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ESMA, ECB and EU Commission issue joint statement on transition to T+1

The European Securities and Markets Authority (ESMA), the European Central Bank's Directorate-General for Market Infrastructure and Payments (ECB DG MIP) and the EU Commission's Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) have issued a joint statement on the preparations for transitioning to a shorter standard securities settlement cycle (i.e. from settling two days after the execution date (T+2), to just one day after execution (T+1)).

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The statement notes that ESMA has been mandated to assess the appropriateness of introducing T+1 in the EU. It intends to deliver its final report to the EU Council and Parliament in the coming months but sets out some preliminary findings in the statement, namely that:

- shortening the settlement cycle in the EU will change the way in which markets function, with effects varying by stakeholder type, transaction category, and financial instrument;
- it is challenging to quantify some of the costs and benefits related to the shortening of the settlement cycle, but the elements assessed by ESMA to date suggest that, in terms of risk reduction, margin savings and the reduction of costs linked to the misalignment with other major jurisdictions globally, introducing T+1 would significantly benefit the EU Savings and Investments Union; and
- there is a need for harmonisation, standardisation and modernisation. ESMA believes that the improvements to post-trade processes resulting from the introduction of T+1 would promote further settlement efficiency in the EU.

The statement also notes that market participants have indicated a strong preference for amending the Central Securities Depositories Regulation (CSDR) to introduce T+1. A decision on this matter needs to be taken by the EU co-legislators following a legislative proposal from the EU Commission, should the Commission decide to adopt one.

ESMA, the ECB DG MIP, and the EU Commission's DG FISMA emphasise the importance of accelerating every aspect of the technical work required to facilitate the move to T+1 in the EU. They have agreed to establish a governance structure, incorporating the EU financial industry, as soon as possible to oversee and support these preparations. They intend to publish details of this governance structure shortly.

DORA: ESAs call for adoption of rejected ITS on registers of information

The European Supervisory Authorities (ESAs) – the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and ESMA – have issued an opinion on the EU Commission's rejection of draft implementing technical standards (ITS) on the registers of information under the Digital Operational Resilience Act (DORA).

The draft ITS were rejected on the grounds that it is necessary to allow financial entities the choice of identifying their ICT third-party service providers registered in the EU by using either the Legal Entity Identifier (LEI) or the European Unique Identifier (EUID). The ESAs believe adding the EUID as an additional identifier will cause unnecessary complexity and could have negative impacts on DORA's implementation. Among other things, the ESAs believe introducing the EUID could:

- cause unforeseen implementation and maintenance efforts for financial entities;
- limit access to and the possibility for verification of information by financial entities and competent authorities;
- lead to an increased reporting burden under DORA;

- bring additional complexity that would negatively impact the quality of data used; and
- risk delays in the designation of critical ICT third-party service providers by the ESAs.

The ESAs have also published their proposed changes to the draft ITS should the Commission proceed with the introduction of the EUID. The proposed changes also reflect practical feedback from financial entities participating in the voluntary dry run exercise on reporting of registers of information.

MiCA: ESMA responds to rejection of RTS by EU Commission

ESMA has published an opinion responding to the EU Commission's rejection of draft regulatory technical standards (RTS) on notifications and authorisations under the Markes in Cryptoassets Regulation (MiCA).

The Commission invited ESMA to submit two new draft RTS specifying the information to be included in a notification by certain financial entities of their intention to provide cryptoasset services and the information to be included in an application for authorisation as cryptoasset service provider, following concerns that the RTS created a new obligation to conduct external audits which was not covered by the mandate under MiCA.

ESMA has highlighted that the final objective of these RTS is to ensure a thorough entry point assessment for applicant cryptoasset service providers (CASPs) and financial entities intending to provide cryptoasset services in the EU. To that end, it has recommended that the Commission considers amending the Level 1 text of the MiCA framework to include a requirement for a cybersecurity audit realised by a third-party auditor at the time of the authorisation.

MiFIR Review: ESMA updates guidance on transparency issues

ESMA has published updates to its manual on post-trade transparency, its opinion on the assessment of pre-trade transparency waivers for equity and non-equity instruments, and some of its Q&A on transparency and market structure issues.

The updates are intended to provide practical guidance to ensure a smooth transition and consistent application of the MiFIR Review.

Banking package: EBA consults on draft ITS on centralised Pillar 3 data hub

The EBA has launched a consultation on draft ITS relating to the Pillar 3 data hub, which is intended to centralise prudential disclosures by institutions through a single electronic access point on the EBA website.

The draft ITS present the IT solutions and processes to be followed by institutions when submitting their Pillar 3 disclosures, including the IT solutions to be used, the data exchange formats to be considered, and the technical validations to be performed by the EBA.

The EBA is running a voluntary pilot exercise in parallel to the consultation to test the process for large and other institutions. The EBA will take into

account the results of the pilot exercise and the feedback from the consultation when finalising the ITS.

Comments are due by 11 November 2024. A public hearing is scheduled on 21 October 2024.

FSB consults on common format for operational incidents reporting

The Financial Stability Board (FSB) has launched a consultation on the format for incident reporting exchange (FIRE), the common format for financial firms' reporting of operational incidents, including cyber incidents.

FIRE builds on the FSB's 2023 recommendations to achieve greater convergence in cyber incident reporting. The FSB believes that converging reporting practices will address operational challenges arising from reporting to multiple authorities and foster better communication within and across jurisdictions.

FIRE provides a set of common information items for reporting incidents but does not define common reporting triggers, deadlines or mitigation approaches. According to the FSB, its design focuses on financial sector participants' reporting to authorities and its flexibility enables regulated entities to leverage FIRE in their relationships with service providers.

The FSB is consulting on:

- a 'human-readable' format;
- a structured data model of FIRE using the reporting-language-agnostic data point model method; and
- a taxonomy in eXtensible Business Reporting Language (XBRL) as a sample machine-readable version of FIRE.

Comments are due by 19 December 2024.

Draft Collective Investment Schemes (Temporary Recognition) and Central Counterparties (Transitional Provision) (Amendment) Regulations 2024 laid

The Collective Investment Schemes (Temporary Recognition) and Central Counterparties (Transitional Provision) (Amendment) Regulations 2024 have been laid in Parliament according to the affirmative procedure. The draft statutory instrument (SI) supports the operationalisation of the Government's first equivalence decision under the Overseas Funds Regime (OFR).

On 30 January 2024, HM Treasury announced its intention to find the EEA States, including EU Member States, equivalent under the OFR for Undertakings for Collective Investment in Transferable Securities (UCITS), except Money Market Funds (MMFs). The Financial Services and Markets Act 2000 (Overseas Funds Regime) (Equivalence) (European Economic Area) Regulations 2024 (SI 2024/635) were laid to enact this decision and came into force on 16 July 2024.

The new draft SI supports the Government's equivalence decision regarding EEA States by amending the Temporary Marketing Permissions Regime (TMPR) to extend it for a further year, allowing funds in scope to transition to the permanent marketing arrangements provided by the OFR and avoid cliff-edge risks. It also makes technical amendments to ensure sub-funds can

transition smoothly to the OFR or apply for recognition under section 272 of FSMA 2000.

The SI also amends the Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 to ensure that overseas central counterparties (CCPs) do not automatically lose their temporary recognised status if their EU recognition is withdrawn, maintaining their market access to the UK.

HM Treasury consults on draft buy-now pay-later legislation

HM Treasury has published a consultation paper outlining its plans to regulate the buy-now pay-later (BNPL) market, which are intended to ensure that people using BNPL products have access to simple, clear, and understandable information, avoid unaffordable borrowing, and are protected when issues arise.

The consultation seeks input from stakeholders on the draft Financial Services and Markets Act 2000 (Regulated Activities etc.) (Amendment) Order 2025, which would bring BNPL agreements under the regulation of the Financial Conduct Authority (FCA).

Comments are due by 29 November 2024.

HM Treasury publishes draft updates to guidance on special resolution regime

HM Treasury has published a new draft chapter of the Banking Act 2009 special resolution regime code of practice following the introduction of the Bank Resolution (Recapitalisation) Bill in Parliament.

The draft chapter sets out details of the recapitalisation payment mechanism introduced by the Bill, including:

- how the recapitalisation mechanism will be used and the firms it is intended for use on;
- how the Bank of England (BoE) will determine the funds required from the Financial Services Compensation Scheme (FSCS) and assess the relative costs of using the mechanism compared to insolvency;
- BoE accountability; and
- clarifications relating to certain aspects of the policy, following Government engagement with industry and Parliament.

The Government intends to issue a final version of the code of practice when the Bill comes into force.

HM Treasury has also published updated terms of reference for the Banking Liaison Panel (BLP), along with the minutes of its February 2024 meeting. The terms of reference set out the remit and membership of the BLP, as well as processes such as those relating to meetings, providing advice to the Treasury and the role of the chair. Under the terms of reference, HM Treasury must consult the BLP on any changes to the special resolution regime code of practice.

UK Government announces plans to reform bank ring-fencing

The UK Government has announced that it intends to implement a package of reforms to the ring-fencing regime, following the independent review led by Sir Keith Skeoch, which reported in March 2022.

The reforms will include:

- the introduction of a secondary threshold to exempt retail-focussed banking groups from the regime – where investment banking activity accounts for less than 10% of Tier 1 capital;
- new flexibilities to allow ring-fenced banks to operate globally, subject to PRA rules;
- measures to encourage more investment by ring-fenced banks in UK SMEs;
- measures to reduce the compliance burdens associated with the regime; and
- an increase in the primary deposit threshold for ring-fenced banks, from GBP 25 billion to GBP 35 billion.

The Government intends to implement these reforms as soon as parliamentary time allows.

CRR: PRA consults on restatement of assimilated law

The Prudential Regulation Authority (PRA) has published a consultation paper (CP13/24) setting out its proposals to restate the remaining provisions in the assimilated Capital Requirements Regulation (CRR) in the PRA Rulebook and other policy material such as supervisory statements (SSs) or statements of policy (SoPs). This follows the PRA's previous restatements and amendments, or consultations on restatements and amendments, of other parts of the CRR, including in relation to the implementation of the Basel 3.1 standards, and HM Treasury's September 2024 statement indicating its intention to revoke the remainder of assimilated law in the CRR.

The proposals consist primarily of the restatement of assimilated law into PRA rules and policy materials without modifications. The PRA also proposes to update the credit ratings mapping tables in some assimilated technical standards and to restate them in the PRA Rulebook. There are a few instances where the PRA proposes to modify certain areas as part of their restatement.

The more substantive proposals relate to proposed changes to the securitisation requirements. They include:

- a formulaic p-factor for the securitisation standardised approach (SEC-SA);
- a new capital treatment of retail residential mortgage loans under the Mortgage Guarantee Scheme (MGS) and private mortgage insurance schemes with similar contractual features to MGS; and
- supervisory expectations relating to the use of unfunded credit protection in synthetic significant risk transfer (SRT) securitisations.

Comments are due by 15 January 2025.

PRA consults on large exposures framework

The PRA has published a consultation paper (CP14/24) setting out its proposals to implement the remaining Basel large exposures standards (LEX standards).

The proposals in the consultation include:

- removing the possibility for firms to use internal model (IM) methods to calculate exposure values to securities financing transactions (SFTs);
- introducing a mandatory substitution approach to calculate the effect of the use of credit risk mitigation (CRM) techniques;
- merging the Large Exposures (CRR) and the Large Exposures Parts of the PRA rulebook to improve accessibility; and
- updating the supervisory statement (SS16/13) on large exposures (LE).

The PRA is also seeking views on amending the LE framework by:

- removing the option for firms to exceed LE limits for trading book exposures to third parties;
- allowing firms to exceed LE limits for trading book exposures to intragroup entities, and simplifying the calculation of the additional capital requirements;
- allowing firms to apply for higher LE limits to exposures to intragroup entities, and amend the conditions firms need to meet to mitigate the higher concentration risk;
- removing the exemption from LE limits to firms' exposures to the UK deposit guarantee scheme (DGS);
- removing the option for firms to use immovable property as CRM; and
- removing the stricter requirements on exposures to certain French counterparties.

Comments are due by 17 January 2025.

BoE consults on amendments to its approach to setting MREL

The BoE has published a consultation paper outlining proposed amendments to its approach to setting the minimum requirement for own funds and eligible liabilities (MREL). The proposals are intended to ensure that the UK's MREL framework:

- is simplified and consolidated where possible, to make it easier to navigate and implement;
- keeps up to date with, and is responsive to, wider developments in financial regulation and markets;
- remains aligned with international standards; and
- adapts over time to reflect lessons learnt from its implementation.

Comments are due by 15 January 2025.

The Government has issued a ministerial statement supporting the consultation and detailing its expectations regarding the interaction between the BoE's proposed policy and the Bank Resolution (Recapitalisation) Bill.

BaFin updates AML/CTF circular on high-risk third countries

The German Federal Financial Supervisory Authority (BaFin) has updated its Circular 08/2024 (GW) regarding countries with strategic deficiencies in combating money laundering and terrorism financing (AML/CTF) which pose serious risks to the global financial system (high-risk third countries).

The circular is relevant for all addressees of the German Money Laundering Act (Geldwäschegesetz - GWG) supervised by BaFin.

In this update, BaFin has incorporated the more stringent declaration on the Democratic People's Republic of Korea (North Korea) published by the Financial Action Task Force (FATF) on 28 June 2024 into the text of the circular, where it had previously been referred to by way of a link.

In the declaration, the FATF repeated its concerns regarding North Korea's continued failure to address the significant deficiencies in its AML/CFT regime and the serious threats posed by its illicit activities related to the proliferation of weapons of mass destruction and its financing. The FATF warned that these threats have amplified due to North Korea's increased connectivity with the international financial system and urged countries to adequately assess and account for this increased proliferation financing risk.

FINMA consults on Insolvency Ordinance

The Swiss Financial Market Supervisory Authority (FINMA) has launched a consultation on the new Ordinance on Insolvency Proceedings at Financial Institutions, which will replace the FINMA Banking Insolvency Ordinance, the FINMA Insurance Bankruptcy Ordinance and the FINMA Collective Investment Schemes Bankruptcy Ordinance. The provisions of the new ordinance are largely based on these three predecessor ordinances, which are currently still in force.

Among other things, the ordinance:

- aims to standardise the procedural rules as far as possible, and special provisions for individual categories of institution have been kept to the bare minimum; and
- now reflects the chronological sequence of restructuring and bankruptcy and their order in the law by also placing the restructuring provisions before the bankruptcy provisions at the level of the ordinance.

The consultation will end on 9 December 2024.

HKMA concludes consultation on proposed renaming of virtual banks

The Hong Kong Monetary Authority (HKMA) has published the conclusions of its August 2024 public consultation on the proposal to rename 'virtual banks' as 'digital banks'. Based on the feedback received, the HKMA considers that it is appropriate to rename 'virtual banks' as 'digital banks' to put more emphasis on the business models and financial technologies adopted by virtual banks rather than their form of presence. To implement the new name

‘digital banks’, the HKMA will introduce amendments to the Guideline on Authorisation of Virtual Banks shortly.