

REGWATCH

CACEIS Regulatory Watch Newsletter

April 2023

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- FSMA publishes Circular 2023_09 on AML/CFT periodic questionnaire

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- NBB publishes Communication 2023_04 on EBA and NBB benchmarking and prudential expectations concerning diversity

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

- FSMA publishes new Circular on the notification procedure for UCITS of another EEA Member State

PAYMENT SERVICES DIRECTIVE (PSD2) / SINGLE EURO PAYMENTS AREA (SEPA)

- Belgium publishes Law of 7 April 2023 on the introduction of certain information obligations applicable to payment service providers

SUSTAINABLE FINANCE / GREEN FINANCE

- NBB adopts key measures for a climate-neutral, sustainable and inclusive economy

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- Federal Ministry of Finance issues Draft law on the financing of future-proof investments (Future Financing Act – ZuFinG)

FINTECH / REGTECH / BIGTECH / SUPTECH / DIGITAL ECONOMY

- BaFin applies ESMA Guidelines for DLT-based market infrastructures

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- BaFin advises on the application of the allocation approach by life insurance undertakings in the narrower sense as well as pension funds under the EU Disclosure Regulation

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

- BVI publishes its position on MiFIR trilogue

IRELAND

ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE (AIFMD)

- CBI publishes 47th Edition of AIFMD Q&A

ITALY

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

- Banca d'Italia updates methodological framework governing its power of intervention with regard to financial instruments

LUXEMBOURG

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

- CSSF updates FAQ on Virtual Assets – Undertakings for collective investment / La CSSF met à jour la FAQ sur les Actifs Virtuels – Organismes de Placement Collectif

REGULATION ON SUSTAINABILITY-RELATED DISCLOSURES IN THE FINANCIAL SERVICES SECTOR (SDR)

- CSSF announces supervisory priorities on sustainable finance / La CSSF annonce des priorités prudentielles en matière de finance durable

REGULATION ON A PILOT REGIME FOR MARKET INFRASTRUCTURES BASED ON DISTRIBUTED LEDGER TECHNOLOGY (DLT REGULATION)

- CSSF issues Circular 23/832 on ESMA Guidelines for specific authorisation to operate a DLT infrastructure / La CSSF publie la circulaire 23/832 sur les orientations de l'ESMA pour l'autorisation spécifique d'exploitation d'une infrastructure DLT

NETHERLANDS

BANKING SUPERVISION

- AFM calls attention to transaction monitoring

FINANCIAL SERVICES COMPENSATION SCHEME

- The Netherlands pays compensation to expropriated holders of SNS securities and assets
- The Netherlands amends Sales Tax Act 1968 (Implementation Act Payment Service Providers Directive)

MEXICO

BOND MARKETS

- SHCP announces reduction of Mexico's external debt with bond swap and places its second sustainable bond in the dollar market

SPAIN

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

- CNMV approves the technical guide on strengthening the transparency of certain fixed income funds (buy and hold strategy and specific profitability objective)

UNITED KINGDOM

BENCHMARKS

- FCA publishes an article on finalising LIBOR transition

CROSS-BORDER ACTIVITIES

- BoE and CFTC issue joint statement on the supervision of cross-border central counterparties

EUROPEAN MARKET INFRASTRUCTURE REGULATION (EMIR)

- UK Government publishes Pension Fund Clearing Obligation Exemption and Intragroup Transaction Transitional Clearing and Risk-Management Obligation Exemptions Regulations 2023

FINANCIAL SERVICES

- FCA publishes update of joint discussion paper on operational resilience (4/11/2023)
- FCA sets clear plan for the next 12 months

MARKET ABUSE DIRECTIVE & REGULATION (MAD / MAR)

- UK legislation publishes Draft SI on Insider Dealing

SUSTAINABLE FINANCE / GREEN FINANCE

- UK government updates Green finance strategy (4/11/2023)

BRAZIL

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

- CVM advises on characterization of receivable tokens and fixed income tokens as securities

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

- CVM issues Circular letter to clarify provisions of CVM Resolution 175

PAYMENT SYSTEMS

- CMN Enhances Local Currency Payment System (SML)

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EUROPEAN UNION

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

FinDatEx updates EMT to Version 4.1

On April 11 2023, the Financial Data Exchange Templates (FinDatEx) published the version 4.1 of the European MiFID Template (EMT V4.1) making the necessary changes to comply with the upcoming UK consumer duty regime which starts applying from July 31 2023 for financial products and services.

The EMT V4.1 includes 10 new optional fields (which become mandatory and conditional apply only if 09030 is set to "Y") required for funds being distributed in the UK. These fields include:

09010 & 09020: Ex-ante and ex-post transaction costs (using the UK calculation methodology)

09030-09100: fields providing information on UK value for money.

REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

EP adopts MiCA Regulation and AML/CTF measures for cryptoassets

On April 20 2023, the European Parliament (EP) endorsed the first EU rules to trace crypto-asset transfers, preventing money laundering, as well as common rules on supervision and customer protection.

MEPs approved with 529 votes in favour to 29 against and 14 abstentions, the first piece of EU legislation for tracing transfers of crypto-assets like bitcoins and electronic money tokens. The text –which was provisionally agreed by Parliament and Council negotiators in June 2022- aims to ensure that crypto transfers, as is the case with any other financial operation, can always be traced and suspicious transactions blocked. The so-called “travel rule”, already used in traditional finance, will in future cover transfers of crypto assets. Information on the source of the asset and its beneficiary will have to “travel” with the transaction and be stored on both sides of the transfer.

The law would also cover transactions above €1000 from so-called self-hosted wallets (a crypto-asset wallet address of a private user) when they interact with hosted wallets managed by crypto-assets service providers. The rules do not apply to person-to-person transfers conducted without a provider or among providers acting on their own behalf.

Plenary also gave its final green light with 517 votes in favour to 38 against and 18 abstentions, to new common rules on the supervision, consumer protection and environmental safeguards of crypto-assets, including crypto-currencies (MiCA). The draft law agreed informally with the Council in June 2022 includes safeguards against market manipulation and financial crime.

MiCA will cover crypto-assets that are not regulated by existing financial services legislation. Key provisions for those issuing and trading crypto-assets (including asset-reference tokens and e-money tokens) cover transparency, disclosure, authorisation and supervision of transactions. Consumers would be better informed about the risks, costs and charges linked to their operations. In addition, the new legal framework will support market integrity and financial stability by regulating public offers of crypto-assets.

Finally, the agreed text includes measures against market manipulation and prevention of money laundering, terrorist financing and other criminal activities. To counter money-laundering risks the European Securities and Markets Authority (ESMA) should set up a public register for non-compliant crypto assets service providers that operate in the European Union without authorisation.

Furthermore, to reduce the high carbon footprint of crypto-currencies, service providers will have to disclose their energy consumption.

SUSTAINABLE FINANCE / GREEN FINANCE

EC publishes Q&As to further clarify certain aspects of the SFDR

On April 14 2023, the European Commission (EC) has responded to a set of questions that the European Supervisory Authorities (ESAs) submitted in September 2022. The replies provide significant clarifications on various SFDR provisions:

- sustainable investment can be measured at the level of an investee company and not only at the level of a specific activity.
- referring to a transition plan aiming to achieve that the whole investment does not significantly harm any of the environmental and social objectives in the future could for instance not be considered as sufficient.
- considering principal adverse impacts means not only providing a description of the adverse impacts, but also describing the procedures put in place to mitigate those impacts.

FRANCE

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

[AMF declares compliance with the ESMA guidelines on updating stress test scenarios / L'AMF se déclare conforme aux lignes directrices de l'ESMA sur la mise à jour des scénarios de stress test](#)

On April 19 2023, the Autorité des marchés financiers (AMF) announced complying with the ESMA guidelines on updating stress test scenarios in accordance with Article 28 of the Money Market Fund Regulation for 2023, by amending its position DOC-2018-05.

In accordance with Article 28 of Regulation (EU) 2017/1131 on money market funds (the MMF regulation), the manager of a money market fund is required to assess the impact of stress test scenarios on the fund. Under Article 37 of the MMF regulation, the results of stress tests on a money market fund must be reported to the fund's competent authority on a quarterly basis if the fund's assets exceed €100 million. Annual reporting is required for all the remaining funds. The competent authority then forwards this reporting to ESMA.

The ESMA guidelines published in 2019 (ESMA34-49-172) define the common reference parameters for different stress test scenarios. In accordance with Article 28(7) of the MMF Regulation, these guidelines are updated at least once a year to take into account the latest market developments. In this regard, ESMA published on January 27 2023 the official translations of its new guidelines on updating stress test parameters (ESMA50-164-6583). These new parameters result from a calibration which has been based on market conditions prevailing at the end of 2022. Those comprise in particular an increase of the stress parameters related to the credit spread of corporate bonds. This has been the third annual update of this data since the implementation of MMFR reporting in 2020.

The ESMA guidelines containing the updates to the reference parameters for stress test scenarios were published on January 27 2023. Under the "comply or explain" procedure, these guidelines apply two months after that date, i.e. on March 27 2023. Money market fund managers must use the updated stress test parameters from March 31 2023 onwards.

The AMF draws market fund managers' attention to the importance of updating these parameters on reporting due from March 31 2023. MMF managers who have updated parameters in reporting due before that date should correct them and resubmit their reporting with the previous parameters.

[Version française](#)

Le 19 avril 2023, l'Autorité des marchés financiers (AMF) a annoncé sa conformité aux lignes directrices de l'ESMA sur la mise à jour des scénarios de stress test conformément à l'article 28 du règlement sur les OPC monétaires pour 2023, en modifiant sa position DOC-2018-05.

Conformément à l'article 28 du règlement (UE) 2017/1131 sur les fonds monétaires (le règlement MMF), le gestionnaire d'un fonds monétaire est tenu d'évaluer l'impact des scénarios de stress test sur le fonds. En vertu de l'article 37 du règlement MMF, les résultats des stress tests d'un fonds monétaire doivent être communiqués trimestriellement à l'autorité compétente du fonds si l'actif du fonds dépasse 100 millions d'euros. Un rapport annuel est requis pour tous les fonds restants. L'autorité compétente transmet ensuite cette déclaration à l'AEMF.

Les lignes directrices de l'ESMA publiées en 2019 (ESMA34-49-172) définissent les paramètres de référence communs pour différents scénarios de stress test. Conformément à l'article 28, paragraphe 7, du règlement MMF, ces lignes directrices sont mises à jour au moins une fois par an pour tenir compte des dernières évolutions du marché. À cet égard, l'ESMA a publié le 27 janvier 2023 les traductions officielles de ses nouvelles lignes directrices sur la mise à jour des paramètres des tests de résistance (ESMA50-164-6583). Ces nouveaux paramètres résultent d'un calibrage qui s'est basé sur les conditions de marché prévalant fin 2022. Ceux-ci comprennent notamment une augmentation des paramètres de stress liés au spread de crédit des obligations d'entreprises. Il s'agit de la troisième mise à jour annuelle de ces données depuis la mise en œuvre du reporting MMFR en 2020.

Les lignes directrices de l'ESMA contenant les mises à jour des paramètres de référence pour les scénarios de stress test ont été publiées le 27 janvier 2023. Dans le cadre de la procédure « appliquer ou expliquer », ces lignes directrices s'appliquent deux mois après cette date, soit le 27 mars 2023. Les gestionnaires de fonds monétaires doivent utiliser les paramètres de test de résistance mis à jour à partir du 31 mars 2023.

L'AMF attire l'attention des gestionnaires de fonds de marché sur l'importance d'une mise à jour de ces paramètres sur le reporting dû à compter du 31 mars 2023. Les gestionnaires monétaires ayant mis à jour des paramètres dans le reporting dû avant cette date doivent les corriger et retransmettre leur reporting avec les paramètres précédents.

REGULATION ON A PILOT REGIME FOR MARKET INFRASTRUCTURES BASED ON DISTRIBUTED LEDGER TECHNOLOGY (DLT REGULATION)

[French financial authorities specify the conditions for examining DLT market infrastructure project files / Les autorités financières françaises précisent les conditions d'examen des dossiers de projets d'infrastructures de marché DLT](#)

On April 12 2023, the Autorité des marchés financiers (AMF), the Autorité de contrôle prudentiel et de résolution (ACPR) and the Banque de France detailed to market infrastructure project developers based on distributed ledger technology (DLT) the entry points to submit their applications for specific permissions, exemptions and/or compensatory measures.

The Regulation (EU) 2022/858 of May 30 2022 on a pilot regime for market infrastructures based on distributed ledger technology (DLT) allows investment service providers, market undertakings and central securities depositories to operate a multilateral trading facility (DLT MTF) where appropriate, a settlement system (SR DLT) or a trading and settlement system (SNR DLT) whose operation is based on DLT technology. The regulation came into force on March 23 2023. The pilot scheme will have a duration of 3 years, renewable once.

The pilot scheme aims to enable innovation and experimentation within a regulatory framework that ensures investor protection, market integrity and financial stability in activities related to the trading and post-trade of financial instruments. It allows the issuance, recording, transfer and storage of so-called "tokenized" DLT financial instruments, i.e. in the form of digital tokens. This is the possibility of digitally backing a financial instrument and the rights attached to it to a

distributed ledger (DLT), or blockchain, and carrying out transactions in central bank or commercial bank money, including tokenized, or even using electronic money tokens.

The Pilot Regulation creates three new categories of market infrastructures "DLT", each subject to a specific authorisation procedure:

- The multilateral trading facility DLT (MTF DLT): a trading venue operated by an investment services provider or a market firm, in addition to any authorised natural and legal persons;
- The DLT Settlement System (SR DLT): it allows the settlement of transactions on DLT financial instruments against payment or delivery. This settlement system is operated by a central securities depository (CSD) authorised in accordance with the provisions of Regulation 909/2014 CSDR;
- The DLT Trading and Settlement System (SNR DLT): a market infrastructure that offers both the services of the trading and settlement systems MTF DLT and SR DLT.

The pilot scheme puts in place requirements for different market infrastructures. The latter must first apply for a specific operating permit from the competent authority of each Member State. Derogations and exemptions, under certain specific conditions, may be requested under this procedure.

On March 8 2023, the European Securities and Markets Authority (ESMA) published its Guidelines on standardised forms, formats and templates to be used when applying for authorisation to operate a market infrastructure. The competent national authorities may be contacted in order to provide any additional information on the necessary elements to be provided in support of such a request.

Any information provided in the context of an application for authorisation to operate a DLT market infrastructure and/or a request for exemption from compliance with the application of certain obligations to European texts must be transmitted on a durable medium. The files can be written in French or English, but it is preferable to use English to facilitate their transmission to the other European authorities concerned.

Applicants who do not have prior authorisation as an investment services provider, investment firm, market firm or central securities depository must apply for authorisation in parallel:

- For investment firms, credit institutions providing investment services and credit and investment institutions, with the ACPR's Fintech Innovation cluster (fintech-innovation@acpr.banque-france.fr) which will then direct project leaders to the ACPR's Authorisation Directorate.
- For market undertakings and central securities depositories, with the Autorité des marchés financiers (innovation@amf-france.org).

For entities already approved wishing to benefit from the pilot scheme, they must obtain prior authorisation from the competent authorities. Depending on the nature of the authorisation sought, the ACPR or the AMF are, after consulting the Banque de France. To do this, entities applying for the pilot scheme are invited to follow the following procedure:

- Contact, as appropriate, the secretariat of the ACPR Authorisation Directorate for EC-PSIs, CIs and SIs or the AMF's Directorate for the Supervision of Intermediaries and Market Infrastructures for market undertakings and central securities depositories (infrastructures@amf-france.org) in order to arrange an appointment to present their project and to examine the provisional timetable for implementation.
- Complete and file, as applicable, in the ACPR authorisation portal or with the AMF (infrastructures@amf-france.org) the dossier corresponding to the authorisation applied for, accompanied by all the supporting documents, including the application form set out in Appendix guidance from the European Securities and Markets Authority on standard forms, formats and templates to be used when applying for authorisation to operate a DLT market infrastructure.

Version française

Le 12 avril 2023, l'Autorité des marchés financiers (AMF), l'Autorité de contrôle prudentiel et de résolution (ACPR) et la Banque de France ont précisé aux porteurs de projets d'infrastructures de marché basés sur la technologie des registres distribués (DLT) les points d'entrée pour déposer leurs demandes de autorisations, exemptions et/ou mesures compensatoires spécifiques.

Le règlement (UE) 2022/858 du 30 mai 2022 relatif à un régime pilote pour les infrastructures de marché fondé sur la technologie des registres distribués (DLT) permet aux prestataires de services d'investissement, aux entreprises de marché et aux dépositaires centraux de titres d'exploiter un système multilatéral de négociation (DLT MTF) le cas échéant, un système de règlement (SR DLT) ou un système de négociation et de règlement (SNR DLT) dont le fonctionnement repose sur la technologie DLT. Le règlement est entré en vigueur le 23 mars 2023. Le projet pilote aura une durée de 3 ans, renouvelable une fois.

Le programme pilote vise à permettre l'innovation et l'expérimentation dans un cadre réglementaire qui garantit la protection des investisseurs, l'intégrité du marché et la stabilité financière dans les activités liées à la négociation et à la post-négociation d'instruments financiers. Il permet l'émission, l'enregistrement, le transfert et le stockage d'instruments financiers DLT dits "tokénisés", c'est-à-dire sous forme de jetons numériques. Il s'agit de la possibilité d'adosser numériquement un instrument financier et les droits qui y sont attachés à un registre distribué (DLT), ou blockchain, et d'effectuer des transactions en monnaie de banque centrale ou de banque commerciale, y compris tokenisée, voire en utilisant des jetons de monnaie électronique.

Le Règlement Pilote crée trois nouvelles catégories d'infrastructures de marché « DLT », chacune soumise à une procédure d'autorisation spécifique :

- *le système multilatéral de négociation DLT (MTF DLT) : une plate-forme de négociation exploitée par un prestataire de services d'investissement ou une entreprise de marché, ainsi que d'éventuelles personnes physiques et morales autorisées ;*
- *le DLT Settlement System (SR DLT) : il permet le règlement des transactions sur instruments financiers DLT contre paiement ou livraison. Ce système de règlement est opéré par un dépositaire central de titres (CSD) agréé conformément aux dispositions du règlement 909/2014 CSDR ;*
- *le DLT Trading and Settlement System (SNR DLT) : une infrastructure de marché qui offre à la fois les services des systèmes de négociation et de règlement MTF DLT et SR DLT.*

Le programme pilote met en place des exigences pour différentes infrastructures de marché. Ces derniers doivent au préalable solliciter une autorisation d'exploitation spécifique auprès de l'autorité compétente de chaque État membre. Des dérogations et des exemptions, sous certaines conditions précises, peuvent être demandées dans le

cadre de cette procédure.

Le 8 mars 2023, l'Autorité européenne des marchés financiers (ESMA) a publié ses lignes directrices sur les formulaires, formats et modèles standardisés à utiliser lors d'une demande d'autorisation d'exploitation d'une infrastructure de marché. Les autorités nationales compétentes peuvent être contactées afin de fournir toute information complémentaire sur les éléments nécessaires à fournir à l'appui d'une telle demande.

Toute information fournie dans le cadre d'une demande d'autorisation d'exploitation d'une infrastructure de marché DLT et/ou d'une demande de dérogation au respect de l'application de certaines obligations aux textes européens doit être transmise sur un support durable^[1]. Les dossiers peuvent être rédigés en français ou en anglais, mais il est préférable d'utiliser l'anglais pour faciliter leur transmission aux autres autorités européennes concernées.

Les candidats qui ne disposent pas d'un agrément préalable en tant que prestataire de services d'investissement, entreprise d'investissement, entreprise de marché ou dépositaire central de titres doivent demander un agrément en parallèle :

- pour les entreprises d'investissement, les établissements de crédit prestataires de services d'investissement et les établissements de crédit et d'investissement, avec le pôle Fintech Innovation de l'ACPR (fintech-innovation@acpr.banque-france.fr) qui orientera ensuite les porteurs de projets vers la Direction Agrément de l'ACPR.
- pour les entreprises de marché et les dépositaires centraux de titres, auprès de l'Autorité des marchés financiers (innovation@amf-france.org).

Pour les entités déjà agréées souhaitant bénéficier du régime pilote, elles doivent obtenir une autorisation préalable des autorités compétentes. Selon la nature de l'agrément sollicité, l'ACPR ou l'AMF le sont, après avis de la Banque de France. Pour ce faire, les entités candidates au dispositif pilote sont invitées à suivre la procédure suivante :

- Contacter, selon le cas, le secrétariat de la direction de l'agrément des EC-PSI, CI et SI de l'ACPR ou la direction de la surveillance des intermédiaires et des infrastructures de marché de l'AMF pour les entreprises de marché et les dépositaires centraux de titres (infrastructures@amf-france.org) au afin de convenir d'un rendez-vous pour présenter leur projet et examiner le calendrier prévisionnel de réalisation.
- Compléter et déposer, selon le cas, sur le portail d'agrément de l'ACPR ou auprès de l'AMF (infrastructures@amf-france.org) le dossier correspondant à l'agrément demandé, accompagné de tous.

ACPR declares compliance with ESMA rules on application for DLT market infrastructure authorisation / L'ACPR se déclare conforme aux règles de l'ESMA sur la demande d'autorisation d'exploitation d'une infrastructure de marché DLT

On April 21 2023, the Autorité de contrôle prudentiel et de résolution (ACPR) announced its implementation of the European Securities and Markets Authority's guidance on standardised forms, formats and templates to be used when applying for authorisation to operate a DLT market infrastructure (ESMA 70-460-213).

This guidance details the information to be provided by applicants wishing to operate a multilateral trading facility, a settlement system or a trading and settlement system based on distributed ledger technology. It also details the information to be included in the application for exemption from certain provisions of Directive 2014/65/EU and Regulation (EU) No 600/2014 on markets in financial instruments.

This guidance is applicable to investment services providers - credit institutions, investment firms, credit and investment institutions, central securities depositories as well as market undertakings, which should make every effort to comply with it, in accordance with the provisions of Article 16(3) of Regulation (EU) No 1095/2010 establishing the European Securities and Markets Authority.

Version française

Le 21 avril 2023, l'Autorité de contrôle prudentiel et de résolution (ACPR) a annoncé la mise en œuvre des orientations de l'Autorité européenne des marchés financiers sur les formulaires, formats et modèles standardisés à utiliser lors d'une demande d'autorisation d'exploitation d'une infrastructure de marché DLT (ESMA 70 -460-213).

Ces orientations détaillent les informations à fournir par les candidats souhaitant exploiter un système multilatéral de négociation, un système de règlement ou un système de négociation et de règlement basé sur la technologie des registres distribués. Il détaille également les informations à inclure dans la demande d'exemption de certaines dispositions de la directive 2014/65/UE et du règlement (UE) n° 600/2014 concernant les marchés d'instruments financiers.

Ces orientations sont applicables aux prestataires de services d'investissement - établissements de crédit, entreprises d'investissement, établissements de crédit et d'investissement -, aux dépositaires centraux de titres ainsi qu'aux entreprises de marché, qui mettent tout en œuvre pour s'y conformer, conformément aux dispositions de l'article 16, paragraphe 3) du règlement (UE) no 1095/2010 instituant l'Autorité européenne des marchés financiers.

REGULATION ON MARKETS IN CRYPTO-ASSETS (MiCA)

AMF publishes communication on EP's adoption of the MiCA regulation / L'AMF publie une communication sur l'adoption par le PE du règlement MiCA

On April 27 2023, the Autorité des marchés financiers (AMF) published a communication on Markets in Crypto-Assets (MiCA) regulation, which seeks to regulate crypto-assets that are not covered by existing European regulations on financial instruments and products, and create a balanced European regulatory framework that aims to protect European investors. The European Parliament formally adopted this regulation in a plenary session on Thursday April 20.

The text covers the offering and admission to trading of crypto-assets (including stablecoins), as well as the provision services in relation to such crypto-assets. It also contains a framework for the prevention and prohibition of market abuse in crypto-assets that will apply to anyone involved in trading these assets. The regulation will replace the national frameworks put in place by EU member states, including the French framework introduced by the PACTE law of May 19 2019, which established a specific regime for initial coin offerings (ICOs) and for digital asset service providers (DASPs).

The MiCA regulation requires mandatory licensing for crypto-asset service providers (CASPs), with requirements similar to those of the optional licensing regime for DASPs under France's current framework. Providers licensed under the MiCA regulation will be able to benefit from the European passport and provide their services in all EU countries.

Non-fungible tokens (NFTs) are excluded from the scope of the MiCA regulation, unless they meet certain criteria mentioned in the text. The European Commission will be tasked to review developments in relation to this aspect, and assess the need to propose a specific regime in relation to NFTs within 18 months of the text's

entry into force.

Where services on crypto-assets are provided in a fully decentralized manner without intermediaries (Decentralized Finance or DeFi), they are excluded from the scope of the text. The Commission will also review developments in relation to decentralized finance and assess the potential to develop rules in this area.

The AMF welcomes the adoption of the text and of the progress made in the European legislative process. This regulation will help to increase the competitiveness of French and European players by creating a harmonised European framework, and will ensure better protection for investors.

The French parliamentary Law of March 9 2023 that contained various provisions adapting French law to various European Union legislative requirements in relation to economic, health, labor, transport and agricultural matters (DDADUE Law) has clarified certain provisions relating to MiCA. It clarifies the provisions that relate to the additional transitional period of 18 months that will apply after entry into application of the text, and which will be granted to DASPs that have either a "simple" registration, an "enhanced" registration, an optional license, or for those providing services referred to under 5° of Article L. 54-10-2 of the Monetary and Financial Code. During this period, these providers may continue to offer their services to the French public only.

In addition, the DDADUE Law, within one year of the enactment of the law, empowers the government to adopt by decree any measure intended to adapt the provisions of national law to ensure their consistency and compliance with MiCA.

In consultation with stakeholders, the AMF will adapt its General Regulation and its policy documents in order to facilitate the transition of DASPs towards MiCA:

- alignment of capital requirements applying to licensed DASPs with those required under MiCA;
- alignment of the documentation required for DASP licensing with those required for a CASP license;
- clarifications on the scope of the conflicts of interest policy required under a DASP license ;
- clarifications on the digital asset custody policy;
- considerations around a potential "fast-track" type approval between DASP status and that of CASP under MiCA, pursuant to Article 143 (6) of MiCA;
- clarification of the respective roles of the AMF and ACPR regarding the application of MiCA.

Subject to adoption by the Council of the European Union, the text will enter into force in July 2023. It will be applicable 18 months after this date, from January 2025.

The European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) will also have to publish the implementing technical standards and guidelines that will specify the implementation of certain provisions of the regulation. These texts will initially be the subject of public consultation, prior to their final publication in 2024. The AMF is taking an active role in the preparation of these texts so that stakeholders can have access to the technical standards as quickly as possible in order to prepare for entry into application.

In consultation with the Autorité de Contrôle Prudentiel et de Résolution (ACPR), the AMF is already working with stakeholders and industry associations to support the transition from the French framework to the European framework.

[Version française](#)

Text

SUSTAINABLE FINANCE / GREEN FINANCE

[AFG publishes note on principles for the framework definition of sustainable investment in the sense of SFDR / L'AFG publie une note de principes pour la définition de l'investissement durable au sens du SFDR](#)

On April 3 2023, the Association Française de Gestion (AFG) published a recommendation on the SFDR Framework Principles for Sustainable Investing.

The level 2 measures of the SFDR came into force on January 1st 2023 with, in particular, the obligation to publish the sustainable investment share of a financial product. The lack of clarity in the very general definition of sustainable investing according to SFDR has led actors to very different interpretations of each other. The AFG and its members therefore wished to clarify this definition around major common principles. As the revision of the FRDS will not take place before 2025, these main principles could be both an aid to the application of the definition and a tool for greater convergence.

Far from considering this deliverable as final, the AFG continues to work on the subject and to exchange with other stakeholders who have also started work. Clarifications may come from the authorities and the AFG will modify or enrich its recommendations accordingly. These definition principles are supported by the AFG in a context where the other stakeholders concerned are also having ongoing reflections.

In summary, the AFG recommends considering the company as sustainable as a whole when it is identified as:

- "active" (alignment with taxonomy or positive contribution to the issues listed in the SFDR Regulation, using a commonly accepted analytical framework, such as the United Nations SDGs)
- and/or committed (measurable and enforceable commitment, e.g. commitment of a company in the transition measured by its current or projected investments and with monitoring of progress by the SGP, which has an escalation procedure).

More specifically, the AFG recommends taking into consideration different (non-cumulative) elements to define a company's contribution to an environmental or social objective:

- As already specified by the regulations, the share of turnover, CapEx and/or Opex forecasts contributing to an environmental or social objective;
- A company's commitment to the transition: as long as it offers solutions that contribute to an E or S objective or has a robust, measurable and enforceable transition plan aligned with the Paris Agreement.
- Any other quantitative element enabling the assessment of the contribution of the undertaking to an E or S objective.

In addition to this contribution, there is the principle that none of these objectives should be prejudiced (through the SFR IAPs) and that the companies in which investments are made should apply good governance practices.

The AFG calls on management companies to be transparent about their methodology and in particular about the threshold from which a company is considered sustainable in its entirety.

Version française

Le 3 avril 2023, l'Association Française de Gestion (AFG) a publié une recommandation sur les SFDR Framework Principles for Sustainable Investing.

Les mesures de niveau 2 du SFDR sont entrées en vigueur le 1er janvier 2023 avec notamment l'obligation de publier la part d'investissement durable d'un produit financier. Le manque de clarté de la définition très générale de l'investissement durable selon le SFDR a conduit les acteurs à des interprétations très différentes les unes des autres. L'AFG et ses membres ont donc souhaité préciser cette définition autour de grands principes communs. La révision de la FRDS n'ayant pas lieu avant 2025, ces grands principes pourraient être à la fois une aide à l'application de la définition et un outil pour une plus grande convergence.

Loin de considérer ce livrable comme définitif, l'AFG continue de travailler sur le sujet et d'échanger avec d'autres acteurs qui ont également entamé des travaux. Des éclaircissements pourront venir des autorités et l'AFG modifiera ou enrichira ses recommandations en conséquence. Ces principes de définition sont soutenus par l'AFG dans un contexte où les autres acteurs concernés ont également des réflexions en cours.

En résumé, l'AFG recommande de considérer l'entreprise comme durable dans son ensemble lorsqu'elle est identifiée comme :

- "actif" (alignement avec la taxonomie ou contribution positive aux enjeux listés dans le règlement SFDR, en utilisant un cadre d'analyse communément accepté, tel que les ODD des Nations Unies)
- et/ou engagé (engagement mesurable et opposable, par exemple engagement d'une entreprise dans la transition mesuré par ses investissements en cours ou projetés et avec suivi de l'avancement par la SGP, qui dispose d'une procédure d'escalade).

Plus précisément, l'AFG recommande de prendre en considération différents éléments (non cumulatifs) pour définir la contribution d'une entreprise à un objectif environnemental ou social :

- comme déjà précisé par la réglementation, la part du chiffre d'affaires, des prévisions CapEx et/ou Opex contribuant à un objectif environnemental ou social ;
- l'engagement d'une entreprise dans la transition : tant qu'elle propose des solutions qui contribuent à un objectif E ou S ou qu'elle dispose d'un plan de transition solide, mesurable et exécutoire aligné sur l'Accord de Paris.
- tout autre élément quantitatif permettant d'apprécier la contribution de l'entreprise à un objectif E ou S.

A cette contribution s'ajoute le principe qu'aucun de ces objectifs ne doit être lésé (au travers des PAI SFR) et que les sociétés dans lesquelles les investissements sont réalisés doivent appliquer de bonnes pratiques de gouvernance.

L'AFG appelle les sociétés de gestion à être transparentes sur leur méthodologie et notamment sur le seuil à partir duquel une société est considérée comme durable dans son ensemble.

BELGIUM

ANTI-MONEY LAUNDERING / COMBATING THE FINANCING OF TERRORISM (AML / CFT)

FSMA publishes Circular 2023_09 on AML/CFT periodic questionnaire

On April 25 2023, the Financial Services and Markets Authority (FSMA) published the Circular 2023_09 on the periodic questionnaire on the prevention of money laundering and terrorist financing (AML/CFT).

This Circular informs obliged entities about the content and modalities of transmission of information to assess the compliance and effectiveness of the AML/CFT framework they have put in place.

The December 31 2022 questionnaire was made available on the FiMiS platform on April 25 2023. It should be completed as soon as possible and no later than May 29 2023.

GOVERNANCE

NBB publishes Communication 2023_04 on EBA and NBB benchmarking and prudential expectations concerning diversity

On April 12 2023, the National Bank of Belgium (NBB) published Communication 2023_04 on European Banking Authority (EBA) and NBB benchmarking and supervisory expectations concerning diversity.

The communication applies to credit institutions under Belgian law, stock exchange companies under Belgian law, branches established in Belgium of credit institutions and stock exchange companies governed by the law of States which are not members of the European Economic Area, within the framework of consolidated or sub-consolidated supervision, approved or designated (mixed) financial companies under Belgian law.

Pursuant to Article 31 of the Banking Act and Article 29 of the Stock Exchange Control Act, financial institutions must:

- (i) draw up a diversity policy referring at least to the following aspects: age, gender, educational background, professional background and, for institutions operating internationally, geographical origin,
- (ii) set a target for the representation of the under-represented gender on the legal governing body;
- (iii) develop a policy to increase the number of such representatives.

In this context, the National Bank of Belgium reports on the results of the latest EBA benchmarking exercise on diversity and the gender pay gap, as well as on the benchmarking exercise it has carried out at Belgian level. The overall conclusion is that the progress made in recent years in terms of representation of the under-represented gender in the management bodies of financial institutions is still too limited and that a change of culture is expected from these institutions as well as a correct implementation of the legislation, both in letter and in spirit.

The Bank recalls that all financial institutions must implement a diversity policy. The Bank will pay particular attention to the review of the content of diversity policies and their implementation, including the recruitment processes for members of the legal governing body.

The Bank invites financial institutions to continue their efforts to overcome the weaknesses identified, taking into account the results of the benchmarking exercises in the Annex.

The Bank recommends that financial institutions pay greater attention to gender diversity aspects in their boards of directors in the short to medium term. Further benchmarking exercises will be carried out in the coming years, at European and Belgian level, in order to be able to assess these improvements.

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

FSMA publishes new Circular on the notification procedure for UCITS of another EEA Member State

On 30 March 2023, the Financial Services and Markets Authority (FSMA) published its Circular FSMA_2023_07 on the notification procedure for UCITS governed by the law of another Member State of the European Economic Area and fulfilling the conditions of Directive 2009/65/EC (UCITS Directive)

This circular contains information on the laws, regulations and administrative provisions that apply to UCITS from another EEA Member State that wish to market their units in Belgium.

It provides an overview of the regulatory framework and of the circumstances in which a notification procedure is required. It also explains the procedure to follow when submitting or updating a notification dossier or when notifying the termination of marketing and the obligations that apply when units are marketed in Belgium.

PAYMENT SERVICES DIRECTIVE (PSD2) / SINGLE EURO PAYMENTS AREA (SEPA)

Belgium publishes Law of 7 April 2023 on the introduction of certain information obligations applicable to payment service providers

On April 18 2023, Belgium published the Law of April 7 2023 amending the Value Added Tax (VAT) Code with regard to the introduction of certain information obligations applicable to payment service providers.

This amendment to the VAT Code is made in the context of the development of e-commerce, which facilitates the sale of goods and the provision of services across borders to final consumers in the Member States.

The Law of April 7 2023 sets the legislative framework for the new obligations of payment service providers. Payment service providers will be obliged to:

- to keep sufficiently accurate data (quarterly records of cross-border payments);

- communicate certain cross-border payments, which are considered as such depending on the location of the payer and the beneficiary of the payment, to the national tax authorities.

It should be noted that the quarterly register only needs to be kept if the number of cross-border payments per calendar quarter exceeds 25.

The registers are kept by payment service providers in electronic format for a period of three calendar years from the end of the calendar year of the date of payment.

Furthermore, the Law of April 7 2023 must be read in conjunction with Council Regulation (EU) 2020/283 of February 18 2020, which essentially provides that the information received by tax administrations concerning the relevant cross-border payments must be transmitted to a Central Electronic System of Payment Information (CESOP) set up at European level by the Regulation.

CESOP will store, aggregate and analyse, in respect of individual payees, all VAT-relevant payment information transmitted by Member States. This will provide a complete overview of payments received by payees from payers established in Member States and make the results of specific analyses available to certain national officials (officials acting as liaison officers for the Eurofisc network).

SUSTAINABLE FINANCE / GREEN FINANCE

NBB adopts key measures for a climate-neutral, sustainable and inclusive economy

On April 4 2023, the National Bank of Belgium (NBB) published a communication announcing it has adopted key measures for a climate-neutral, sustainable and inclusive economy.

On March 29, the NBB published its Charter on Sustainable and Responsible Investment as well as climate-related financial information. These two documents mark a major step towards a climate-neutral, sustainable and inclusive economy.

With these documents, the SNB is affirming its commitment to sustainable and responsible investing. The Charter on Sustainable and Responsible Investment provides a high-level framework for integrating these aspects into the management of the Bank's own reserves. The principles of sustainable and responsible investment are increasingly shaping the Bank's activities, including the management of its non-monetary policy portfolios. In this regard, the Bank considers sustainability as a fourth objective of its strategic asset allocation policy, alongside liquidity, safety and return.

The Charter on Sustainable and Responsible Investment builds on previous initiatives and existing practices (e.g. issuer exclusion procedures based on sustainability and responsibility characteristics). It is intended to inform and guide the management of the Bank's non-monetary policy portfolios. The Charter is enriched with best practices and incorporates information and experiences shared internationally, such as the recommendations of the Network for Greening the Financial System (NGFS). Compliance with international standards has also been ensured, for example in the valuation of green and social bonds. The Charter will serve as a reference for the teams responsible for designing and implementing the Bank's investment strategies and activities.

Similarly, the Climate Data Transparency document is based on the growing awareness of the importance of climate change risks for investment portfolios. The Bank's initial information on climate change risks and opportunities provides transparency on the greenhouse gas emissions associated with the management of its own reserves. They mark the beginning of an annual reporting cycle that will help continue the Bank's internal climate change efforts and inform its external stakeholders.

In line with the communication pillar of the Charter, the Bank aims to ensure transparency by providing adequate information to the public on the impact of climate change risks on its portfolios and their management. The published parameters include issues financed by the Bank as an asset holder, i.e. the financed portion of its Scope 3 issues. The reporting methodology is based on the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), established by the Financial Stability Board. The uniform approach used was developed jointly by the Eurosystem national central banks and the European Central Bank and is particularly useful for the calculation of climate-related parameters.

GERMANY

CAPITAL MARKETS UNION (CMU)

Federal Ministry of Finance issues Draft law on the financing of future-proof investments (Future Financing Act – ZuFinG)

On April 12 2023, the Bundesfinanzministerium (Federal Ministry of Finance) issued Draft law on the financing of future-proof investments (Future Financing Act – ZuFinG).

Germany needs investment on an almost unprecedented scale. This is the only way to secure prosperity under the changing conditions and at the same time to quickly adapt society and the economy to digitization and climate protection. It is necessary to strengthen the performance of the German capital market and to increase the attractiveness of the German financial center as an important part of a strong European financial center. In particular, start-ups, growth companies and small and medium-sized enterprises (SMEs) as drivers of innovation are to be facilitated to access the capital market and raise equity.

Regulations in financial market law, company law and tax law are to be further developed with a view to achieving this goal.

Digitization, de-bureaucratization and internationalization are intended to make the German financial market and Germany more attractive as a business location for both national and international companies and investors. Equities and listed securities are to become more attractive as capital investments in order to strengthen the demand side (incentives for shares as an investment) and supply side (increase in the number of listed companies in Germany).

FINTECH / REGTECH / BIGTECH / SUPTECH / DIGITAL ECONOMY

BaFin applies ESMA Guidelines for DLT-based market infrastructures

On April 19 2023, the Federal Financial Supervisory Authority (BaFin) published an article on the application of the German version of the ESMA guidelines for DLT-based market infrastructures of March 8 2023 in its supervisory practice.

The guidelines are addressed to competent authorities as well as to market participants applying for specific authorisations for the operation of DLT market infrastructures.

The aim of the guidelines is to establish consistent, efficient and effective supervisory practices within the European System of Financial Supervision comprising the three European and national supervisory authorities for the specific authorisation of multilateral DLT trading facilities (DLT MTFs).

INSURANCE

BaFin advises on the application of the allocation approach by life insurance undertakings in the narrower sense as well as pension funds under the EU Disclosure Regulation

On April 26 2023, the Federal Financial Supervisory Authority (BaFin) published a fact sheet on the application of the allocation approach by life insurance undertakings in the narrower sense as well as pension funds and pension funds under the EU Disclosure Regulation.

The optional attribution approach describes how specific investments can be allocated to specific financial products for disclosure purposes. The allocation approach applies to new financial products of life insurance undertakings in the narrower sense, pension funds and pension funds for which additional information must be disclosed in accordance with Article 8 or 9 of the EU Disclosure Regulation (Regulation (EU) 2019/2088). The focus is on "classic life insurance" products that are advertised with at least ecological and/or social characteristics.

This leaflet is applicable to a life insurance company in the narrower sense based in Germany or in a third country according to § 1 para. 1 No. 1 VAG in connection with Section 7 No. 33 or Section 7 No. 34 and 6 VAG (LVU) and Pensionskassen and pension funds domiciled in Germany which, as financial market participants within the meaning of Art. 2 No. 1 SFDR, are a financial product within the meaning of of Art. 2 No. 12 SFDR in Germany, which must be disclosed under Art. 8 or 9 SFDR.

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

BVI publishes its position on MiFIR trilogue

On April 20 2023, the Bundesverband Investment (BVI) published its position on the MiFIR trilogue.

The purpose of this note is to highlight the German buy-side core priorities in relation to the coming trilogue to ensure that the EU will develop an internationally competitive and efficient Capital Markets Union for the benefit of companies and investors. The buy-side main priorities are the removal of Article 26 transaction reporting on AIF/UCITS, a viable real-time and pre-trade shares consolidated tape (CT), cost-based market data pricing rules, and liquidity protecting bond deferrals on large trades. In addition, BVI continues to support in full sell-side demands not to restrict the use of waivers, deferrals, and Systematic Internalisers (SI) in order to keep liquidity in the EU.

IRELAND

ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE (AIFMD)

CBI publishes 47th Edition of AIFMD Q&A

On April 4 2023, the Central Bank of Ireland (CBI) published the 47th Edition of the AIFMD Q&A.

This edition of the Q&A revises ID1145, which considers if a RIAIF or a QIAIF can invest either directly or indirectly in crypto-assets. The revised Q&A does not change the Central Bank's position in relation to RIAIFs. The Central Bank is increasing limits for indirect exposure to digital assets, depending on the liquidity provided by the QIAIF:

- Where a QIAIF is open-ended it can gain exposure to digital assets of up to 20% of NAV.
- Where a QIAIF is closed-ended or has limited liquidity it can it can gain exposure to digital assets of up to 50% of NAV.

In light of the above, the Central Bank has updated the pre-submission process for Qualifying Investor AIFs proposing to invest indirectly in digital assets in excess of what is outlined in the AIFMD Q&A ID1145 or any direct investment in digital assets.

ITALY

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE AND REGULATION (MIFID II / MIFIR)

Banca d'Italia updates methodological framework governing its power of intervention with regard to financial instruments

On April 26 2023, the Banca d'Italia updated the methodological framework governing its power of intervention with regard to financial instruments.

Regulation EU/2014/600 (MiFIR), which entered into force on January 3 2018, introduced important innovations in the financial field, including the attribution to national supervisory authorities, such as the Bank of Italy and Consob, of the power to intervene in financial instruments.

This power allows authorities to prohibit or restrict the marketing, distribution or sale of financial instruments and structured deposits, as well as certain related financial activities and practices.

The Banca d'Italia has developed an automated procedure to identify potentially risky financial instruments based on their complexity and the amount of its traded volumes, selecting those flagged for further investigation. The typology includes:

- Transferable securities
- Instruments of the financial market
- Units undertaking collective investments
- Option contracts, standardized forward financial contracts, swaps, forward contracts, and other contracts on derivative instruments
- Financial derivative instruments for the transfer of credit risk
- Financial differential contracts
- Emission quotas

Moreover, the procedure is extended to examine the following criteria:

- The size of the market
- The characteristics of financial leverage
- Factors of risk and return
- Liquidity

A taxonomy of risks to financial stability has likewise been prepared, including related indicators to be analysed for each financial instrument:

- Complexity
- The risk characteristics of the instrument
- The characteristics of the reference market
- The characteristics of the issuer
- Market liquidity

For each of these macro-areas, the analysis focuses on a few indicative variables (e.g. leverage ratios, volatility indicators of the prices of the instruments and of the underlying market/instrument, yield indices, volumes and concentration indices of the instruments held, liquidity indicators).

LUXEMBOURG

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

CSSF updates FAQ on Virtual Assets – Undertakings for collective investment / La CSSF met à jour la FAQ sur les Actifs Virtuels – Organismes de Placement Collectif

On April 6 2023, the Commission de Surveillance du Secteur Financier (CSSF) updated its FAQ on Virtual Assets – Undertakings for collective investment.

Q2. May an AIF invest in virtual assets?

Investments in virtual assets as defined in the AML/CTF Law could be compatible with funds aimed at the professional investor on condition that the investment by the fund in virtual assets does not prevent the application of and compliance with existing regulatory requirements. In consequence, an AIF may invest directly (and indirectly) in virtual assets under the condition that its units are marketed only to professional investors. Investments in financial instruments such as derivatives or transferable securities with underlying virtual assets, are to be considered as indirect investments in virtual assets. Should such an AIF be managed by a Luxembourg-authorized AIFM, the latter must obtain an authorisation extension from the CSSF for this new investment strategy. The CSSF draws attention to the integration phase of virtual assets in the investment policy and reiterates the importance of having adequate internal control functions with their key role in the approval of new products/investment strategies. Investment managers will have to ensure that investors are properly informed in a transparent and timely manner and that the relevant fund documentation is updated.

Q3 A. Is this “Other-Other Fund-Virtual assets” license also required in case of management of AIFs investing in target funds with underlying virtual assets?

1. No application for the “Other-Other Fund-Virtual assets” licence is required for a Luxembourg IFM managing an AIF investing in virtual assets through one or several target funds (“TF”). When the AIF invests more than 20% of its NAV in one or several TFs, an IFM authorisation for the “fund of funds” strategy is required.
2. However, considering the risks related to investing in virtual assets, the CSSF requires that in relation to each TF with virtual assets as the main underlying exposure, the IFM undertakes an assessment of the ability of the TF’s manager to identify and manage the risks pertaining to investments in virtual assets. The assessment should include the operational risks arising from the activities of the parties which intervene in the administration, notably the registrar and transfer function, and custody of the virtual assets. The IFM should be able to provide the CSSF with the results of its assessment on demand.
3. It is the responsibility of the IFM to determine if a TF has virtual assets as main exposure.
4. An investment in virtual assets through one or several TF constitutes an indirect investment in virtual assets, subject to all other conditions of this FAQ.

Version française

Le 6 avril 2023, la Commission de Surveillance du Secteur Financier (CSSF) a mis à jour sa FAQ sur les Actifs Virtuels – Organismes de Placement Collectif.

Q2. Un FIA peut-il investir dans des actifs virtuels ?

Les investissements dans des actifs virtuels tels que définis dans la Loi LBC/FT pourraient être compatibles avec des fonds destinés à l'investisseur professionnel à condition que l'investissement du fonds dans des actifs virtuels n'empêche pas l'application et le respect des exigences réglementaires existantes. En conséquence, un FIA peut investir directement (et indirectement) dans des actifs virtuels à condition que ses parts ne soient commercialisées qu'auprès d'investisseurs professionnels. Les investissements dans des instruments financiers tels que des produits dérivés ou des valeurs mobilières avec des actifs virtuels sous-jacents doivent être considérés comme des investissements indirects dans des actifs virtuels. Dans l'hypothèse où un tel FIA serait géré par un GFIA agréé au Luxembourg, ce dernier devra obtenir une extension d'agrément auprès de la CSSF pour cette nouvelle stratégie d'investissement. La CSSF attire l'attention sur la phase d'intégration des actifs virtuels dans la politique d'investissement et rappelle l'importance de disposer de fonctions de contrôle interne adéquates avec leur rôle clé dans l'approbation des nouveaux produits/stratégies d'investissement. Les gestionnaires d'investissement devront s'assurer que les investisseurs sont correctement informés de manière transparente et en temps opportun et que la documentation pertinente du fonds est mise à jour.

Q3 A. Cette licence « Other-Other Fund-Virtual assets » est-elle également requise en cas de gestion de FIA ??investissant dans des fonds cibles avec des actifs virtuels sous-jacents ?

1. Aucune demande d'agrément « Other-Other Fund-Virtual assets » n'est requise pour un GFI luxembourgeois gérant un FIA investissant dans des actifs virtuels à travers un ou plusieurs fonds cibles (« FT »). Lorsque le FIA investit plus de 20% de sa valeur liquidative dans un ou plusieurs FCP, un agrément GFI pour la stratégie « fonds de fonds » est requis.
2. Toutefois, compte tenu des risques liés à l'investissement dans des actifs virtuels, la CSSF exige que, pour chaque FT ayant des actifs virtuels comme principale exposition sous-jacente, le GFI entreprenne une évaluation de la capacité du gestionnaire du FT à identifier et gérer les risques concernant les investissements dans les actifs virtuels. L'évaluation devrait inclure les risques opérationnels découlant des activités des parties qui interviennent dans l'administration, notamment la fonction de teneur de registre et de transfert, et la conservation des actifs virtuels. Le GFI devrait être en mesure de fournir à la CSSF les résultats de son évaluation sur demande.
3. Il est de la responsabilité du GFI de déterminer si un TF a des actifs virtuels comme exposition principale.
4. Un investissement dans des actifs virtuels par l'intermédiaire d'un ou plusieurs TF constitue un investissement indirect dans des actifs virtuels, sous réserve à toutes les autres conditions de cette FAQ.

REGULATION ON SUSTAINABILITY-RELATED DISCLOSURES IN THE FINANCIAL SERVICES SECTOR (SDR)

CSSF announces supervisory priorities on sustainable finance / La CSSF annonce des priorités prudentielles en matière de finance durable

On April 6 2023, the Commission de Surveillance du Secteur Financier (CSSF) announced its supervisory priorities on sustainable finance.

The CSSF strives to accompany the transition of the financial sector and its players in a proactive way aiming at fostering a cohesive implementation of the sustainable finance framework across the sector and ensuring the integration of ESG requirements in its supervisory practice.

Supervisory priorities for credit institutions

Transparency and disclosures

This falls in the scope of Regulation (EU) 2019/2088 on sustainability related disclosures in the financial services sector (SFDR) through the long form report, as revised per our Circular CSSF 22/821.

A dedicated section on sustainability disclosures has been incorporated in the Self-Assessment Questionnaire. It also includes agreed upon procedure (AUP) reports to be established by the réviseur d'entreprise agréé on SFDR disclosures. Following the entry into application of the SFDR regulatory technical standards (the SFDR RTS), additional off-site reviews of the SFDR website disclosures at entity and products level will be performed on a sample basis. The CSSF will carry out a transversal review of Pillar 3 disclosures on ESG risks and will subsequently follow up with the institutions for which these requirements are of relevance.

Risk management and governance

The CSSF plans to repeat its self-assessment exercise on climate related and environmental risks with a new sample of approximately 15 to 20 less significant institutions ("LSI") and third-country branches. The aim of the exercise is to review the level of alignment of the banking sector with the CSSF's expectations set out in Circular CSSF 21/773 and provide dedicated feedback to credit institutions. From year end or beginning of 2024 the CSSF also intends to carry out on-site inspections specifically focused on climate-related and environmental risks. The CSSF is also expecting to conduct, towards the end of the year, a sample-based review of the remunerations policies and practices in order to gain an understanding of how such policies have been updated to ensure consistency with the integration of sustainability risks in their governance and business models.

MiFID rules related to sustainability

The CSSF notably expects supervised entities that provide investment advisory or discretionary portfolio management services to collect and take into account all relevant information related to the sustainability preferences of their clients since August 2 2022 and anticipate the entry into application of the ESMA guidelines on MiFID II Suitability requirements.

As from 2024, the CSSF will launch dedicated MiFID on-site inspections capturing both obligations applicable to credit institutions and some aspects of the sustainability disclosures obligations applicable to investment firms. Additionally, the ESMA CSA on marketing communications and advertising under MiFID II is set to include an assessment of how of sustainability-related product information and product characteristics are provided in the marketing communications and advertisements.

Supervisory priorities for the asset management industry

Organisational arrangements of IFMs, including the integration of sustainability risks by financial market participants

The CSSF expects IFMs' organisational arrangements to take due account of the integration of sustainability risks, notably in terms of human resources and governance, investment decision or advice processes, remuneration and risk management processes and policies and management of conflicts of interest as required under SFDR. The verification of the integration of those provisions in the IFMs' organisational arrangements will remain an integral part of the CSSF supervisory approach.

Verification of the compliance of pre-contractual and periodic disclosures

SFDR, the SFDR RTS and the Taxonomy Regulation lay down transparency requirements regarding the provision of sustainability-related information in pre-contractual and periodic documentation of financial products. In this respect, the CSSF will continue to assess the compliance of pre-contractual and periodic disclosures of investment funds with the SFDR regulatory provisions.

Verification of the consistency of information in fund documentation and marketing material

The CSSF will continue to assess and verify that sustainability-related disclosures made are consistent across the fund documentation and marketing material.

Verification of the compliance of product website disclosures

The CSSF will continue to verify that IFMs comply with their obligations relating to the publication and maintenance on their website of SFDR related information for the investment funds they manage.

Portfolio analysis

In line with the requirements of the Supervisory Briefing, the CSSF will undertake supervisory actions to ensure that portfolio holdings reflect the name, the investment objective, the strategy, and the characteristic displayed in the documentation to investors.

The CSSF has launched a dedicated SFDR data collection exercise in view of fulfilling its supervisory duties, and also to carry out the above verifications. This data collection exercise has been extended on March 24 2023 to product disclosure information. A dedicated SFDR FAQ2 as well as CSSF Communiqués on SFDR have also been published to provide additional guidance and clarifications to the industry in this regard.

Supervisory priorities for investment firms

Transparency and Disclosures

It is envisaged to establish a self-assessment questionnaire to be addressed to all investment firms, as part of the contemplated reform of the long-form report.

Risk management and governance

The CSSF will implement a gradual approach to its supervision of ESG risks for investment firms, prioritising the recognition of ESG risks in investment firms' strategies and governance arrangements. Circular CSSF 20/758 on administration, internal governance and risk management will be updated in due course.

MiFID rules related to sustainability

The CSSF's supervisory priorities for investment firms will mirror those as described above for credit institutions.

Supervisory priorities for issuers

ESMA, together with the European national accounting enforcers, including the CSSF, identified European common enforcement priorities (the "ECEPs") for the 2022 annual reports to which particular attention will be paid when monitoring and assessing the application of the relevant reporting requirements. Climate-related matters have been identified as a priority for both IFRS financial statements and non-financial statements. The CSSF will tailor its review procedures in view of addressing both the aspects covered by this ECEP and the follow-up of the observations made during its 2022 campaign thereon. The information required under Article 8 of the Taxonomy Regulation for relevant issuers is also one of the ECEPs for the upcoming campaign, as these non-financial issuers are required to disclose, for the first time, the alignment of their economic activities with climate change mitigation and adaptation objectives, as provided by the regulation. For further information on this topic, please refer to the communication of January 2 2023.

Version française

Le 6 avril 2023, la Commission de Surveillance du Secteur Financier (CSSF) a annoncé ses priorités prudentielles en matière de finance durable.

La CSSF s'efforce d'accompagner la transition du secteur financier et de ses acteurs de manière proactive afin de favoriser une mise en œuvre cohérente du cadre de la finance durable dans l'ensemble du secteur et d'assurer l'intégration des exigences ESG dans sa pratique de surveillance.

Priorités prudentielles des établissements de crédit

Transparence et divulgations

Cela relève du champ d'application du règlement (UE) 2019/2088 sur les informations à fournir en matière de développement durable dans le secteur des services financiers (SFDR) par le biais du rapport détaillé, tel que révisé par notre circulaire CSSF 22/821. Une section dédiée aux informations sur la durabilité a été intégrée au questionnaire d'auto-évaluation. Il comprend également des rapports de procédure convenue (AUP) à établir par le réviseur d'entreprise agréé sur les divulgations SFDR. Suite à l'entrée en application des normes techniques de réglementation SFDR (le SFDR RTS), des revues supplémentaires hors site des informations fournies sur le site Web de SFDR au niveau de l'entité et des produits seront effectuées sur la base d'un échantillon. La CSSF procédera à une revue transversale des informations du Pilier 3 sur les risques ESG et assurera ensuite un suivi auprès des institutions pour lesquelles ces exigences sont pertinentes.

Gestion des risques et gouvernance

La CSSF prévoit de réitérer son exercice d'auto-évaluation sur les risques liés au climat et à l'environnement auprès d'un nouvel échantillon d'environ 15 à 20 établissements moins importants (« LSI ») et succursales de pays tiers. L'objectif de l'exercice est d'examiner le niveau d'alignement du secteur bancaire avec les attentes de la CSSF énoncées dans la circulaire CSSF 21/773 et de fournir un retour d'information dédié aux établissements de crédit. Dès la fin de l'année ou début 2024, la CSSF entend également procéder à des contrôles sur place spécifiquement axés sur les risques liés au climat et à l'environnement. La CSSF prévoit également de mener, vers la fin de l'année, une revue par sondage des politiques et pratiques de rémunération afin de comprendre comment ces politiques ont été mises à jour pour assurer la cohérence avec l'intégration des risques de durabilité dans leur gouvernance et modèles économiques.

Règles MiFID liées à la durabilité

La CSSF attend notamment des entités surveillées qui fournissent des services de conseil en investissement ou de gestion discrétionnaire de portefeuille qu'elles collectent et prennent en compte toutes les informations pertinentes liées aux préférences de leurs clients en matière de développement durable depuis le 2 août 2022 et anticipent l'entrée en application des lignes directrices de l'ESMA sur l'adéquation MiFID II exigences.

À partir de 2024, la CSSF lancera des inspections sur place MiFID dédiées capturant à la fois les obligations applicables aux établissements de crédit et certains aspects des obligations d'information en matière de durabilité applicables aux entreprises d'investissement. De plus, l'ESMA CSA sur les communications marketing et la publicité sous MiFID II devrait inclure une évaluation de la manière dont les informations sur les produits et les caractéristiques des produits liées à la durabilité sont fournies dans les communications marketing et les publicités.

Priorités prudentielles pour le secteur de la gestion d'actifs

Dispositions organisationnelles des GFI, y compris l'intégration des risques de durabilité par les acteurs des marchés financiers

La CSSF attend des dispositifs organisationnels des GFI qu'ils tiennent dûment compte de l'intégration des risques de développement durable, notamment en termes de ressources humaines et de gouvernance, de processus de décision ou de conseil en investissement, de processus et politiques de rémunération et de gestion des risques et de gestion des conflits d'intérêts comme l'exige le SFDR. La vérification de l'intégration de ces dispositions dans les dispositifs organisationnels des GFI restera partie intégrante de l'approche de surveillance de la CSSF.

Vérification de la conformité des informations précontractuelles et périodiques

Le SFDR, le SFDR RTS et le règlement Taxonomie établissent des exigences de transparence concernant la fourniture d'informations liées au développement durable dans la documentation précontractuelle et périodique des produits financiers. A cet égard, la CSSF continuera à évaluer la conformité des informations précontractuelles et périodiques des fonds d'investissement avec les dispositions réglementaires SFDR.

Vérification de la cohérence des informations contenues dans la documentation des fonds et les supports marketing

La CSSF continuera d'évaluer et de vérifier que les informations fournies en matière de développement durable sont cohérentes dans la documentation du fonds et le matériel marketing.

Vérification de la conformité des divulgations du site Web du produit

La CSSF continuera à vérifier que les GFI respectent leurs obligations relatives à la publication et à la maintenance sur leur site internet des informations relatives au SFDR pour les fonds d'investissement qu'ils gèrent.

Analyse de portefeuille

Conformément aux exigences du Supervisory Briefing, la CSSF entreprendra des actions de surveillance pour s'assurer que les participations en portefeuille reflètent le nom, l'objectif d'investissement, la stratégie et la caractéristique affichés dans la documentation destinée aux investisseurs.

La CSSF a lancé un exercice de collecte de données SFDR dédié en vue de remplir ses missions de surveillance, ainsi que pour effectuer les vérifications ci-dessus. Cet exercice de collecte de données a été étendu le 24 mars 2023 aux informations sur la divulgation des produits. Une FAQ SFDR dédiée ainsi que des Communiqués CSSF sur le SFDR ont également été publiés pour fournir des orientations et des clarifications supplémentaires à l'industrie à cet égard.

Priorités prudentielles pour les entreprises d'investissement

Transparence et divulgations

Il est envisagé d'établir un questionnaire d'auto-évaluation à adresser à l'ensemble des entreprises d'investissement, dans le cadre de la réforme envisagée du rapport de longue durée.

Gestion des risques et gouvernance

La CSSF mettra en œuvre une approche progressive de sa surveillance des risques ESG pour les entreprises d'investissement, en donnant la priorité à la prise en compte des risques ESG dans les stratégies et les dispositifs de gouvernance des entreprises d'investissement. La circulaire CSSF 20/758 relative à l'administration, la gouvernance interne et la gestion des risques sera mise à jour en temps utile.

Règles MiFID liées à la durabilité

Les priorités de surveillance de la CSSF pour les entreprises d'investissement refléteront celles décrites ci-dessus pour les établissements de crédit.

Priorités prudentielles des émetteurs

L'ESMA, en collaboration avec les autorités comptables nationales européennes, y compris la CSSF, a identifié des priorités européennes communes d'application (les « ECEP ») pour les rapports annuels 2022, auxquelles une attention particulière sera accordée lors du suivi et de l'évaluation de l'application des exigences de déclaration pertinentes. Les questions liées au climat ont été identifiées comme une priorité tant pour les états financiers IFRS que pour les états non financiers. La CSSF adaptera ses procédures de révision en vue d'aborder à la fois les aspects couverts par cet ECEP et le suivi des observations faites lors de sa campagne 2022 à ce sujet. Les informations requises en vertu de l'article 8 du règlement taxonomie pour les émetteurs concernés font également partie des ECEP de la campagne à venir, car ces émetteurs non financiers sont tenus de divulguer, pour la première fois, l'alignement de leurs activités économiques sur l'atténuation du changement climatique, et les objectifs d'adaptation, tels que prévus par le règlement. Pour plus d'informations à ce sujet, veuillez vous référer à la communication du 2 janvier 2023.

REGULATION ON A PILOT REGIME FOR MARKET INFRASTRUCTURES BASED ON DISTRIBUTED LEDGER TECHNOLOGY (DLT REGULATION)

CSSF issues Circular 23/832 on ESMA Guidelines for specific authorisation to operate a DLT infrastructure / La CSSF publie la circulaire 23/832 sur les orientations de l'ESMA pour l'autorisation spécifique d'exploitation d'une infrastructure DLT

On April 5 2023, the Commission de Surveillance du Secteur Financier (CSSF) issued Circular CSSF 23/832 on the application of ESMA Guidelines on standard forms, formats and templates to apply for specific authorisation to operate a DLT market infrastructure (ESMA70-460-206).

Applicants for a specific permission to operate a DLT MTF, a DLT SS or a DLT TSS are reminded that they may have to

simultaneously present further information to apply as a CSD or as an investment firm or to operate a regulated market or to demonstrate compliance with Directive 2014/65/EU or Regulation (EU) No 909/2014 (see Articles 8(3), 9(3) and 10(3) and (5) of Regulation (EU) 2022/858).

The present circular shall apply to all entities intending to apply for specific permissions to operate a DLT market infrastructure as defined in Article 2(5) of Regulation (EU) 2022/858 with immediate effect.

When applying for a specific permission to operate a DLT MI, all applicants should provide the competent authority with the following information:

- a. Table 1 of the Annex: General information on the applicant; and
- b. Table 2 of the Annex: General information to be included in an application for permission to operate a DLT MTF, a DLT SS or a DLT TSS.

Depending on the applicant regulatory status and on the nature of its application request, Table 3 and/or Table 4 of the Annex should be provided, as follows:

- a. Where the applicant is or intends to be authorised as an investment firm or to operate a regulated market under Directive 2014/65/EU and intends to operate a DLT MTF or a DLT TSS.
- b. Where the applicant is or intends to be authorised as a CSD under Regulation (EU) No 909/2014 and intends to operate a DLT SS or a DLT TSS.

For each document listed in Tables 2, 3 or 4 the applicant should identify at least the following information:

- a. the unique reference number of each document;
- b. the title of each document;
- c. the chapter, section or page of each document where the relevant information is provided.

Where necessary to avoid submitting the same information or document twice, applicants should cross refer to the relevant information or document submitted under a different part of their application file. When the applicant considers that information in addition to the one to be provided under Table 2, Table 3 or Table 4 is relevant for the purposes of the specific permission, the applicant may submit additional specific documents.

Version française

Le 5 avril 2023, la Commission de Surveillance du Secteur Financier (CSSF) a publié la circulaire CSSF 23/832 relative à l'application des orientations de l'ESMA sur les formulaires, formats et modèles standard pour demander une autorisation spécifique d'exploitation d'une infrastructure de marché DLT (ESMA70-460- 206).

Il est rappelé aux candidats à une autorisation spécifique d'exploitation d'un DLT MTF, d'un DLT SS ou d'un DLT TSS qu'ils peuvent être amenés à

présenter simultanément des informations complémentaires pour postuler en tant que DCT ou entreprise d'investissement ou pour exploiter un marché réglementé ou pour démontrer la conformité avec la directive 2014/65/UE ou le règlement (UE) n° 909/2014 (voir articles 8(3), 9(3) et 10(3) et (5) du règlement (UE) 2022/858).

La présente circulaire s'applique à toutes les entités ayant l'intention de demander des autorisations spécifiques pour exploiter une infrastructure de marché DLT telle que définie à l'article 2, paragraphe 5, du règlement (UE) 2022/858 avec effet immédiat.

Lors d'une demande d'autorisation spécifique d'exploitation d'un IM DLT, tous les candidats doivent fournir à l'autorité compétente les informations suivantes :

- a. Tableau 1 de l'annexe : Informations générales sur le demandeur ; et
- b. Tableau 2 de l'annexe: Informations générales à inclure dans une demande d'autorisation d'exploitation d'un DLT MTF, d'un DLT SS ou d'un DLT TSS.

En fonction du statut réglementaire du demandeur et de la nature de sa demande de candidature, le tableau 3 et/ou le tableau 4 de l'annexe doit être fourni, comme suit :

- a. Lorsque le demandeur est ou a l'intention d'être agréé en tant qu'entreprise d'investissement ou d'exploiter un marché réglementé en vertu de la directive 2014/65/UE et a l'intention d'exploiter un DLT MTF ou un DLT TSS.
- b. Lorsque le demandeur est ou a l'intention d'être agréé en tant que DCT en vertu du règlement (UE) n° 909/2014 et a l'intention d'exploiter un DLT SS ou un DLT TSS.

Pour chaque document répertorié dans les tableaux 2, 3 ou 4, le demandeur doit identifier au moins les informations suivantes :

- a. le numéro de référence unique de chaque document ;
- b. le titre de chaque document;
- c. le chapitre, la section ou la page de chaque document où les informations pertinentes sont fournies.

Si nécessaire, pour éviter de soumettre deux fois les mêmes informations ou documents, les candidats doivent renvoyer aux informations ou documents pertinents soumis dans une partie différente de leur dossier de candidature. Lorsque le demandeur considère que des informations supplémentaires à celles à fournir dans le tableau 2, le tableau 3 ou le tableau 4 sont pertinentes aux fins de l'autorisation spécifique, le demandeur peut soumettre des documents spécifiques supplémentaires.

NETHERLANDS

BANKING SUPERVISION

AFM calls attention to transaction monitoring

On April 21 2023, the Autoriteit Financiële Markten (AFM) called attention to transaction monitoring.

The Netherlands Authority for the Financial Markets (AFM) is asking managers of investment funds to pay more attention to transaction monitoring. That helps them better recognize unusual transactions. The AFM states this in response to an analysis of compliance with the Money Laundering and Terrorist Financing (Prevention) Act (Wwft) and the Sanctions Act (Sw). In general, the AFM notes that the sector is increasingly aware of compliance.

The AFM periodically sends a questionnaire to administrators to gain insight into the extent to which they comply with the Wwft and Sw. Managers must ensure that the investment funds they manage comply with these laws.

Based on the Wwft and Sw questionnaires, the AFM sees that compliance with the Wwft and Sw by administrators has improved in recent years in important areas, including risk assessment and policy, reporting unusual transactions and following training by employees.

In 2022, the 2021 survey was completed by 703 administrators. A number of specific points of attention emerge. For example, there is room for improvement with regard to monitoring transactions and following the necessary training by policymakers.

The AFM has seen an increase in the number of reports of unusual transactions by managers to the Financial Intelligence Unit. Yet only 11% of managers generate unusual transactions with their transaction monitoring. According to the AFM, tools such as drawing up an expected transaction profile of a customer or looking at reference groups could be used more often to better detect unusual transactions.

Improvements are still needed in the training provided by day-to-day policymakers. In 2022, 44% of day-to-day policymakers indicated that they had followed a Wwft training and for SW courses this was 39%. It is important that the day-to-day policymakers – who are charged with the responsibility for compliance with the Wwft and Sw – also receive sufficient training to be able to bear their (final) responsibility.

In order to comply with the obligations of the Sanctions Act, an administrator must screen its relations against three sanctions lists: the National Terrorism Sanctions List, the EU Sanctions List and the UN Sanctions List.

The use of the EU and UN sanctions lists increased to 79% (2020: 75%), respectively 70% (2020: 65%) of all administrators. The use of the national terrorism sanctions list has remained virtually the same. This information predates the sanctions against Russia in 2022 and therefore it is expected that the use of the lists will have increased in 2022.

This is the fourth time that the AFM has issued the Wwft and Sw questionnaire to administrators. By publishing the results, the market can generally see where improvements are still needed. Because good progress can be seen in general, the AFM will now publish the questionnaire every two years instead of annually.

FINANCIAL SERVICES COMPENSATION SCHEME

The Netherlands pays compensation to expropriated holders of SNS securities and assets

On April 21 2023, the Rijksoverheid (Government of the Netherlands) reported that the Ministry of Finance is to pay compensation to expropriated holders of SNS securities and assets.

The Ministry of Finance will pay expropriated bond, shareholders and loan holders of SNS compensation. Now that the Supreme Court has confirmed the earlier ruling of the Enterprise Chamber on the amount of compensation in its ruling of April 21 2023, the Ministry is proceeding with payment.

The compensation applies to holders of subordinated bonds, certain Participation Certificates and subordinated loans expropriated as a result of the nationalisation of SNS REAAL and SNS Bank on February 1 2013. Expropriated shareholders of SNS Bank and SNS REAAL are not eligible for compensation, according to the ruling. The process of payment of compensation will start from May 15 2023, within the statutory period of 4 weeks after the Supreme Court's ruling.

Due to the nationalisation of SNS REAAL and SNS Bank on February 1 2013, the securities and assets lost their value. The Financial Supervision Act (Wft) stipulates that in such a situation holders of these expropriated securities and assets must be compensated. With the ruling of April 21 2023, the Supreme Court has confirmed an earlier ruling of the Enterprise Chamber that holders of subordinated bonds, certain Participation Certificates and loans are entitled to compensation and that the amount of compensation is set at approximately € 805 million, plus statutory interest. The ministry is now proceeding with disbursement.

This payout process starts within four weeks of the ruling. The Ministry calls on rightholders who are eligible for this compensation to report via the website www.vergoedingsns.nl. They can submit an application there from May 15 2023.

The Netherlands amends Sales Tax Act 1968 (Implementation Act Payment Service Providers Directive)

On April 5 2023, the Netherlands published the Act of April 5 2023 amending the Sales Tax Act 1968 (Implementation Act Payment Service Providers Directive) in the Overheid (Government Documents in the Netherlands).

The Sales Tax Act 1968 is amended as follows:

The following section is added to Chapter VI Section 6 General Obligations for payment service providers:

Article 39b

1. Payment service providers shall keep sufficiently accurate records of payees and payments relating to payment services which they provide for each calendar quarter in order to enable the competent authorities of the Member States to carry out checks to exercise the supply of goods and services which, in accordance with the provisions of Chapter II, Sections 1a and 1b are deemed to take place in a Member State, to achieve the anti-VAT fraud objective.
2. The obligation only applies to payment services related with cross-border payments. A payment is made as a cross-border payment if the payer is located in a Member State and the payee is in a other Member State, in a third territory or in a third country.
3. The obligation applies where a payment service provider in the course of the of a calendar quarter provides payment services relating to more than than 25 cross-border payments to the same beneficiary.
4. The number of cross-border payments shall be calculated on the basis of the payment service providers provided payment services by Member State and by identification code referred to in article 39c, second paragraph. If the payment service provider has information has multiple identifiers in the beneficiary, the calculation shall be per beneficiary.
5. The obligation shall not apply to payer payment services provided for each payment where at least one of the payee's payment service providers are established in a Member State if: is evidenced by the BIC of that payment service provider or by another business identification code which unambiguously identifies the payment service provider and its location. Payment service providers of the payer shall nevertheless include those payment services in the calculation referred to in the third paragraph.
6. The registers shall be:
 - a. held by the payment service provider in electronic form for a period of three calendar years from the end of the calendar year of the payment date;
 - b. made available in accordance with Article 24b of Regulation (EU) No 904/2010 to the home Member State of the payment service provider, or to the Member State of receipt where the payment service provider provides payment services in other Member States other than the home Member State.
7. Where the Member State referred to in the sixth paragraph is the Netherlands, the registers shall be provided to the inspector on its own initiative by the payment service provider.

Article 39c

1. For the purposes of the second paragraph of Article 39b, without prejudice to the provisions of Chapter II, Sections 1a and 1b, the location of the payer in the Member State shall be deemed to be correspond to:
 - a. the IBAN of the payer's payment account or any other identifier that unambiguously identifies the payer and specifies the payer's location, or, in the absence of such an identification code;
 - b. the BIC or any other business identification code used by the payer acting on behalf of the payer. unambiguously identifies payment service provider and the location of the payment service provider Specify.
2. For the purposes of article 39b, second paragraph, the location of the beneficiary shall be deemed to be in the Member State, in the third territory or in the third country corresponding with:
 - a. the IBAN of the payee's payment account or another identifier which unambiguously identifies the beneficiary and specifies the location of the beneficiary, or, in the absence of such an identifier;
 - b. the BIC or other business identification code used by the beneficiary acting on behalf of the beneficiary unambiguously identifies payment service provider and its location of the payment service provider Specify.

Article 39d

1. The registers shall contain the following information:
 - a. the BIC or any other business identification code that unambiguously identifies the payment service provider;
 - b. the name or company name of the beneficiary as it appears in the registers of the payment service provider;
 - c. if available, a VAT identification number or other national tax number of the beneficiary;
 - d. the IBAN or, if no IBAN is available, any other identifier that unambiguously identifies the beneficiary and gives the location of the beneficiary;
 - e. the BIC or other business identification code used by the beneficiary acting on behalf of the beneficiary unambiguously identifies payment service provider and the location of the payment service provider of the beneficiary, if the beneficiary receives funds without having a have a payment account;
 - f. where available, the address of the beneficiary as it appears in the registers of the payment service provider;
 - g. the details of any cross-border payments;
 - h. the details of all repayments found to be linked keep with the cross-border payments.
2. The information referred to in points (g) and (h) of the first paragraph shall contain the following details:
 - a. the date and time of payment or refund;
 - b. the amount and currency of the payment or refund;
 - c. the Member State of origin of the payment received by the beneficiary or on his behalf, the Member State of destination of the refund, as applicable, and the information which has been used to determine the origin of the destination of the payment or refund in accordance with Article 39c;
 - d. all references that unambiguously identify the payment;
 - e. where applicable, information demonstrating that the payment is made in the physical location of the trader has been initiated.

3. The following Article shall be inserted in Chapter VII:

Article 41

1. If it is due to intent or gross negligence on the part of the payment service provider whereas the obligations referred to in Section 6 of Chapter VI are not being fulfilled, constitutes an offence in respect of which the inspector shall impose an administrative fine on him not more than the amount of the sixth category referred to in the fourth paragraph of Article 23, of the Penal Code, can impose.

2. The first paragraph shall apply mutatis mutandis where a payment service provider provide payment data to the tax authorities that relate to less than 26 cross-border payments to the same beneficiary in the course of a calendar quarter.

3. The power to impose the fine referred to in the first paragraph shall lapse, by way of derogation from article 5:45, second paragraph, of the General Administrative Law Act, by the expiry of five years after the end of the calendar year in which the Section 6 has arisen.

This law will enter into force on January 1 2024.

MEXICO

BOND MARKETS

SHCP announces reduction of Mexico's external debt with bond swap and places its second sustainable bond in the dollar market

On April 25 2023, the Secretaría de Hacienda y Crédito Público (SHCP) announced the reduction of Mexico's external debt with bond swap and places its second sustainable bond in the dollar market.

As part of Mexico's Sustainable Financing Strategy, the Treasury issued a new dollar-denominated benchmark sustainable bond maturing in 2053. This is the ninth sustainable bond issued in international financial markets during this administration.

This latest issuance is the largest of an ESG (Environmental, Social and Corporate Governance) bond to date, reflecting the Government of Mexico's commitment to sustainability and responsible investment. With this action, Mexico consolidates its position as a leader in the issuance of sustainable bonds in the region.

In addition, the Government of Mexico took advantage of favorable market conditions to reduce its foreign currency debt portfolio by \$368 million, thus reaffirming its strategic commitment to managing its external debt.

SPAIN

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

CNMV approves the technical guide on strengthening the transparency of certain fixed income funds (buy and hold strategy and specific profitability objective)

On April 26 2023, the Comision Nacional del Mercado del valores (CNMV) approved the technical guide on strengthening the transparency of certain fixed income funds (buy and hold strategy and specific profitability objective).

The guide updates the criteria included in the technical guide 1/2017 on enhancing the transparency of investment funds with a specific long-term performance objective (GT 1/2017), which was applicable only to funds with a specific performance objective with a term of more than three years. Six years after its publication, it is considered necessary to update some aspects to reflect best market practices and extend its application to investment funds with buy-and-hold strategies. The aim is to strengthen investor protection and informed consent.

The main objectives of the technical guide are as follows:

- To establish criteria with regard to the information provided to investors on the estimated return (in terms of APR) that they can reasonably expect on fixed income investment funds with a buy-and-hold strategy if they maintain their investment until the maturity of the strategy's time horizon. This will provide the investor with very important information for their investment decision.
- To complete the contents of the GT 1/2017 to reflect the registration and supervision experience acquired since its publication. In particular, criteria are established regarding the warnings to be given to investors on the risk derived from not valuing part of their transactions during the marketing period, as well as the effects of inflation on the nominal return of their investments.
- Reinforce some of the warnings included in the previous GT. On the one hand, the warning regarding the cost of liquidity, which will become applicable to funds that provide investors with less than twelve liquidity windows per year (possibility of redemption without fees) instead of the four annual windows referred to in GT 1/2017. On the other hand, the risk of loss warning in the event of an increase in interest rates will apply to all funds and not only to those with a term of more than three years, as was the case to date.
- Extend the warnings on interest rate risk and on the cost of the fund's liquidity to fixed-income investment funds with a buy-and-hold strategy.

The content of the technical guide has been defined after analysing and assessing the comments and observations received during the public consultation period (from February 13 2023 to March 31 2023) as well as the report issued by the CNMV's Advisory Committee. A document with the assessment of the allegations received is also made public.

At the same time as the public consultation process, the CNMV has commissioned, for the first time as part of its procedure for preparing Circulars and Technical Guides, a market study among retail investors (consumer testing). The aim was to gauge investors' understanding of the text of the warnings and to identify adjustments to their wording to facilitate their comprehension. This has enabled several modifications to be made to the final wording of the warnings based on the results of this process, in order to make them more comprehensible to the end investor.

The CNMV recalls that some risks applicable to this type of fund are also relevant for other fixed income products not subject to the Technical Guide - such as bills, bonds, debentures or fixed income funds other than these two types - in contexts of interest rate tension or high inflation. Institutions marketing or advising on them should, in compliance with their customer information duties, provide customers with adequate information to ensure that they understand the risks and costs associated with them.

UNITED KINGDOM

BENCHMARKS

FCA publishes an article on finalising LIBOR transition

On April 12 2023, the Financial Conduct Authority (FCA) published an article on finalising LIBOR transition.

Following the successful cessation of the GBP LIBOR panel and widespread market adoption of the Sterling Overnight Index Average (SONIA), the Working Group on Sterling Risk-Free Reference Rates (the Working Group) concluded that it had met its original objective to 'catalyse a broad-based transition to SONIA across sterling derivative, loan and bond markets'. To address the remaining transition priorities, particularly USD LIBOR transition, it revised its objective in April 2022 to focus on the implications of non-GBP LIBOR transition in UK markets and transitioning legacy GBP LIBOR contracts. The Bank of England and the Financial Conduct Authority are ex-officio members of the Working Group.

To finalise the transition, the Bank of England, FCA and Working Group encourage market participants to:

- Actively transition USD LIBOR contracts ahead of the cessation of the USD LIBOR panel at end-June 2023;
- Ensure readiness for implementation of USD LIBOR fallbacks, including planned CCP conversion events and operationalisation of the ISDA 2020 IBOR Fallbacks Protocol;
- Ensure they transition to the most robust RFRs;
- Continue to actively transition any remaining legacy contracts from synthetic GBP LIBOR to SONIA.

The transition from USD LIBOR remains of critical importance globally, including in the UK where many firms are active in USD interest rate markets.

The FCA recently announced its decision to require LIBOR's administrator to continue the publication of the 1, 3 and 6 months USD LIBOR settings using a synthetic methodology, for a short period after end-June 2023, and to permit its use in all legacy contracts except cleared derivatives. The FCA intends to cease requiring that publication at end-September 2024.

The FCA has been clear that synthetic LIBOR is a temporary bridge to RFRs, hence active transition of legacy USD LIBOR contracts ahead of end-June 2023, wherever practicable, remains the best way for market participants to retain control and certainty over their existing contracts. This is in line with recommendations from US authorities and the Alternative Reference Rates Committee (the ARRC) who have highlighted the importance of acting now to remediate contracts to avoid a pile-up ahead of key dates.

The adoption of robust fallbacks has been a critical step in reducing the risks associated with the cessation of LIBOR. Inclusion of fallbacks in ISDA's Definitions for all USD LIBOR trades entered into since January 25 2021 and widespread adherence to the ISDA IBOR Fallbacks Protocol, combined with planned conversion processes by central counterparties (CCPs), provide an orderly transition path for USD LIBOR interest rate derivatives. The ISDA IBOR Fallbacks Protocol remains open for adherence where firms have not yet done so.

CCP conversion events successfully transitioned cleared contracts for GBP, JPY, CHF and EUR LIBOR settings in December 2021. In a similar way, CCP conversion events will be utilised for the transition of cleared USD LIBOR contracts, with the proposed timings of conversion events set out in the table below.

The Bank, FCA and Working Group encourage market participants to ensure they have clear plans, resourcing and oversight in place to support a smooth transition over these CCP conversions, as well as the Index Cessation Effective Date (for the purposes of the ISDA IBOR Fallbacks Protocol and ISDA Definitions) on July 3 2023. Additionally, market participants should act on any lessons learned from GBP, JPY, CHF and EUR LIBOR conversions.

CROSS-BORDER ACTIVITIES

BoE and CFTC issue joint statement on the supervision of cross-border central counterparties

On April 14 2023, the Bank of England (BoE) and Commodity Futures Trading Commission (CFTC) announced a further strengthening of their commitment to close cooperation and mutual understandings on the supervision of cross-border central counterparties (CCPs).

The Bank and the CFTC are committed to maintaining a robust and effective relationship of cooperation and information sharing. Pursuant to their existing 2020 Memorandum of Understanding (MoU), the authorities share a common understanding of mutual practices in connection with certain U.S. and UK cross-border CCPs within the MoU's scope. Duly authorised officials have set out arrangements which detail and support the practices of the existing MoU.

The nature of the cooperation exhibited in these practices includes periodic engagements between staff of the Bank and the CFTC to exchange views on relevant supervisory issues, take into consideration each other's views as appropriate, and provide assistance on specific matters of concern where they arise.

The practices also include the robust and timely sharing of information, including data on the clearing services provided to market participants; notifications of material events, including those related to financial resilience or business continuity of the CCPs, in accordance with the MoU; and regular engagement on areas of supervisory focus.

EUROPEAN MARKET INFRASTRUCTURE REGULATION (EMIR)

UK Government publishes Pension Fund Clearing Obligation Exemption and Intragroup Transaction Transitional Clearing and Risk-Management Obligation Exemptions Regulations 2023

On April 27 2023, the UK government published the Pension Fund Clearing Obligation Exemption and Intragroup Transaction Transitional Clearing and Risk-Management Obligation Exemptions (Extension and Amendment) Regulations 2023.

- These Regulations may be cited as the Pension Fund Clearing Obligation Exemption and Intragroup Transaction Transitional Clearing and Risk-Management Obligation Exemptions (Extension and Amendment) Regulations 2023.
- These Regulations come into force on June 12 2023.
- These Regulations extend to England and Wales, Scotland and Northern Ireland.
- In Article 89(1) (transitional provisions) of Regulation (EU) 648/2012, the exemption in the first subparagraph is extended by two years so that it ends on June 18 2025.
- The Over-the-Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019 are amended as follows:

In regulation 81, for paragraphs (1)(b) and (2)(b) substitute “(b) in respect of any third country in which a non-UK counterparty is established, December 31 2026.”.

In regulation 83, for paragraphs (1)(b) and (2)(b) substitute “(b) in respect of any third country in which a non-UK counterparty is established, December 31 2026.”.

FINANCIAL SERVICES

FCA publishes update of joint discussion paper on operational resilience (4/11/2023)

On April 11 2023, the Financial Conduct Authority (FCA) published an update of the joint discussion paper with the Prudential Regulation Authority (PRA) and the Bank of England (Bank) on the operational resilience.

UK financial services firms are increasingly relying on third-party services to support their operations. But while these bring multiple benefits, this increasing reliance also poses systemic risks to the supervisory authorities' objectives, including UK financial stability, market integrity and consumer protection. No one firm can manage these potential systemic risks.

The Financial Services and Markets Bill sets out a statutory framework for overseeing the resilience of services third parties provide that many financial firms rely on. The supervisory authorities welcome the proposals in the Bill and are launching this discussion on potential measures for these critical third parties (CTPs).

FCA sets clear plan for the next 12 months

On April 5 2023, the Financial Conduct Authority (FCA) set clear plan for the next 12 months.

In its Business Plan 2023/24, the FCA has set out an ambitious program for the next 12 months to achieve better outcomes for consumers and markets, in line with its 3-year strategy.

The FCA's strategy is designed to be flexible and with the changing economic picture, the FCA is accelerating its work in 4 areas over the next year through further investment and increased resources.

Last year, the FCA moved quickly to support people with the rising cost of living. It reminded 3,500 lenders of how they should be supporting borrowers in financial difficulty and told 32 lenders to make changes to the way they treat customers - leading to £29m being secured in compensation to their customers. The FCA will continue to prioritize protecting people from unfair treatment, with more staff being allocated to ensure firms support consumers who are struggling financially.

In July, the Consumer Duty will come into force. The Duty will play a leading role in meeting the FCA's objective of putting consumers' needs first. The FCA has committed to providing additional resource to make sure the transition is smooth for both consumers and firms. Setting higher and clearer standards of consumer protection will not only benefit consumers. The FCA aims to use the Duty to encourage more innovation and competition, as it could lead to a more simplified approach to regulation.

The FCA will continue its urgent work with its partners and deliver the outcomes of the new Future Regulatory Framework (FRF) and Edinburgh Reforms. More than £12m will be invested to prepare for the FRF, which will help support the UK's wider economic growth and international competitiveness, in line with the FCA's new secondary objective.

The FCA will continue to support innovative and high growth firms, including through its world-leading Sandbox and its Early and High Growth Oversight function.

New cost benefit analysis panels will also be established to support the effectiveness of the FCA's program of work.

MARKET ABUSE DIRECTIVE & REGULATION (MAD / MAR)

UK legislation publishes Draft SI on Insider Dealing

In April 2023, the UK legislation published a Draft Insider Dealing (Securities and Regulated Markets) Order 2023.

This Order supplements Part 5 of the Criminal Justice Act 1993 (c. 36), which establishes the offence of insider dealing. The offence applies to anyone who has inside information on securities or issuers of securities as an insider and then does one of three things. The first is to deal in securities whose price would be affected by the public release of the information on either a regulated market or via a professional intermediary. The second is to encourage such dealing. The third is to disclose the information outside the proper performance of their employment, office or profession.

Article 3 of the Order imposes a condition that Part 5 (and the offence) will only apply to securities either traded on specified trading venues or the price or value of which is linked to such securities. This means the offence will only apply to those who have inside information relating to such securities. Moreover, where the offence is committed by dealing, or encouraging dealing, in securities, the securities involved must satisfy the same condition. Article 4 defines a regulated market for the purposes of Part 5, so where the offence is committed via dealing, or encouraging dealing, in securities on a regulated market the offence will only apply if the market is listed in Article 4. Article 5 describes which markets are to be treated as regulated in the United Kingdom which is relevant to the territorial scope of the offence.

Article 6 amends Schedule 2 to the 1993 Act, which lists various instruments that are a 'security' for the purposes of Part 5. The current list is replaced by the list of financial instruments found in Part 1 of Schedule 2 to the Financial Services and Markets 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) to be read in conjunction with Part 2 of Schedule 2 to that Order.

Article 7 of the Order revokes the Insider Dealing (Securities and Regulated Markets) Order 1994 (S.I. 1994/187) and amending instruments (S.I. 1996/1561, S.I. 2000/1923, and S.I. 2002/1874).

SUSTAINABLE FINANCE / GREEN FINANCE

UK government updates Green finance strategy (4/11/2023)

On April 11 2023, the UK government updated its Green finance strategy.

The Mobilising Green Investment: 2023 Green Finance Strategy aims to strengthen the UK's position at the forefront of the rapidly growing global green finance market, while driving private investment to deliver our energy security, net zero and environmental objectives.

It sets out the framework for the UK to become the world's first Net Zero Aligned Financial Centre, outlining how it will ensure market participants have the information and tools they need to align to our climate and nature goals.

The strategy sets out a framework for supporting technologies as they grow to commercialisation, including through the work of our public finance institutions. The strategy also set out the next steps to grow high integrity voluntary markets including a framework for developing nature markets in the UK.

Finally, the strategy shows how the UK is building on the legacy of COP26 by accelerating global growth in green finance, including to emerging markets and developing economies.

BRAZIL

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

CVM advises on characterization of receivable tokens and fixed income tokens as securities

On April 4 2023, the Comissão de Valores Mobiliários (CVM) advised on the characterization of receivable tokens and fixed income tokens as securities.

The Superintendence of Securitization Supervision (SSE) of the Brazilian Securities and Exchange Commission (CVM) published the CVM/SSE Circular Letter 4/2023, which guides service providers involved in tokenization activities on the characterization of Receivables Token or Fixed Income Tokens (TR) as securities. The document also clarifies certain public offerings for the distribution of TR that may be carried out under the terms of the regime provided for by CVM Resolution 88.

If the tokens are characterized as securities, the rules on registration of issuers and on public offerings must be respected, as well as the provisions on intermediation, bookkeeping, custody, centralized deposit, registration, clearing, settlement and administration of the organized market for securities trading.

INVESTMENT FUNDS / COLLECTIVE INVESTMENT SCHEMES (CIS) / ASSET MANAGEMENT

CVM issues Circular letter to clarify provisions of CVM Resolution 175

On April 11 2023, the Comissão de Valores Mobiliários (CVM) issued the Circular letter CVM/SIN/SSE 01/23 to clarify provisions of CVM Resolution 175.

The Supervision of Institutional Investors (SIN) and Supervision of Securitization (SSE) of the Brazilian Securities and Exchange Commission (CVM) published the Joint Circular Letter CVM/SIN/SSE 1/2023 with the objective to clarify and disclose the interpretations of the technical areas on the general provisions of CVM Resolution 175, the new Regulatory Framework for Investment Funds, issued on 23/12/2022.

The document presents 84 answers to questions received from the market, divided into 24 topics:

- Timeline for entry into force
- Classes and Subclasses
- Calculation of the equity of the class
- Periodic reports
- CVM website and systems
- Compensation/ Rebate/Charges/ Financial Statements
- Adequacy of funds by unilateral act vs assembly
- Documents that must be kept on the website of the service providers
- Hiring of service providers
- Distribution of class quotas in open regime
- Need for evaluation report
- Constitution and registration of the fund
- Accounting records and financial statements
- Communication with quota holders
- Trading with improper use of inside information
- Supplement A: Term of Science and Assumption of Unlimited Liability
- Distribution on account and order - bookkeeping license
- Liquidity management
- Sending to the administrator a copy of a document signed by the manager
- Financial statements of transfer of administration
- General adaptations of other rules (COFI and Res. CVM 21)
- Voting in assembly by related parties
- Social and environmental funds
- Investment by Funds with limitation of liability

CVM Resolution 175 configures the systematization of 38 standards in a single resolution. The measure, which reflects the innovations introduced in the legal system of investment funds by the Law of Economic Freedom, promotes innovations for the investment fund industry and greater security for investors' assets.

CVM Resolution 181 promoted punctual changes in RCVM 175 and established 2/10/2023 as the new term of validity of the standard.

PAYMENT SYSTEMS

CMN Enhances Local Currency Payment System (SML)

On April 27 2023, the Conselho Monetário Nacional (CMN) enhanced its Local Currency Payment System (SML).

The Local Currency Payment System (SML) – infrastructure managed by the Central Bank in partnership with the central banks of Argentina, Paraguay and Uruguay that allows the use of the respective local currencies in transactions between companies and people from these countries – is enhanced.

The main changes determined by the Resolution are:

- simplification of the SML operationalization procedures carried out by its authorized financial institutions;
- standardization of the control procedures, where appropriate, of the exchange operations and of the operations carried out in the SML;

- expansion of the list of institutions eligible to operate in the SML, so that it is an additional product for the clients of the institutions authorized to operate in exchange by the Central Bank.

By allowing payments and receipts to be made directly in the currencies of its participants (Brazil, Argentina, Paraguay and Uruguay), SML waives the exchange contract. Thus one of the counterparties, usually the exporter, can fix the price of its commodity or service in the currency of its country, eliminating exposure to variations in exchange rates.

In addition, the SML expands the economic and financial integration between the participating countries since the possibility of making international transactions using their own currencies reduces several obstacles.

CONTACTS

This publication is produced by the Projects & Regulatory Monitoring teams as well as experts from the Legal Department and the Compliance Department of CACEIS entities, together with the close support of the Communications Department.

Editors

Gaëlle Kerboeuf, Group General Secretary, Legal Department

Marie Marion, Group Head of Transversal Functions, Compliance Department

Permanent Editorial Committee

Gaëlle Kerboeuf, Group General Secretary, Legal Department

Marie Marion, Group Head of Transversal Functions, Compliance Department

Corinne Brand, Group Communications Manager

Local

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Beatriz Sanchez Jete, Compliance (Spain)

Arrate Okerantza Elejalde, Legal (Spain)

Jessica Silva, Compliance (Brazil)

Luiz Fernando Silva, Compliance (Brazil)

Libia Andrea Carvajal, Compliance (Colombia)

Daiana Garcia, Compliance (Colombia)

Karim Martínez, Compliance (Mexico)

Edgar Zugasti, Compliance (Mexico)

Design

CACEIS Group Communications

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CACEIS

89-91 rue Gabriel Péri

92120 Montrouge