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CRR: Amending ITS on disclosure and reporting of MREL and TLAC published in Official Journal

[Commission Implementing Regulation \(EU\) 2024/1618](#) amending the implementing technical standards (ITS) regarding the supervisory reporting and public disclosure of the minimum requirement for own funds and eligible liabilities (MREL) and the total loss absorbency requirement (TLAC) has been published in the Official Journal.

Commission Implementing Regulation (EU) 2024/1618 replaces the templates and annexes in the ITS in order to reflect changes made to the Capital Requirements Regulation (CRR), including:

- the requirement to deduct investments in eligible liabilities instruments of entities belonging to the same resolution group ('the daisy chain framework');

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- the prior permission regime for buying back eligible liabilities instruments issued by the reporting entities and groups; and
- the breakdown by insolvency ranking.

The Regulation will enter into force on 27 June 2024 and will apply from 27 December 2024.

CRR: EBA consults on draft RTS for operational risk loss

The European Banking Authority (EBA) has launched a [consultation](#) on three sets of draft regulatory technical standards (RTS) under the CRR.

The aim of the draft RTS is to standardise the collection and record of operational risk losses and to provide clarity on the exemptions for the calculation of the annual operational risk loss and on the adjustments to the loss data set that banks must perform in case of merged or acquired entities or activities.

The three sets of draft RTS relate to:

- establishing a risk taxonomy on operational risk that complies with international standards and a methodology to classify the loss events included in the loss data set based on that risk taxonomy on operational risk under Article 317(9) of the CRR;
- specifying the condition of 'unduly burdensome' for the calculation of the annual operational risk loss under Article 316(3) of the CRR; and
- specifying how institutions shall determine the adjustments to their loss data set following the inclusion of losses from merged or acquired entities or activities under Article 321(2) of the CRR.

Comments are due by 6 September 2024.

Following feedback received from the consultation, the EBA intends to revise the draft RTS where appropriate and send them in their final form to the EU Commission for adoption. The intention, depending on the feedback received, would be to finalise the three mandates by end-2024.

DORA: ESAs publish templates and tools for voluntary exercise on reporting of registers of information

The European Supervisory Authorities (ESAs) - the EBA, the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) - have [published](#) a set of tools and templates for use by financial entities wishing to participate in a voluntary exercise in preparation for the implementation of the Digital Operational Resilience Act (DORA).

Under DORA, financial entities will be required to maintain registers of information regarding their use of ICT third-party providers. The voluntary exercise will focus on these responsibilities and allow financial entities to conduct a dry run of building their register of information and testing the reporting process. The ESAs have published a set of materials to assist in conducting the exercise, including:

- templates for the registers of information with examples;
- a draft technical package for reporting, including a data point model (DPM), annotated table layout and validation rules;

- an optional tool (VBA macro) to assist with the conversion of Excel templates into .csv files and .zip files for their submission; and
- a frequently asked questions document regarding the exercise.

Financial entities participating in the exercise are expected to submit their registers of information to the ESAs through their competent authorities between 1 July and 30 August 2024.

EBA and ESMA invite comments on review of investment firms prudential framework

The EBA and ESMA have published a [discussion paper](#) on the potential review of the investment firms prudential framework.

The discussion paper is intended to gather stakeholder feedback to inform the response to the EU Commission's call for advice. The discussion paper covers a range of topics, including:

- the adequacy of the current prudential requirements;
- an analysis of the existing methodology;
- risks not covered by the current framework;
- the implications of the adoption of the new EU banking package (CRD6 and CRR3) concerning the trading book, the fundamental review of the trading book (FRTB) and credit valuation adjustments (CVA);
- prudential consolidation and a possible extension to crowdfunding and cryptoasset service providers;
- the interaction of the Investment Firms Directive and Regulation (IFD/IFR) with requirements applicable to UCITS management companies and alternative investment fund managers (AIFMs) providing MiFID services on an ancillary basis, or investment firms providing services related to cryptoassets;
- aspects related to remuneration in relation to investment firms, AIFMs, and UCITS management companies, including the scope of application, remuneration policies, the requirements on variable remuneration, their oversight, disclosure, and transparency; and
- the treatment of firms currently non-prudentially regulated and active in commodity markets.

An ad-hoc data collection addressed to competent authorities, investment firms, and UCITS management companies and AIFMs has also been published.

Comments are due by 3 September 2024.

ESAs report on greenwashing in financial sector

The [EBA](#), [EIOPA](#) and [ESMA](#) have published final reports on greenwashing in the financial sector.

In their respective reports, the ESAs set out the common high-level understanding of greenwashing as a practice where sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or

financial services. They stress the responsibility on financial market players to provide sustainability information that is fair, clear and not misleading.

Each report provides a stocktake of the current supervisory response to greenwashing risks under the ESA's remit, highlights steps taken by national competent authorities (NCAs) in the supervision of sustainability-related claims, and identifies practices intended to enhance supervision in the future.

MiCA: EBA publishes final draft RTS and guidelines in relation to governance, remuneration and conflicts of interest

The EBA has [published](#) a package of regulatory products on governance and remuneration under the Markets in Cryptoassets Regulation (MiCA), comprising:

- guidelines on the minimum content of the governance arrangements for issuers of asset-referenced tokens (ARTs), which further specify the various governance provisions in MiCA and also clarify the tasks, responsibilities and organisation of the management body, and the organisational arrangements of issuers;
- final draft RTS on the minimum content of the governance arrangements on the remuneration policy, which set out a framework similar to the remuneration framework for investment firms and apply to issuers of significant ARTs and electronic money institutions issuing significant e-money tokens (EMTs), and, where Member States require the application of Article 45(1) MiCA, to issuers of non-significant EMTs; and
- final draft RTS on conflicts of interest for issuers of ARTs, which require issuers of ARTs to implement and maintain effective policies and procedures to identify, prevent, manage and disclose conflicts of interest.

IOSCO reports on good practices for leveraged loans and CLOs

The International Organization of Securities Commissions (IOSCO) has published its [final report](#) on leveraged loans and collateralised loan obligations (CLOs) good practices for consideration.

The report provides an overview of the leveraged loan and CLO markets and their evolution since the global financial crisis. It discusses how vulnerabilities in those markets could impact IOSCO's objectives of protecting investors, ensuring that markets are fair, efficient and transparent, and reducing systemic risk.

In the report IOSCO examines the impact of fewer and looser covenants on investor protections, whether there is adequate transparency in these markets and the scope for potential conduct-related issues to arise. The report sets out twelve good practices, grouped into themes relating to:

- 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.

The good practices are intended to guide market participants in their decision making while operating in the leveraged loan and CLO markets and encourage market development and the behaviour of market participants in way which support IOSCO's objectives.

IOSCO reports on good practices for market outage resilience

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

The report identifies key findings from recent market outages and sets out five good practices aimed at improving market-wide resilience and investor confidence. The practices, which are intended to assist regulators, trading venues and market participants prepare for and manage future market outages, cover areas including:

- outage plans;
- communication plans;
- reopening of trading;
- closing auctions and closing prices; and
- post-outage plans.

According to IOSCO, the practices have been designed to offer flexibility for adoption across various trading venues, asset classes and market structures and are generally applicable to market outages caused by different types of root causes.

HKMA issues guidance on Cross-boundary Wealth Management Connect for non-locally incorporated authorised institutions

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) to set out its guidance for authorised institutions (AIs) incorporated outside Hong Kong to provide Southbound Scheme services under the Cross-boundary Wealth Management Connect Pilot Scheme (Cross-boundary WMC) to non-private banking customers.

The HKMA notes that currently Hong Kong branches of non-locally incorporated AIs registered under the Securities and Futures Ordinance for carrying on Type 1 regulated activity (dealing in securities) and engaging in private banking business are eligible to participate in the Cross-boundary WMC. The monetary threshold for private banking customers had been defined to include investable assets under the AI's management threshold of USD 1 million, or USD 3 million investable assets in any banks / institutions. In view of the unique features of the Cross-boundary WMC, the HKMA considers that non-locally incorporated AIs engaging in private banking business may, through their respective Hong Kong branches, also provide Southbound Scheme services under the Cross-boundary WMC to customers not meeting the abovementioned monetary threshold for private banking customers, **provided that** certain requirements are met as listed in the circular.

MAS expands application of fair dealing guidelines to all financial institutions and all products and services

The Monetary Authority of Singapore (MAS) has issued an [updated](#) set of guidelines on fair dealing that expands the scope to apply to all financial institutions (FIs) and all products and services they offer to their customers, following the MAS December 2022 public consultation on proposed enhancements to the guidelines.

The updated guidelines are intended to raise standards of fair dealing and improve the experience of customers dealing with FIs. First introduced in 2009 under the Financial Advisers Act, the guidelines cover the selection, marketing, and distribution of investment products, as well as the provision of advice and post-sales services. The updated guidelines are intended to achieve:

- products suited to the needs of the target market segment;
- advice with suitable product recommendations, accurate representation of information and extra consideration for those who are more vulnerable;
- clear explanations on a product and its terms and conditions; and
- independent and responsive handling of feedback.

The MAS has also published responses to the feedback it received on the consultation on proposed revisions. Amongst other things, the MAS has indicated the following in its response:

- on the proposals pertaining to expanding the scope the MAS recognises the varied nature of FIs and their business models, and has clarified that each FI should consider how best to achieve the outcomes in the updated guidelines in a manner that is proportionate to its business model, the types of products and services it provides, and the potential harm to customers, and the MAS has clarified that in the case of foreign offices (FOs) and foreign related corporations (FRCs), the principles and outcomes in the updated guidelines will apply except where FOs and FRCs are exempt from specific conduct requirements for cross-border business arrangements;
- on the proposals pertaining to sound and objective processes to assess applications, the MAS has clarified that FIs should provide adequate explanation through appropriate channels to help customers better appreciate the rationale behind the application outcomes, and for applications that are rejected due to statutory prohibitions, FIs should ensure compliance with the relevant legal or statutory obligations, and disclosure may be withheld to the extent necessary for such compliance;
- on the proposals pertaining to expectations for manufacturers, the MAS has clarified that in addition to aligning the design of a product or service to the needs and financial interests of the target segment, FIs should also assess performance under different market conditions or scenarios and the likely benefit or value to customers;
- on the proposals pertaining to provision of information that accurately represents products and services, the MAS has acknowledged feedback on the practical challenges that FIs face and has refined the guidelines accordingly; and

- on the proposals pertaining to right of review (RoR), the MAS has clarified that, where there is potentially an adverse or material impact to customers from exercising an RoR clause, FIs should put in place these safeguards seeking the appropriate management forum's approval to exercise the RoR clause, including considering measures to mitigate potential detriment to customers, and disclosing the changes to customers early and in writing.

The updated guidelines are effective immediately. The MAS expects FIs to incorporate key principles of fair dealing at various stages of a product's life cycle or services rendered.

MAS revises Notice SFA 04-N14 to All Holders of a Capital Markets Services Licence for REIT Management

The MAS has revised [Notice SFA 04-N14](#) to All Holders of a Capital Markets Services Licence for Real Estate Investment Trust (REIT) Management, which sets out requirements on the conduct of boarding meetings, governance, the composition of the audit committee and remuneration for directors and executive officers.

The primary change to MAS Notice SFA 04-N14 is to clarify that REIT managers shall take reference from Rule 1207(10D) of the SGX Listing Rules (Mainboard)/Rule 1204(10D) of the SGX Listing Rules (Catalist) on disclosure requirements. For the financial years ending on or after 31 December 2024, issuers will be required to disclose in their annual reports the names, exact amounts, and breakdown of remuneration paid to each individual director and the CEO by the issuer and its subsidiaries. This breakdown must include (in percentage terms) base or fixed salary, variable or performance-related income or bonuses, benefits in kind, stock options granted, share-based incentives and awards, and other long-term incentives.

The revised MAS Notice SFA 04-N14 is effective from 27 May 2024.

RECENT CLIFFORD CHANCE BRIEFINGS

The EU Legislative Process Explained

As the EU enters a new legislative cycle after the European Parliament elections, Clifford Chance has produced an updated version of its guide to the EU legislative process.

The guide gives an overview of the key institutions of the EU, the legislative process for both 'Level 1' regulations and directives and delegated and implementing acts and technical standards and the roles of the European Commission and the European Supervisory Authorities in the creation of the rules that are central to the implementation of the single rulebook in financial services.

<https://www.cliffordchance.com/briefings/2024/06/the-eu-legislative-process-explained.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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