

INTERNATIONAL REGULATORY UPDATE 11 – 15 SEPTEMBER 2023

- EU Commission launches consultations on SFDR
- CRR: ITS updating closely correlated currencies published in OJ
- EU Parliament adopts Consumer Credit Directive 2
- ECON Committee publishes draft report on proposed directive amending BRRD and SRM
- G20 Leaders adopt New Delhi Declaration
- IOSCO consults on good practices for leveraged loans and CLOs and reports on emerging risks in private finance
- Central Counterparties (Transitional Provision) (Extension and Amendment) Regulations 2023 published
- UK Government publishes response to consultation on future of insolvency regulation
- FCA publishes policy statement on financial promotions regulatory gateway
- FCA publishes update on its post-Brexit Handbook
- FCA writes Dear CEO letter to wholesale banking sector
- Draft law to strengthen FIU's risk-based working method submitted to German legislative bodies
- Polish Financial Supervision Authority begins work on long-term financing ratio
- SFC updates FAQs on Mainland-Hong Kong mutual recognition of funds
- MAS updates frequently asked questions on Licensing and Business Conduct (other than for Fund Management Companies)

EU Commission launches consultations on SFDR

The EU Commission has launched a [targeted consultation](#) and a [public consultation](#) to seek feedback on the Sustainable Finance Disclosure Regulation (SFDR). The Commission is interested in understanding how the SFDR has been implemented and any potential shortcomings, including in its interaction with the other parts of the European framework for sustainable finance, and in exploring possible options to improve the framework.

The targeted consultation will gather input from public bodies and stakeholders who are more familiar with the SFDR and the EU's sustainable

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finance framework as a whole, including financial market participants, investors, NGOs, relevant public authorities, national regulators, and others that are subject directly or indirectly to the provisions of the SFDR and have a more in-depth knowledge of SFDR.

The public consultation is addressed to a broad range of stakeholders including individuals and organisations including interest groups, member associations and representative bodies, that have a more general knowledge of SFDR.

The consultations will be accompanied by a series of workshops, beginning on 10 October 2023. Comments on both consultations are due by 15 December 2023.

CRR: ITS updating closely correlated currencies published in OJ

[Commission Implementing Regulation \(EU\) 2023/1718](#) containing implementing technical standards (ITS) on closely correlated currencies under the Capital Requirements Regulation (CRR) has been published in the Official Journal.

The ITS amend Implementing Regulation (EU) 2015/2197 by replacing the text of the Annex to update the list of closely correlated currencies. The list uses 31 March 2023 as the end date for the purpose of computing three- and five-year data series required to access currency pairs.

The Amending Regulation will enter into force on 1 October 2023.

EU Parliament adopts Consumer Credit Directive 2

The EU Parliament's plenary session has [adopted](#) the proposed directive on consumer credits (CCD2) at first reading.

CDD2, provisionally agreed between Parliament and Council negotiators in December 2022, is intended to protect consumers from credit card debt, overdrafts and unsuitable loans.

Amongst other things, the new legislation provides for:

- an assessment of a consumer's creditworthiness in the consumer's interest and to prevent irresponsible lending practices and over-indebtedness;
- caps on charges, to prevent abuses and ensure that consumers cannot be charged excessive interest rates, annual rates, or charges on loans or the total cost of credit; and
- the right to withdraw from a credit agreement with no reason within 14 days.

The directive will enter into force 20 days after its publication in the Official Journal. Member States will then have two years to adopt the necessary laws and administrative provisions to transpose the directive and three years to apply them.

ECON Committee publishes draft report on proposed directive amending BRRD and SRM

The EU Parliament's Committee on Economic and Monetary Affairs (ECON Committee) has published its [draft report](#) on the EU Commission's proposed

directive amending the Bank Recovery and Resolution Directive (BRRD) and the Single Resolution Mechanism (SRM) Regulation.

The amendments to the BRRD and SRM Regulation concern certain aspects of the minimum requirement for own funds and eligible liabilities (MREL). The report sets out the Committee's proposed amendments to the Commission's text.

The Commission adopted the proposed directive in April 2023.

G20 Leaders adopt New Delhi Declaration

The G20 Leaders have adopted a [Declaration](#) following their summit in New Delhi, India on 9-10 September 2023.

The Declaration is the final outcome of negotiations and events organised within the framework of the Indian G20 Presidency and broadly concerns actions to address global economic challenges relating to growth, climate change, technology and inequality.

In relation to finance, the G20 Leaders:

- reiterate their commitment to take action to scale up sustainable finance;
- welcome the Sustainable Finance Working Group's (SFWG) recommendations for overcoming barriers to sustainable finance;
- endorse the Technical Assistance Action Plan (TAAP) and voluntary recommendations for overcoming data-related barriers to climate investments;
- endorse, and request the effective and timely implementation of, the Financial Stability Board's (FSB) recommendations for the regulation, supervision and oversight of cryptoasset activities and markets and of global stablecoin arrangements;
- welcome discussions on the potential macro-financial implications arising from the introduction and adoption of central bank digital currencies (CBDCs);
- strongly support the work of the FSB and standard-setting bodies to enhance the resilience of non-bank financial intermediation (NBFIs),
- welcome the FSB's recommendations to achieve greater convergence in cyber incident reporting and work on enhancing third-party risk management and oversight;
- reaffirm their commitment to the effective implementation of the next phase of the G20 roadmap for enhancing cross-border payments;
- reiterate their commitment to promoting sustainable capital flows; and
- commit to supporting the increasing resource needs of the Financial Action Task Force (FATF) and support the FATF's initiative to accelerate the global implementation of its standards in relation to virtual assets.

The G20 Leaders will meet in Brazil in 2024.

IOSCO consults on good practices for leveraged loans and CLOs and reports on emerging risks in private finance

The International Organization of Securities Commission (IOSCO) has launched a [consultation](#) on proposed good practices on leveraged loans and collateralised loan obligations (CLOs). It has also published a [report](#) with its thematic analysis on emerging risks in private finance.

The consultation describes 12 proposed good practices grouped into the following themes:

- origination and refinancing based on a sound business premise;
- EBITDA and loan documentation transparency;
- strengthening alignment of interest from loan origination to end investors;
- addressing interests of different market participants throughout the intermediation chain; and
- disclosure of information on an ongoing basis.

Comments are due by 15 December 2023. IOSCO intends to finalise the good practices by Q1 2024.

IOSCO's report on emerging risks argues that private finance markets are inherently opaque and presents challenges for regulators and for market participants to understand the scale of risk in these activities. The report further notes that connections between private markets and other parts of the financial system may also provide avenues for the transmission of risk into public markets. IOSCO is concerned that the sector may be tested going forward and respond in ways that uncover hidden risks, such as excess corporate leverage.

Central Counterparties (Transitional Provision) (Extension and Amendment) Regulations 2023 published

[The Central Counterparties \(Transitional Provision\) \(Extension and Amendment\) Regulations 2023](#) (SI 2023/999) have been made and laid before Parliament, along with an explanatory memorandum.

The Regulations amend the Central Counterparties (Amendment, etc, and Transitional Provisions) (EU Exit) Regulations 2018 (SI 2018/1184) to extend the temporary recognition regime (TRR) for overseas central counterparties (CCPs) by 12 months, to 31 December 2025. This is intended to allow overseas CCPs currently in the TRR to continue to offer clearing services in the UK while they wait for their applications for recognition to be determined by the Bank of England (BoE).

The Regulations also extend the transitional regime for qualifying CCPs (QCCPs) in Article 497(1)(b)(ii) of the UK CRR) for an additional 12 months. The expiry date of this transitional regime differs between individual CCPs as it is dependent on when a firm has applied for recognition in the UK. For most firms within the regime, the current expiry date is 31 December 2023. The extension is intended to ensure that UK firms with indirect exposures to the QCCPs within the transitional regime will not face a sudden and disruptive increase in their capital requirements on the expiry of the transitional regime.

The extensions to the transition regimes reflect equivalent extensions made by HM Treasury in November 2022. According to the explanatory memorandum, the replacement of these transitional regimes will be aligned with the introduction of amendments to the existing framework under the UK European Market Infrastructure Regulation (UK EMIR).

The Regulations come into force on 1 November 2023.

UK Government publishes response to consultation on future of insolvency regulation

The UK Government has published its [response](#) to the Insolvency Service's consultation on the future of insolvency regulation, which ran between 21 December 2021 and 25 March 2022. The consultation sought views on a comprehensive package of reforms to the insolvency practitioner regulatory framework. The Government's response summarises the views of the stakeholders who replied to the consultation and sets out the reforms that the Government will take forward. These include:

- expanding regulation to include firms providing insolvency services, alongside the existing regulation of individual insolvency practitioners (IPs);
- challenging the current four professional body regulators to deliver significant and measurable improvements to the quality of regulation through non-legislative means, whilst keeping options to replace the current regulatory model with a single regulator of IPs under review;
- reforming the way ethical and professional standards for the profession are set;
- introducing a public register of authorised IPs and firms providing insolvency services, that will include relevant and proportionate regulatory information;
- developing and consulting on proposals to introduce a compensation/redress scheme for those affected by an IPs' acts or omissions; and
- strengthening the bonding framework, which requires IPs to hold security in the event of their fraud or dishonesty.

FCA publishes policy statement on financial promotions regulatory gateway

The Financial Conduct Authority (FCA) has published a [policy statement](#) (PS23/13) and [webpage](#) on the new regulatory gateway for authorised firms to approve financial promotions for an unauthorised person.

The gateway was introduced by the Financial Services and Markets Act 2023 (FSMA 2023) and requires, once it comes into effect, all authorised persons who want to approve financial promotions to have the FCA's permission to do so, subject to certain exemptions.

PS23/13 sets out the FCA's final policy on the new financial promotion requirement, including its approach to assessing applications and the reporting and notification obligations on firms who are granted permission. The FCA has also published a webpage on the application process.

The gateway comes into effect on 7 February 2024. A three-month window for firms who are not exempt to apply for permission opens on 6 November 2023 and closes on 6 February 2024.

The FCA intends to publish the relevant application forms once the window opens.

FCA publishes update on its post-Brexit Handbook

The FCA has published a [blog post](#) providing an overview of its approach to the replacement of retained EU law (REUL) with regulatory rules under the enhanced framework introduced by the FSMA 2023.

Among other things, the FCA notes:

- that it is working closely with HM Treasury and the Prudential Regulation Authority (PRA) to plan for a smooth transfer of REUL to regulatory rules;
- a commitment to both formal and informal stakeholder engagement, including a request for stakeholders to take every opportunity to share their views to help shape the future of financial services regulation;
- the principles it will follow when replacing REUL, which are intended to produce clear rules, reduce regulatory burdens where appropriate and enhance accessibility; and
- an intention to keep its website updated with individual files as it makes progress and to provide an overview of the reforms via the Regulatory Initiatives Grid, a full update of which is expected in Q4 2023.

FCA writes Dear CEO letter to wholesale banking sector

The FCA has written a [letter](#) to the chief executives of all wholesale banks in the UK setting out its key priorities for the sector.

The letter sets out the FCA's supervisory work programme over the next two years, which will include:

- seeking to deliver supervision which is outcomes-focussed and incisive, in order to ensure resilience against the external environment;
- looking to senior management to evidence how remediation programmes have delivered better risk management and oversight across businesses and carrying out supervisory testing on the embeddedness of improvements in risk management;
- ramping up its testing programme to look at how banks maintain high standards of control including more in person assessments, and expecting prompt notification of any material issues identified by senior management as well as effective action taken to address them; and
- continuing to review banks' compliance with the requirements of PS21/3 on building operational resilience and their ability to remain within their impact tolerances, while using engagement with senior managers to assess how they have learnt the lessons of operational resilience events even if their firm has not been directly impacted.

Other key areas of focus for the FCA include:

- organisational changes;
- LIBOR transition;

- implementation of the Consumer Duty;
- ESG;
- artificial intelligence;
- diversity, equity and inclusion; and
- non-financial misconduct.

CEOs are expected to discuss the letter with their fellow directors, consider how it applies to their business and agree actions or next steps where necessary.

Draft law to strengthen FIU's risk-based working method submitted to German legislative bodies

The German Federal Government has submitted its recently published [draft law](#) to strengthen the risk-based working method of the Financial Intelligence Unit (Gesetz zur Stärkung der risikobasierten Arbeitsweise der Zentralstelle für Finanztransaktionsuntersuchungen) to the German Parliament (Bundestag).

The Federal Government had already submitted the draft law to the German Federal Council (Bundesrat) on 18 August 2023, qualifying it as being particularly urgent in order to address an existing legal uncertainty for the employees of the Financial Intelligence Unit (FIU) after differing legal views on the content and scope of the FIU's duty of analysis under the current legal situation resulted in criminal investigations against FIU employees.

In Germany, the Financial Intelligence Unit receives suspicious activity reports (SARs) on money laundering and terrorist financing, analyses them and passes them on to law enforcement authorities. In the face of an increasing number of reports, the draft law makes a number of legal adjustments intended to ensure effective work processes of the FIU in analysing and forwarding SARs as quickly as possible and to create legal clarity for the performance of tasks and risk-based working method of the FIU.

Polish Financial Supervision Authority begins work on long-term financing ratio

The Polish Financial Supervision Authority (KNF) has [appointed](#) a working group to implement a new regulatory requirement - the long-term financing ratio - for banks' housing loan portfolios.

As stated in its communication, the KNF intends to develop a final concept of long-term financing of mortgage loans, including in particular:

- defining the final form of the long-term financing ratio; and
- defining activities to strengthen the mortgage bond market in Poland.

SFC updates FAQs on Mainland-Hong Kong mutual recognition of funds

The Securities and Futures Commission (SFC) has updated its set of [frequently asked questions](#) (FAQs) on Mainland-Hong Kong mutual recognition of funds.

The FAQs have been updated to add Question 5B under Section A to clarify whether the China Securities Regulatory Commission (CSRC)'s prior approval

will be required for setting up a new share class for offering to Mainland China investors by a Recognised Hong Kong Fund which has already been registered with the CSRC. According to the SFC, the CSRC's approval will not be required in such cases. The SFC expects management firms to update their Mainland China offering documents and notify Mainland China holders about setting up such a new share class in accordance with the applicable Mainland China rules and regulations, and also maintain a proper audit trail.

MAS updates frequently asked questions on Licensing and Business Conduct (other than for Fund Management Companies)

The Monetary Authority of Singapore (MAS) has updated its set of [FAQs](#) on Licensing and Business Conduct (other than for Fund Management Companies) by adding Question 81 and Question 82 to the FAQs.

Question 81 provides guidance on whether companies holding a capital markets services (CMS) license under the Securities and Futures Act can mention their licensing and regulatory status on their website or marketing materials. The MAS has clarified that such companies should display only factual information pertaining to their licensing and regulatory status on their website or any other communications or marketing materials. In addition, the MAS expects such companies not to misrepresent the MAS' role in and/or association with any information presented on the company's website and/or any other communications or marketing materials.

Question 82 provides guidance on website contents and other marketing materials for companies holding a CMS license for dealing in capital markets products and operating as a securities-based crowdfunding. Amongst other things, the MAS expects such companies to:

- review the information on their website and other marketing materials to ensure compliance with Regulations 46, 46AA, 46AB, 46AC and 46AD of the Securities and Futures (Licensing and Conduct of Business) Regulations; and
- not misrepresent the nature and risk profile of the capital markets products they offer to investors.

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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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