process assessments, an absence of unified and integrated assessments, inadequately explained reductions in risk capital, lack of comprehensive own funds and liquidity asset thresholds and triggers, and insufficient governance and Board involvement;
- insufficient attention to wind-down plans, with common gaps including lack of a stress backdrop, little consideration of group membership and incomplete analysis of wind-down requirements; and
- inaccurate or incomplete data submissions.

The FCA is continuing with its review, and intends to publish further interim observations, where appropriate, and a concluding report after completion.

HM Treasury consults on aligning ring-fencing and resolution regimes

HMT has launched a [call for evidence](#) on the practicalities of aligning the ring-fencing and resolution regimes for banks and long-term options for reform.

This follows a report published by an independent review on ring-fencing in March 2022, which noted that the regime has been beneficial for financial stability and should be retained, but that its benefit is likely to reduce with time once the UK's resolution regime is fully embedded. The panel made some recommendations for reforms to the scope of the regime, the scope of excluded activities, the restrictions on servicing relevant financial institutions and the ability of firms to establish operations or service customers outside the EEA.

HMT published a policy paper with its response to the panel's recommendations in December 2022. The call for evidence is the first stage in the Government's response to the panel's recommendations.

HMT is seeking views on the ongoing benefits that ring-fencing provides to financial stability not found elsewhere in the regulatory framework, and on the steps that could be taken to better align the ring-fencing and resolution regimes without losing financial stability benefits.

The consultation covers:

- future benefits of the ring-fencing regime;
- costs of the ring-fencing regime;
- long-term options for aligning the ring-fencing and resolution regimes;
- a spectrum of options, including to retain the regime with no further changes, disapply the regime from some or all in-scope firms and reform the regime further.

Comments are due by 7 May 2022.

FCA reports findings of trade data review

The FCA has published the [findings](#) of its trade data review, which suggest that the wholesale data market currently does not work as effectively as it could in allowing effective competition and innovation.

The FCA has emphasised that access to good quality, fairly priced trade data is important for the whole financial system and allows for properly informed, timely investment decisions.

Among other things, the report concludes that:

- some trading markets are concentrated among a few firms so there is little choice for users not to buy this important data and switching supplier is not an easy option;
- the way data is sold can be complex, making it harder for data users to make informed choices;
- complexity and limited choice result in additional costs to data users, which are likely to be passed on to UK retail investors and savers; and
- despite rules in place requiring delayed data to be distributed for free, many users end up with little choice but to pay for data.

The FCA is working with the Government to develop consolidated tapes, which collect wholesale data across the market and distribute them in single, standardised data feeds, which the FCA believes could help improve the overall cost, quality and accessibility of wholesale data.

Alongside the findings report, the FCA has launched a [wholesale data market](#) study. It will investigate whether the markets for benchmarks, credit ratings data and market data vendor services are working well.

Wholesale Markets Review: Draft FSMA Commodity Derivatives and Emission Allowances Order published

The [draft Financial Services and Markets Act 2000 \(Commodity Derivatives and Emission Allowances\) Order 2023](#) has been published.

The draft Order amends the FSMA (Regulated Activities) Order 2001 (RAO) and FSMA (Markets in Financial Instruments) Regulations 2017 (SI 2017/701) to remove the obligation on firms trading in commodity derivatives or emission allowances as an ancillary activity to annually notify the FinancFA) when making use of the exemption from authorisation (the ancillary activities exemption).

To that end, the draft Order also:

- removes references to UK Commission Delegated Regulation (EU) 2017/592 (UK MiFID2 RTS 20), which sets out provisions for determining when a firm's activity is ancillary to its main commercial business; and
- deletes article 72J of the RAO, which sets out provisions relating to the market threshold calculation and other conditions relating to the exemption.

The draft Order is proposed to come into force on 1 January 2025.

The draft Order, which forms part of the Wholesale Markets Review (WMR), was announced as part of the Edinburgh Reforms and is being made in anticipation of changes being made using powers under the Financial Services and Markets (FSM) Bill, including the revocation of UK RTS 20 and the establishment of a new exemption by the FCA.

CSSF publishes new notification template for outsourcing critical or important ICT arrangements

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has [announced](#) the publication of a new notification template for outsourcing critical or important ICT arrangements.

In-scope entities must notify the CSSF of critical or important ICT outsourcing arrangements in accordance with points 59 and 60 of Circular CSSF 22/806 on outsourcing arrangements. In-scope entities comprise, amongst others, credit institutions, investment firms, payment and e-money institutions and investment fund managers.

The new template is to be used as of 20 February 2023 for this purpose and replaces the previous template (Notification for outsourcing of material IT activities). In order not to penalise in-scope entities that are well advanced in the preparation of a notification based on the previous template, in-scope entities may introduce notifications using the previous template during a transitional period until 20 March 2023. After this date only notifications received using the new template will be considered as notified in line with the instructions and forms available in accordance with point 59 of Circular CSSF 22/806.

A link to the new notification template can be found on the relevant CSSF website page referred to in the communiqué.

HKMA publishes observations from review of investment product selling processes

The Hong Kong Monetary Authority (HKMA) has published the [observations](#) from its review of the selling processes for investment products of selected registered institutions, covering both retail banks and private banks. The HKMA has sought to streamline a number of investor protection measures and provided guidance on the flexibility allowed in selling processes over the past few years, with a view to enhancing the customer experience while also ensuring customer protection. Notwithstanding this, the HKMA has received feedback from various stakeholders about lengthy selling processes of investment products.

During its review, the HKMA noted some misunderstandings on the part of registered institutions about the regulatory standards, which may have lengthened their investment product selling processes. The HKMA is now sharing its observations, alongside the relevant regulatory standards, including the flexibility already allowed, on product risk disclosure, assessment of customer's investment horizon and concentration risk, execution-only transactions and audio-recording of the selling processes.

The HKMA has reminded registered institutions that they have the flexibility to design their own investment product selling processes having regard to their business strategies, risk management and controls, as long as such selling processes are in compliance with the applicable requirements and expected standards. Registered institutions are encouraged to review their policies, procedures and practices and design proper and reasonable measures and controls so that the selling processes can be streamlined as appropriate and that the customer experience can be enhanced while according customer protection.

Singapore and IFC sign MoU to catalyse financing for Singapore enterprises in emerging markets

Enterprise Singapore (EnterpriseSG) has [signed](#) a memorandum of understanding (MoU) with the International Finance Corporation (IFC) to spur further investment and project, trade, and supply-chain finance for Singapore enterprises in emerging markets.

Activities under the MoU include joint outreach and business-matching to connect Singapore enterprises with other governments and private-sector companies, and initiatives to reduce risks and capital constraints for financial institutions and enterprises. As part of the collaboration, the IFC will advise financial institutions and enterprises on cross-border financing, in areas such as risk-mitigation techniques and structuring of financing facilities, so as to catalyse cross-border trade and investments.

EnterpriseSG and the IFC will also jointly engage financial institutions in Singapore on risk-mitigation solutions for their trade-finance activities in emerging markets.

Singapore and Brunei deepen cooperation in financial supervision

The MAS and the Brunei Darussalam Central Bank (BDCB) have [signed](#) a MoU to deepen cooperation in banking and insurance supervision.

Signed at the fourth BDCB-MAS Bilateral Roundtable, the MoU aims to facilitate the effective supervision of banks and insurers operating across the two jurisdictions, including through information exchange and cross border on-site inspections.

The BDCB and the MAS also exchanged views on recent economic and financial developments, cooperation in sustainable finance to accelerate climate change mitigation and adaptation in ASEAN, as well as developments in central bank digital currencies and cross-border payments.

RECENT CLIFFORD CHANCE BRIEFINGS**China finalises standard contract on cross-border transfer of personal information**

In recent years, China has developed its legal framework regulating data and personal information (PI) with the promulgation of the PRC Cybersecurity Law in 2016, the PRC Data Security Law in 2021 and the PRC Personal Information Protection Law (the PIPL) in 2021 (collectively, the PRC Data Laws). The PRC Data Laws set out the supervisory approach of PRC regulators to different data- and PI- related matters. One of the key focuses for multinational companies that are subject to the PRC Data Laws is compliance with PRC regulatory requirements on international transfer of PI (i.e., exporting and/or receiving China-sourced PI, including by way of remote access), given the potential widespread implications on their global business and data management systems.

On 24 February 2023, the Cyberspace Administration of China released the Measures on Standard Contract for Cross-Border Transfer of Personal Information (the SCC Measures) and the finalised Standard Contract on Cross-border Transfer of Personal Information, which will take effect on 1 June 2023. The SCC Measures implement the requirements set out under Article 38(3) of the PIPL.

This briefing paper discusses the SCC Measures.

<https://www.cliffordchance.com/briefings/2023/03/china-finalises-standard-contract-on-cross-border-transfer-of-pe.html>

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London, E14 5JJ

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