

INTERNATIONAL REGULATORY UPDATE 2 – 6 SEPTEMBER 2024

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FSMA 2023 (Commencement No. 7) Regulations made

[The Financial Services and Markets Act 2023 \(Commencement No. 7\) Regulations 2024](#) (SI 2024/891) have been made.

Amongst other things, SI 2024/891 brings into force on 1 November 2024 provisions of the Financial Services and Markets Act 2023 (FSMA 2023) relating to the revocation of:

- the EU Securitisation Regulation (Regulation (EU) 2017/2402);
- instruments made under the EU Securitisation Regulation;
- provisions of instruments that had amended the EU Securitisation Regulation;
- the Securitisation Regulations 2018 (SI 2018/1288); and
- Commission Delegated Regulation (EU) No 625/2014 supplementing the Capital Requirements Regulation (Regulation (EU) No 575/2013) by way of regulatory technical standards (RTS) specifying the requirements for

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investor, sponsor, original lender and originator institutions relating to exposures to transferred credit risk.

UK EMIR: FCA consults on draft Q&As on trade repositories

The Financial Conduct Authority (FCA) has published a [consultation paper](#) on its draft questions and answers (Q&As) on UK trade repositories (TRs).

The Q&As are aimed at supporting UK TRs in the implementation of the updated reporting requirements under the retained EU Regulation on OTC derivative transactions, central counterparties and trade repositories (UK EMIR) that apply from 30 September 2024. UK TRs previously requested that the FCA issue guidance specific to TR operations or how to validate certain fields in industry submitted reports.

Comments on the draft Q&As are due by 25 September 2024.

FCA publishes Quarterly Consultation No. 45

The FCA has published its latest [quarterly consultation paper](#) (CP24/18) on proposed amendments to the FCA Handbook.

It is seeking feedback on its proposals relating to:

- changing the definition of ‘firm’ to clarify that designated coordination bodies fall within the remit of the Enforcement Guide and Decision Procedure and Penalties Manual; and
- allowing a non-Undertakings for the Collective Investment in Transferable Securities (UCITS) retail scheme to be exposed to long-term asset funds without the constraints of the second scheme rules.

Comments are due by 11 October 2024.

FCA publishes final statement on forthcoming end of LIBOR

The FCA has published its [final announcement](#) on the last remaining USD LIBOR settings and the forthcoming end of LIBOR.

The FCA has required ICE Benchmark Administration Limited (IBA) to continue to publish the 1-, 3- and 6-month US dollar LIBOR settings in synthetic form until 30 September 2024. The FCA has further stated that it will not use its powers to compel IBA to continue to publish the settings beyond this date. The synthetic US dollar LIBOR settings will cease permanently after their final publication on 30 September 2024.

The FCA has reminded firms with outstanding US dollar LIBOR exposures to continue their active transition efforts. The FCA has also stated that the cessation of the last remaining LIBOR settings is the final milestone in the transition away from LIBOR and will mark the end of LIBOR overall.

FCA publishes report on principal firms’ oversight of appointed representatives

The FCA has published a [report](#) on how principals are embedding new rules for overseeing appointed representatives (ARs) and examples of good practice and areas for improvement for firms to consider.

In December 2022, the FCA introduced new rules designed to increase and improve principal firms' oversight of their ARs. The report sets out the findings from its review of the implementation of these rules. The review involved a telephone questionnaire with approximately 250 firms and an in-depth assessment of 23 randomly selected firms.

Overall, the FCA notes that:

- principals had made some effort to comply with the rules, with 96% stating they were very confident they were effectively implementing them, however the in-depth assessments revealed not all principals could show they had undertaken an adequate annual review or self-assessment;
- the quality and completion of self-assessments and annual reviews requires improvement, with some principals improperly documenting them or taking a 'tick-box' approach; and
- most principals had not changed their onboarding or termination procedures to reflect the introduction of the new rules.

The report also includes examples of good practice and areas for improvement and calls on all firms who have ARs, or intend to have ARs in the future, to consider them when assessing their obligations as principals under the FCA's rules.

FCA reports on payment accounts access and closures

The FCA has published a [report](#) on UK payment accounts access and closures. The report follows on from the FCA's September 2023 report, which detailed findings from an initial review of issues relating to payment account access for both individuals and organisations.

The FCA has recognised that banks, building societies and payment firms are trying to support customers to access accounts and is encouraging them to build on examples of existing good practice, such as working with homeless charities to tailor their support to the needs of customers in vulnerable circumstances.

The report finds that:

- Basic Bank Account (BBA) customer journeys varied, leading to differences in apparent rejection rates, and firms were poor at making customers aware of BBAs;
- data on account access was limited or unclear;
- the FCA did not see evidence of political beliefs or other views lawfully expressed being used as a rationale for account denial, suspension or termination; and
- 'reputational risk' is used in varying ways by different firms to deny or close accounts.

The FCA has sets out its expectations of firms in this area, including in respect of the Consumer Duty which came into force for open products and services shortly before the 2023 report, and is now in force for closed products and services.

The FCA has also published independent, qualitative research on the experiences some of the most financially excluded consumers face when accessing and using financial products and services.

BaFin updates circular on product oversight and governance arrangements for retail banking products

The German Federal Financial Supervisory Authority (BaFin) has updated its [circular](#) on product oversight and governance arrangements for retail banking products (08/2023). The update follows the publication on 27 May 2024 of BaFin's circular on minimum requirements for the risk management of ZAG institutions (ZAG-MaRisk) – i.e. institutions that fall under the German Payment Services Supervision Act (Zahlungsdiensteaufsichtsgesetz - ZAG).

BaFin has updated those parts of the circular that previously referred only to the minimum requirements for the risk management of credit institutions and financial services institutions (MaRisk) (e.g. item 15). These parts now also refer to the ZAG-MaRisk. In addition, some editorial adjustments have been made.

The relevant institutions must implement the updated circular by 1 January 2025, which corresponds to the implementation period for the ZAG-MaRisk. However, the editorial adjustments already entered into force on 30 August 2024 as BaFin maintains its current supervisory practice.

NPL Directive: Italian implementing act enters into force

[Italian legislative Decree No. 116 of 30 July 2024](#), which implements Directive (EU) 2021/2167 on credit servicers and credit purchasers, was published in Official Gazette No. 189 of 13 August 2024.

Amongst other things, the aim of the framework set out in the Decree is to promote the development of secondary markets for non-performing loans (NPLs).

The new legislation provides for the liberalisation of the sale of NPLs only, not Unlikely to Pay loans (UTPs), strengthens protections for assigned debtors and regulates the credit market by introducing a licensing and supervisory regime for NPL managers/service providers, regulating the relationship between buyers, managers and service providers, and establishing disclosure requirements, rules of conduct, a supervisory register and complaint handling.

Securitisation transactions are excluded from the scope of the Decree.

FINMA consults on circular on consolidated supervision under Banking Act and Financial Institutions Act

The Swiss Financial Market Supervisory Authority (FINMA) has [launched](#) a consultation on a new circular setting out its supervisory practice on consolidated supervision under the Banking Act and the Financial Institutions Act.

The primary purpose of consolidated supervision is to ensure that all risks entered into by a financial group are covered by supervision.

The circular sets out the requirements for the inclusion of group companies in consolidated supervision. The decisive factors are the company's activity in the financial sector and the existence of an economic unit, a legal duty to provide support or a de facto obligation to provide support. The specific implications of consolidated supervision are based on the provisions of the Banking Ordinance.

By commenting on its practice, FINMA wishes to provide greater clarity on questions of interpretation regarding the scope and content of consolidated supervision.

The consultation will end on 1 November 2024.

MAS revises forms, FAQs, guidelines and compliance toolkits regarding fund management

Following the repeal of the registered fund management regime from 1 August 2024, the Monetary Authority of Singapore (MAS) has [revised](#) the application form for applicants for a capital markets services licence (CMS Licence). In particular, while applicants for a CMS Licence in respect of fund management (LFMC) and applicants seeking to become licenced as a venture capital fund management company (VCFM) were previously required to submit Form 1A and Form 1V respectively, with effect from 29 August 2024, applicants for a CMS Licence in respect of any type of regulated activity (including LFMCs and VCFMs) will now have to use the same application form, Form 1. Applicants will now also be required to submit their application through eLicensing instead of CeL. A new version of Form 3A (for Notification for Appointment of an Appointed Representative) was also made effective from the same date.

The following were also amended with effect from 29 August 2024 to reflect the above changes to the application form to be submitted and the platform through which such submissions should be made:

- MAS Guidelines on Licensing and Conduct of Business for Fund Management Companies (Guidelines SFA 04-G05);
- Frequently Asked Questions on the Licensing of Fund Management Companies (FAQs);
- Compliance Toolkits for LFMCs and VCFMs.

In addition, the template Notice of Change of Particulars for Fund Management Companies and Form 25A (Annual Declaration by a VCFM) were amended with effect from 1 September 2024.

MAS updates FAQs on Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013

The MAS has [updated](#) its set of frequently asked questions (FAQs) on the Securities and Futures (Reporting of Derivatives Contracts) Regulations 2013 (SF(RDC)R) in advance of the commencement of the revised SF(RDC)R, which will take effect from 21 October 2024. The FAQs have been updated mainly to:

- add a new Question 2.2A to clarify that derivatives contracts which are booked in Singapore with a remaining maturity of at least one year as at the date the reporting entity becomes a 'specified person' would need to be reported. Such derivatives contracts should be reported within 6 months from the date the reporting entity becomes a specified person;
- update Question 2.8B to provide additional guidance on the trade lifecycle events that are required to be reported by a reporting entity;
- update Question 2.10 to clarify that with effect from 21 October 2024, when reporting an FX swap, both legs of the swap should be reported using the

same UPI and the ‘Contract type’ for both legs should be reported as ‘SWAP’;

- add a new Question 4.10A to clarify that with effect from 21 October 2024, reporting entities are required to re-report all outstanding derivatives contracts previously reported before 21 October 2024, and with a maturity of at least 6 months as at 21 October 2024. However, if there are changes to the reportable data fields of any of the outstanding derivatives contracts with less than 6 months maturity as at 21 October 2024, these changes must be reported within 2 business days of the change; and
- update Question 6.2 to provide additional guidance on how a reporting entity should update the interim-UTI to the final-UTI.

The MAS has also published the following revised forms in connection with the revised SF(RDC)R:

- Form 1A - Notification on Becoming a Significant Derivatives Holder; and
- Form 1B - Notification on Ceasing to be a Significant Derivatives Holder.

RECENT CLIFFORD CHANCE BRIEFINGS

The new UK prospectus regime – filling in the blanks

Over the summer, the Financial Conduct Authority (FCA) took a further step towards ‘filling in the blanks’ of the replacement UK prospectus regime.

Consultation Paper [CP24/12](#), published by the FCA at the end of July, sets out the FCA’s policy conclusions on the detail of the UK public offer and admission to trading (POATRs) regime. The 360-page paper also includes draft rules for the FCA Handbook and draft annexes with proposed prospectus disclosure requirements.

The deadline for comments on the FCA Consultation is not until mid-October. Moreover, the FCA has indicated that it is planning a separate consultation later this year on the UK retail debt market, likely in ‘late Q4’.

This high-level briefing on CP24/12 outlines key aspects and their impact for debt issuance. In the briefing, we indicate some of the areas where we will be following up with the UK FCA with requests for further clarifications. Additionally, with the EU prospectus regime also in flux, we have highlighted not only how the FCA proposals differ from the current UK regime but, also, how they differ from current and future EU requirements.

<https://www.cliffordchance.com/briefings/2024/09/the-new-uk-prospectus-regime---filling-in-the-blanks.html>