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- **Ministry of Finance publishes updated list of classifications of listed companies relating to prior-notification requirements on inward direct investment under FEFTA**
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## **Capital Markets Union: EU Commission adopts retail investment package**

The EU Commission has [adopted](#) a retail investment strategy aimed at streamlining and modernising investor protection rules.

The legislative package, which consists of a proposed Omnibus Directive amending MiFID2, IDD, Solvency II, the UCITS Directive and AIFMD, and a proposed Regulation amending the PRIIPs Regulation, seeks to:

- improve the regulatory disclosures framework to ensure transparency for retail investors;
- address the risk of unbalanced or misleading marketing communications and clarify the responsibilities of investment firms and insurance distributors, including when using digital channels and relying on third parties;
- reduce potential conflicts of interest caused by the payment of inducements;
- strengthen product governance rules and regulate pricing processes;
- clarify and strengthen suitability and appropriateness assessments;
- strengthen and align the requirements on the knowledge and competence of investment advisors;
- ease restrictions for investors to qualify as professional investors;
- strengthen supervisory enforcement, particularly in the context of digital channels and in cross-border cases; and
- promote financial education measures at national level.

## **Capital Markets Union: EU Council agrees position on instant payments proposal**

The EU Council has [agreed](#) its negotiating position on the instant payments proposal, which aims to improve the availability of instant payment options in euro in the EU and EEA countries.

This initiative comes in the context of the completion of the Capital Markets Union. The proposed regulation amends the Single Euro Payments Area

(SEPA) Regulation and consists of four requirements regarding euro instant payments:

- making instant euro payments universally available, with an obligation on EU payment service providers that already offer credit transfers in euro to offer their instant version as well;
- making instant euro payments affordable, with an obligation on payment service providers to ensure that the price charged for instant payments in euro does not exceed the price charged for traditional, non-instant credit transfers in euro;
- increasing trust in instant payments, with an obligation on providers to verify the match between the bank account number (IBAN) and the name of the beneficiary provided by the payer in order to alert the payer of a possible mistake or fraud before the payment is made; and
- removing friction in the processing of instant euro payments while preserving the effectiveness of screening of persons that are subject to EU sanctions, through a procedure whereby payment service providers will verify their clients against EU sanctions lists on at least a daily basis, instead of screening all transactions one by one.

The EU Council has also indicated that the implementation of the new rules should happen faster in Member States which are within the euro area. For payment service providers located in Member States outside the euro area, there would be a phased implementation.

Now that the Council has agreed its position on the proposal, it is ready to start negotiations with the EU Parliament in order to agree on a final version of the text.

## **Capital Markets Union: EU Council and Parliament reach provisional agreement on European single access point**

The EU Council has published a [press release](#) on reaching a provisional agreement with the EU Parliament on the Commission's proposals for establishing a European single access point (ESAP).

ESAP is intended to provide centralised access to publicly available information of relevance to financial services, capital markets and sustainability, and is expected to be implemented in the following three phases once the platform is made available in 2027:

- phase one to include information under the Short Selling Regulation, Prospectus Regulation and Transparency Directive;
- phase two to include information under, among other things, the Sustainable Finance Disclosure Regulation (SFDR), the Credit Rating Agencies Regulation (CRAR) and the Benchmark Regulation (BMR); and
- phase three to include information under, among others, the Capital Requirements Regulation (CRR), the Markets in Financial Instruments Regulation (MiFIR) and the EU Green Bonds Regulation (EUGBR).

The EU Council and Parliament must now formally adopt the proposals.

## **Investment firms: EU Commission adopts RTS on Pillar 2 add-ons under IFD**

The EU Commission has adopted a Delegated Regulation laying down [regulatory technical standards](#) (RTS) on Pillar 2 add-ons under the Investment Firms Directive ((EU) 2019/2034) (IFD).

The RTS set out a number of indicative qualitative metrics to support competent authorities in the identification, assessment and quantification of material risks and elements of risks not covered or not sufficiently covered by own funds requirements set out in the Investment Firms Regulation (IFR). The proposed metrics seek to reflect the size, complexity of activities and business models of the various investment firms across the EU.

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

## **Investment firms: ESMA publishes statement on risks of unregulated products and services**

The European Securities and Markets Authority (ESMA) has published a [statement](#) intended to highlight the investor protection and prudential risks arising from the provision of unregulated products and / or services by investment firms.

The statement is addressed to investment firms offering unregulated products with a similar purpose to financial instruments regulated under MiFID2, namely products in which the client is investing for return or hedging purposes, and sets out ESMA's expectations, including that firms:

- take all necessary measures to ensure that clients are fully aware of the regulatory status of the product or service they are receiving; and
- clearly disclose to clients when regulatory protections do not apply to the product or service provided.

ESMA also recommends that firms take into consideration the impact their unregulated activities may have on their business activity as a whole and reminds firms that they should have a full understanding and comprehensive view of the risks connected with both their regulated and unregulated activities.

## **ESAs consult on amending ITS on mapping of credit assessments of ECAIs for credit risk**

The European Supervisory Authorities (ESAs), comprising the European Banking Authority (EBA), ESMA and the European Insurance and Occupational Pensions Authority (EIOPA), have launched a [consultation](#) on proposed implementing technical standards (ITS) to amend the Implementing Regulations on the mapping of credit assessments of External Credit Assessment Institutions (ECAIs) for credit risk.

The proposed amendments reflect the outcome of a monitoring exercise on the adequacy of existing mappings, namely those to the credit quality steps (CQS) allocation for four ECAIs and the introduction of new credit rating scales for seven ECAIs as well as the withdrawal of the registration of one ECAI.

Comments are due by 26 June 2023.

## ESAs publish final draft RTS on ESG disclosures for STS securitisations

The ESAs have submitted to the EU Commission draft [RTS](#) on the ESG impact disclosure for simple, transparent and standardised (STS) securitisations under the Securitisation Regulation.

The final report provides an overview of the feedback received to the consultation launched in May 2022, as well as the ESAs' responses to the feedback received.

The draft technical standards specify ESG disclosures which would apply to STS securitisations where the underlying exposures are residential loans, auto loans and leases.

The draft RTS are not intended to create a framework for 'sustainable securitisation', i.e. to develop indicators, definitions or thresholds for when and how the originator(s) of a securitisation may characterise or market a securitisation as 'sustainable' or 'green'. The draft RTS seek to enable originators to disclose principal adverse impacts (PAIs) of STS securitisations using reporting which closely aligns to the Sustainable Finance Disclosure Regulation (SFDR), while helping investors to fulfil their ESG reporting requirements.

Following the submission of the RTS, the EU Commission is expected to endorse the RTS within three months of their publication.

## ESRB reports on cryptos and decentralised finance

The European Systemic Risk Board (ESRB) has published a [report](#) outlining the systemic implications of crypto markets and proposing policy options to address the risks stemming from cryptoassets and decentralised finance (DeFi).

The report finds that while the past year has been turbulent for cryptos and DeFi, the impact on the financial system was limited, that the crypto market has few interlinkages with the traditional financial sector and the real economy, and that none of those links are currently significant.

However, the report also warns that systemic risks could materialise if, for example, interconnectedness with the traditional financial system increases over time, new connections are not promptly identified, or if similar innovations, such as distributed ledger technology, are widely adopted in traditional finance.

The ESRB identifies a number of potential policy options that could enable authorities to understand better the developments and potential financial stability implications of cryptoassets. The options aim to ensure that authorities have the capacity to act in a timely manner to address potential systemic risks.

The report proposes three areas of main focus:

- improving the EU's capacity to monitor potential contagion channels between the cryptoasset sector and the traditional financial sector, and within the cryptoasset sector;
- carrying out assessments of risks posed by cryptoasset conglomerates and leverage using cryptoassets, and identifying potential additional actions to mitigate observed risks; and

- promoting EU-level knowledge exchange and monitoring of market developments, focusing on operational resilience, DeFi, and cryptoasset staking and lending.

## **ECB publishes guide on qualifying holding assessments**

The European Central Bank (ECB) has published its [final guide](#) on qualifying holding procedures.

The guide is intended to:

- clarify how supervisors assess applications to acquire qualifying stakes in banks;
- make supervisory actions more predictable and support applicants intending to acquire a qualifying holding in banks;
- provide information on complex acquisition structures, the application of the principle of proportionality and specific procedural elements related to qualifying holding acquisitions; and
- complement the ECB's guide on the supervisory approach to consolidation in the banking sector.

Alongside the guide, the ECB has published a [feedback statement](#) following its consultation on the guide in September 2022, which provides an overview of the comments received and its assessment of these comments.

## **UCITS/AIFMD: ESMA publishes results of common supervisory action on asset valuation**

ESMA has published a [report](#) setting out analysis and conclusions on the 2022 common supervisory action (CSA) on asset valuation rules under the UCITS Directive and Alternative Investment Fund Managers Directive (AIFMD).

The main findings of the report cover the following topics:

- the appropriateness of valuation policies and procedures, noting room for improvement in allocating operational tasks and responsibilities and in defining the valuation model as well as validation;
- valuation under stress conditions, noting issues on policies and procedures that do not distinguish between normal and stressed market conditions and a lack of systematic incorporation of the outcome of liquidity stress testing;
- independence of the valuation function and use of third-party valuers, noting some specific cases raising issues relating to independence of the function, particularly from portfolio management, and over-reliance on third party data providers;
- early detection mechanisms for valuation errors and transparency to investors, noting that remedial procedures are not always appropriately formalised; and
- private equity and real estate assets, noting issues arising in the alignment between the NAV calculation, the asset valuation frequency and the availability of up-to-date data.

In light of the deterioration of the macroeconomic outlook, ESMA notes the importance of NCAs' supervision addressing the deficiencies identified and the

need to pay close attention to potential valuation issues arising from less liquid assets, particular private equity and real estate.

## **ELTIF2: ESMA consults on RTS**

ESMA has launched a [consultation](#) on draft RTS under the revised European long-term investment funds (ELTIFs) Regulation (ELTIF2).

Views are sought on repealing RTS set out in Delegated Regulation (EU) 2018/480 and consolidating provisions that do not need to be amended or deleted, along with new RTS on:

- the criteria for establishing the circumstances in which the use of financial derivative instruments solely serves hedging purposes;
- the circumstances in which the life of an ELTIF is considered compatible with the life-cycles of each of the individual assets, as well as different features of the redemption policy of the ELTIF;
- the circumstances for the use of the matching mechanism, i.e. the possibility of full or partial matching (before the end of the life of the ELTIF) of transfer requests of units or shares of the ELTIF by exiting ELTIF investors with transfer requests by potential investors;
- the criteria to be used for certain elements of the itemised schedule for the orderly disposal of the ELTIF assets; and
- costs disclosure.

Comments are due by 24 August 2023. ESMA intends to publish a final report and submit the draft RTS to the EU Commission for endorsement by 10 January 2024.

## **MiFID2: ESMA publishes opinion on market outages**

ESMA has published its [final report](#) on market outages.

The report includes feedback to responses received to ESMA's September 2022 consultation paper on its proposed guidance on market outages, and its final guidance in the form of an opinion addressed to national competent authorities (NCAs).

The opinion sets out the steps that NCAs should require trading venues to take in order to reopen trading in an orderly manner and provides considerations on non-equity instruments, in particular for derivatives markets. It sets out ESMA's expectations on:

- how NCAs should ensure that trading venues have appropriate communication protocols in place for communicating with their members, participants and the public;
- which arrangements should be in place to avoid an outage affecting the closing auction; and
- how trading venues should ensure the market is provided with an official closing price.

ESMA expects NCAs to ensure that trading venues have appropriate outage plans in place which are ready to be deployed and that they assess their arrangements and procedures against the opinion and consider whether any changes need to be made.

## **IOSCO consults on global crypto regulation**

The Board of the International Organization of Securities Commissions (IOSCO) has published a [consultation](#) report on policy recommendations for crypto and digital asset markets.

Views are sought on 18 policy recommendations aimed at investor protection and market integrity in relation to activities performed by cryptoasset service providers (CASPs) in the following areas:

- conflicts of interest arising from vertical integration of activities and functions;
- market manipulation, insider trading and fraud;
- cross-border risks and regulatory cooperation;
- custody and client asset protection;
- operational and technological risk; and
- retail access, suitability and distribution.

Comments are due by 31 July 2023. IOSCO intends to finalise the recommendations in early Q4 2023.

## **BIS reports on ongoing policy perspectives on central bank digital currencies**

The Bank for International Settlements (BIS) and a group of central banks (the Bank of Canada, the Bank of England, the Bank of Japan, the ECB, the Board of Governors of the Federal Reserve System, Sveriges Riksbank and the Swiss National Bank) have published a [report](#) on ongoing policy perspectives on central bank digital currencies (CBDCs).

This follows the publication of a report in October 2020 on the common foundational principles and core features of a CBDC, and reports on system design and interoperability, user needs and adoption and financial stability implications in September 2021.

The report summarises key themes continuing to be discussed by the group of central banks, including that:

- development of CBDC work requires careful consideration and engagement with a wide range of stakeholders, including the private sector and legislators;
- to successfully meet its public policy objectives, a CBDC ecosystem should allow a wide range of private and public stakeholders to participate and, in doing so, deliver services which benefit end users;
- the complex design questions and the potential risks arising from the implementation of any CBDC require careful consideration; and
- the evolving payments landscape requires central banks to give some consideration to how CBDCs may be used for wholesale and cross-border use cases.



## **BCBS-CPMI-IOSCO report on margin dynamics in commodities markets**

The Basel Committee on Banking Supervision (BCBS), the Bank for International Settlements' Committee on Payments and Market Infrastructures (CPMI) and the IOSCO have published a [report](#) on margin dynamics in centrally cleared commodities markets in 2022.

The report examines margin calls in centrally cleared commodities markets during the volatility following the Russian invasion of Ukraine. The findings are based on a survey of CCPs that clear commodities derivatives and on an industry workshop held to gather the perspectives of end users of commodities derivatives.

The report, among other things:

- examines the dynamics of CCPs' margin models, the use of discretion and its effect on margin procyclicality, and the other ways CCPs adapted their risk management during this period;
- investigates market participants' preparedness to meet margin calls during stress events based on the level of transparency and predictability of these margin practices;
- finds that CCPs are sensitive to the impact of margin calls on market participants and many maintain or have introduced measures to help limit the speed and size of initial margin requirement increases;
- finds that, due to the market turmoil of 2022 exceeding some of the biggest shocks foreseen in the scenarios CCPs used to size their default funds, some CPPs are adjusting their approach to stress testing for commodity derivatives; and
- finds that end users of commodity derivatives believe that there is scope to improve the transparency and predictability of additional margin requirements applied by their clearing brokers on top of the initial CCP margin.

The findings will inform the international policy work set out in the BCBS-CPMI-IOSCO's review of margining practices.

## **ISDA publishes whitepaper on energy security**

The International Swaps and Derivatives Association (ISDA) has published a [whitepaper](#) on energy security.

The whitepaper, written by members of the ISDA Future Leaders in Derivatives (IFLD) program, is intended to provide insights and recommendations on how the derivatives market can help to protect energy security while facilitating the transition to net zero. The paper sets out the current state of the market and the challenges resulting from extreme price volatility in energy markets caused by events such as the conflict in Ukraine and climate change. It also makes medium- and long-term recommendations to scale, standardise and update certain derivatives products.

The IFLD hopes the paper will help to foster collaboration among key stakeholders and drive the development of innovative solutions to create a sustainable future.

## **HM Treasury introduces technical amendments to Financial Services and Markets Bill for CCP run-off regime**

HM Treasury has introduced two [technical amendments](#) to the Financial Services and Markets Bill (FSMB) to facilitate UK firms' continued use of non-UK central counterparties (CCPs) under the run-off regime.

The amendments provide contingencies should the Royal Assent of the FSMB be secured after 30 June 2023 and by ensuring these amendments and the January 2023 amendment giving the BoE the power to extend the maximum run-off period for CCPs from one year to three years and six months come into force immediately upon Royal Assent.

If approved by Parliament, the amendments would:

- ensure that the power for the BoE to extend the maximum run-off period comes into force on Royal Assent; and
- in the event of a gap between a CCP's exit from the run-off regime and Royal Assent, provide for the BoE to be able to determine that a CCP's run-off period is to be treated as not having expired, from the making of the determination onwards.

If a non-UK CCP leaves the run-off regime before the BoE's power to extend the maximum run-off period comes into force, the BoE would be able to exercise its power to vary the run-off period up to the maximum period of three years and six months from when the CCP first entered it.

The Financial Conduct Authority (FCA), the Prudential Regulation Authority (PRA) and the BoE have published a [press release](#) welcoming the proposals. According to the statement, in the event of a gap between 1 July 2023 and Royal Assent, the regulators will take a proportionate and risk-based approach when giving consideration to the use of their supervisory powers in relation to firms that may be impacted pending Royal Assent.

## **Dormant Assets Scheme: FCA consults on second phase of expansion**

The FCA has launched a [consultation](#) (CP23/12) on changes to its Handbook to reflect the expansion of the Dormant Assets Scheme, which allows banks and building societies to pay dormant monies to an authorised reclaim fund which then puts this money towards funding good causes.

The expansion of the scheme is being phased to reflect the differences between the different asset classes and their resolution processes. The FCA's final rules on facilitating the first phase of expansion (for insurance, pensions and securities assets) were published in Handbook Notice 101 and are effective from 1 August 2022. It is now consulting on proposed amendments to its rules and guidance to enable dormant investment funds and client money to be available to the expanded scheme.

Comments on CP23/12 are due by 10 July 2023.

## **SFC consults on revisions to takeovers and share buy-back rules**

The Securities and Futures Commission (SFC) has published a [consultation paper](#) on its proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs. Amongst other things, the proposals are intended to:

- clarify certain matters regarding voting and acceptances by shareholders in a Codes-related transaction, as well as amending the definition of ‘close relatives’;
- provide guidance on the application of the chain principle;
- streamline and improve efficiency during an offer;
- clarify the effects of statements made during an offer;
- clarify certain procedural matters in partial offers and requirements for comparable offers;
- introduce a number of green initiatives to enhance efficiency and to reduce the environmental impact associated with Codes documents; and
- codify existing practice and to effect a number of housekeeping amendments.

Comments on the consultation are due by 23 June 2023.

## **SFC concludes consultation on regulation of virtual asset trading platforms**

The SFC has published the [conclusions](#) to its February 2023 consultation on proposed regulatory requirements applicable to licensed virtual asset trading platform operators. According to the SFC, a significant majority of respondents agreed to its proposal to allow licensed trading platform operators to serve retail investors. The SFC intends to implement measures to protect such investors, including ensuring suitability in the onboarding process, good governance, enhanced token due diligence, admission criteria and disclosures.

The SFC notes that the Guidelines for Virtual Asset Trading Platform Operators, which set out, among other things, safe custody of assets, segregation of client assets, avoidance of conflicts of interest and cybersecurity standards and requirements expected of licensed trading platforms, will become effective on 1 June 2023. The SFC will provide additional guidance on the new regulatory requirements, other implementation details including licence application procedures, as well as more information about the transitional arrangements in due course.

The SFC has indicated that operators of virtual asset trading platforms who are prepared to comply with its standards are welcome to apply for a licence. Those who do not plan to do so should proceed to an orderly closure of their business in Hong Kong.

The SFC has also reminded the industry that despite the commencement of the regime on 1 June 2023, it has yet to approve any virtual asset trading platform to provide services to retail investors and most virtual asset trading platforms currently accessible by the public are not regulated by the SFC.

## **Ministry of Finance publishes updated list of classifications of listed companies relating to prior-notification requirements on inward direct investment under FEFTA**

The Ministry of Finance (MoF) has [published](#) the updated list of classifications of listed companies regarding the prior-notification requirements on inward direct investment under the Foreign Exchange and Foreign Trade Act (FEFTA).

First published in May 2020 and subsequently revised in June 2020, July 2020, July 2021 and November 2021, the list aims to help foreign investors to decide on whether or not to submit a prior notification under the FEFTA when they make inward direct investments in Japanese listed companies.

The updated list reflects the revised FEFTA regulatory notices issued in April 2023, which added core business sectors towards securing stable supply chains, newly listed and delisted companies, and the latest company business activities (see our related alert of 24 April 2023). The updates are based on the MoF's surveys of all listed companies as well as their Articles of Associations and Annual Securities Reports.

## **HKEX announces launch of HKD-RMB dual counter model**

The Hong Kong Exchanges and Clearing Limited (HKEX) has [announced](#) that the Hong Kong Dollar (HKD)-Renminbi (RMB) Dual Counter Model and the Dual Counter Market Making Programme will be launched on 19 June 2023, subject to market readiness.

The Programme will offer buy and sell quotes for RMB-denominated securities trading, providing liquidity in the RMB counter and minimising price discrepancies between the HKD and RMB counters. The initial list of Dual Counter Securities and Dual Counter Market Makers will be announced in due course.

Under the Model, investors will be able to interchange securities listed in both HKD and RMB counters. Securities under the two counters are of the same class and holdings of securities in the two counters can be transferred without change of beneficial ownership.

The HKEX has also published the relevant rule amendments for the introduction of the Model and the Programme.

## **SGX and SSE deepen partnership with ETF link connecting Singapore and China**

The Singapore Exchange (SGX Group) and the Shanghai Stock Exchange (SSE) have [signed](#) a memorandum of understanding (MoU) to launch an SSE-SGX exchange-traded fund (ETF) link.

Under the MoU, SGX Group and SSE will jointly develop and promote the ETF markets in both countries through a master-feeder fund model. The ETF link also facilitates greater collaboration opportunities between issuers in both markets, thereby enhancing investment options for investors.

The new ETF link builds upon the successful listing of three ETFs in 2022 under the ETF Product Link with Shenzhen Stock Exchange.

## **SGX announces launch of Singapore Depository Receipts under DR Linkage with the Stock Exchange of Thailand**

The SGX Group has [announced](#) the launch of Singapore Depository Receipts (SDRs) under the Thailand-Singapore DR Linkage. SDRs are a new product that will provide Singapore investors with opportunities to invest in the Thai market.

The SDRs will trade on the SGX securities market during local trading hours and in Singapore dollars. Investors can also use their local brokers to trade. The SDRs will be available for trading by retail and institutional investors from 30 May 2023.

The inaugural SDRs under the Thailand-Singapore DR Linkage will be issued by Philip Securities Pte Ltd and represent beneficial ownership in the underlying securities of Airports of Thailand (AOT), CP All (CPALL) and PTT Exploration & Production (PTTEP), which are constituents of the benchmark SET50 Index.

A MoU will also be signed to mark the partnership between the SGX Group and the Stock Exchange of Thailand on the DR Linkage. This is the first exchange-level DR cooperation in ASEAN, demonstrating a step forward in enhancing regional connectivity.

## **MAS revises code on collective investment schemes**

The Monetary Authority of Singapore (MAS) has issued a [revised version](#) of the Code on Collective Investment Schemes.

The revision adds a guidance note to paragraph 4.2 of Appendix 6 of the Code to clarify that a property fund may hold electronic meetings provided it observes the relevant provisions in the Companies Act, the listing requirements of its approved exchange and its trust deed relating to the convening and conduct of general meetings.

## **RECENT CLIFFORD CHANCE BRIEFINGS**

### **The EU's gold standard – the final EU Green Bond Standard has landed but what does it mean for the green bond market?**

The eagerly anticipated agreed EU Green Bond Standard Regulation has finally been published, five years after the standard for environmentally sustainable bonds in Europe was first envisaged by the European Commission in its 2018 Sustainable Finance Action Plan.

The Regulation looks much more like the original EU Commission proposal from 2021 than the more radical proposal put forward by the European Parliament in 2022.

This briefing paper discussing the final EU Green Bond Standard.

<https://www.cliffordchance.com/briefings/2023/05/the-eu-s-gold-standard---the-final-eu-green-bond-standard-has-la.html>

## **Energy transition – Balancing the interests of investors and States on the path to clean energy**

197 Governments (and the European Union) have ratified or acceded to the Paris Agreement, pledging to pursue efforts to limit the global temperature rise to 1.5°C above preindustrial levels. To meet the 1.5°C target, international action will have to bring about a clean energy transition that is unprecedented in scale and opportunity.

As we move towards the clean energy sources that are required to mitigate the climate emergency, vast investment will be needed. Therefore, it is crucial that those States most in need of inbound investment to power their energy transition can access the finance flows they require. With developing countries currently hardest hit by the effects of climate change, the investment protection framework can play a key role in facilitating the process of change.

This briefing paper discusses the need to balance the interests of investors and States on the path to clean energy.

<https://www.cliffordchance.com/briefings/2023/05/energy-transition--balancing-the-interests-of-investors-and-stat.html>

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