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MiFIR2/MiFID3 published in Official Journal

The [Regulation](#) and [Directive](#) amending the Markets in Financial Instruments Regulation and Directive (MiFIR2/MiFID3) have been published in the Official Journal.

The changes to the EU's trading rules are intended to increase the global competitiveness of the EU's capital markets and give investors access to the market data necessary to invest in financial instruments more easily. They will, among other things:

- establish EU-level 'consolidated tapes' or centralised data feeds for different kinds of assets, which are intended to make it easier for investors to access key information such as the price of instruments and the volume and time of transactions; and
- impose a general ban on payment for order flow (PFOF), while providing Member States with a discretion to allow the practice in their territory until 30 June 2026.

The texts will enter into force on 28 March 2024. The Regulation will apply immediately upon entry into force, with Member States having until 29 September 2025 to transpose the Directive.

EMIR: Amending RTS extending temporary measures on collateral requirements published in Official Journal

[Commission Delegated Regulation \(EU\) 2024/818](#) amending the regulatory technical standards (RTS) relating to temporary emergency measures on central counterparty (CCP) collateral requirements under the European Market Infrastructure Regulation (EMIR) has been published in the Official Journal.

The Regulation extends the emergency measures to temporarily expand the pool of eligible collateral for all types of counterparties by six months, until 7 September 2024.

The Regulation entered into force on 7 March 2024.

CRD5: EU Commission adopts ITS on supervisory disclosures

The EU Commission has adopted an [Implementing Regulation](#) amending the implementing technical standards (ITS) on supervisory disclosures.

The ITS specify the format, structure, contents list and annual publication date of the supervisory information to be disclosed by competent authorities. The amendments incorporate changes resulting from the Capital Requirements Regulation (CRR2) and the Capital Requirements Directive (CRD5), in particular the changes related to supervisory reporting and investment firms.

EU Commission adopts RTS on sustainability disclosures for STS securitisations

The EU Commission has adopted a [Delegated Regulation](#) supplementing the Securitisation Regulation with regulatory technical standards (RTS) specifying, for simple, transparent and standardised (STS) non-ABCP traditional securitisation and for STS on-balance-sheet securitisation, the content, methodologies and presentation of information related to the principal adverse impacts of the assets financed by the underlying exposures on sustainability factors.

This follows a consultation on the draft RTS launched by the European Supervisory Authorities (ESAs) in May 2022.

The second sub-paragraphs of Articles 22(4) and 26d(4) of the Securitisation Regulation, as amended by the Capital Markets Recovery Package Regulation, provide originators of STS securitisations with the option to disclose available information related to the principal adverse impacts on sustainability factors of the assets financed by residential loans, auto loans or leases. This disclosure would be voluntary.

The Delegated Regulation lays down the content, methodologies, and presentation of information on principal adverse impacts on sustainability factors of the assets financed by residential loans, auto loans or leases for non-ABCP traditional securitisations and on-balance-sheet STS securitisations. It seeks to ensure as much consistency as possible with the Sustainable Finance Disclosure Regulation (SFDR), which sets out sustainability-related disclosure requirements in financial services.

The Delegated Regulation will enter into force 20 days after its publication in the Official Journal.

Benchmarks Regulation: ECON Committee adopts report on proposed amendment regarding scope, use in the EU of benchmarks provided by a third country administrator, and reporting requirements

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has [adopted](#) its report on the EU Commission's proposed Regulation to amend the Benchmarks Regulation (BMR) as regards the scope of the rules for benchmarks, the use in the EU of benchmarks provided by an administrator located in a third country, and certain reporting requirements.

The report was adopted with 45 votes in favour and 2 abstentions.

The ECON Committee's report sets out:

- that the new rules should apply to critical benchmarks, significant benchmarks, EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and certain commodity benchmarks;
- the current threshold of a total average value of at least 50 billion euro to define a significant benchmark should be retained, with other benchmarks being subject to a voluntary supervision regime;
- technical standards should be developed to specify the calculation method to classify a benchmark as significant;
- administrators of benchmarks used in the EU should attempt to obtain a globally agreed identifier code to identify their benchmarks;
- ESMA should have a supervisory role for critical, significant, cross-border, third country, EU climate transition benchmarks and EU Paris-aligned benchmarks;
- previously supervised benchmark administrators would keep their existing registration, authorisation, recognition or endorsement for nine months after entry into force of the new rules and should not be obliged to re-apply if they voluntarily opt-in to the amending Regulation within nine months.

The EU Parliament is expected to vote on the text during the secondary plenary session in April 2024, to close the first reading without agreement with the EU Council. Negotiations between the EU Parliament and EU Council are then expected to start after the EU Parliament elections.

Banking Union: ECON Committee publishes draft report on European Deposit Insurance Scheme

The ECON Committee has published a [draft report](#) on the Commission's proposed regulation amending the Single Resolution Mechanism Regulation ((EU) 806/2014) (SRMR) to establish a European Deposit Insurance Scheme (EDIS).

The draft report sets out amendments to the Commission's legislative proposal, which was originally published in November 2015.

The proposed regulation would establish an EDIS, with decision-making, monitoring and enforcement powers centralised and entrusted to the Single Resolution and Deposit Insurance Board, with the objective of creating a harmonised deposit guarantee framework.

MiCA: EBA consults on draft guidelines on redemption plans

The European Banking Authority (EBA) has published for [consultation](#) draft guidelines for the plans to orderly redeem asset-referenced (ARTs) or e-money tokens (EMTs) in the event that the issuer fails to fulfil its obligations under the Markets in Cryptoassets Regulation (MiCA).

In particular, the draft guidelines:

- clarify the main principles governing the redemption plan;
- describe the main steps to implement the plan, including the communication plan, the content of the redemption claims and the distribution plan;

- cover what should happen in instances of ‘pooled issuance’ (i.e. where the same token is issued by multiple issuers); and
- outline the triggers for the activation of the plan by the competent authority; and
- set out the roles of the prudential and resolution authorities once the plan has been activated.

Comments are due by 10 June 2024.

NPLs: EBA publishes final guidelines on national lists or registers of credit servicers

The EBA has published its [final report](#) on guidelines on national lists or registers of credit servicers under the Non-Performing Loans (NPL) Directive.

The guidelines are addressed to competent authorities managing the lists or registers, and specify:

- the content of the lists or registers;
- how they should be made accessible; and
- the deadlines for updating them.

The guidelines require basic information about credit servicers, such as their name and address and home Member State, as well as other information, such as whether the credit servicer is currently authorised to conduct services or to receive and hold funds from borrowers.

The guidelines also specify that the lists or registers should be accessible 24/7 on the website of the competent authority or another electronic tool, should not require the user’s prior registration as a precondition for access, and should be free of charge. The guidelines also set the deadlines by which competent authorities have to update the lists or registers.

Following feedback received to the consultation launched in July 2023, the EBA clarified various provisions and introduced minor additional requirements, namely for the lists or registers to be downloadable and available in English.

The guidelines will apply six months after their publication on the EBA’s website in the official languages of the EU.

CRR3: EBA consults on RTS on off-balance sheet items under standardised approach for credit risk

The EBA has launched a public [consultation](#) on its draft RTS under CRR3 regarding off-balance sheet items under the standardised approach for credit risk.

Under the standardised approach for credit risk, the exposure values of off-balance exposure depend on the application of certain percentages, which in turn depend on a bucket classification. CRR3 will update the calibration of the applicable percentages used and introduce an adjusted weighting scheme and an additional bucket. The RTS specify:

- the criteria institutions should use to classify off-balance sheet items;
- the factors that may constrain the institutions’ ability to cancel the unconditionally cancellable commitments (UCCs); and

- the process for notifying the EBA about institutions' classifications of other off-balance sheet items.

Comments are due by 4 June 2024.

ECB issues statement on advancing Capital Markets Union

The European Central Bank (ECB) Governing Council has issued a [statement](#) on advancing the Capital Markets Union (CMU).

The statement sets out the ECB's reasons to support and enhance the CMU, which include the need for a savings and sustainable investment union, support for innovative European firms, increased private risk-sharing, strengthening the international role of the euro, and helping to integrate the EU's banking sector.

The ECB welcomes the implementation of the EU Commission's second CMU Action Plan and the intentions of the Eurogroup to publish a statement on the future of CMU. The ECB also emphasises the need for a top-down approach, including specific actions to advance capital market integration and development at the European level. In particular, the ECB has called for further progress on:

- ensuring that the EU securitisation market can play a role in transferring risks away from banks to enable them to provide more financing to the real economy, while creating opportunities for capital markets investors;
- integrated supervision of EU capital markets;
- targeted harmonisation of corporate insolvency rules, accounting frameworks and securities law;
- in the area of post-trading, finalising the harmonisation of processing of withholding tax and corporate actions and overcoming remaining integration barriers in securities post-trade services, including collateral management; and
- addressing the debt bias in taxation.

Amongst other things, the ECB also intends to continue to contribute to the CMU in the area of financial market infrastructure, and argues that promoting the attractiveness of listing in the EU should be a priority to increase efficiency and liquidity in stock markets.

EMMI announces changes to Euribor methodology

The European Money Markets Institute (EMMI) has published a [summary](#) of the feedback it received to its October 2023 consultation on changes to Euribor and announced its decision to implement the new Euribor methodology.

EMMI notes that there was broad support for its proposal to reformulate Level 2.3 and eliminate Level 3 from the Euribor hybrid methodology. The redefinition of Level 2.3 encompasses various adjustments, including an expanded calculation starting point and a refined Market Adjustment Factor (MAF) to better reflect interest rate fluctuations and changes in perceived credit risks. Following feedback received, EMMI has introduced an additional control parameter to address exceptionally adverse market conditions, leading

to the discontinuation of Level 3 contributions under the previous methodology.

EMMI has announced its decision to implement the new methodology and associated governance framework in a phased manner. The migration of panel banks to the revised calculation methodology is scheduled to start around mid-May 2024, with the process expected to conclude after approximately six months.

BCBS consults on revised assessment framework for global systemically important banks

The Basel Committee on Banking Supervision (BCBS) has launched a [consultation](#) on potential measures to address ‘window-dressing’ behaviour in the context of the framework for global systemically important banks (G-SIBs).

The proposed revisions would require banks to report and disclose the indicators used to compute G-SIB scores based on average values throughout the reporting year, as opposed to year-end values.

The proposals are intended to mitigate ‘window-dressing’ behaviour by some banks, which seeks to temporarily reduce banks’ perceived systemic footprint around the reference dates used for the reporting and public disclosure of G-SIB scores. The Committee has emphasised that this practice is unacceptable because it undermines the intended policy objectives of the Committee’s standards and poses a risk to the operations of financial markets. The proposed revisions are intended to limit banks’ ability to lower their G-SIB scores through window-dressing. An accompanying [working paper](#) provides the analysis supporting the consultation.

Comments are due by 7 June 2024.

Spring Budget 2024: UK Government announces plans for regulation of ESG ratings providers and Reserved Investor Fund, and launches consultations on UK ISA, cryptoasset reporting, and Private Intermittent Securities and Capital Exchange System

The Chancellor of the Exchequer, Jeremy Hunt, has presented his [Spring Budget 2024](#) to Parliament. Alongside the Budget, the UK Government has:

- [announced](#) that it will regulate the provision of Environmental, Social, and Governance (ESG) ratings, where these assessments of ESG factors are used for investment decisions and influence capital allocation. This is intended to improve clarity and trust in ESG ratings. The Government has indicated that a full response to its March 2023 consultation and legislative steps will follow later in 2024;
- published the [outcome](#) of its April 2023 consultation on the design and scope of a tax regime for a new UK investment fund vehicle, the Reserved Investor Fund (Contractual Scheme) (RIF), confirming its intention to proceed with the RIF. The RIF will be open to professional and institutional investors;
- launched a consultation on the [new UK ISA](#) and options for defining and implementing it – comments are due by 6 June 2024;

- launched a [consultation](#) on the UK implementation of the OECD Cryptoasset Reporting Framework (CARF) and amendments to the Common Reporting Standard (CRS), seeking views on the potential benefits and drawbacks of extending the CARF/CRS international standards to require UK reporting entities to include information on UK residents – comments are due by 29 May 2024; and
- launched a [consultation](#) on the Private Intermittent Securities and Capital Exchange System (PISCES), a proposed new platform intended to allow private companies to trade their securities in a controlled environment and on an intermittent basis – comments are due by 17 April 2024.

Financial Services and Markets Act 2000 (Financial Promotion) (Amendment and Transitional Provision) Order 2024 published

The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment and Transitional Provision) Order 2024 ([SI 2024/301](#)) has been made and laid before Parliament.

SI 2024/301, which seeks to address concerns that amendments to the scope of the financial promotion exemptions introduced in 2023 (SI 2023/1411) negatively impact start-up businesses and the theatre sector, reinstates certain eligibility criteria by introducing the following changes:

- reducing the financial thresholds to be eligible for the high net worth individual exemption to income of at least GBP 100,000 in the last financial year or net assets of at least GBP 250,000 throughout the last financial year;
- amending the criteria to be eligible for the self-certified sophisticated investor exemption by: (i) reinstating the criterion of having made two or more investments in an unlisted company in the previous two years; and (ii) reducing the company turnover required to satisfy the ‘company director’ criterion to GBP 1 million;
- providing that investor statements that comply with the 2023 Order remain valid until and including 30 January 2025.

SI 2024/301 comes into force on 27 March 2024.

The Financial Conduct Authority (FCA) has published a [statement](#) on the changes noting, among other things, an intention to work with the Government on strengthening the financial promotions regime.

Primary Markets Effectiveness Review: FCA consults on second tranche of draft UK Listing Rules

The FCA has updated Appendix 1 of its [consultation paper](#) (CP23/31) on proposed listing rules reforms to include a second tranche of draft rules.

CP23/31, which was published in December 2023, set out detailed proposals aimed at making the UK’s listing regime more accessible, effective and competitive. Appendix 1 of the CP contained the first tranche of the initial draft UK Listing Rules (UKLR) sourcebook provisions and the FCA noted at the time that it intended to publish a second tranche in the first quarter of 2024. Appendix 1 has now been amended to include that second tranche, which, alongside the original first tranche, now makes a complete draft instrument for the new UKLRs.

The new draft instrument includes the following new material:

- updated commercial company draft rules published in tranche 1, which includes updates as previously described in CP23/31;
- the remaining proposed UKLRs for listing categories (UKLRs 11 to 19, and UKLR 22 to 23) other than the commercial companies category, including for closed-ended investment funds and shell companies;
- the remaining cross-cutting chapters for all listed securities (UKLR 1, UKLR 2, UKLR 20 to 21); and
- transitional provisions.

Comments on both tranches of the draft rules are due by 22 March 2024.

UK EMIR: FCA consults on guidance on derivatives reporting

The FCA and Bank of England (BoE) have launched a [consultation](#) on a draft Q&A document providing guidance to support the implementation of the updated reporting requirements under the retained EU Regulation on OTC derivative transactions, central counterparties and trade repositories (UK EMIR).

The consultation is the first of a series that will cover the topics included in the Q&A document. The first consultation will cover:

- transitional arrangements;
- reconciliations;
- errors and omissions;
- derivative identifiers; and
- action and events.

Comments are due by 28 March 2024. The FCA intends to consult on the remaining topics in Spring 2024.

Bank of Spain consults on draft circular on conduct of business requirements, information transparency obligations and fair treatment of customers

The Bank of Spain has launched a public consultation on a [draft circular](#) on conduct of business requirements, information transparency obligations and fair treatment of customers.

Amongst other things, the new circular is intended to:

- reduce the current dispersion of regulatory rules on conduct of business and information transparency obligations;
- establish a greater level of harmonisation and standardisation among rules in order to avoid inconsistencies and enhance legal certainty and a balanced playing field among market participants;
- reduce the complexity and the amount of information that supervised entities must provide to clients; and

- re-focus conduct of business rules towards the principles of shared responsibility and self-regulation through the reinforcement of internal control and preventive supervision mechanisms based on risk assessment.

Comments are due by 16 March 2024.

Bond prospectuses: Consob updates its regulation on issuers

The Commissione Nazionale per le Società e la Borsa (Consob) has adopted a new [resolution](#) amending its [Regulation No. 11971/1999 on issuers](#). This set of rules is intended to streamline and simplify the approval process of bond prospectuses by reducing response times, lowering costs and allowing application forms to be submitted in English.

Under these new regulations:

- following the first submission of the prospectus (i) preliminary comments will be provided within 2 working days and (ii) detailed comments will be provided within 6 working days (reduced to 5 working days for offers of debt securities with a denomination of at least EUR 100,000 ('wholesale offers')); and
- for all subsequent submissions of the prospectus, comments will be provided within 3 working days (reduced to 2 working days for wholesale offers).

Consob has also announced that issuers of debt securities will be able to use new templates of application forms, available both in Italian and English, which will be easier to complete than the existing ones, in line with common practice throughout the European Union. Consob has also reduced the number of documents that need to be filed with the application form and has allowed these new application forms to be signed electronically.

For the period from 2 January 2024 to 31 December 2024, Consob has reduced its supervisory fees for both wholesale and retail offers of debt securities.

JBA TIBOR Administration publishes statement on cessation of Euroyen TIBOR

The Japanese Bankers Association (JBA) TIBOR Administration (JBATA) has issued a 'Statement on the end of Euroyen TIBOR (Publication of the Results of Public Consultation on permanent cessation of Euroyen TIBOR and related issues)'.

The statement follows the JBATA's August 2023 public consultation seeking feedback on whether to permanently cease Euroyen TIBOR and the timing of the cessation, if adopted. The JBATA notes that all the respondents to the consultation supported the implementation of permanent cessation of Euroyen TIBOR and to set its timing at the end of December 2024.

In consideration of the feedback received from market participants, the JBATA has decided on the permanent cessation of all tenors (i.e. 1-week, 1-month, 3-month, 6-month, and 12-month) of Euroyen TIBOR at the end of December 2024. The final publication of Euroyen TIBOR will be on 30 December 2024.

The JBATA has emphasised that Euroyen TIBOR users are required to take actions for transition away from contracts referencing Euroyen TIBOR and

make necessary changes, such as modifications to their operations and systems, in a planned manner in light of the statement and other related statements/announcements issued by regulatory supervisors and agencies as well as the following related developments:

- the JBATA's March 2023 publication of the results of the public consultation on fallback issues for JBA TIBOR, in which it presented its position on the benchmark replacement (fallback rates and spread adjustments) for Euroyen TIBOR, amongst others;
- the FSA's December 2023 announcement suggesting market participants cease entering into new contracts for products referencing Euroyen TIBOR by the end of June 2024 at the latest; and
- the practical issues related to the permanent cessation of Euroyen TIBOR identified in the August 2023 and August 2022 public consultations on permanent cessation of Euroyen TIBOR and related issues, and fallback issues for JBA TIBOR, respectively.

The Financial Services Agency (FSA) has published a [press release](#) in relation to the JBATA statement and expects market participants to take timely and appropriate actions for transitioning away from Euroyen TIBOR aiming towards orderly cessation of its publication.

MAS revises guidelines on licensing, registration and conduct of business for fund management companies

The Monetary Authority of Singapore (MAS) has published [revised guidelines](#) on licensing, registration and conduct of business for fund management companies (FMCs).

The revised guidelines modify paragraph 3.15 on compliance arrangements to add that FMCs should consult their in-house compliance officer or third-party service provider where they have queries on the applicability of rules and regulations. If there is a need to seek clarification from the MAS, FMCs should set out their detailed assessment of the specific regulatory query and/or issue they want to clarify or seek approval for. The MAS has also highlighted that it has resources on its website to assist FMCs in complying with the relevant requirements.

SGX consults on enhancing consistency and comparability in sustainability reporting

The Singapore Exchange Regulation (SGX RegCo) has launched a [public consultation](#) seeking feedback on how the International Sustainability Standards Board (ISSB) standards should be incorporated into the SGX RegCo's sustainability reporting rules for climate-related disclosures, in line with recommendations by the Sustainability Reporting Advisory Committee (SRAC) announced on 28 February 2024.

The consultation follows responses from the Accounting and Corporate Regulatory Authority (ARCA) and SGX RegCo in February 2024 to their July 2023 public consultation on the recommendations of the SRAC to advance climate reporting in Singapore for both listed issuers and non-listed Singapore companies. The current consultation paper proposes changes to the SGX-ST Listing Rules (Mainboard), and the SGX-ST Listing Rules (Catalist) to implement these recommendations.

Amongst other things, SGX RegCo is seeking feedback on proposals that would:

- mandate reporting on the primary components of a sustainability report from the current 'comply or explain' basis;
- amend the section on climate-related disclosure in the Sustainability Reporting Guide that would require issuers to: (i) from fiscal year (FY) 2025, refer to both ISSB's IFRS S1 and IFRS S2 in preparing climate-related disclosures, including any (permanent) structural and (temporary) transition reliefs; (ii) from FY 2025, disclose Scope 1 and Scope 2 greenhouse gas (GHG) emissions, and from FY 2026 Scope 3 emissions, and in each case, the measurement approach; (iii) disclose industry-based metrics and cross-industry metric categories relevant for climate-related disclosures; (iv) issue a sustainability report according to current timelines, and from FY 2026, issue the sustainability report together with the annual report; and (v) for climate-related disclosures, make reference only to reports published by the same entity, and not the sustainability reports of its operating subsidiaries, in line with ISBB standards.

With respect to transition plans, SGX RegCo has clarified that while it is not currently proposing to mandate transition planning under the Listing Rules, it encourages issuers to consider formulating transition plans to harness green and transition opportunities. SGX RegCo intends to continue to monitor international developments on and local adoption of transition plan-related disclosures before making any rule proposals.

Comments on the consultation are due by 5 April 2024.

Singapore Government gazettes Moneylenders (Amendment) Act 2023 (Commencement) Notification 2024 and Moneylenders (Amendment) Rules 2024

The Singapore Government has gazetted the [Moneylenders \(Amendment\) Act 2023 \(Commencement\) Notification 2024](#) to designate 1 March 2024 as the commencement date of the [Moneylenders \(Amendment\) Act 2023](#), which was passed by the Singapore Parliament on 22 November 2023, assented to by the President on 14 December 2023, and subsequently published in the Government Gazette on 3 January 2024.

Amongst other things, the Act:

- introduces a new Section 35(4A) to enact a new offence if a licensee, without reasonable excuse, makes a wrongful demand of payment from a borrower;
- introduces a new Section 66A which applies where a loan application is made to a licensee by an applicant with one or more sureties. The section sets out the duties of a licensee in relation to the grant of a loan to the applicant, such as requesting a credit report in relation to surety;
- amends Section 69 to expand the purposes for which a licensee may request borrower information from the designated credit bureau, and the purposes for which and list of persons to whom a licensee may disclose borrower information;
- amends Section 70 to expand a licensee's duty to protect any information in the licensee's possession or under the licensee's control that the

licensee has obtained or received under or for the purposes of the Act by making reasonable security arrangements;

- introduces a new Section 74A which permits a designated credit bureau to prepare and deliver to the licensee a business report in relation to a licensee;
- introduces a new Section 77A on the power of the Registrar, if he or she is aware that a credit report, business report or loan information report has been wrongly delivered to a person, to direct the person to dispose of the report delivered in error; and
- introduces a new Section 81A which permits the Registrar to share information pursuant to a data sharing direction under the Public Sector (Governance) Act 2018.

The Government has also gazetted the [Moneylenders \(Amendment\) Rules 2024](#), which came into operation on 1 March 2024. Amongst other things, the Amendment Rules:

- modify the definitions of ‘business day’ in rule 1A, and ‘permanent resident’ in rule 18;
- introduce new rules 22CA and 22CB pertaining to the list of prescribed credit bureau and prescribed persons; and
- introduce new rule 22EA pertaining to the prescribed information that must be included in a business report.

RECENT CLIFFORD CHANCE BRIEFINGS

McDermott International Group gets English Court’s approval on restructuring plan

On 27 February, the English high court sanctioned a restructuring plan in respect of CB&I UK Limited as part of a restructuring of the McDermott International Group. This case is of interest for various reasons, including being the first English restructuring plan to be sanctioned following the Court of Appeal decision in Adler which set aside the plan in that case. The case also puts into practice the Adler guidance offered to the court when considering cross class cram down.

This briefing paper discusses the case.

<https://www.cliffordchance.com/briefings/2024/02/mcdermott-international-group-gets-english-court-s-approval-on-r.html>

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