

## INTERNATIONAL REGULATORY UPDATE 27 – 31 MARCH 2023

- **AMLD6: Council agrees negotiating mandate on single access point to bank account registries**
- **EU Parliament Committees adopt position on AML/CFT package**
- **CRD4: EU Commission publishes amended draft RTS on supervisory outlier tests**
- **MiFID2: ESMA publishes guidance for supervision of copy trading services**
- **MiFID2: ESMA publishes updated ITS on supervisory cooperation**
- **MiFID2: ESMA updates product governance guidance**
- **EMIR: ESMA consults on amendments to position calculation guidelines**
- **CCP recovery and resolution: ESMA reports on final RTS on business reorganisation plans**
- **CCP recovery and resolution: ESMA publishes official translations of guidelines on scenarios and indicators**
- **ESMA issues public statement on investor protection concerns raised by derivatives on fractions of shares**
- **Fundamental Review of the Trading Book: EBA consults on draft RTS on assessing market risk internal models**
- **EBA publishes money laundering guidelines to tackle de-risking**
- **EBA consults on inclusion of cryptoasset service providers in risk-based AML/CFT supervision guidelines**
- **Draft Financial Services and Markets Act 2000 (Commodity Derivatives and Emission Allowances) Order 2023 laid before Parliament**
- **Cryptoassets: Draft FSMA (Financial Promotion) (Amendment) Order published**
- **UK publishes updated Green Finance Strategy and consults on ESG ratings**
- **Green finance: FCA provides update on consultation on sustainability disclosure requirements and investment labels**
- **HM Treasury, FCA and PRA review Senior Managers and Certification Regime**

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- **UK EMIR: HM Treasury extends pension funds and intragroup clearing exemptions**
- **FSCS: PRA publishes final Management Expenses Levy Limit for 2023/24**
- **PRA publishes policy statement on depositor protection and safeguarding rules**
- **PSR publishes annual plan for 2023/24**
- **BaFin publishes reporting requirements for Pfandbrief banks**
- **Luxembourg bill on the implementation of the NPL Directive published**
- **Polish Financial Supervision Authority adopts Recommendation J**
- **Bank of Spain issues Circular 2/2023 amending Circular 1/2013 on Risk Information Centre**
- **FINMA publishes 2022 annual report**
- **SFC concludes consultation on introduction of new regulated activity for depositaries of public funds**
- **SFC consults on proposed subsidiary legislation for implementing uncertificated securities market in Hong Kong**
- **President Biden recommends reform of regional bank rules**
- **Recent Clifford Chance briefings: Payments Trends 2023, HKSE conclusions on Chapter 18C and more. Follow this link to the briefings section.**

## **AMLD6: Council agrees negotiating mandate on single access point to bank account registries**

The EU Council has [adopted](#) its negotiating mandate on the EU Commission's proposal for a directive amending Directive (EU) 2019/1153 as regards access of competent authorities to centralised bank account registries through a single access point.

The directive would extend the access to the bank account registers single access point, which will be established by a proposed sixth anti-money laundering directive (AMLD6) and operated by the Commission, to any authorities designated by Member States as competent for the prevention, detection, investigation or prosecution of criminal offences under Directive (EU) 2019/1153.

The Council's mandate goes beyond the original proposal to require that transaction records, i.e. bank statements, shared by financial institutions as part of an investigation are in a harmonised format.

The co-legislators will now enter trilogue negotiations in order to agree on a final version of the text.

## EU Parliament Committees adopt position on AML/CFT package

The EU Parliament's Committees on Economic and Monetary Affairs (ECON) and Civil Liberties, Justice and Home Affairs (LIBE) have adopted their position on three pieces of draft legislation on the financing provisions of EU anti-money laundering and countering the financing of terrorism (AML/CFT) policy.

The package consists of:

- the [EU 'single rulebook' regulation](#) (2021/0239 (COD)), with provisions on conducting due diligence on customers, transparency of beneficial owners and the use of anonymous instruments, such as cryptoassets, and new entities, such as crowdfunding platforms;
- [AMLD6](#) (2021/0250 (COD)) containing national provisions on supervision and financial intelligence units (FIUs), as well as on access for competent authorities to necessary and reliable information, including beneficial ownership registers and assets stored in free zones; and
- the [regulation establishing the European Anti-Money Laundering Authority](#) (AMLA) (2021/0240(COD)) with supervisory and investigative powers to ensure compliance with AML/CFT requirements.

According to the adopted texts, entities including banks, asset managers and cryptoasset managers will be required to verify their customers' identity, what they own and who controls the company. They will also have to establish detailed types of risk of money laundering and terrorist financing (ML/TF) in their sector of activity, and transmit the relevant information to a central register.

Additionally, each Member State will need to establish a FIU to prevent, report and combat ML/TF. FIUs will share information with each other and with competent authorities as well as cooperating with the AMLA, Europol, Eurojust and the European Public Prosecutor's office. National FIUs and other competent authorities should be able to access information on beneficial ownership, bank accounts, land or real estate registers. Information on beneficial ownership held in national central registers will have to be up to date and available to FIUs, AMLA, competent authorities, self-regulatory bodies and obliged entities.

The AMLA would monitor risks and threats within and outside the EU and directly supervise specific credit and financial institutions, classifying them according to their risk level. The AMLA could mandate companies and people to disclose documents and other information, conduct on-site visits with judicial authorisation, and impose sanctions. In their position on the draft law, MEPs are proposing to:

- extend the AMLA's competence to drawing up lists of high-risk non-EU countries; and
- give the AMLA powers to mediate between national financial supervisors and settle disputes, supervise and investigate the national implementation of the single AML rulebook, ensure stronger oversight of the supervisors in the non-financial sector, and receive whistleblower complaints.

The agency's seat will be decided during the trilogue negotiations between the Parliament and Council.

The Parliament will be ready to start negotiations on the AML/CFT package after a confirmation during a plenary session in April.

## **CRD4: EU Commission publishes amended draft RTS on supervisory outlier tests**

The EU Commission has sent a [letter](#) to the European Banking Authority (EBA) containing its amendments to a draft Delegated Regulation containing regulatory technical standards (RTS) under the Capital Requirements Directive (CRD4).

The draft RTS specify the supervisory shock scenarios, the common modelling and parametric assumptions and the definition of a large decline, for the purposes of the supervisory outlier tests of the exposures of institutions to the interest rate risk arising from non-trading book activities and their impact on net interest income and economic value of equity.

In its letter to the EBA, the Commission explains that it agrees with the overall substance of the submitted draft RTS, however it believes that the approach proposed to determine the notion of a large decline under the supervisory outlier test for the net interest income would not adequately reflect the current different interest rate environment and could result in the identification of a disproportionate number of outliers in the context of the supervisory review and evaluation process (SREP). The Commission believes that there is a risk of unduly significant market correction if the specific threshold is interpreted as a hard limit and triggers sizeable corrective actions from institutions to remain below the threshold to avoid possible supervisory actions.

The Commission has therefore proposed an alternative approach which reflects the necessary technical adjustments and intends to endorse the draft RTS as amended.

## **MiFID2: ESMA publishes guidance for supervision of copy trading services**

The European Securities and Markets Authority (ESMA) has published a [supervisory briefing](#) on firms offering copy trading services.

The briefing includes guidance on the qualification of copy trading services as an investment service and sets out supervisory expectations with regard to MiFID2 requirements on:

- information requirements (including on marketing communications and costs and charges);
- product governance;
- suitability and appropriateness assessment;
- remuneration and inducement; and
- qualifications of traders whose trades are being copied.

The briefing sets out the supervisory expectations of both ESMA and national competent authorities (NCAs) and also includes indicative questions that supervisors could ask themselves, or firms, when assessing firms' approaches to the application of the relevant MiFID2 rules.

## **MiFID2: ESMA publishes updated ITS on supervisory cooperation**

ESMA has published a [final report](#) setting out proposed amendments to Implementing Regulation (EU) 2017/980 laying down implementing technical standards (ITS) on cooperation in supervisory activities under MiFID2.

Due to the continued increase in cross-border activities, the proposed amendments to the ITS aim to facilitate a more expeditious exchange of information among competent authorities by introducing clear deadlines for responses to both urgent and non-urgent requests.

The draft amending ITS will be sent to the EU Commission for endorsement.

## **MiFID2: ESMA updates product governance guidance**

ESMA has published a [final report](#) setting out amendments to its guidelines on product governance under MiFID2.

The changes seek to reflect regulatory and supervisory developments and include:

- the specification of sustainability-related objectives a product is compatible with;
- the practice of identifying a target market per cluster of products instead of per individual product;
- the determination of a compatible distribution strategy where a distributor considers that a more complex product can be distributed under non-advised sales; and
- the periodic review of products, including the application of the proportionality principle.

The guidelines will apply two months after the date of the publication on ESMA's website in all EU official languages.

## **EMIR: ESMA consults on amendments to position calculation guidelines**

ESMA has published a [consultation paper](#) on amendments to its guidelines on position calculation under the European Market Infrastructure Regulation (EMIR).

The amendments are intended to ensure that trade repositories calculate positions in derivatives in a harmonised and consistent manner with regard to the time of calculations, the scope of the data to be used in calculations and the calculation methodologies under EMIR, as amended by the EMIR Refit technical standards. They provide specific information on the aggregation of certain data fields and how those should be calculated by trade repositories before providing data to relevant authorities.

The amended guidelines also address to what extent continuity should be ensured by trade repositories during the EMIR Refit transition period when pre- and post-Refit data will co-exist.

Comments are due by 9 May 2023.

## **CCP recovery and resolution: ESMA reports on final RTS on business reorganisation plans**

ESMA has published its [final report](#) on draft RTS on central counterparties' (CCPs') business reorganisation plans. The draft RTS are part of the resolution regime under the CCP Recovery and Resolution Regulation (CCPRRR).

The draft RTS specify further the minimum elements to be included in the business reorganisation plans that CCPs are expected to implement as part of their resolution tools under CCPRRR and the criteria that they have to fulfil.

The annexes to the report contain a cost and benefit analysis, the legal mandate and the text of the draft RTS.

ESMA will submit the final draft RTS to the EU Commission for adoption.

## **CCP recovery and resolution: ESMA publishes official translations of guidelines on scenarios and indicators**

ESMA has published the official translations of its guidelines on recovery plan scenarios and indicators under the Regulation on central counterparty recovery and resolution (CCPRRR).

The [guidelines](#) on CCP recovery plan scenarios under Article 9(12) of the CCPRRR specify the range of recovery plan scenarios that should be considered for the purposes of the CCP recovery plans.

The [guidelines](#) on CCP recovery plan indicators under Article 9(5) of the CCPRRR specify the minimum list of quantitative and qualitative indicators to be included in CCP recovery plans as well as providing guidance on the integration of the CCP recovery plan indicators within the CCP's monitoring system.

Both sets of guidelines will apply from 24 May 2023.

## **ESMA issues public statement on investor protection concerns raised by derivatives on fractions of shares**

The ESMA has issued a [public statement](#) highlighting that derivatives on fractions of shares are not corporate shares, and that firms should therefore not use the term 'fractional shares' when referring to these instruments. Additionally, ESMA has emphasised that in line with the obligation to make clients reasonably able to understand the nature and risks of the specific type of financial instrument, firms should make clear to the investor that they are buying a derivative instrument.

The statement also stresses that:

- all information provided to clients on these instruments shall be fair, clear, and not misleading and that firms must clearly disclose all direct and indirect costs and charges relating to them;
- as derivatives, these instruments are complex products, and this is expected to result in a narrow target market of clients; and
- an appropriateness assessment needs to be carried out where non-advised services are provided.

## Fundamental Review of the Trading Book: EBA consults on draft RTS on assessing market risk internal models

The EBA has launched a [consultation](#) on draft RTS on the assessment methodology under which competent authorities verify institutions' compliance with the requirements applicable to their internal models under the Fundamental Review of the Trading Book (FRTB) rules.

Amendments to the Capital Requirements Regulation (CRR2) implement revised requirements to compute own funds requirements for market risk of the Basel III package, i.e. the FRTB. One of the prerequisites for an institution to use the new internal model approach for calculating its own funds requirements for market risk is the approval from its competent authority.

The EBA is seeking to ensure clarity on the assessment performed by competent authorities, so as to guide the implementation of FRTB internal models in EU. In particular, the draft RTS set out a framework for competent authorities to assess the requirements and focuses on:

- governance;
- the internal risk-measurement model covering the expected shortfall and the stress scenario risk measure; and
- the internal default risk model.

Comments are due by 26 June 2023.

## EBA publishes money laundering guidelines to tackle de-risking

The EBA has published two sets of guidelines on the effective management of ML/TF risks when providing access to financial services.

[EBA/GL/2023/03](#) amends the EBA ML/TF risk factors guidelines (EBA/2021/02) to include an annex setting out what financial institutions should do to identify and assess ML/TF risk associated with customers who are not-for-profit organisations (NPOs). The guidance contained in the annex is intended to help financial institutions understand better how NPOs are organised, how they operate in practice, and what ML/TF risk factors are particularly relevant when dealing with such customers.

[EBA/GL/2023/04](#) aims to clarify the interaction between the access to financial services and institutions' AML/CFT obligations, including in situations where customers have legitimate reasons to be unable to satisfy customer due diligence (CDD) requirements. 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.

Both sets of guidelines will apply three months after publication in all EU official languages.

## EBA consults on inclusion of cryptoasset service providers in risk-based AML/CFT supervision guidelines

The EBA has launched a [consultation](#) on amendments to its guidelines on risk-based AML/CFT supervision.

The amendments extend the scope of the guidelines to AML/CFT supervisors of cryptoasset service providers (CASPs). According to the EBA, it is important that the same standards apply wherever CASPs operate in the EU, as the provision of cryptoasset services is a cross-border activity.

The amendments, among other things:

- provide guidance on the sources of information competent authorities should consider when assessing ML/TF risks associated with CASPs;
- highlight the importance of a consistent approach to setting supervisory expectations where multiple competent authorities are responsible for the supervision of the same institutions; and
- stress the importance of training to ensure that staff from competent authorities have the technical skills and expertise necessary for the execution of their functions.

The EBA intends to deliver specific AML/CFT guidance for CASPs in the future through:

- amendments to the EBA's risk factors guidelines;
- amendments to the guidelines to prevent the abuse of fund transfers for ML/TF purposes; and
- new guidelines on policies and procedures for compliance with restrictive measures.

A public hearing on the consultation will take place on 7 June 2023. Comments are due by 29 June 2023.

## **Draft Financial Services and Markets Act 2000 (Commodity Derivatives and Emission Allowances) Order 2023 laid before Parliament**

A [draft of the Financial Services and Markets Act 2000 \(Commodity Derivatives and Emission Allowances\) Order 2023](#) has been laid before Parliament, together with a draft explanatory memorandum.

The draft Order relates to the ancillary activities exemption that applies to firms trading commodity derivatives or emission allowances primarily for investment purposes or to support the firm's commercial business as set out in Schedule 3 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO).

It is intended to streamline the process for determining when a firm trading commodity derivatives or emission allowances needs to be authorised as an investment firm. The Financial Conduct Authority (FCA) intends to establish a simpler and lower cost process.

In particular, the draft Order will:

- amend the RAO and the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 to remove the obligation for firms relying on the ancillary activities exemption to notify the FCA of their exemption annually, and remove reference to UK Commission Delegated Regulation (EU) 2017/592 which contains provisions for determining whether a firm's activity is ancillary to its main commercial business; and

- delete article 72J of the RAO which enables firms to carry on their business without obtaining authorisation if there is no data available to enable them to perform the test establishing when an activity is ancillary.

Subject to Parliamentary approval, the Order will come into force on 1 January 2025.

## **Cryptoassets: Draft FSMA (Financial Promotion) (Amendment) Order published**

The [draft Financial Services and Markets Act 2000 \(Financial Promotion\) \(Amendment\) Order 2023](#) has been published.

The draft Order, which forms part of the Government's wider staged approach to regulating the cryptoasset sector, amends the FSMA (Financial Promotion) Order 2005 (FPO) to include financial promotions in respect of qualifying cryptoassets, such as exchange tokens.

The draft Order also introduces a temporary, limited exemption for:

- cryptoasset businesses registered with the FCA under the (AML/CFT Regulations; and
- persons who communicate non-real time financial promotions prepared by a registered person on that person's behalf.

For the purposes of enabling the FCA to make rules and give guidance, the draft Order is proposed to come into force on the day after the day the Order is made. For all other purposes and to ensure compliance, a four-month implementation period is proposed from the day after the Order is made.

HM Treasury (HMT) has also published a [Keeling Schedule](#) showing the proposed modifications to FSMA in respect of registered persons. The Keeling Schedule does not show proposed amendments to the FPO.

## **UK publishes updated Green Finance Strategy and consults on ESG ratings**

The UK Government has published a [revised Green Finance Strategy](#) setting out its policy framework for managing the risks and opportunities associated with climate change and supporting the transition to net zero.

The 2023 Strategy, which follows the 2019 Strategy, covers the UK's approach to green finance and how it intends to align the regulatory framework with its climate and environmental goals and create green investment opportunities. It also sets out the Government's commitments over the next year, such as:

- consulting on a UK Green Taxonomy;
- launching a formal mechanism for assessing UK adoption of the forthcoming disclosure requirements being developed by the International Sustainability Standards Board (ISSB);
- providing further detail on the Sustainability Disclosure Requirements (SDR) implementation timeline to reflect international standards;
- launching a call for evidence on scope 3 emissions reporting;
- consulting on introducing a requirement for large private companies to disclose transition plans; and

- reviewing the regulatory framework for effective stewardship, including the operation of the Stewardship Code.

The UK regulators have published a [joint statement](#) welcoming the updated Strategy.

As part of the updated Strategy, HMT has also published a [consultation](#) setting out initial policy proposals on the scope of a potential regulatory regime for ESG ratings providers, covering:

- the description of ESG ratings and their provision;
- exclusions;
- territorial scope; and
- proportionality.

The consultation closes on 30 June 2023.

The Government announced its intention to publish the revised Strategy and ESG ratings consultation as part of the December 2022 Edinburgh Reforms.

### **Green finance: FCA provides update on consultation on sustainability disclosure requirements and investment labels**

The FCA has [provided](#) an update on its [consultation](#) (CP22/20) on sustainability disclosure requirements (SDR) and investment labels, setting out some of the feedback received and next steps.

The FCA received around 240 written responses to CP22/20, which closed on 25 January 2023. There is broad support for the proposed regime and constructive feedback has been received on some of the detail which the FCA intends to consider in deciding next steps. This includes, but is not limited to, considering its approach to the marketing restrictions, refining some of the specific criteria for the labels and clarifying how different products, asset classes and strategies can qualify for a label, including multi-asset and blended strategies.

The FCA is planning to publish the policy statement in Q3 2023. The FCA intends to clarify in the policy statement matters such as that primary and secondary channels for achieving sustainability outcomes are not prescribed, and that the FCA does not require independent verification of product categorisation to qualify for a label.

### **HM Treasury, FCA and PRA review Senior Managers and Certification Regime**

As part of the Edinburgh Reforms, the Government announced that HMT, the FCA and Prudential Regulation Authority (PRA) would commence separate reviews of the SM&CR.

The SM&CR comprises several, mutually reinforcing elements, centred on the Senior Managers Regime, the Certification Regime, and the Conduct Rules.

HMT has launched a [call for evidence](#) on the legislative aspects of the Senior Managers and Certification Regime (SM&CR).

Among other things, HMT's call for evidence seeks feedback on:

- whether the current regime delivers against its original aims;

- whether there are any specific areas of the SM&CR that respondents have concerns about or are perceived as a deterrent to firms or individuals locating in the UK;
- international competitiveness; and
- the scope of the regime.

Comments are due by 29 May 2023.

In parallel, the PRA and FCA have published a [discussion paper](#) (DP1/23) on the effectiveness, scope, and proportionality of the regulatory regime.

Comments are due by 1 June 2023.

### **UK EMIR: HM Treasury extends pension funds and intragroup clearing exemptions**

HMT has [announced](#) its intention to lay a statutory instrument (SI) extending the pension fund clearing exemption and the temporary intragroup exemption regime by two years and three years, respectively.

The SI will amend Article 89(1) of the retained EU Regulation on OTC derivative transactions, CPPs and trade repositories (UK EMIR) to extend the expiry date of the pension fund exemption by two years to 18 June 2025.

The SI will also amend the relevant provisions of The Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019/335 to extend the expiry date of the intragroup exemptions by three years to 31 December 2026.

HMT intends to conduct a review of the pension fund exemption ahead of its expiry in 2025, allowing time for consideration and implementation of a longer-term approach and will incorporate relevant findings from work being undertaken by regulators internationally on financial market fragilities and resilience in the non-banking financial sector.

### **FSCS: PRA publishes final Management Expenses Levy Limit for 2023/24**

The PRA has published a [policy statement](#) (PS3/23) on the final rules for the Financial Services Compensation Scheme (FSCS) Management Expenses Levy Limit (MELL) for 2023/24.

Given that no responses to the January 2023 consultation on the MELL (CP1/23) were received, the policy proposals are being implemented as consulted on.

The MELL applies from 1 April 2023 to 31 March 2024.

### **PRA publishes policy statement on depositor protection and safeguarding rules**

The PRA has published a [policy statement](#) (PS2/23) setting out its final rules on depositor protection.

PS2/23 contains the feedback and final policy relating to the PRA's proposals on safeguarding rules which were consulted on in September 2022. In particular, the PRA proposed to amend rule 6.2 in the Depositor Protection Part of the PRA Rulebook to clarify that the FSCS depositor protection regime covers FSCS eligible customers of e-money institutions, authorised payment

institutions, small payment institutions, and credit unions (in respect of e-money) should a credit institution holding such firms' safeguarded funds fail.

Respondents to the consultation welcomed the proposals on safeguarding rules and requested a few clarifications, which the PRA has set out in Chapter 2 of PS2/23.

The PRA has implemented the proposals with some minor changes to improve the clarity and effectiveness of the rules. The changes to the safeguarding rules came into effect on 12 March 2023.

## **PSR publishes annual plan for 2023/24**

The Payment Systems Regulator (PSR) has published its [annual plan and budget for 2023/24](#).

The PSR intends to continue to focus on its priorities of protection, competition, unlocking account-to-account payments and providing access and choice.

The PSR work programme for 2023/24 consists of the following key projects:

- authorised push payment (APP) scams;
- confirmation of payee (CoP);
- account-to-account payments;
- card fees;
- the New Payments Architecture (NPA);
- ATM network regulation and digital payments; and
- digital currencies and cryptoassets.

On 9 May 2023, the PSR will hold an event to discuss the plan in more detail. In summer 2023, the PSR intends to publish its annual report on how it has performed against the 2022/23 annual plan.

## **BaFin publishes reporting requirements for Pfandbrief banks**

The German Federal Financial Supervisory Authority (BaFin) has [published](#) reporting requirements for the electronic submission of German covered bond (Pfandbrief)-related reports by Pfandbrief banks under the Pfandbrief Reporting Ordinance (PfandMeldeV).

In accordance with section 5 PfandMeldeV, BaFin has published more detailed requirements for the filing process on its website, consisting essentially of the following:

- BaFin's Reporting and Publishing Platform (MVP Portal) must be used for the electronic submission of the reports;
- the reports must, for the time being, be submitted as an excel spreadsheet, which can be done using the sample file provided on BaFin's website;
- the submitted files must follow a certain naming convention;
- if an already submitted report was incorrect, the corrected report must be completely resubmitted; and
- the structure of the submitted files may not be altered.

## **Luxembourg bill on the implementation of the NPL Directive published**

A [Bill](#) implementing Directive (EU) 2021/2167 on credit servicers and credit purchasers (NPL Directive) (Bill No. 8185) has been lodged with the Luxembourg Parliament.

The Bill has a double objective:

- to transpose the NPL Directive, establishing a European framework for the transfer or assignment of non-performing loans (NPLs) from credit institutions to secondary buyers; and
- to operationalise certain amendments made by the Daisy Chain Regulation (EU) 2022/2036 to the Bank Recovery and Resolution Directive (BRRD) as regards the determination of the minimum requirement for own funds and eligible liabilities (MREL) for resolution entities of global systemically important institution (G-SII) entities.

The Bill transposes the provisions relating to the transfer or assignment of NPLs initially granted by a credit institution, the obligations incumbent on credit purchasers, and the provisions applicable to supervision and sanctions, among others. The Bill also introduces to the law of 5 April 1993 on the financial sector (as amended) credit servicers as a new type of financial sector professional subject to authorisation and supervision by the Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF).

Targeted amendments are also made to the Consumer Code, to the law of 23 December 1998 establishing a financial sector supervisory commission (as amended), to the law of 22 March 2004 on securitisation (as amended), the law of 18 December 2015 on the failure of credit institutions and certain investment firms (as amended), as well as certain other laws.

The lodging of the Bill with the Luxembourg Parliament constitutes the start of the legislative procedure.

## **Polish Financial Supervision Authority adopts Recommendation J**

The Polish Financial Supervision Authority (PFSA) has [adopted](#) Recommendation J, which pertains to best practices governing the collection and processing of real property market data by banks, contained in their internal and external databases, supporting the risk management process associated with mortgage-secured credit exposures.

The PFSA has underscored that, owing to the different nature of the financing of commercial and residential properties, the new wording of its recommendation permits banks with significant involvement in mortgage-secured credit exposure on commercial properties not to apply statistical models, provided that the valuation methods adopted by the banks ensure fair and reliable determination of the value of the collateral.

## **Bank of Spain issues Circular 2/2023 amending Circular 1/2013 on Risk Information Centre**

The Bank of Spain has issued [Circular 2/2023](#), of 17 March, amending Circular 1/2013, of 24 May, on the Risk Information Centre.

The main purpose of Circular 2/2023 is to adapt Circular 1/2013 to the changes introduced by Order ETD 600/2022, of 29 June. As of 2 January 2023, declaring entities must report to the Risk Information Centre (Central de Información de Riesgos), on an individual basis, all transactions carried out by persons whose accumulated risk with the entity is equal to or greater than EUR 3,000.

Circular 2/2023 also incorporates, among others, new requirements in the information reporting obligations applicable to transactions involving:

- measures under the Code of Good Practices of Royal Decree Law 5/2021, of 21 March, on extraordinary measures to support business solvency in response to the COVID-19 pandemic; or
- guarantees (avales) under Royal Decree Law 6/2022, of 29 March, on urgent measures in response to the economic and social consequences of the war in Ukraine.

Circular 2/2023 will enter into force on 1 July 2023. However, paragraphs 1 and 2 of the sole provision (norma única) of Circular 2/2023 and the new requirements in the information reporting obligations applicable to the transactions identified in paragraphs (i) and (ii) above entered into force on 26 March 2023.

## **FINMA publishes 2022 annual report**

The Swiss Financial Market Supervisory Authority (FINMA) has [published](#) its 2022 annual report.

Among other things, the report notes that:

- the most important pressure points included the consequences of the war in Ukraine for financial institutions. During on-site supervisory reviews at a number of banks, FINMA investigated, among other things, whether the banks are organisationally capable of complying with the sanctions provisions and intensified its supervision in this regard;
- the market continued to show strong interest in crypto-based financial services and assets. Alongside specialist fintech companies, a growing number of banks supervised by FINMA also expanded the range of services they provide in this area. In a survey of supervised institutions, FINMA found that the use of artificial intelligence is also gaining in importance in the financial markets;
- of the more than 2,500 portfolio managers and trustees who signalled their intention to obtain authorisation in 2020, 1,699 ultimately submitted an application for authorisation to FINMA by the end of 2022; and
- FINMA carried out more than 850 (2021: 763) investigations and concluded 39 proceedings (2021: 34) against companies and individuals in the year under review.

## **SFC concludes consultation on introduction of new regulated activity for depositaries of public funds**

The Securities and Futures Commission (SFC) has published the [conclusions](#) to its February 2022 consultation on proposed legislative and code amendments to introduce Type 13 regulated activity (RA 13), a new regime to regulate depositaries (i.e., top-level trustees and custodians) of SFC-authorized collective investment schemes.

According to the SFC, most of the comments sought clarification of technical issues. The key comments, amongst others, were related to the scope of the oversight function under the proposed approach to defining RA 13, the interpretation of terms such as 'client assets' and 'associated entities' under the subsidiary legislation and requests for exemptions from certain subsidiary legislation, and the level of responsibility under Schedule 11 to the Code of Conduct for Persons Licensed by or Registered with the SFC for different activities.

To help depositaries transition to the new regime, the SFC intends to provide specific guidance on the licensing process and to launch electronic licensing forms for RA 13 in the third quarter of 2023. Subject to completion of the legislative process, the RA 13 regime will come into effect on 2 October 2024.

### **SFC consults on proposed subsidiary legislation for implementing uncertificated securities market in Hong Kong**

The SFC has published a [consultation paper](#) on its proposed subsidiary legislation for implementing an uncertificated securities market (USM) in Hong Kong.

In 2019/2020, the SFC, Hong Kong Exchanges and Clearing Limited and the Federation of Share Registrars Limited jointly consulted the market on the operational model for implementing a USM in Hong Kong. In June 2021, the Securities and Futures and Companies Legislation (Amendment) Ordinance 2021 (USM Amendment Ordinance) was enacted and since then the SFC has been focussing on developing technical details and specifications of the operational model, and the subsidiary legislation needed to support that model. The latest consultation paper focuses on that subsidiary legislation and comprises the following two new sets of rules:

- the Securities and Futures (Uncertificated Securities Market) Rules, which aim to set out the operational and technical matters and processes under a USM environment; and
- the Securities and Futures (Approved Securities Registrar) Rules, which aim to provide for the regulation of share registrars.

Additionally, the consultation also proposes amendments to other subsidiary legislation, code, and guidelines to cater for the USM environment.

The SFC notes that the USM initiative will introduce a major change in the Hong Kong market and that the subsidiary legislation supporting this initiative will therefore have a significant impact on investors, issuers and other market participants. The SFC has urged interested parties to submit written comments on the proposals discussed in the consultation paper. The deadline for submissions is 30 June 2023.

### **President Biden recommends reform of regional bank rules**

President Biden has issued a [fact sheet](#) urging the federal banking agencies, in consultation with the Treasury Department, to consider a set of recommended reforms aimed at reducing the risk of future banking crises.

The recommendations, which build on regulatory reforms already on the Biden Administration's agenda, seek to strengthen the regulation and supervision of banks and include:

- for banks with between USD 100 and 250 billion in assets, reinstating liquidity requirements and enhanced liquidity stress testing, annual supervisory capital stress tests and the requirement to submit resolution plans;
- strengthening capital requirements for regional banks and fully implementing post-financial crisis capital rules;
- reducing the transition periods for safeguards such as stress tests, and consideration of other measures to address risks associated with banks' rapid growth;
- strengthening supervisory tools, such as stress testing;
- expanding long-term debt requirements to a broader range of banks; and
- ensuring that the costs of replenishing the Deposit Insurance Funds (DIF) after the recent Signature Bank and Silicon Valley Bank failures are not borne by community banks.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **Payments Trends 2023**

Regulation of the payments sector continues to evolve as technology drives further changes to consumer and wholesale payments, from blockchain-based central bank digital currencies and stablecoins to new embedded finance offerings and operational resilience challenges.

This briefing paper focuses on enforcement, from global regulators over the next 12 months.

[https://www.cliffordchance.com/insights/thought\\_leadership/2023-trends/payment-trends-2023.html](https://www.cliffordchance.com/insights/thought_leadership/2023-trends/payment-trends-2023.html)

### **HKSE conclusions on Chapter 18C – the new listing regime for specialist technology companies**

The Stock Exchange of Hong Kong Limited (HKSE) has published the consultation conclusions on the proposed new listing regime for Specialist Technology Companies by introducing the new Chapter 18C. The new Chapter 18C will become effective on 31 March 2023 where companies may submit a formal listing application under this new listing regime.

This briefing paper discusses the key changes between the consultation proposal and final rules under the new Chapter.

<https://www.cliffordchance.com/briefings/2023/03/hkse-conclusions-on-chapter-18c--the-new-listing-regime-for-spec.html>

### **The case of fraudulent payment instructions – have banks' duties been extended too far?**

The Court of Final Appeal (CFA) in Hong Kong has recently handed down a decision concerning what it described as 'one of the oldest and most litigated questions in commercial law, namely the rights of a corporate customer

against a banker who has paid money out of its account on the dishonest instructions of authorised signatories’.

This decision has significant ramifications for banks in Hong Kong and potentially other common law jurisdictions, notably in their day-to-day handling of payment and other instructions, how long banks are to remain liable to their customers, and their record-keeping policies.

This briefing paper discusses the case.

<https://www.cliffordchance.com/briefings/2023/03/the-case-of-fraudulent-payment-instructions---have-banks--duties.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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