

INTERNATIONAL REGULATORY UPDATE 2 – 6 OCTOBER 2023

- Sustainable finance: EU Parliament adopts European Green Bond Regulation
- EU Parliament adopts directive on financial services contracts concluded at a distance
- Banking Union: ECON Committee publishes draft reports on proposed amendments to CMDI framework
- ECON Committee publishes draft reports on retail investment package
- Crowdfunding Regulation: EU Commission adopts delegated regulation on credit scoring, offer pricing and risk management policies
- ESAs Joint Committee publishes 2024 work programme
- EBA publishes 2024 work programme
- EMIR 3.0: ESRB writes to co-legislators on active account requirement
- EMIR: ESMA withdraws recognition of South African CCP
- ESMA publishes call for evidence on shortening settlement cycle
- MiCA: ESMA consults on second batch of technical standards
- BCBS reports on 2023 banking turmoil
- BCBS reports on implementation of Basel III reforms
- BIS and central banks of Singapore, France and Switzerland successfully test cross-border wholesale central bank digital currencies
- HM Treasury publishes policy statement on reforms to payment service contract termination rules
- PRA reports on written auditor reporting policy
- PSR consults on proposed revisions to Powers and Procedures Guidance
- ACPR publishes notice on licencing procedure for credit institutions providing investment services
- CSSF-CPDI issues circular on survey of covered deposits held on 30 September 2023

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- **Polish Financial Supervision Authority announces recommendation regarding principles and methods of conversion of debt securities issues in which WIBOR is applied**
- **MAS responds to consultation on draft notices on competency requirements for representatives conducting regulated activities under FAA and SFA**
- **MAS responds to consultation on proposed exemptions for approved exchange and recognised market operators that provide certain clearing and settlement services**
- **Recent Clifford Chance briefings: New EU rules on non-performing loans, Japanese law issues surrounding Generative AI, and more. Follow this link to the briefings section.**

Sustainable finance: EU Parliament adopts European Green Bond Regulation

The EU Parliament plenary has adopted the [regulation](#) on European green bonds (EuGB).

The European Green Bond Regulation establishes uniform requirements for issuers of bonds that wish to use the designation EuGB for their environmentally sustainable bonds that are aligned with the EU taxonomy. The disclosure requirements, which are set out in template formats, can also be used by companies issuing bonds which are not yet able to adhere to all the standards of the EuGB, but still wish to signal their green aspirations.

The regulation also establishes a registration system and supervisory framework for external reviewers of EuGBs. Until the taxonomy framework is fully up and running, issuers of an EuGB would need to ensure that at least 85% of the funds raised by the bond are allocated to economic activities that align with the EU's Taxonomy Regulation. The other 15% can be allocated to other economic activities provided the issuer complies with the requirements to clearly explain where this investment will go.

The regulation still needs to be formally adopted by the Council. The regulation will enter into force on the twentieth day following its publication in the Official Journal, and will start applying 12 months after its entry into force.

EU Parliament adopts directive on financial services contracts concluded at a distance

The EU Parliament plenary has adopted the [directive](#) concerning financial services contracts concluded at a distance.

The directive was agreed between the EU Parliament and Council in June 2023. It repeals the Distance Marketing Directive (2002/65/EC) and transfers the framework for consumer protections relating to financial services distance contracts to the Consumer Rights Directive (2011/83/EU). The new rules include:

- additional safeguards to allow consumers to withdraw from any distance contract via a withdrawal function, which is prominently displayed, easily accessible and continuously available during the entire 14-day withdrawal window;

- clear requirements for what information the trader needs to provide to the consumer before concluding a distance contract, providing consumers with sufficient time to read and understand pre-contractual information, compare offers and make an informed decision;
- the commercial purpose of the call needs to be disclosed at the start when traders contact consumers by phone;
- consumers will have a right to receive adequate explanations from traders before signing and to request human intervention when using fully automated online interfaces; and
- financial services providers will be prohibited from deceiving or ‘nudging’ consumers into making choices that may be against their interest via their website designs.

Once the Council formally adopts the text, the directive will be published in the Official Journal and enter into force 20 days later.

Banking Union: ECON Committee publishes draft reports on proposed amendments to CMDI framework

The EU Parliament’s Committee on Economic and Monetary Affairs (ECON Committee) has published three draft reports, all dated 3 October 2023, on the EU Commission’s legislative proposals amending the crisis management and deposit insurance (CMDI) framework.

The draft reports set out the Committee’s proposed amendments to the Commission’s texts of:

- [the proposed Directive amending the Bank Recovery and Resolution Directive \(BRRD\)](#);
- [the proposed Regulation amending the Single Resolution Mechanism \(SRM\) Regulation](#); and
- [the proposed Directive amending the Deposit Guarantee Schemes Directive \(DGSD\)](#).

The reports do not contain explanatory statements but do provide justifications for some of the proposed amendments.

ECON Committee publishes draft reports on retail investment package

The ECON Committee has published two draft reports, both dated 2 October 2023, on each of the legislative proposals adopted by the EU Commission as part of its retail investment strategy, namely a [proposed Omnibus Directive](#) amending MiFID2, IDD, Solvency II, the UCITS Directive and AIFMD, and a [proposed Regulation](#) amending the PRIIPs Regulation.

Both draft reports set out the Committee’s proposed amendments to the Commission’s texts and contain the same explanatory statement noting, among other things:

- concerns about the introduction of a partial ban on inducements;
- proposals to further clarify and strengthen the Commission’s proposed new test for applying the principle of acting in the best interest of the client under MiFID2 and IDD;

- that the Commission's proposed value for money benchmarks could be disruptive on the market and that further discussions are needed to find a balanced approach;
- the introduction of a new obligation for companies to register in the same Member State where their head office is located, in order to avoid forum-shopping and boost the Commission's proposal on cross-border supervision;
- proposals to further strengthen the Commission's proposals relating to financial influencers (finfluencers);
- proposals intended to implement horizontal and holistic EU regulation for both financial and non-financial data providers and their activities, including increased supervision of all data providers; and
- in relation to the Commission's proposals on PRIIPs, the need to introduce further adjustments to market practices and certain adaptations to the insurance sector, and to further assess the alignment of the new sustainability section with the relevant existing legislation.

The Commission adopted the retail investment package on 24 May 2023.

Crowdfunding Regulation: EU Commission adopts delegated regulation on credit scoring, offer pricing and risk management policies

The EU Commission has adopted a [delegated regulation](#) setting out regulatory technical standards (RTS) specifying requirements for the credit scoring of crowdfunding projects and the pricing of crowdfunding offers, as well as the risk management policies and procedures of crowdfunding service providers (CSPs).

Specifically, the RTS detail:

- the information that CSPs must disclose to investors about the methods used to calculate the credit score for crowdfunding projects and the price for crowdfunding offers;
- the factors that CSPs must consider to ensure the loans offered on their platforms are fairly and appropriately priced;
- the information and factors that CSPs must consider when assessing the credit risk for a crowdfunding project or project owner;
- the information and factors that CSPs must consider when conducting a loan valuation at different points in the life cycle of the loan; and
- the governance arrangements and risk management frameworks that CSPs must have in place.

The delegated regulation will enter into force on the twentieth day following its publication in the Official Journal.

ESAs Joint Committee publishes 2024 work programme

The Joint Committee of the European Supervisory Authorities (ESAs) has published its [work programme for 2024](#).

The Joint Committee intends to focus on:

- consumer and investor protection;

- operational resilience;
- financial conglomerates; and
- securitisation.

Additionally, the Joint Committee intends to continue monitoring closely the emerging key cross-sectoral risks and vulnerabilities for financial stability in the context of challenging macro-economic conditions. To communicate on its risk assessment, the Joint Committee plans to develop cross-sectoral risk reports and provide updates of its assessment to the Financial Stability Table of the Economic and Financial Committee (EFC-FST).

EBA publishes 2024 work programme

The European Banking Authority (EBA) has published its [work programme for 2024](#), setting out the key strategic areas for the EBA to work on in the coming year, as well as related activities and tasks.

The work programme provides a brief overview of the priorities for 2024-2026, followed by a more detailed presentation of priorities for 2024. In particular, the EBA intends to focus on:

- implementing the EU banking package, including the Capital Requirements Regulation (CRR III) and the Capital Requirements Directive (CRD VI);
- monitoring financial stability and sustainability against a backdrop of increased interest rates and uncertainty;
- providing a data infrastructure at the service of stakeholders;
- developing oversight and supervisory capacity for the Digital Operational Resilience Act (DORA) and the Markets in Cryptoassets Regulation (MiCA); and
- increasing attention on innovation and consumers (including access to financial services), while preparing the transition to the new anti-money laundering and countering the financing of terrorism (AML/CFT) framework.

EMIR 3.0: ESRB writes to co-legislators on active account requirement

The European Systemic Risk Board (ESRB) has published letters to the [EU Commission](#), [Parliament](#) and [Council](#) on the proposed active account requirement (AAR) under the Commission's legislative proposal for amendments to the European Markets Infrastructure Regulation (EMIR 3.0).

The ESRB supports the introduction of an AAR as a tool to help build domestic capacity in the EU but believes that if a quantitative active account were established, its effectiveness in building clearing capacity in the EU would depend on the types of trades that fall within the scope of the AAR and the threshold applied. Specifically, the ESRB believes that:

- an AAR on its own would probably be insufficient to address risks to financial stability;
- limiting the AAR to new trades and exempted market-making and client clearing means it may have little impact on its own in bringing clearing volumes for these instruments to EU central counterparties (CCPs) and building clearing capacity in the EU; and

- focusing the AAR on the number or notional amounts of trades, rather than the exposures associated with the trades, might not reduce EU clearing members' and clients' exposures to the clearing services provided by UK CCPs that the ESRB has deemed to be of substantial systemic importance.

EMIR: ESMA withdraws recognition of South African CCP

The European Securities and Markets Authority (ESMA) has [withdrawn](#) its recognition of JSE Clear, a CCP established in South Africa, under the European Market Infrastructure Regulation (EMIR).

The withdrawal follows the addition of South Africa to the EU Commission's list of high-risk third countries presenting strategic deficiencies in their national AML/CFT regime.

The withdrawal of recognition decision will enter into effect on 29 December 2023, from which date JSE Clear will no longer be permitted to provide clearing services to clearing members or trading venues established in the EU.

ESMA publishes call for evidence on shortening settlement cycle

ESMA has published a [call for evidence](#) on the shortening of the settlement cycle.

The call for evidence is intended to assess the costs and benefits of a possible reduction of the settlement cycle in the EU and identify whether any regulatory action is needed to smoothen the impact for EU market participants of the planned shortening of the settlement cycle to T+1 in other jurisdictions, such as the US.

Amongst other things, views are sought on:

- what the impact of the reduction of the securities settlement cycle would be in the operations of market players;
- what benefits and costs a shorter securities settlement cycle would bring;
- if it is concluded that a mandatory shorter settlement cycle should be imposed, how and when a shorter settlement cycle could be achieved; and
- what the impacts on the EU's capital markets resulting from international developments related to securities settlement are.

ESMA is seeking input, including quantitative evidence, from all stakeholders involved in financial markets, particularly market infrastructures, their members and participants, other investment firms, issuers, fund managers, retail and wholesale investors, and their representatives.

Comments are due by 15 December 2023.

MiCA: ESMA consults on second batch of technical standards

ESMA has launched a [consultation](#) on the second package of technical standards under the MiCA.

In this second of three consultation packages, ESMA is seeking input on five sets of proposed rules, covering:

- sustainability indicators for distributed ledgers;
- disclosures of inside information;
- technical requirements for white papers;
- trade transparency measures; and
- record-keeping and business continuity requirements for cryptoasset service providers.

Comments are due by 14 December 2023. ESMA intends to publish a final report on the basis of feedback received and submit the draft technical standards to the EU Commission for endorsement by 30 June 2024 at the latest.

In order to allow market participants to familiarise themselves with Inline XBRL, ESMA has also made available a proof of concept (PoC) illustrating a concrete application of the proposed format requirements included in the draft implementing technical standard (ITS) on forms, formats and templates for the cryptoasset white papers under MiCA.

ESMA intends to publish the third and final consultation package with the remaining 18-month mandates in Q1 of 2024.

BCBS reports on 2023 banking turmoil

The Basel Committee on Banking Supervision (BCBS) has published a [report](#) on the 2023 banking turmoil.

The report assesses the causes of the turmoil, the regulatory and supervisory responses, and the initial lessons learnt.

Following its findings, the BCBS intends to pursue a series of follow-up initiatives, including:

- prioritising work to strengthen supervisory effectiveness and identify issues that could merit additional guidance at a global level; and
- pursuing additional follow-up analytical work based on empirical evidence to assess whether specific features of the Basel Framework performed as intended during the turmoil, such as liquidity risk and interest rate risk in the banking book, and assessing the need to explore policy options over the medium term.

The BCBS has emphasised that the discussion in the report is not an indication of planned revisions to the Basel Framework.

In addition, the BCBS has agreed to consult on:

- a Pillar 3 disclosure framework for bank exposures to climate-related financial risks – a consultation paper on the proposed framework is expected by November; and
- a set of disclosure requirements related to banks' cryptoasset exposures, which would complement the prudential standard for such exposures that was published in December 2022 – this consultation paper is expected to be published soon.

BCBS reports on implementation of Basel III reforms

The BCBS has published a [progress update](#) on the adoption of the Basel regulatory framework.

The update sets out the adoption status of Basel III standards in member jurisdictions as of end-September 2023. It covers the Basel III post-crisis reforms published in December 2017 and the finalised minimum capital requirements for market risk published in January 2019. The implementation date for both reforms was 1 January 2023.

The BCBS notes that, since its previous report in October 2022, member jurisdictions have continued to make good progress in implementing the outstanding standards. Around a third have implemented all, or the majority, of the standards, and the remaining two thirds have published draft rules and are in the process of implementing them.

At its meeting on 11 September 2023, members of the BCBS's oversight body reaffirmed their expectation that all aspects of the Basel Framework will be implemented in full as soon as possible.

BIS and central banks of Singapore, France and Switzerland successfully test cross-border wholesale central bank digital currencies

The Bank for International Settlements (BIS) and the central banks of France, Singapore and Switzerland have [successfully concluded](#) Project Mariana.

Project Mariana was developed jointly by three BIS Innovation Hub centres (the Swiss, Singapore and Eurosystem Hub Centres) together with the Monetary Authority of Singapore (MAS), Bank of France, and Swiss National Bank. It explored how multi-currency settlement may be performed atomically, while maintaining the independence of respective domestic settlement systems. In addition, the collaboration enabled central banks to explore and better understand the policy, governance and technical implications of using automated market makers to facilitate foreign exchange.

The project tested the cross-border trading and settlement of wholesale central bank digital currencies (wCBDCs) between financial institutions, using new decentralised finance (DeFi) technology concepts on a public blockchain. It relied on the following three elements:

- a common technical token standard provided by a public blockchain to facilitate exchange and interoperability between the different currencies;
- bridges for the seamless transfer of wCBDCs between different networks; and
- an automated market maker, which is a specific type of decentralised exchange to trade and settle spot FX transactions automatically.

Project Mariana is purely experimental and does not indicate that any of the partner central banks intend to issue wCBDC or endorse DeFi or a particular technological solution.

HM Treasury publishes policy statement on reforms to payment service contract termination rules

HM Treasury (HMT) has published a [policy statement](#) on the implementation, timings and next steps for changes to payment service contract termination rules.

The policy statement is intended to provide additional clarity on new requirements announced in July 2023 that will require firms to provide clear and tailored explanatory reasons for terminating a payment service contract and to provide 90 days' notice of termination, including that:

- the reforms will be principally delivered through amendments to regulation 51 (termination of framework contract) of the Payment Services Regulations 2017 (SI 2017/752);
- firms and services currently in-scope of existing requirements should remain the same following the amendments;
- framework contracts concluded on or after the date that changes are brought into effect would be subject to the new rules;
- pre-existing carve outs are intended to apply, specifically for regulated consumer credit agreements and corporate users' framework contracts;
- what constitutes reasons will not be prescribed in the legislation and firms will be expected to focus on the outcome of their communications, namely that the customer clearly understands why the contract is terminated and has adequately specific information; and
- providers will have limited flexibility not to apply the new requirements where it would bring them into conflict with other legal requirements or regulatory obligations.

The Government intends to publish a draft statutory instrument by the end of 2023.

HMT also published a press release announcing an intention to consult on changes to threshold conditions to ensure banks uphold their duties to protect freedom of speech, with legislation expected in 2024.

PRA reports on written auditor reporting policy

The Prudential Regulation Authority (PRA) has published a [statement](#) setting out the conclusions of its evaluation of the written auditor reporting policy.

The statement also sets out how the PRA intends to continue to refine its approach to the policy to make it a more efficient and effective supervisory tool.

The PRA found that:

- the policy has met its objective of improving the quality, focus and discipline of the auditor-supervisor dialogue;
- the costs of the policy have been within or below the range expected; and
- the existing policy has significant flexibility in how it is implemented.

The PRA intends to improve the way that the policy is implemented to be more proportionate to the risks to its objectives. The planned improvements will not

require amendments to the corresponding rules or supervisory statement (SS1/16).

The PRA has also published a letter to chief financial officers of selected PRA-regulated deposit-takers to provide thematic feedback from the PRA's review of written auditor reports received in 2023, covering accounting for expected credit losses, climate risk and fair value.

PSR consults on proposed revisions to Powers and Procedures Guidance

The Payment Systems Regulator (PSR) has launched a [consultation](#) on proposed changes to its Powers and Procedures Guidance (PPG).

The original PPG was published in 2015, and a revised version in 2020. Since then, the PSR's management structure has evolved, with the recent announcement of a new-look executive team and a new Supervision and Compliance Monitoring Division. The PSR is proposing changes to its PPG to reflect this new structure more accurately.

The first main update is to change who can decide to open an enforcement case. As it stands, the decision to open an enforcement case must be made by two staff members at manager level or above, appointed by the PSR's Managing Director. According to the PSR, this does not reflect its current management structure and practices, or account for the new Supervision and Compliance Monitoring Division. The PSR is proposing alternative decision makers, aiming to streamline the process and provide executive oversight at the start of an investigation.

The second main update is about who the PSR may appoint from among the PSR staff to become part of the enforcement case. This change would specifically enable staff who have been involved in the monitoring stage of a suspected compliance failure to become part of the enforcement team investigating. This is intended to allow the PSR to allocate resources more efficiently to support operational objectives, react swiftly to emerging issues, and deliver outcomes more quickly.

Comments are due by 23 October 2023.

ACPR publishes notice on licencing procedure for credit institutions providing investment services

The French Prudential Supervision and Resolution Authority, the Autorité de contrôle prudentiel et de résolution (ACPR), has published a [notice](#) on the licencing procedure to be complied with by credit institutions providing investment services, in accordance with articles L. 511-10 and R. 511-2-1 of the French Code monétaire et financier (Financial and Monetary Code).

CSSF-CPDI issues circular on survey of covered deposits held on 30 September 2023

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), acting in its function as Depositor and Investor Protection Council (Conseil de Protection des Déposants et des Investisseurs, CPDI), has published [CSSF-CPDI Circular 23/38](#) to carry out a regular survey on the amount of covered deposits held on 30 September 2023.

The circular is addressed to all members of the Luxembourg deposit protection scheme, the Fonds de garantie des dépôts Luxembourg (FGDL), in particular credit institutions incorporated under Luxembourg law, Luxembourg branches of non-EU/EEA credit institutions and POST Luxembourg, the latter in respect of its postal financial services.

The circular draws member's attention to the definitions of 'covered deposits' and 'eligible deposits', in particular with regard to the exclusions of structures assimilated to financial institutions as well as the treatment of accounts whose holder is not absolutely entitled to the sums on the account (e.g., omnibus or fiduciary/trust accounts, third-party accounts, etc.).

FGDL members are requested to provide the data at the level of their legal entity, comprising data from branches located within other Member States, by 15 November 2023.

Additionally, FGDL members are reminded that neither accounts denominated in units of precious metals nor accounts denominated in virtual currencies constitute eligible deposits for the purpose of the FGDL guarantee and should therefore not be reported under this data collection.

Institutions are also informed that the reporting of this survey via E-File or SOFiE has been deactivated. Starting from 9 October 2023, institutions are required to submit the reporting through one of the following means of communication:

- via CSSF eDesk platform, which is also accessible through the CSSF website; or
- via the submission of a structured file through S3 (simple storage service) protocol

A user guide is available on eDesk, explaining the technical procedures for completing, validating and submitting the DCOR Quarterly Reporting.

A member of the authorised management, in this case the member in charge of the membership of the FGDL in accordance with section C of CSSF Circular 13/555, as amended, must review and approve the document prior to its transmission to the CSSF.

Polish Financial Supervision Authority announces recommendation regarding principles and methods of conversion of debt securities issues in which WIBOR is applied

The Polish Financial Supervision Authority (KNF) has [announced](#) the adoption of a recommendation regarding the principles and methods of conversion of debt securities issues in which WIBOR is applied by the Steering Committee of the National Working Group on the reform of indicators.

The document concerns solutions and practices with respect to the servicing of debt securities issued to date (so-called legacy portfolio) whose interest rate provisions refer to the WIBOR reference rate. The recommendation also proposes the content of the fallback clause for new issues of floating interest rate debt securities in which WIBOR is applied.

MAS responds to consultation on draft notices on competency requirements for representatives conducting regulated activities under FAA and SFA

The Monetary Authority of Singapore (MAS) has published its [responses](#) to the feedback it received to its September 2020 Consultation Paper on Draft Notices on the Competency Requirements for Representatives Conducting Regulated Activities under the Financial Advisers Act (FAA) and Securities and Futures Act (SFA).

The consultation paper proposed draft legal amendments to the FAA-N13: Notice on Minimum Entry and Examination Requirements for Representatives of Licensed Financial Advisers and Exempt Financial Advisers (FAA Notice) and the SFA 04-N09: Notice on Minimum Entry and Examination Requirements for Representatives of Holders of Capital Markets Services Licence and Exempt Financial Institutions (SFA Notice), to effect the enhancements to the Capital Markets and Financial Advisory Services (CMFAS) exams, and continued exemption for private banking (PB) representatives who only serve accredited investors (AIs).

The MAS notes that there was broad agreement from the industry on the draft legal amendments to the FAA Notice and SFA Notice. Where appropriate, the MAS has incorporated the feedback received into the following revised notices, and the revised notices will take effect on 1 April 2024:

- Notice on Competency Requirements for Representatives of Financial Advisers (FAA-N26) – it will supersede the FAA Notice which will be cancelled with effect from 1 April 2024; and
- Notice on Competency Requirements for Representatives of Holders of Capital Markets Services Licence and Exempt Financial Institutions (SFA 04-N22) – it will supersede the SFA Notice which will be cancelled with effect from 1 April 2024.

The MAS has indicated that it will update the Frequently Asked Questions in relation to the revised notices in due course. The Institute of Banking & Finance and Singapore College of Insurance will start registrations for the new CMFAS exams and make available the new study guides at least two months before the new exams commence on 1 April 2024.

Amongst other things, the MAS has clarified the following:

- appointed representatives of a licensed fund management company (LFMC) who conduct central dealing should take RES3 (the CMFAS module for Rules, Ethics and Skills (RES) for Fund Management). The MAS has also updated the revised SFA Notice to provide individuals appointed as dealing representatives of LFMCS with the flexibility to pass either RES3 or the RES modules for dealing in capital markets products;
- LFMCS' representatives who market any collective investment scheme (CIS) should pass RES3 or CM-EIP under the revised SFA Notice, unless exempted. If they provide financial advisory services, they must additionally pass RES5 and the relevant product knowledge module(s) under the revised FAA Notice, unless exempted;
- LFMCS' representatives who limit their activities to marketing any CIS to distributors will continue to be exempted from CMFAS exams and

continuing professional development (CPD) requirements, and ‘distributors’ includes licensed financial advisers in Singapore;

- LFMCS’ representatives who limit their provision of financial advisory services to advising others on the investment fund products managed by his/her LFMCS and its related corporations will be exempted from RES5;
- PB representatives from s100(2) units who service only AIs and fulfil other criteria are exempted from the CMFAS exam requirements under the SFA Notice. This exemption will be broadened to cover representatives from s100(2) units who did not take the CACS exams and/or who service institutional investors (IIs). This exemption will continue to apply if representatives from s100(2) units move to another financial institution, as long as they continue to serve PB clients and an industry-agreed process is adhered to;
- representatives from s100(2) units will be exempted from the minimum academic requirements under the FAA Notice; and
- representatives who service only AIs, IIs and/or EIs will be exempted from the CPD requirements under the SFA Notice.

MAS responds to consultation on proposed exemptions for approved exchange and recognised market operators that provide certain clearing and settlement services

The MAS has published its [response](#) to the feedback it received to its July 2022 public consultation on the proposed exemption for an approved exchange (AE) or recognised market operator (RMO) that provides certain clearing and settlement services from being regulated as an approved clearing house (ACH) or recognised clearing house (RCH) under the Securities and Futures Act 2001 (SFA).

Based on the feedback received, the MAS has confirmed that it will proceed with the proposal to exempt AEs and RMOs that provide post-trade services of verifying the transactions conducted on the organised markets that they operate and/or calculating the obligations of parties under those transactions, from regulation as ACHs or RCHs, by way of a class exemption under Section 49(6) of the SFA read with Securities and Futures (Clearing Facilities of Approved Exchanges or Recognised Market Operators) (Exemption) Regulations 2023.

The Regulations came into operation on 7 September 2023.

In particular, the exemption will apply to an AE or a RMO that establishes or operates a clearing facility, if every transaction that is to be cleared or settled by that clearing facility is:

- executed on an organised market that is established or operated by the AE or RMO;
- not routed to an ACH or RCH; and
- only cleared or settled on the AE or RMO’s clearing facility by trade verification and/or calculation of obligation.

Under the Regulations, AEs and RMOs (including existing RMOs) are required to notify the MAS in writing when they establish or commence operation of a clearing facility that provides such post-trade services and their reliance on the exemption.

RECENT CLIFFORD CHANCE BRIEFINGS

New EU rules on non-performing loans – Commission adopts implementing technical standards

The European Commission has now adopted the ITS setting out the new disclosure templates to be used by EU banks selling non-performing loans (NPLs) under the EU Directive on credit servicers and credit purchasers. The adopted ITS make some changes to the final draft ITS proposed by the EBA, including a change reducing the scope of the obligations to provide information to prospective buyers.

This briefing paper discusses the new rules.

<https://www.cliffordchance.com/briefings/2023/10/new-eu-rules-on-non-performing-loans--commission-adopts-implement.html>

The European Commission consults on the SFDR framework – five key takeaways

On 14 September 2023, the European Commission published its much-anticipated public consultation on the Sustainable Finance Disclosure Regulation (SFDR), one of the key pillars of the European sustainable finance framework. Containing more than 95 questions, the consultation has been presented in two parts: a public consultation; and a more detailed targeted consultation of stakeholders familiar with SFDR implementation. Alongside the consultation, round tables and workshops will be held during the consultation period to facilitate discussion. The consultation closes on 15 December 2023 and the Commission is expected to issue its report in Q2 2024.

The consultation is extensive, covering a range of topics, and is intended to assist the Commission in understanding the issues that have arisen during SFDR implementation, as well as potential improvements.

This briefing paper discusses the consultation.

<https://www.cliffordchance.com/briefings/2023/10/the-european-commission-consults-on-the-sfdr-framework--five-key.html>

EU/UK-US data privacy framework approved

On 10 July 2023, the European Commission reached an 'adequacy decision' under the EU General Data Protection Regulation (GDPR), approving transfers of personal data to organisations located in the United States that are certified under the newly-established Trans-Atlantic Data Privacy Framework (DPF) agreed between the US and the EU. On 12 October 2023, an equivalent decision, in respect of the same DPF, takes effect for the purposes of the UK GDPR. The UK Government prefers to refer to the DPF as a 'data bridge'.

These long-awaited decisions replace the EU-US 'Privacy Shield', which was invalidated by the Court of Justice of the European Union (CJEU) in the Schrems 2 case in 2020 (see our [article](#) on Schrems 2). Although the adequacy decisions are likely also to be challenged before the CJEU and the UK courts, for the time being they dispel the considerable uncertainty around

transfers of personal data regulated by the US and UK GDPRs to the US that arose following Schrems 2. They should greatly simplify the risk analysis associated with these transfers, even where they are made to US recipients which do not participate in the DPF. Businesses will need to review their compliance strategies to explore taking advantage of the opportunities presented by the DPF and the adequacy decisions.

This briefing paper discusses the framework.

<https://www.cliffordchance.com/briefings/2023/07/eu-uk-us-data-privacy-framework-approved.html>

Clifford Chance Financial Services Antitrust Bulletin

This edition of the Clifford Chance Financial Services Antitrust Bulletin provides an overview of developments relating to the application of competition law to the financial services sector.

Competition authorities continued to closely scrutinise the financial services sector at a time when legislators and financial regulators proposed major reforms designed to facilitate competition. This included looking at the responses of financial services firms to rising interest rates, threats of climate change and developments in technologies. Competition law concerns around IPOs arose again in Japan where it was considered whether the pricing decisions of a lead underwriter could lead to an infringement under competition legislation.

This edition of the Clifford Chance Financial Services Antitrust Bulletin charts recent developments in Europe, North America and the Asia Pacific region.

<https://www.cliffordchance.com/briefings/2023/10/financial-services-antitrust-bulletin.html>

The UAE introduces changes to the arbitration law

In September, the UAE issued a new law which amends some of the provisions of Federal Law No. 6 of 2018. The amendment law, Federal Law No. (15) of 2023, is effective as of the day following its publication in the Official Gazette. The amendment law will repeal and replace Articles 10, 23, 28 and 33 of the arbitration law as well as incorporate an additional Article 10.

This briefing paper identifies the key changes introduced by the amendment law and briefly considers their likely practical implications.

<https://www.cliffordchance.com/briefings/2023/10/the-uae-introduces-changes-to-the-arbitration-law.html>

Japanese law issues surrounding Generative AI – ChatGPT, BARD and beyond

Organisations and governments around the world are attempting to harness the power of generative AI and navigate a path for safe and secure use. In Japan, those exploring the opportunities presented by generative AI will need to consider complex legal issues, including in relation to copyright, data privacy and liability.

Copyright issues can arise at both the training and use stages of these AI systems. While using copyrighted materials for training generative AI models is generally allowed under certain conditions, potential conflicts with copyright holders need careful consideration. The ability to copyright AI-based works

depends on creative input by a human. Data privacy concerns arise due to the collection and processing of vast amounts of data, where this includes personal information. Adherence to Japan's Act on the Protection of Personal Information (APPI) is crucial. Organisations must ensure that personal data used in generative AI aligns with the stated purpose and be cautious when third-party operators might use data differently. Liability for harms arising in relation to generative AI outputs remains complex in Japanese law. Risk management strategies, including well-drafted terms of service and disclaimers, can mitigate potential legal exposure.

While Japan has not enacted specific AI legislation, the regulatory landscape may evolve to address emerging AI technologies. Staying informed about legal developments and crafting effective risk management strategies is vital to ensure compliance and to minimise legal risks.

This briefing paper provides an overview of some of the key issues organisations should consider under Japanese law when using or developing generative AI.

<https://www.cliffordchance.com/briefings/2023/10/japanese-law-issues-surrounding-generative-ai--chatgpt--bard-and.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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