



September 2024

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- Chambre des représentants publishes draft law establishing double voting rights for dematerialised registered shares

BRAZIL

CAPITAL MARKETS UNION (CMU)

- ANBIMA announces Pre-matching now accepts account information on deal registration

CREDIT RISK

- BCB publishes Normative Instruction No. 521 that amends Circular Letter No. 3,853 on accounting items to be used in the calculation of portion of risk-weighted assets referring to credit risk exposures

DATA STRATEGY

- ANBIMA announces Reports on economic indicators will be migrated to ANBIMA Data

INTERNAL CONTROL SYSTEMS (ICS)

- BCB publishes CMN Resolution No. 5,178 on internal control systems of financial institutions and other institutions

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

- ANBIMA announces BCB publishes new layout for filling in information on fund shareholders
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- CVM complements guidelines on items of CVM Resolution 175
- BCB publishes Normative Instruction No. 527 on procedures for remittance of information on shareholders of investment funds
- ANBIMA updates API for investment funds in compliance with CVM Resolution 175
- ANBIMA announces ANBIMA HUB new platform for sending fund data
- ANBIMA publishes Circular on Rules for transparency in the remuneration of funds and new questionnaires for service providers

REMUNERATION POLICIES

- BCB publishes CMN Resolution No. 5,177 on the remuneration policy of managers of financial institutions and other institutions

FRANCE

CUSTODIANS / DEPOSITARIES

- FPM publishes press release on establishing controls for non-financial constraints by custodians / Le FPM publie un communiqué sur la mise en place de contrôles des contraintes extra-financières par les dépositaires

REPORTING

- Ministère de l'Economie publishes press release on confidentiality of suspicious activity / Le ministère de l'Economie publie un communiqué sur la confidentialité des activités suspectes

GERMANY

CYBERSECURITY

- BaFin updates and publishes Supervisory Statement on Guidance Notes on implementation of DORA

FINANCIAL SUPERVISION

- BaFin applies EBA Guidelines on resubmission of historical data

INVESTMENT FIRMS /MIFID FIRMS

- BaFin publishes Leaflet 01/2024 (WA) on required minimum number of managing directors under WpIG

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

- BaFin updates MaComp Circular

REPORTING

- Deutscher Bundestag publishes Bill implementing CSRD

GUERNSEY

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

- GFSC publishes Consultation Paper on proposed new Regulated Investment Exchange Operator Rules

IRELAND

FINANCIAL SUPERVISION

- Houses of the Oireachtas lays Central Bank Act 1942 (Section 32D) Regulations 2024

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

- CBI updates on requirements for Irish UCITS in light of UK OFR
- CBI clarifies filing process for updates to fund names following ESMA Guidelines
- CBI updates on process change for submission of certain applications
- CBI updates on closure of filing process for pre-contractual document updates under SFDR on 18 October 2024

ITALY

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

- CONSOB publishes first communication relating to MiCAR

REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

- Bank of Italy issues communication for entities intending to issue EMTs or ARTs
- Italy publishes Legislative Decree implementing MiCA

SUSTAINABLE FINANCE / GREEN FINANCE

- Camera dei Deputati publishes Legislative Decree implementing CSRD
- CONSOB announces translation of ESMA guidelines on names of funds using ESG terms

JERSEY

FINANCIAL SUPERVISION

- JFSC announces five forms are added to myJFSC
- JFSC announces updates to supervisory risk data collection

RISK MANAGEMENT

- JFSC publishes Industry Update on conflicts of interest Thematic Examination Questionnaire

LUXEMBOURG

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

- CSSF amends Circular 19/732 on Ultimate Beneficial Owner / La CSSF modifie la Circulaire 19/732 relative au bénéficiaire effectif final

COMPLIANCE

- LBR publishes Public Notice on updating filing process to RCS / LBR publie un avis public sur la mise à jour du processus de dépôt au RCS

CROSS-BORDER ACTIVITIES

- CSSF informs of UCITS and AIFs cross-border marketing notifications / La CSSF informe des notifications de commercialisation transfrontalière des OPCVM et FIA

FINANCIAL REPORTING

- CSSF reminds of procedures of transmission for KID and official documents / La CSSF rappelle des modalités de transmission des KID et des documents officiels
- CSSF publishes annual report for 2023 / La CSSF publie son rapport annuel 2023

INFORMATION TECHNOLOGY (IT) / INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT)

- CSSF reminds of new U1.1 reporting transmission procedures / La CSSF rappelle de nouvelles modalités de transmission du reporting U1.1

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

- CSSF reminds of Circular CSSF 22/811 on UCI administrators (UCIAs) / La CSSF rappelle de la circulaire CSSF 22/811 relative aux administrateurs d'OPC
- CSSF reminds IFMs to keep eDesk information up-to-date / La CSSF rappelle aux GFI de maintenir à jour les informations sur eDesk

REPORTING

- CSSF launches a new eDesk platform "PREPROD" for carrying out tests / La CSSF lance une nouvelle plateforme eDesk « PREPROD » pour réaliser des tests

MALAYSIA

BENCHMARKS

- BNM publishes Discussion Paper on Proposed Full Transition to MYOR / MYOR-i and Cessation of KLIBOR

NETHERLANDS

DEPOSIT GUARANTEE SCHEME DIRECTIVE (DGSD)

- DNB amends Policy Rules for the Deposit Guarantee Scheme

PAYMENT TRANSFER

- Overheid consults on Implementing Act and Implementing Decree on the Regulation on Instant Credit Transfers in Euros

SPAIN

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

- Banco de España adopts Guidelines establishing common reference parameters for stress test scenarios for liquidity stress tests

FINANCIAL SUPERVISION

- CNMV adopts EBA guidelines on resubmission of historical data

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

- CNMV updates FAQ on collective investments, venture capital and other closed-end collective investment vehicles

PRUDENTIAL REQUIREMENTS FOR INVESTMENT FIRMS DIRECTIVE & REGULATION (IFD / IFR)

- CNMV adopts EBA Guidelines on application of group capital test for investment firm groups

SWITZERLAND

FINANCIAL SERVICES

- Swiss Federal Council approves mutual recognition agreement between Switzerland and the United Kingdom / Le Conseil fédéral suisse adopte l'accord de reconnaissance mutuelle entre la Suisse et le Royaume-Uni

FINANCIAL SUPERVISION

- FINMA launches consultation on new circular on supervisory practice under BA and FinIA / La FINMA lance une consultation sur une nouvelle circulaire relative aux pratiques de surveillance selon la BA et la FinIA
- Swiss Federal Council consults on amendments to Financial Market Supervision Act and other acts / Le Conseil fédéral procède à une consultation sur les modifications de la loi sur la surveillance des marchés financiers et d'autres lois

UNITED KINGDOM

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

- FCA publishes OPBAS report on progress and themes from its 2023/2024 supervisory work

BENCHMARKS

- FCA publishes press release on remaining synthetic US dollar LIBOR settings

FINANCIAL SUPERVISION

- FCA publishes good practice and areas for improvement on principal firms embedding the new rules for effective appointed representative oversight
- FCA publishes its annual report and accounts 2023/24

FINTECH / REGTECH / BIGTECH / SUPTECH / DIGITAL ECONOMY

- FCA publishes policy statement PS24/12 Digital Securities Sandbox joint Policy Statement and Final Guidance with BoE

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

- FCA publishes document on its approach to recognition of funds under OFR and updates its page on OFR (11/09/2024)

PACKAGED RETAIL AND INSURANCE-BASED INVESTMENT PRODUCTS (PRIIPS)

- FCA updates its statement on forbearance in relation to investment trust disclosure requirements (30/09/2024)

RETAIL FINANCIAL SERVICES

- FCA and UK Government publish statement on reforms to financial services retail-disclosure requirements and on forbearance in relation to investment trust disclosure requirements
- FCA publishes good and poor practice update on price and value outcome (18/09/2024)

SANCTIONS

- UK Government updates its annual frozen asset review and reporting form (11/09/2024)

SECURITISATION REGULATION

- UK publishes Financial Services and Markets Act 2023 (Commencement No. 7) Regulations 2024

SUSTAINABLE FINANCE / GREEN FINANCE

- FCA publishes statement on setting out temporary measures for firms on 'naming and marketing' sustainability rules

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FINANCIAL MARKET INFRASTRUCTURE (FMI)

- ISDA publishes statement on EMIR 3.0

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EUROPEAN UNION

ARTIFICIAL INTELLIGENCE

EU publishes Council Decision (EU) 2024/2218 on the signing of the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law

On 4 September 2024, the European Union published a Council Decision (EU) 2024/2218 of 28 August 2024 on the signing, on behalf of the European Union, of the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law.

By means of Decision (EU) 2022/2349, the Council authorised the Commission to open negotiations on behalf of the Union for a Council of Europe convention on artificial intelligence and human rights, democracy and the rule of law. On 17 May 2024, the negotiations were successfully concluded with the initialling of the Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law ('the Convention') and its adoption by the Council of Europe Committee of Ministers.

The Convention lays down general principles and obligations that parties to the Convention should observe to ensure the protection of human rights, democracy and the rule of law in relation to the activities within the lifecycle of artificial intelligence (AI) systems.

On 13 June 2024, the European Parliament and Council adopted, on the basis of Articles 16 and 114 of the Treaty on the Functioning of the European Union (TFEU), Regulation (EU) 2024/1689 of the European Parliament and the Council, which contains harmonised rules, generally based on full harmonisation, that regulate the placing on the market, the putting into service and the use of AI systems in the Union. Those rules are directly applicable in the Member States, unless that Regulation explicitly provides otherwise. The Convention is to be implemented in the Union exclusively through Regulation (EU) 2024/1689 and other relevant Union acquis, where applicable.

Activities within the lifecycle of AI systems related to the protection of national security interests are excluded from the scope of the Convention. Regulation (EU) 2024/1689, which will be the main Union legal act implementing the Convention, also excludes from its scope of application AI systems placed on the market, put into service, or used with or without modification exclusively for national security purposes, and the output of AI systems used in the Union exclusively for such purposes, regardless of the type of entity carrying out those activities. Furthermore, national security remains the sole responsibility of each Member State, as provided for in Article 4(2) of the Treaty on European Union (TEU). Consequently, the Union position to be expressed in the Conference of the Parties set up by the Convention should respect the boundaries set out above. In particular, the Commission should refrain from discussing or taking any position on activities within the lifecycle of AI systems related to the protection of national security interests in the meetings of the Conference of the Parties.

This Decision shall enter into force on the date of its adoption.

EC informs about the next steps for the AI Pact

On 25 September 2024, the European Commission published a press release on over a hundred companies signing EU artificial intelligence (AI) Pact pledges to drive trustworthy and safe AI development.

The Commission announced over a hundred companies that are the first signatories of the EU AI Pact and its voluntary pledges. The signatories include multinational corporations and European small and medium enterprises (SMEs) from diverse sectors, including IT, telecoms, healthcare, banking, automotive, and aeronautics. The Pact supports industry's voluntary commitments to start applying the principles of the AI Act ahead of its entry into application and enhances engagement between the EU AI Office and all relevant stakeholders, including industry, civil society and academia.

The EU AI Pact voluntary pledges call on participating companies to commit to at least three core actions:

- AI governance strategy to foster the uptake of AI in the organisation and work towards future compliance with the AI Act.
- High-risk AI systems mapping: Identifying AI systems likely to be categorised as high-risk under the AI Act.
- Promoting AI literacy and awareness among staff, ensuring ethical and responsible AI development.

In addition to these core commitments, more than half of the signatories committed to additional pledges, including ensuring human oversight, mitigating risks, and transparently labelling certain types of AI-generated content, such as deepfakes. Companies are welcome to join the AI Pact and commit to the core and the additional pledges at any moment until the AI Act fully applies.

Alongside the efforts to help companies implement the AI Act in anticipation of the legal deadline, the Commission is taking action to boost EU innovation in AI. The AI Factories initiative of 10 September 2024 will provide start-ups and industry with a one-stop-shop to innovate and

develop AI, including data, talent and computing power. The AI Factories will also propel the development and validation of AI industrial and scientific applications in key European sectors such as healthcare, energy, automotive and transport, defence and aerospace, robotics and manufacturing, clean and agritech.

AI Factories are a highlight of the Commission's AI innovation package presented in January 2024, together with venture capital and equity support measures, the deployment of Common European Data Spaces, the 'GenAI4EU' initiative, and the Large AI Grand Challenge giving start-ups financial support and access to EU's supercomputers, among other measures. The Commission will also set up a European AI Research Council to exploit the potential of data, and the Apply AI Strategy to boost new industrial uses of AI.

The AI Act entered into force on 1 August 2024. Some provisions of the AI Act are already fully applicable. The entire AI Act will be fully applicable 2 years following its entry into force, with some exceptions: prohibitions will take effect after six months, the governance rules and the obligations for general-purpose AI models become applicable after 12 months and the rules for AI systems embedded into regulated products will apply after 36 months.

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

EC adopts CDR supplementing MiCA with regard to RTS specifying the requirements, templates and procedures for the handling of complaints relating to ARTs.

On 30 September 2024, the European Commission adopted the Commission Delegated Regulation (CDR) supplementing Markets in Crypto-Assets Regulation (Regulation (EU) 2023/1114 - MiCA) with regard to regulatory technical standards (RTS) specifying the requirements, templates and procedures for the handling of complaints relating to asset referenced tokens (ARTs).

Article 31(5) of Regulation (EU) No 2023 empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA), and in accordance with Articles 10 to 14 of Regulation No (EU) 1093/2010, delegated acts specifying the requirements, templates and procedures for handling complaints.

In accordance with Article 10(1) of Regulation No (EU) 1093/2010 establishing the EBA, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

The final RTS set out the handling of complaints and requirements related to the complaints management policy and function, and the provision of information to holders of asset-referenced tokens and other interested parties. The RTS continue with requirements on templates and recording of complaints and measures taken in response, the languages, the procedure to investigate complaints and to communicate the outcome of the investigations to complainants, and specific provisions for complaints handling involving third-party entities.

CYBERSECURITY

ECB clarifies that adoption of TIBER-EU helps to fulfil DORA requirements

On 26 September 2024, the European Central Bank (ECB) published a paper on adopting threat intelligence-based ethical red-teaming (TIBER-EU) helping fulfil Digital Operational Resilience Act (DORA) requirements.

The DORA sets out a number of requirements for threat-led penetration testing (TLPT). This paper outlines how the European framework for threat intelligence-based ethical red teaming – the TIBER-EU framework – can help competent authorities and financial entities fulfil those requirements.

The TIBER-EU framework provides comprehensive guidance on how authorities, financial entities, threat intelligence providers and red team testers should work together to test and improve financial entities' cyber resilience, by carrying out controlled cyberattacks. By adopting the TIBER-EU framework, competent authorities will equip themselves and financial entities to perform sound TLPT and thereby meet the DORA requirements for such tests.

DORA is an EU Regulation that entered into force on 16 January 2023 and will apply as of 17 January 2025, after which competent authorities will need to guide and manage the performance of TLPT for designated financial entities in their jurisdictions. Guiding TLPT is a specific area of expertise and is outside the usual skillset associated with supervision. Such testing needs to be executed effectively and securely, especially given that TLPT will be conducted on live production systems. The TIBER-EU framework will give authorities and financial entities comprehensive support in fulfilling DORA requirements for TLPT.

Guiding and performing TLPT on the basis of the DORA regulatory technical standards alone will be challenging given the high standards required by such tests. Contextualisation, detailed and in-depth guidance, lessons learned from experience or best practices for TLPT are not included in the legal text. Effectively executing the various elements of the testing process requires a specific set of skills and knowledge, while testing may also pose many challenges to authorities and financial entities that are new to TLPT. TIBER-EU will alleviate these difficulties to a large extent and provides a framework that can be used to fulfil the DORA TLPT requirements.

TIBER-EU is a common European framework that delivers a controlled, bespoke and intelligence-led red team test of financial entities' critical live production systems. It was established as a tool for testing and improving key elements of the cyber resilience of participating financial entities, while focusing heavily on the learning opportunities provided by the testing. There are no differences between the TIBER-EU testing process and the TLPT process set out in DORA.

16 countries have implemented the TIBER framework so far. More are in the process of adopting it, while others have expressed an interest – also in light of the DORA requirements for TLPT. More than 100 tests have been carried out in a safe and controlled manner on financial entities across the EU under the framework as implemented in each country, delivering concrete results that have helped improve cyber resilience. The TIBER-EU framework can be applied to various types of financial entity and is also applied to entities outside the scope of the DORA legislation that want to test and improve their cyber resilience.

Adopting and implementing the TIBER-EU framework – at national or at a European level – offers several benefits:

- **Extensive guidance**

The two main documents of TIBER – the TIBER-EU framework and the Services Procurement Guidelines – contain additional context, guidance and points of attention for managing a TIBER test to completion. Carrying out advanced TLPT to a high standard of quality is an extensive process, with many aspects requiring careful management. This is also reflected in the various pieces of additional guidance that have been prepared and published by the ECB in recent years, including guidance for purple teaming, the scoping phase, the threat intelligence report and the red team test report.

- **Experience and knowledge of TLPT**

The members of the various TIBER cyber teams at the authorities that have adopted the framework across the EU are responsible for coordinating and executing tests for their respective financial entities. They have substantial knowledge on the testing process and related topics, such as provider certifications, the procurement phase, TLPT project management, the scoping of critical functions and outsourcing. Their experience is reflected in the best practices and lessons learned that are shared within the community, and evidenced by the fact that no noteworthy incidents have occurred since the launch of the TIBER-EU framework. Some of these shared best practices have now become mandatory under DORA TLPT, including purple teaming, for which the ECB published a guide in 2022. Several national central banks and national competent authorities are planning to use their existing TIBER cyber teams when performing TLPT under DORA.

- **TIBER-EU Knowledge Centre and community**

The TIBER-EU Knowledge Centre (TKC) is a forum for national and European TIBER authorities, chaired by the ECB. The participating authorities use the forum to share their knowledge and experiences, and to coordinate common TIBER-related initiatives.

After an authority has formally decided to adopt and implement TIBER-EU, it is invited to join the TKC. This allows the new representatives to quickly increase their knowledge of the TIBER-EU framework and aspects of practical implementation and to establish bilateral lines of communication with other test managers. The existence of the cooperative, trust-based TKC community has contributed to the success of the TIBER-EU framework and its broad adoption across EU jurisdictions to date. This is illustrated by the significant support provided by the TKC in maintaining the framework, conducting bespoke training activities and developing additional guidance documentation.

EUROSYSTEM COLLATERAL MANAGEMENT SYSTEM (ECMS)

ECB publishes press release on rescheduling of launch of ECMS

On 25 September 2024, the European Central Bank (ECB) published a press release on rescheduling of the launch of Eurosystem Collateral Management System (ECMS).

The purpose of the ECMS is to streamline and harmonize the management of collateral used in Eurosystem monetary policy operations and intraday credit operations.

The ECB's Governing Council has decided to reschedule the launch of its new ECMS to the first half of 2025. The exact launch date will be communicated in October 2024. The decision to reschedule the launch has been taken in the light of an assessment conducted by the ECB Market Infrastructure Board (MIB), which concluded that additional time was required to achieve sufficient readiness for a smooth go-live, despite the

good progress made in the testing phase over the summer.

The rescheduling will support national central banks of the euro area and the counterparties that will be joining the ECMS by enabling them to achieve sufficient testing coverage in a stable environment to ensure their readiness by the revised go-live date. The ECMS will allow counterparties to manage assets used as collateral in Eurosystem credit operations. It is closely linked to the TARGET2-Securities (T2S) platform for the settlement of securities and to the T2 system for the transfer of central bank liquidity.

The ECMS is a unified system that will replace the existing systems of the 20 euro area national central banks that are currently used in managing assets used as collateral for Eurosystem credit operations. Together with the other TARGET Services offered by the Eurosystem, enhanced liquidity management features will be introduced and cash, securities and collateral will flow freely across Europe.

FINANCIAL SUPERVISION

ESMA publishes its work programme for 2025

On 30 September 2024, the European Securities and Markets Authority (ESMA) published its 2025 Work Programme.

ESMA has contributed to the ongoing discussion of how to make European capital markets more efficient and attractive, and in 2025 will advance on those aspects within its control, while working with the co-legislators and others to support the construction of the European Savings and Investment Union.

A significant portion of ESMA's work in 2025 will comprise policy work to facilitate the implementation of the large number of mandates received in the previous legislative cycle, and the preparation of new mandates, such as the European Green Bonds and the ESG Rating Providers Regulations. Following the adoption of European Market Infrastructure Regulation (EMIR) 3, ESMA will take on new responsibilities and develop a substantial number of technical standards, including for the new Active Account Requirement.

2025 will also see the selection and authorisation of the first Consolidated Tape Provider, an important step to enhance transparency of European markets. The effective implementation of MiCA will be crucial to ensuring adequate protection for investors and convergent supervisory approaches for Crypto Assets Services Providers.

The 2025 Work Programme underlines ESMA's dedication to providing adequate opportunities for, and safeguarding the interests of, retail investors wishing to participate in EU capital markets. In addition to preparations for potential new responsibilities under the Retail Investment Strategy and for the possible shortening of the settlement cycle (T+1), key outputs include technical standards and guidelines under MiFIR/MiFID II and AIFMD/UCITS.

In 2025, ESMA will work to further strengthen supervision focusing on effective coordinated supervision across the EU financial markets. ESMA will continue to use all the tools in its convergence toolkit to further harmonise supervisory approaches and practices across its remit, including common supervisory actions, and practical exchanges on specific supervisory cases and challenges.

ESMA will work closely with the NCAs to enhance cross-border cooperation and data-sharing. Through the continued implementation of its Data Strategy and the development of common SupTech and data projects, ESMA will be contributing to the EU strategy on supervisory data in financial services. In 2025, ESMA is expected to finalise preparations to launch the first phase of the European Single Access Point (ESAP) in 2026, aiming to create a centralised platform for easy access to public data and information on securities markets.

ESAs publishes Autumn 2024 Joint Committee Report on risks and vulnerabilities in the EU financial system

On 10 September 2024, the European Supervisory Authorities (ESAs) published their Autumn 2024 Joint Committee Report on risks and vulnerabilities in the EU financial system.

The Report underlines ongoing high economic and geopolitical uncertainties. The ESAs warn national supervisors of the financial stability risks stemming from these uncertainties and call for continued vigilance from all financial market participants. For the first time, the Report also includes a cross-sectoral deep dive into credit risks in the financial sector.

The continued decline of inflation in late 2023 and early 2024 has led central banks to begin the shift towards looser monetary policy. Financial markets performed strongly in anticipation of future rate cuts and an improving macroeconomic outlook, save for the short-lived but sharp equity price dip in August. Considerable uncertainties, nonetheless, remain regarding the future path of the global economy, inflation and monetary policy and the interplay of these factors across different jurisdictions.

Amid ongoing geopolitical developments, such as the Russian aggression against Ukraine, the war in the Middle East and elections in the

European Union and the United States, there is potential for sudden shifts in the economic outlook and market expectations. High market volatility in August provided a glimpse of the continued potential for sudden shifts in outlook and market expectations. In sum, the highly uncertain current environment continues to present material financial stability and operational risks that necessitate vigilance from all financial market participants.

Against the backdrop of these risks and vulnerabilities, the Joint Committee of the ESAs advises national competent authorities, financial institutions and market participants to take the following policy actions:

- financial institutions and supervisors should remain prepared to face the impacts of continued high interest rates on the real economy;
- credit risk should continue to be monitored and carefully managed as its potential materialisation remains a concern. This underlines the need for adequate provisioning levels and forward-looking provisioning policies, while maintaining prudent and up-to-date collateral valuation;
- financial institutions need to be flexible and agile and have proper plans and processes in place to address unexpected short-term multi-fold challenges;
- financial institutions and supervisors should remain vigilant regarding the impact of inflation on product development.
- financial institutions and supervisors should remain vigilant to operational and financial stability risks that could arise from cyber-risks, as exemplified by the global IT disruption in July from the failed software update of a widely used cybersecurity company.

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

EFAMA publishes press release on significant expansion of European Fund Classification system

On 3 September 2024, the European fund and Asset Management Association (EFAMA) published a press release on a significant expansion of the European Fund Classification (EFC) system.

The EFC, a pan-European classification system of investment funds overseen by industry trade body EFAMA, has significantly expanded its coverage to reach close to 180,000 fund share classes across most European countries. The vast majority of European funds now have an EFC classification.

This includes several novel fund categories, taking on board recent market evolutions. At the most granular level, there are currently more than 880 fund subcategories included in the EFC. During the latest update, the following categories were added:

- Crypto asset funds;
- FX funds;
- Ultra-short bond funds.

The EFC is the only classification scheme that is owned and managed solely by the fund industry. It is completely free of charge, both for fund groups/managers and for data users. The entire classification process is done on a non-monetary basis, with results freely available to all interested users via the EFC webpage or bespoke feeds.

BELGIUM

CONSUMER PROTECTION

Chambre des représentants publishes law amending the Code of Economic Law, aimed at combating greenwashing

On 18 September 2024, the Chambre des représentants published a law amending the Code of Economic Law, aimed at combating greenwashing.

This bill aims to combat greenwashing, where companies misleadingly use arguments claiming good environmental and climate practices in marketing or communication operations.

In order to complement the actions that are being prepared at European level, three measures are planned;

- greenwashing is automatically considered a misleading commercial practice; it is therefore easier to apply the planned sanctions;
- the strengthening of sanctions;
- the use of the “carbon neutral” claim must be properly justified.

The European Commission has recently drafted two proposals to combat misleading environmental claims. The first, published in March 2022, aims to identify advertisements boasting “future environmental performance without clear, objective and verifiable commitments or targets and without an independent monitoring system”, and associate them with illegal misleading commercial practices. The second, presented a year later, contains in particular the obligation for companies to accompany environmental claims and labels with precise assessments to support them.

The adoption of these two measures would constitute real progress in the fight against greenwashing. It is therefore important that our country supports these two proposals within the European Council. At the same time, Member States of the European Union have carried out legislative work aimed at implementing national measures to counter this phenomenon. This is particularly the case in France, where, since 1 January 2023, the use of the claim “carbon neutral”, or any other claim with an equivalent meaning, must be justified, and where non-compliance with this rule is punishable by a fine of up to 100,000 euros. It should be noted that greenwashing, understood as a misleading commercial practice, was already punishable by two years in prison, a fine of 300,000 euros or equivalent to 10% of average annual turnover.

In Belgium, environmental claims are regulated by Belgian or European sectoral legislation or standards. In the absence of such legislation or standards, the regulation is determined by the provisions of the Code of Economic Law concerning the prohibition of unfair and misleading commercial practices. Greenwashing, provided that it is recognized as an unfair commercial practice, can be punished by a criminal fine of between 26 and 10,000 euros. Including additional tenths, this amount can reach 80,000 euros, or 4% of turnover, if this corresponds to a higher amount. But, to do this, it must be possible to prove that this greenwashing really constitutes an unfair practice; proof that is not always easy to provide. This bill addresses this problem by establishing that greenwashing practices are always considered “a deceptive commercial practice.”

CYBERSECURITY

FSMA publishes educational documentation on DORA

On 27 September 2024, the Financial Services and Markets Authority (FSMA) published educational documentation on the Digital Operational Resilience Act (DORA).

This publication discusses the main themes, key concepts and obligations arising from the DORA regulations.

The DORA regulation will come into force on 17 January 2025. This regulation sets ambitious targets for digital operational resilience. This aims to protect financial entities and their customers, in view of the increasing use of ICT technologies in the financial sector, the dependency and risks arising from them, as well as the continuous development of cybercrime.

The publication of this documentation aims to make the sometimes technical and complex provisions of the DORA regulation accessible to as many people as possible. These texts are primarily aimed at small entities with limited IT infrastructure and support.

The documentation addresses each of the main themes of the DORA regulation by summarizing the key concepts and the obligations arising from it (level I). It is designed in such a way that it is easy to navigate between the different themes via the links inserted in the pages, in order to easily find the information you are looking for, or to deepen one or other concept of the regulation.

The documentation may, in the future, be supplemented or clarified, following the publication of the implementing technical standards by the European supervisory agencies or on the basis of the experience acquired during the application of the Regulation.

FINANCIAL SUPERVISION

FSMA publishes guidance on resubmission of historical data for reporting to EBA

On 10 September 2024, the Financial Services and Markets Authority (FSMA) published a guidance on the resubmission of historical data for reporting to the European Banking Authority (EBA).

These guidelines apply to asset management and investment advisory companies (Sociétés de gestion de portefeuille et de conseil en investissement - SGPCI) as well as to investment holding companies or mixed financial holding companies that are part of the group of an SGPCI.

The purpose of this circular is to implement the EBA guidelines of 8 April 2024 on the resubmission of historical data in the context of reporting to the EBA. The guidance specifies the requirements for the resubmission of historical data by the financial institutions concerned to the competent authorities in the event of errors, inaccuracies or other changes in the data previously reported in accordance with the reporting framework developed by the EBA.

Pursuant to Article 16 of Regulation (EU) No 1093/2010, the EBA may issue guidelines to competent authorities or financial institutions in order to establish consistent, efficient and effective supervisory practices within the European System of Financial Supervision and to ensure a common, uniform and consistent application of European Union law.

It is in this context that the EBA has issued guidance on the resubmission of historical data as part of reporting to the EBA (EBA/GL/2024/04). This guidance applies to both individual and consolidated historical data.

As part of their prudential supervision, the companies referred to in this communication are required to report data to the FSMA on a regular basis, in accordance with the reporting framework provided for in the EBA.

Although the companies concerned are expected to pay adequate attention to the quality of the data reported to the supervisory authority, it is possible that, after the data has been submitted to the relevant supervisory authority, errors or inaccuracies in the data reported may be detected, either by the companies themselves or by the supervisory authority.

If such errors or inaccuracies are identified in the submitted reporting, the current legal requirements for the different (European) reporting frameworks provide that these reports must be corrected by the institution concerned. If these errors or inaccuracies are not only in the most recent reports (Current Data) but also in previous reports (Historical Data), such Historical Data must also be corrected as soon as possible. In addition, where the audited figures differ from the unaudited figures previously submitted to the supervisory authority, financial institutions must resubmit the corrected audited figures without delay.

However, the current European reporting requirements did not specify until when financial institutions had to adjust this historical data (i.e. for which past reference periods they had to correct the data). The EBA Guidelines attached to this communication attempt to address this gap by defining a common European approach. The guidelines indicate for which past reference periods the data (the historical data) must be resubmitted by the supervised institutions to Supervisory Authority. The guidance is intended to help supervised institutions ensure that their reporting obligations are always correctly met, even in the event of inaccuracies or errors.

As set out, these EBA guidelines will take effect on 17 October 2024 and will apply to all existing (and future) EBA reporting requirements for supervisory purposes.

The FSMA is of the opinion that this guidance will provide useful clarification regarding the reference period up to which corrections are expected from institutions when erroneous data have been reported to the FSMA. The latter will integrate these guidelines into its control system.

FSMA publishes guidance on the application of the group capitalization test for investment firm groups in accordance with Article 8 of IFR

On 10 September 2024, the Financial Services and Markets Authority (FSMA) published a guidance on the application of the group capitalization test for investment firm groups in accordance with Article 8 of Investment Firms Regulation (Regulation 2019/2033 - IFR).

This guidance applies to asset management and investment advisory firms that are part of a group of investment firms.

This guidance specifies how competent authorities should apply Articles 8(1) and 8(4) of Regulation (EU) 2019/2033 when receiving a request from a group of investment firms, in order to be able to apply the group capitalisation test or hold an amount of own funds lower than the amount calculated pursuant to Article 8, Paragraph 3 of that regulation.

Pursuant to Article 16 of Regulation (EU) No 1093/2010, the European Banking Authority (EBA) may issue guidelines to competent authorities or

financial institutions in order to establish consistent, efficient and effective supervisory practices within the European System of Financial Supervision and to ensure a common, uniform and consistent application of European Union law.

It is in this context that the EBA has issued "Guidelines on the application of the group capitalisation test for groups of investment firms in accordance with Article 8 of Regulation (EU) 2019/2033" (EBA/GL/2024/03). These guidelines apply from 1 January 2025.

To contextualize these new guidelines, it should be recalled that the IFR 2 provides for the implementation of supervision on a consolidated basis for investment firm group structures. This is the case where a portfolio management and investment advisory company (Sociétés de gestion de portefeuille et de conseil en investissement - SGPCI) is a parent undertaking or is owned by an investment holding company (compagnie holding d'investissement - CHI) or a mixed financial holding company (compagnie financière holding mixte - CFHM). These parent SGPCIs, CHI and CFHMs are required to comply with the main provisions of the IFR Regulation on the basis of their consolidated position

Competent authorities may, however, allow group structures that are deemed sufficiently simple to apply a light derogation, the group capitalisation test, provided that there are no significant risks to clients or the market associated with the investment firm group. In this case, the capital charge that will apply to the parent SGPCI or the CHI is defined in Article 8, §3 of the IFR Regulation.

The FSMA is of the opinion that these guidelines, which have already been incorporated into its supervisory system, provide useful clarifications with regard to the application of the above-mentioned article.

SHAREHOLDING / OWNERSHIP STRUCTURES

Chambre des représentants publishes draft law establishing double voting rights for dematerialised registered shares

On 16 September 2024, the Chambre des représentants published a draft law establishing double voting rights for dematerialised registered shares.

The new Companies and Associations Code (Code des sociétés et des association - CSA) allows companies listed on the stock exchange to introduce double voting rights for registered shares. This proposal aims to also grant double voting rights to dematerialised registered shares. It is further proposed to reduce the majority required to introduce double voting rights from 66% to 75%.

Since the introduction of the CSA, listed companies can introduce double voting rights. This is only granted to registered shares, but not to dematerialized shares. Its aim is to combat short-termism and the search for quick profit and aims to enable companies to make long-term decisions. The idea behind it is that anyone who has been a member of a society for a long time knows what is good for that society.

In countries that allow double voting rights for registered shares, practice shows that it mainly benefits large shareholders. This is particularly the case when the double voting right is only granted to registered shares.

Private and institutional investors (undertakings for collective investment in transferable securities - UCITS, alternative investment funds - AIFs, pension funds, insurers) generally hold their shares in a securities account. To acquire double voting rights, they would have to convert their dematerialized shares into registered shares.

The advantage of registered shares is that the investor is known to the company. The latter can communicate directly with him (sending the annual report, invitation to the general meeting, etc.). The holding of registered shares does not give rise to the payment of custody fees or to the levying of a tax on securities accounts. Some will argue that the loss of anonymity is a disadvantage. But it is the shareholder himself who decides whether he wants to make himself known to the company.

For the private investor, the costs of conversion are burdensome because of the small holdings that he generally holds in a diversified portfolio of investments. Financial institutions do not hesitate to charge EUR 250 per converted "line". The conversion is not carried out in an automated manner as in the case of the purchase or sale of shares on a regulated market. The transaction requires several communications between the financial institution and the issuing company and between the issuing company and the central securities depository (Euroclear). Depending on the responsiveness of the issuing company, the conversion process will take several days to several weeks.

At the end of the conversion, these shares disappear from the securities account. The issuer issues the shareholder with a registered registration certificate. In the event of the conversion of shares of different listed companies, the shareholder no longer has an overall view of his or her portfolio of securities. He must keep the certificates, but not necessarily in a safe deposit box at the bank. Indeed, these certificates do not constitute title deeds whose possession takes the place of title, like the bearer securities that existed in the past. It is up to the heirs to guess in which companies the deceased held any registered shares. On the other hand, when shares are in a securities account, the heirs can easily find the securities account via Febelfin's Bank Research service. Heirs can also use a notary acting in the context of a declaration of succession and having

access to the Central Contact Point (bank register) to get their hands on this information.

The introduction of double voting rights for registered shares only does not strengthen the commitment of institutional investors. For the latter, registered shares have the same disadvantages as for private investors, but in their case, it is the liquidity risk that is predominant.

BRAZIL

CAPITAL MARKETS UNION (CMU)

ANBIMA announces Pre-matching now accepts account information on deal registration

On 19 September 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) announced Pre-matching now accepts account information on deal registration.

The Pre-matching platform, which allows the checking of purchase and sale information of operations with government securities before registration in the Selic (Special Settlement and Custody System), now has a new feature to simplify the processes of participants. From 19 September 2024, parties can choose to inform the accounts at the time of business registration. With this, the specification requisition is generated automatically. The solution is available through the web interface and API.

The Pre-Matching platform checks the negotiations between financial institutions with federal government securities before registration with the Selic, a process known as matching operations. The tool saves time for institutions, which previously had to do this process by phone or email. Registration for Pre-matching can be done via the web or through APIs available on the Selic Conecta developer portal.

CREDIT RISK

BCB publishes Normative Instruction No. 521 that amends Circular Letter No. 3,853 on accounting items to be used in the calculation of portion of risk-weighted assets referring to credit risk exposures

On 11 September 2024, the Banco Central do Brasil (BCB) published the Normative Instruction No. 521 that amends Circular Letter No. 3,853 which details the accounting items to be used in the calculation of the portion of risk-weighted assets in the simplified form referring to credit risk exposures subject to the calculation of the minimum capital requirement through a simplified standardized approach.

The change results from necessary improvements identified in the Circular Letter No. 3,853, of 19 December 2017, which details the accounting items to be used in calculating the share of risk-weighted assets in the form for credit risk exposures subject to calculation of the minimum capital requirement through a simplified standardized approach.

The main improvements correspond to resulting adjustments updating the Accounting Plan of the Institutions of the Financial System (Cosif) and are related to:

- The gold asset, subject to the application of the risk weight (FPR) of 0% (zero percent) as prescribed in Circular No. 3,862, of 7 December 2017; and
- Provisions for other doubtful accounts, accounts reducing amounts of the exposures related to credit operations, the latter subject to the application of the FPR of 75% (seventy-five percent).
- In line with the principle of transparency and with the aim of resolving any doubts about of the application of simplified prudential regulation, it was also decided to add Breakdown for the accounting items identifying assets that are not considered exposure, in addition to those currently already foreseen, according to the determined in paragraph 4 of article 3 of Circular No. 3,862, of 2017. Specifically, such Improvement details that accounting items are not considered exposures related to
 - Related to related asset operations, according to item IV of paragraph 4 of the art. 3 cited Circular;
 - Assets deducted in the calculation of the PRS5 or PRIP according to item I of paragraph 4 of article 3 of the aforementioned Circular;
 - The amounts receivable from paying end-user where the institution acts as a postpaid card issuer, both for payment institutions that are not part of a conglomerate, and for payment institution that is a member of a Type 2 conglomerate, as per item VIII of paragraph 4 of the aforementioned Circular of article 3, amounts subject to calculation of the RWA portionSP, on the calculation of the capital required for the risks associated with payment services.

Another update results from the fact that Cosif records in the same clearing account both the Contracted credit amounts to be released regarding credit limits Granted. Thus, since payment institutions that are not part of the as well as Type 2 prudential clusters, do not act in the granting of credit, due to legal and regulatory restrictions and, by therefore, they do not have installments to release and, taking into account that the limits of credit granted listed, notably those linked to instruments of postpaid payment, are elements subject to calculation through the RWA installmentSP, Adjustment is necessary to neutralize the amounts recorded in said account of compensation for the institutions and conglomerates mentioned.

It is published in the Official Gazette of 12 September 2024, Section 1, p. 68/69.

The draft shall come into effect on the date of its publication.

DATA STRATEGY

[ANBIMA announces Reports on economic indicators will be migrated to ANBIMA Data](#)

On 12 September 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) announced that the reports on economic indicators will be migrated to ANBIMA Data.

As of 10 October 2024, ANBIMA publications that bring the results and projections of economic indicators will be migrated to ANBIMA Data, a free data platform that concentrates information on the financial and capital markets.

The novelty includes the Macroeconomic Report, which consolidates the projections of the economists of our Macroeconomic Group, and the Fixed Income Bulletin, which brings data on our indices that track public and private securities.

Currently, publications are made on ANBIMA website. On October 10, the respective pages will be discontinued and the data will be published exclusively on ANBIMA Data.

The format of the publications will not change, as well as the information disclosed. The move is part of a plan to centralize all our data in one place, making it easier to read and comparability of information.

ANBIMA Data is a free platform that brings data and statistics on debentures, CRIs (Real Estate Receivables Certificates) and CRAs (Agribusiness Receivables Certificates), investment funds, government bonds, ANBIMA indices and more.

With several tools, such as personalized data queries, calculators, and fund and debenture comparators, the platform optimizes the daily lives of market professionals and helps improve investment decision-making.

INTERNAL CONTROL SYSTEMS (ICS)

[BCB publishes CMN Resolution No. 5,178 on internal control systems of financial institutions and other institutions](#)

On 26 September 2024, the Banco Central do Brasil (BCB) published the CMN Resolution No. 5,178 that amends CMN Resolution No. 4,968, of 25 November 2021, which provides for the internal control systems of financial institutions and other institutions authorized to operate by the Central Bank of Brazil.

CMN Resolution No. 4,968, of 25 November 2021, published in the Federal Official Gazette of 29 November 2021, is now in force with the following amendments:

Article 5:

g) periodic security tests for information and technology systems;

i) measures to ensure the provision of correct documents, data and information and in accordance with the deadlines and conditions established in legal or regulatory rules, including through the implementation of a verification process the quality of the information provided; and

The process of verifying the quality of the information referred to in item IV, paragraph "i", of the caput must include the performance of specific quality tests.

This Resolution enters into force on 1 January 2025.

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

[ANBIMA announces BCB publishes new layout for filling in information on fund shareholders](#)

On 10 September 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) announced that BCB published a new layout for filling in information on fund shareholders.

Changes were made to adapt to Resolution 175 and reflect conversations we had with the CVM and the BCB.

The BCB published a new layout for filling out documents 5401 and 5402, which request information from institutions about investment fund shareholders and are sent by fiduciary administrators and distributors on behalf of their clients.

The new layout can be used by institutions as of October 2024.

ANBIMA publishes Circular on Rules for transparency in the remuneration of funds and new questionnaires for service providers

On 19 September 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) published a Circular on Rules for transparency in the remuneration of funds and new questionnaires for service providers.

The consultation seeks to include in the text transparency rules in the remuneration of investment fund service providers and new QDDs (Due Diligence Questionnaires) mandatory for essential service providers and for administrators of FIDCs (Credit Rights Investment Funds).

All proposals consider the regulatory updates brought by CVM Resolution 175.

They are standardizing the information on the remuneration of service providers, which must be demonstrated and disclosed to investors if the fund's regulations include a global rate. Their goal is to provide investors with transparency of the fees paid to each service provider, in line with the CVM's new interpretations related to 175 brought in Circular Letter No.3/2024.

The new suggested rule is that the fund maintains, on the manager's website, a document, separate from the regulation, containing the minimum parameters defined in the new text of the code, such as general information about the class or subclass and the segregation of fees charged.

To ensure a standard of governance for the essential service providers of the funds, they have developed a QDD that defines minimum requirements for the beginning of the relationship between administrators and managers.

This questionnaire deals with topics such as exposure to capital risk and liquidity tools, novelties brought by 175, as well as classic topics, such as internal controls and information security. The document also has questions about ESG (environmental, social, and governance) and investment in crypto assets.

The QDD can also be used to reassess the activities of administrators and managers while the partnership relationship lasts.

They also created a QDD to assist FIDCs administrators in hiring credit rights registrars, with the aim of helping them understand the risks associated with the provision of the service and ensure a minimum standard among the contracted companies.

The questionnaire has questions about money laundering prevention, technological structure and risk management.

Comments and suggestions can be sent until 4 October 2024 by e-mail.

All new rules come into force on 1 November 2024, in line with the entry into force of the remuneration rules of 175.

ANBIMA announces ANBIMA HUB new platform for sending fund data

On 16 September 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) announced ANBIMA HUB new platform for sending fund data.

On 1 October 2024, the HUB ANBIMA will be launched, new platform for sending information on investment funds in line with CVM Resolution 175.

It will allow institutions to carry out, among other actions, the registration of single-class and multi-class financial and structured funds, with or without associated subclasses, change or terminate a fund, issue a registration analysis fee, adapt a stock fund to Resolution 175, send and resend PL and quota reports and justify inconsistencies.

By replacing the Funds Site, the HUB introduces relevant changes in the way institutions report their information. The platform will be accessible through the URL hubanbima.rtm.net.br from its launch and it is important that IT teams do the necessary tests to ensure access.

ANBIMA updates API for investment funds in compliance with CVM Resolution 175

On 16 September 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) updated its API for investment funds in compliance with CVM Resolution 175.

Due to the news brought by CVM Resolution 175, over the last few months ANBIMA have released new versions of investment fund APIs for testing in ANBIMA Feed.

It is very important for institutions to participate in the pilot. As of 1 October 2024, the investment funds API (V1) used today by the market and

which follows the format of Instruction 555 will be discontinued, that is, it will no longer receive data from that date. Access to the history will be available until 7 October 2024.

In previous test releases (beta 1, 2, and 3) ANBIMA made the following endpoints available:

- Fund listing: Easily access the listing of over 30k investment funds, leveraging this variety to optimize your testing. The information about these products is updated every other day.
- Fund details: Get detailed information about each product.
- Batch Data: access the option to consume registration and historical series data through the batch model. This format is more efficient for consuming large volumes of data.
- Historical series of equity and quota: analyze the periodic data of the funds.
- Institutions: check the list of institutions with at least one active fund.
- Investor segment: see the percentage distribution of the funds' net worth, according to the classification of the type of investor. This is an exclusive product for institutions adhering to the Management or Administration Chapter of the ART Code.
- Details with history: access the history of registration changes of the funds.
- Explanatory notes: check out information on relevant events that occurred in the fund and were recorded in the ANBIMA database.

The data made available in the tests contains fictitious information, including funds with structures not yet contemplated (such as multiclass funds with or without associated subclasses). That is, they do not represent the real numbers of the industry.

[BCB publishes Normative Instruction No. 527 on procedures for remittance of information on shareholders of investment funds](#)

On 27 September 2024, the Banco Central do Brasil (BCB) published the Normative Instruction that amends BCB Normative Instruction No. 94, of 8 April 2021, which consolidates the procedures for remittance of information on shareholders of investment funds, referred to in BCB Resolution No. 38, of 11 November 2020.

The Head of the Department of Monitoring of the Financial System – Desig in the use of the attribution that confers article 23, item I, item "a" of the Internal Regulations of the Central Bank of Brazil, disclosed through BCB Resolution No. 340, of 21 September 2019, based on article 85, item I, paragraph "b" of the aforementioned Rules of Procedure, and having in view of the provisions of BCB Resolution No. 38, of 11 November 2020, resolve:

Article 1 BCB Normative Instruction No. 94, of 8 April 2021.

It comes into force with the following amendments:

a) in relation to the investment fund, its classes and its Subclasses:

1. identification;
2. net worth;
3. Number of quotas;
4. number of quota holders;

b) identification of the quotaholder or distributor on behalf of the shareholder and order;

c) in relation to the investment fund, its classes and its Subclasses:

1. identification;
2. Number of shares distributed on behalf of the distributor sending the information;
3. Number of quota holders holding the Shares distributed on account and order by the sender distributor of the information;

The indication referred to in the caput must be registered in the Bank's Entity of Interest Information System Central – Unicad, which is dealt with by BCB Resolution No. 209, of 22 March 2022."

Annex to BCB Normative Instruction No. 94, of 8 April 2021, becomes effective with the following amendment:

Deadline for Remittance: until the twelfth day of the month subsequent to the base date.

This Normative Instruction entered into force on 1 October 2024.

The Code Documents 5401 - Information on Fund Quotaholders - Data sent by the administrators of the investment funds and 5402 - Information about Fund Quotaholders - Data sent by financial institutions distributors of fund quotas were created through the Normative Instruction BCB No. 94, of 8 April 2021, based on BCB Resolution No. 38, of 11 November 2020, and are used to capture information on fund shareholders and the respective investment funds.

It is published in the Official Gazette of 27 September 2024, Section 1, page 122.

CVM complements guidelines on items of CVM Resolution 175

On 23 September 2024, the Comissão de Valores Mobiliários (CVM) technical area complements in a new circular letter guidelines on items of CVM Resolution 175.

The Superintendence of Supervision of Institutional Investors (SIN) of the CVM published the CVM/SIN Circular Letter 5/2024.

The document complements CVM Circular Letters SIN 2, 3 and 4/2024 and discloses additional interpretations by the Agency's technical area on provisions of the general part of CVM Resolution 175, as well as Annex I and V of the regulation.

The SIN clarifies the possibility of classes of quotas with different tax treatment in the funds of Annex I of CVM Resolution 175, the obligation of reports and limits related to FI-Infra. And, specificities applicable to ETFs, in Annex V of the same Resolution.

The SIN's guidelines are distributed in the format of questions and answers, making it easier and simpler for market participants to understand.

There are five questions, which were prepared based on doubts received from the market.

The objective is to inform that, as of 1 October 2024, the Fundos.NET System will be prepared to receive periodic and occasional information from both investment funds and their respective quota classes. The guidance applies to Investment Funds in Agroindustrial Production Chains (FIAGRO), Real Estate (FII) and Credit Rights (FIDC).

CVM publishes rule on FIAGRO

BACKGROUND

FIAGROs were introduced in Brazil by Law No. 14,130/2021, which was promptly regulated, on an experimental basis, by the CVM. Since then, FIAGROs have been growing and consolidating themselves as an important tool for Agribusiness to raise funds in the Capital Market.

CVM Resolution 214, through which FIAGRO receive specific regulations, has been prepared based on the development of these funds under the protection of CVM Resolution 39 and its experimental nature, for over three years.

After learning from the experimental rule, the CVM now delivers CVM Resolution 214, a complete and modern rule for FIAGROs, inserted as Annex VI of the Regulatory Framework for Investment Funds (consolidated in CVM Resolution 175).

CVM Resolution 214 is a delivery of the 2024 Regulatory Agenda.

Between the issuance of the temporary rule, in July 2021, and the date of the last information available in the CVM Agribusiness Bulletin, with the base date of June/24, the net worth of FIAGRO reached around R\$ 37 billion, distributed among 115 funds, 12 of which already have more than 15 thousand shareholders. This accelerated growth has occurred without, so far, any unusual problems in the functioning of the industry having been identified.

The three years of effective operation of FIAGRO using the chassis of other categories of funds have generated knowledge about products dedicated to agribusiness for the entire market – investors, agents and regulator.

FIAGRO will be able to operate as a kind of agribusiness multimarket fund, with an investment policy that involves exposure to different risk factors, without the commitment to concentrate investments in any specific factor.

WHAT'S NEW?

On 23 September 2024, the Comissão de Valores Mobiliários (CVM) published a new rule on the Investment Funds in Agribusiness Production Chains (FIAGRO). Through the new regulation for FIAGRO, the CVM mainly seeks:- facilitate the access of dynamic and innovative local agribusiness to the resources of Brazilian public savings through investment funds.- provide FIAGRO with standards of conduct, informational transparency and governance that serve to protect investors, a fundamental mandate of the Agency. It is noted that nothing prevents FIAGRO

from concentrating their portfolio on assets typical of other categories of funds, provided, of course, that their investment policies are focused on agribusiness. FIAGRO will be allowed to participate in the carbon market. Despite this, it is important to consider that, for now, this market in Brazil still has extra-market risks, so the regulation imposes additional governance requirements on the operation, aimed at protecting FIAGRO shareholders, more related to the control of the existence, integrity and ownership of agribusiness carbon credits. Additionally, considering that ethanol production is an agribusiness activity, FIAGRO will be allowed to acquire decarbonization credits, the CBIO, a product traded in the organized over-the-counter market.

WHAT'S NEXT?

The rule comes into force on 3 March 2025. FIAGRO that are already in operation must adapt to the new regulation by 30 September 2025. The deadline does not coincide with the adaptation of the other funds, which ends on 30 June 2025.

[ANBIMA publishes new version of manual for exchanging information on funds and managed portfolios between service providers](#)

On 24 September 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) published a new version of the manual for exchanging information on funds and managed portfolios between service providers.

ANBIMA has launched a new version of the filing manual for Position File 5.0, which is aimed at managers and administrators who exchange information about funds and managed portfolios. The update of the document ensures that financial institutions follow a standard that facilitates communication between market participants.

The main objective of the new version of the manual is to adapt the structure of the file to the changes brought about by CVM Resolution 175, the new regulatory framework for investment funds, and to the best international practices. Now, the document makes it possible to fill in new class and subclass structures, such as single-class or multi-class backgrounds.

ANBIMA has also revised the manual in order to improve the filing guidelines and simplify reading. Among the main novelties, the manual brought more detail on the filling of assets and expenses of the funds. They also included identifiers for managed portfolios, meeting a demand from Previc (National Superintendence of Complementary Pension).

Standardization through Position File 5.0 reduces the cost of generating information, as it eliminates the need to create different file formats to send the same information. With the change, position file 4.01 will be discontinued in June 2025, given the impossibility of its use for the new reality of fund structure

[ANBIMA launches technical guide for transfer of exclusive funds](#)

On 27 September 2024, the Brazilian Financial and Capital Markets Association (ANBIMA) launched technical guide for the transfer of exclusive funds.

Asset managers and administrators now have a technical guide to assist them in the entire process of transferring exclusive funds from one institution to another.

The document, which is not part of our self-regulation, brings good practices for service providers, detailing the steps in the fund transfer process and offering suggestions for standardization of documentation to assist institutions.

With these recommendations, ANBIMA hopes that this process will gain more efficiency and agility, which benefits both institutions and investors.

REMUNERATION POLICIES

[BCB publishes CMN Resolution No. 5,177 on the remuneration policy of managers of financial institutions and other institutions](#)

BACKGROUND

On 27 September 2024, the Banco Central do Brasil (BCB) published the CMN Resolution No. 5,177 that provides for the remuneration policy of managers of financial institutions and other institutions authorized to operate by the BCB.

WHAT'S NEW?

For the purposes of the provisions of this Resolution, the following are included in the scope:

I - administrators:

a) the directors and members of the board of directors of corporations, credit unions and service confederations constituted by central credit cooperatives; and

b) the managers of limited liability companies;

II – realized recurring profit: the net accounting income for the period adjusted for unrealized results and free of the effects of non-recurring events controllable by the institution; and

III – remuneration: the payment made in kind, shares, share-based instruments and other assets, in return for the work rendered to the institution by managers, including fixed compensation, represented by salaries, fees and commissions, and variable compensation, consisting of bonuses, profit sharing, and other incentives associated with performance.

The compensation of the managers of the internal control and risk management areas, of those responsible for activities related to the compliance function and of the members of the internal audit team shall be:

I - adequate to attract qualified and experienced professionals; and

II - determined independently of the performance of the business areas, so as not to generate conflicts of interest.

The remuneration policy must be approved:

I - by the general meeting, in credit cooperatives and service confederations constituted by central credit cooperatives; and

II - by the board of directors, in payment institutions, securities brokerage companies, exchange brokerage companies and securities distribution companies and securities.

The Board of Directors is responsible for the management compensation policy, and shall supervise the planning, operationalization, control and review of said policy.

The payment of variable compensation to managers may be made in cash, shares, share-based instruments or other assets, in proportion to the level of responsibility and the manager's activity.

Payment institutions, securities brokerage companies, exchange brokerage companies and securities distribution companies and securities shall make payments as variable remuneration shall implement the remuneration policy in such a way that the proportion between fixed remuneration and variable remuneration is balanced.

At least 50% of the variable remuneration must be paid in equities, equity-based instruments or other assets, compatible with the creation of long-term value and with the time horizon of the risk.

At least 40% of the variable compensation must be deferred for future payment, and this percentage must be increased according to the level of responsibility of the manager.

Institutions shall apply the above provisions, according to the following schedule:

I - 50% (fifty percent) of the limits, as of 1 January 2026;

II - 75% (seventy-five percent) of the limits, as of 1 January 2027; and

III - 100% (one hundred percent) of the limits, as of 1 January 2028.

Contracts with payment clauses in excess of those provided for in the current legislation, linked to the dismissal of managers, must be compatible with the creation of value and long-term risk management.

The guarantee of payment of a minimum amount of bonus or other incentives to managers can only occur on an exceptional basis, when hiring or transferring managers to another area, city or company of the same conglomerate, limited to the first year after the fact that gives rise to the guarantee.

Reports referred to in this Resolution shall be kept at the disposal of the BCB for a minimum period of five years.

WHAT'S NEXT?

Institutions must implement a management compensation policy to comply with the provisions of this Resolution until 31 December 2025.

Institutions that have in place compensation committees must make the necessary adjustments to comply with this Resolution by 1 July 2025.

CMN Resolution No. 4,879, of December 23, 2020, published in the Federal Official Gazette of December 24, 2020, is now in force with the following amendments:

IV - the attributes and prohibitions applicable to the members of the audit team, as defined in Section III of Chapter II of this Resolution;

The following provisions are also repealed:

I - Article 8 of Resolution No. 4,595, of August 28, 2017, published in the Federal Official Gazette of August 30, 2017;

II - Article 10 of CMN Resolution No. 4,879, of December 23, 2020, published in the Federal Official Gazette of December 24, 2020;

III - Resolution No. 3,921, of November 25, 2010, published in the Federal Official Gazette of November 29, 2010; and

IV - Resolution No. 4,656, of April 26, 2018, published in the Federal Official Gazette of April 30, 2018.

The Central Bank of Brazil will adopt the measures necessary for the execution of the provisions of this Resolution.

This Resolution enters into force on 1 January 2025.

FRANCE

CUSTODIANS / DEPOSITARIES

[FPM publishes press release on establishing controls for non-financial constraints by custodians / Le FPM publie un communiqué sur la mise en place de contrôles des contraintes extra-financières par les dépositaires](#)

On 11 September 2024, the France Post Marché (FPM) published a press release on establishing controls for non-financial constraints by custodians.

A working group, including several financial associations, met at the AMF's request to establish controls for non-financial constraints by custodians, endorsed by the AMF's CCGII on 16 July 2024.

Regular Reporting:

- Quarterly reports for general-purpose funds and annual reports for other fund categories on non-financial ratio breaches.
- Use existing AMF report formats, adding passive breaches.

Sample-Based Verification:

- Annual random checks of calculation results for selected funds and ratios.
- A classification system for non-financial rules is under development to improve communication. This initiative supplements existing custodian measures, ensuring systematic and comprehensive monitoring of non-financial ratios as per AMF guidelines. Custodians will integrate these controls into their general monitoring and escalation procedures for any issues.

[Version française](#)

Le 11 septembre 2024, le Marché France Poste (FPM) a publié un communiqué relatif à la mise en place de contrôles des contraintes extra-financières par les dépositaires.

Un groupe de travail, réunissant plusieurs associations financières, s'est réuni à la demande de l'AMF pour mettre en place des contrôles des contraintes extra-financières des dépositaires, entériné par la CCGII de l'AMF le 16 juillet 2024.

Rapports réguliers :

- *rapports trimestriels pour les fonds à vocation générale et rapports annuels pour les autres catégories de fonds sur les dépassements de ratios extra-financiers.*
- *utiliser les formats de rapport AMF existants, en ajoutant des violations passives.*

Vérification basée sur des échantillons :

- *contrôles aléatoires annuels des résultats de calcul des fonds et ratios sélectionnés.*
- *un système de classification des règles non financières est en cours d'élaboration pour améliorer la communication. Cette initiative complète les mesures de conservation existantes et assure un suivi systématique et complet des ratios extra-financiers conformément aux lignes directrices de l'AMF. Les dépositaires intégreront ces contrôles dans leurs procédures générales de surveillance et de remontée de l'information pour tout problème.*

REPORTING

[Ministère de l'Economie publishes press release on confidentiality of suspicious activity / Le ministère de l'Economie publie un communiqué sur la confidentialité des activités suspectes](#)

On 5 September 2024, the Ministère de l'Economie published a press release on confidentiality of suspicious activity.

The confidentiality of suspicious activity reporting (SAR) is mandated by Article L. 561-18 of the French Monetary and Financial Code (CMF), prohibiting the declarant from informing the client or any third party about the SAR. Breaching this confidentiality is subject to criminal penalties.

Exceptions to this rule include:

1. Communication to Regulatory Authorities: Declarants can share SARs with their supervisory authority, professional order, or representative body during an audit.

2. Sector-Specific Exceptions:

- Financial Sector: Entities like banks and insurance companies can inform judicial authorities or law enforcement of a SAR's existence but cannot provide copies or disclose details. Authorities must confirm the SAR's existence with Tracfin.
- Non-Financial Sector: Professions such as notaries and lawyers cannot reveal SARs to judicial authorities or law enforcement, nor provide copies or details.

Judicial authorities, excluding law enforcement, can request Tracfin to disclose a SAR only when necessary to establish the declarant's responsibility in money laundering or terrorism financing investigations.

Version française

Le 5 septembre 2024, le ministère de l'Économie a publié un communiqué sur la confidentialité des activités suspectes.

Le secret des déclarations de suspicion (DAS) est imposé par l'article L. 561-18 du Code monétaire et financier (CMF), interdisant au déclarant d'informer le client ou tout tiers de ses DOS. La violation de cette confidentialité est passible de sanctions pénales.

Les exceptions à cette règle incluent :

1. Communication aux autorités de régulation : Les déclarants peuvent partager leurs communications avec leur autorité de contrôle, leur ordre professionnel ou leur organisme représentatif lors d'un audit.

2. Exceptions spécifiques au secteur :

- *secteur financier : des entités telles que les banques et les compagnies d'assurance peuvent informer les autorités judiciaires ou les forces de l'ordre de l'existence d'une communication, mais ne peuvent pas fournir de copies ni divulguer de détails. Les autorités doivent confirmer l'existence du SAR auprès de Tracfin.*
- *secteur non financier : les professions telles que les notaires et les avocats ne peuvent pas révéler les DOS aux autorités judiciaires ou aux forces de l'ordre, ni en fournir des copies ou des détails.*

Les autorités judiciaires, hors forces de l'ordre, ne peuvent demander à Tracfin de communiquer une communication que lorsque cela est nécessaire pour établir la responsabilité du déclarant dans le cadre d'enquêtes pour blanchiment ou financement du terrorisme.

GERMANY

CYBERSECURITY

BaFin updates and publishes Supervisory Statement on Guidance Notes on implementation of DORA

On 19 September 2024, the Federal Financial Supervisory Authority (BaFin) published supervisory statement on guidance notes on implementation of Digital Operational Resilience Act (DORA) and updated the implementation notes for DORA.

The BaFin has updated the minimum contract contents from its supervisory communication on IT risk management and IT third-party risk management. In addition, all information on this topic is now also available in English.

The update is prompted by the publication of the final report on the draft RTS on the subcontracting of ICT services supporting critical or important functions (Article 30(5) DORA).

BaFin has amended its Supervisory Notice as well as the related information translated into English in order to support the widest possible circle of market participants.

The financial entities in the banking and insurance sectors supervised by BaFin are currently applying Supervisory Requirements for IT in Financial Institutions (Bankaufsichtliche Anforderungen an die IT – BAIT) and Supervisory Requirements for IT in Insurance Undertakings (Versicherungsaufsichtliche Anforderungen an die IT – VAIT). From 17 January 2025, most of these entities will be obliged to apply the standard risk management framework set out in the DORA. They will thus be obliged to manage their information and communication technology (ICT) risks according to DORA's requirements. The guidance notes on implementation in the supervisory statement are addressed to these entities.

BaFin's supervisory statement serves as non-mandatory guidance. It is intended to support entities to implement the DORA requirements for standard ICT risk management and ICT third-party risk management. It also considers the relevant regulatory technical standards. In addition, the guidance notes on implementation include an overview of the minimum contractual contents which supervised entities must agree with ICT third-party service providers.

These guidance notes on implementation only refer to the BAIT and VAIT. However, the requirements examined are frequently similar to those in the Supervisory Requirements for IT in Asset Management Companies (Kapitalverwaltungsaufsichtliche Anforderungen an die IT – KAIT) and the Supervisory Requirements for IT in Payment Services and Electronic Money Institutions (Zahlungsdiensteaufsichtliche Anforderungen an die IT von Zahlungs- und E-Geld-Instituten – ZAIT). The guidance notes are thus generally relevant in these fields as well.

FINANCIAL SUPERVISION

BaFin applies EBA Guidelines on resubmission of historical data

On 18 September 2024, the Federal Financial Supervisory Authority (BaFin) applied the European Banking Authority (EBA) guidelines on resubmission of historical data.

The EBA has published the German version of its "Guidelines on the resubmission of historical data under the EBA reporting rules" published. The financial supervisory authority BaFin and the Deutsche Bundesbank will apply it from 17 October 2024.

In the Guidelines (EBA/GL/2024/04), the EBA reduces the need for correction notifications for banking supervision and resolution reporting requirements. Previously, all errors had to be corrected, regardless of size and reference date.

In the future, financial institutions will have to correct incorrect data for the current reporting date and four previous quarters. For data with a monthly reporting frequency, corrections must be made retroactively for at least six months and at least until the end of the last year. In addition, the EBA plans to reduce the checking accuracy for validation rules.

INVESTMENT FIRMS /MIFID FIRMS

BaFin publishes Leaflet 01/2024 (WA) on required minimum number of managing directors under WpIG

On 11 September 2024, the Federal Financial Supervisory Authority (BaFin) published a Leaflet 01/2024 (WA) on the required minimum number of managing directors under the German Securities Institutions Act (Wertpapierinstitutsgesetz - WpIG).

The leaflet sets out criteria for an investment institution to have at least two managing directors in order to meet the legal requirements for the

professional suitability and availability of the management as well as the organisation of an investment institution in accordance with section 20 (1), (2) of the WpIG and section 41 no. 1 of the WpIG.

Pursuant to section 18 (1) no. 8 of the WpIG, the licence to provide investment services pursuant to section 15 (1) of the WpIG is to be refused in the following cases if an investment institution does not have at least two managing directors who do not only work for the investment institution on a voluntary basis:

- The investment institution is authorised to acquire ownership or possession of clients' funds or securities in the provision of investment services or ancillary investment services, or
- According to a certificate issued by the Federal Financial Supervisory Authority in accordance with Section 4 para. 1 No. 2 of the Act on the Certification of Retirement Savings Contracts.

In addition to the individual professional suitability of the managing directors, the institutes should ensure that the managing directors as a whole also have all the necessary knowledge, skills and experience to meet their overall responsibility for the proper business organisation and the associated requirements at all times. In doing so, the directors as a whole should have a balanced level of knowledge, skills and experience that correspond to the business model, risk appetite, strategy and markets in which the institution operates.

The BaFin bases its decision on the following risk criteria, which require the management of an investment institution by two managing directors:

- Scope of the investment institution, and/or
- Complexity of the investment institution's business model.

In these cases, possible risks are to be limited by the fact that the investment institution is managed by at least two managing directors. This enables the implementation of end-to-end segregation of duties and corresponding checks and balances down to management level. Likewise, in the case of two managing directors, it can be assumed that there is a broader basis in terms of professional suitability. In addition, the complexity of certain business models in particular, but also the reach, requires a minimum amount of time that cannot be sufficiently fulfilled by a managing director.

With the leaflet, BaFin is also implementing a recommendation of the European Securities Markets Authority (ESMA).

ESMA recommends stricter substantive requirements, according to which it should be possible to manage an investment institution with only one managing director. ESMA also recommends that concrete and effective materiality thresholds be established for alternative arrangements when an institution is managed by only one director.

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

BaFin updates MaComp Circular

On 26 September 2024, the Federal Financial Supervisory Authority (BaFin) updated the circular on the minimum requirements for the compliance function and the other conduct, organisational and transparency obligations for investment services companies (MaComp).

The purpose of the Circular is to promote investor confidence in the proper functioning of the securities markets and to strengthen the protection of all investors and the institutional functioning of the capital markets, as well as to protect the investment services company and its employees. At the same time, the Circular aims to introduce appropriate measures to mitigate the risk of regulatory measures, claims for damages against companies and reputational damage to companies due to violations of the provisions of Section 11 of the German Securities Trading Act (Wertpapierhandelsgesetz – WpHG) and Articles 21 et seq. of the Implementing Regulation.

The European Securities and Markets Authority (ESMA) has published new versions of the guidelines "on the product monitoring requirements of MiFID II" and "on some aspects of the MiFID II suitability requirements". BaFin has now transferred these to the Special Part (BT) 5 and (BT) 7.1 of MaComp.

The ESMA guidelines, which have been adopted unchanged in terms of content into the MaComp, contain specifications for product monitoring requirements and suitability testing. They are intended to avoid conflicts of interest and ensure compliance with the rules of conduct. The changes concern, among other things, the query of customers' sustainability preferences. The new ESMA Guidelines have replaced the previous Guidelines "on the product monitoring requirements of MiFID II" and "on some aspects of the MiFID II fitness requirements".

REPORTING

Deutscher Bundestag publishes Bill implementing CSRD

On 9 September 2024, the Deutscher Bundestag published a draft law implementing the Corporate Sustainability Reporting Directive (CSRD).

Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014 and Directives 2004/109/EC, 2006/43/EC and 2013/34/EU as regards corporate sustainability reporting (OJ L 322 of 16.12.2022, p. 15) (CSRD) requires member states to introduce sustainability reporting for companies defined under accounting law as large and as small or medium-sized capital market-oriented companies and to audit the corresponding sustainability reporting by 6 July 2024.

The law thus contributes in particular to the timely achievement of Goal 12 of the UN 2030 Agenda for Sustainable Development, to ensure sustainable consumption and production patterns. This obligation is implemented with this law. In the course of implementation, the existing legal framework will also be reviewed and adjusted in certain areas.

To implement the objectives mentioned above, changes are required in the Commercial Code, the Securities Trading Act and the Auditing Regulations, among others.

The CSRD introduces sustainability reporting for large, as well as small or medium-sized, capital market-oriented companies, and an audit of this sustainability reporting. The Accounting Directive, the Transparency Directive and the Audit Directive were adapted for this purpose by the amending provisions of the CSRD. These requirements are to be implemented with the current draft.

The CSRD helps investors, consumers and other stakeholders to assess the sustainability contribution of companies; the adoption of the CSRD was initiated as part of the European Green Deal and the European Commission's strategy for financing a sustainable economy.

In the Securities Trading Act (WpHG), the changes to the Transparency Directive resulting from the CSRD for issuers are to be reflected in subsection 2 of section 16 concerning the publication and transmission of financial reports to the company register (§§ 114 ff. WpHG). Sustainability reporting will also be the subject of the balance sheet control procedure according to §§ 106 ff. WpHG. This is ensured by the existing version of the law, which extends balance sheet control to the (group) annual reports (§ 106 number 1 WpHG).

GUERNSEY

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

GFSC publishes Consultation Paper on proposed new Regulated Investment Exchange Operator Rules

On 17 September 2024, the Guernsey Financial Services Commission (GFSC) published Consultation Paper on proposed new Regulated Investment Exchange Operator Rules.

GFSC issued a Consultation Paper seeking comments from interested parties on the creation of a new set of rules and associated guidance to be made under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (the POI Law) – The Regulated Investment Exchange Operator Rules and Guidance (the RIEO Rules).

The RIEO Rules are intended to replace the current Investment Exchange (Notification) Rules 1998 (the IEN Rules) and will apply to any firm licensed under the POI Law to operate an investment exchange. They will provide one consolidated and transparent point of reference for an operator of an investment exchange, incorporating relevant elements of the IEN Rules and other applicable rules made under the POI Law.

Respondents are encouraged to submit any comments online until 12 November 2024.

IRELAND

FINANCIAL SUPERVISION

Houses of the Oireachtas lays Central Bank Act 1942 (Section 32D) Regulations 2024

On 27 September 2024, the Houses of the Oireachtas (Ireland's National Parliament) laid the Central Bank Act 1942 (Section 32D) Regulations 2024 (S.I. No. 493 of 2024).

All regulated entities are liable to pay to the Bank a levy contribution in respect of each authorisation.

A regulated entity may, no later than 21 days following a due date, submit an appeal under this Regulation in respect of a levy contribution and/or supplementary levy contribution payable by such entity.

A1: Irish authorised Credit Institutions = €198,945 + variable amount

In relation to credit institution groups, one levy shall be calculated and issued at the highest level of consolidation in respect of its regulatory reporting to the Bank.

A supplementary levy contribution is payable as a separate levy by credit institutions previously in the ELG scheme in addition to the levy contribution.

A2: Credit Institutions authorised in another EEA state which have established a branch in Ireland = €31,250 (flat rate).

A3: Credit Institutions authorised in another EEA state operating in Ireland on a Freedom of Services basis = €31,250 (flat rate).

Supplementary Levy Contributions exist for:

(1) Tracker Mortgage Investigation

(2) Significant changes to Business Model

Life Insurance Undertakings (B1), Non-Life Undertakings (B4), Reinsurance Undertakings (B7), Branch in the State

of a third-country insurance undertaking (B8) = €1,993,369 (High), €455,784 (Medium High), €90,608 (Medium Low), €28,147 (Low), based on the 'Impact Category', a rating given to regulated entities by the CBI in accordance with the Probability Risk and Impact System (PRISM) framework.

Special Purpose Reinsurance Vehicles shall pay a minimum levy equivalent to 50% of that applied to Low impact undertakings in Category B = €14,073.

Second and each subsequent Special Purpose Reinsurance Vehicle arrangements = €4,691 per arrangement.

Intermediaries = €1,075 + variable levy

Designated Fund Managers (D1), Receipt & Transmission of Orders &/ or Provision of Investment Advice (D2), Portfolio

Management; Execution of Orders (D3), Own Account Trading; Underwriting on a Firm Commitment Basis (D4), Stock Exchange Member Firms (D5), Investment Intermediaries (D6), High Volume Algorithmic Trading Firms (D9), Market

Infrastructure Firms (D10) = €2,085,861 (High), €1,042,930 (Medium High), €207,330 (Medium Low), €26,503 (Low), based on their Impact category.

Investment Firms in D1 to D10 subject to Client Asset Requirements = €449,484 (High), €224,742 (Medium High), €44,678 (Medium Low), €6,263 (Low).

Market Infrastructure Firms shall pay a supplementary levy to the Bank.

Investment Firms authorised in another EEA state which have established a branch in Ireland (D11) = €26,503.

Authorised UCITS, Authorised Investment Companies (Designated and non-Designated), Authorised Unit Trusts, Authorised Investment Limited Partnerships, Authorised Common Contractual Funds, and Authorised Irish Collective

Asset-management Vehicles (ICAV), UCITS Self-Managed Investment Companies (SMICs), UCITS Self-Managed ICAVs, Authorised Designated Investment Companies (Internally Managed Alternative Investment Funds), and Authorised Irish

Collective Asset management Vehicles (Internally Managed AIF ICAVs) = €8,240 and €546 per sub fund.

Umbrella funds shall also pay a contribution per sub-fund of €546 up to a maximum of twenty sub-funds, resulting in a maximum contribution for umbrella funds of €19,160.

AIF Management Companies, Administrators, UCITS Managers (Non Delegating), Depositaries, and Alternative

Investment Fund Managers, UCITS Managers (Delegating) = €1,488,134 (High), €744,067 (Medium High), €147,917 (Medium Low), €18,908 (Low), based on their Impact category.

UCITS managers and alternative investment fund managers authorized in another EEA state which have established a branch in Ireland = €18,908.

Credit Unions = 0.02935% of total assets reported in the quarterly prudential return setting out the balance sheet as at 31 December 2023.

High Cost Credit Providers (HCCP) = €1,920 + variable levy.

Payment Institutions, E-money institutions, Payment Service Providers = €5,000 + variable levy.

Any firms rated as 'Ultra High' on the CBI AML/CTF risk matrix will be required to pay a separate flat fee of €375,000.

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

CBI updates on requirements for Irish UCITS in light of UK OFR

On 13 September 2024, the Central Bank of Ireland (CBI) informed about the UK's FCA Overseas Funds Regime (OFR) and the requirements for Irish Authorised UCITS.

Irish authorised UCITS (with the exception of MMFs) wishing to avail of the OFR may be required to make changes to fund offering documents in accordance with the FCA guidance.

These amendments to the prospectus must be submitted to the CBI as a post-authorisation update.

UCITS may avail of one of the following options:

1. The relevant disclosure may be added to the UK country supplement and filed via the Portal using the "UCITS/AIF Country Supplement" Request Change.
2. Alternatively, if the main body of the prospectus/supplement is amended, the amended document must be submitted to the Funds Post-Authorisation team via the Portal using the "UCITS/RIAIF: Prospectus/Supplement review - No new sub-funds" Request Change.

It should be noted that option 2 involves amendments to the main body of the prospectus as opposed to just the country supplement. Any such OFR application submissions to the FCA will be subject to a lengthier and more detailed review process.

CBI updates on closure of filing process for pre-contractual document updates under SFDR on 18 October 2024

On 27 September 2024, the Central Bank of Ireland (CBI) updated on the closure of the streamlined filing process for the pre-contractual document updates based on the SFDR Level 2 Requirements.

The streamlined filing process which was established in 2022 for pre-contractual document updates based on the SFDR Level 2 requirements will be closed effective 18 October 2024.

Any submissions related to SFDR Level 2 implementation which are filed via SFDR@centralbank.ie after this date will not be noted, and must be submitted in line with standard post-authorisation processes.

CBI updates on process change for submission of certain applications

On 27 September 2024, the Central Bank of Ireland (CBI) updated on the process change for the submission of certain applications.

Effective 1 October 2024, there will be a change to the process for the submission of:

Applications for clearance of Investment Managers and non-EU AIFMs:

These applications are currently submitted via Orion or by email. Starting 1 October 2024, these applications will move to submission via the Portal only.

The existing Investment Manager mailbox will be retained for the notification of any changes to details for existing, previously cleared investment managers only. New applications for clearance will not be accepted by email and applications for clearance that are submitted to Orion will not be accepted, and will not be redirected.

Applications for UCITS mergers/AIF amalgamations:

At present, applications for UCITS mergers and amalgamations of AIFs are submitted by email. Starting 1 October 2024, these applications must be received via the Portal, and will no longer be accepted by email.

CBI clarifies filing process for updates to fund names following ESMA Guidelines

BACKGROUND

ESMA has issued Guidelines setting out recommendations for UCITS management companies and AIFMs on the use of ESG and sustainability-related terms in the name of a UCITS or an AIF, as applicable. The Guidelines were published on 21 August 2024 and will apply from 21 November 2024 for new UCITS and AIFs. For UCITS and AIFs existing prior to 21 November 2024, the Guidelines will apply from 21 May 2025.

WHAT'S NEW?

On 27 September 2024, the Central Bank of Ireland (CBI) clarified the filing process for updates to UCITS funds and AIFs names following ESMA Guidelines on fund names using ESG or sustainability-related terms. The Central Bank has established a streamlined filing process for updates to fund names based on the requirements set out in ESMA's guidelines. UCITS management companies and AIFMs will be required to certify compliance with the Guidelines via an attestation that must be submitted to the CBI with the request seeking a change of name of the UCITS or AIF. The streamlined filing process is limited solely to name changes that are required in order for UCITS and AIFs to comply with the Guidelines. Any other changes to SFDR-related disclosures will be subject to review under standard post-authorisation processes. The CBI will carry out a sample review of the submissions noted via the streamlined filing process. Changes may therefore be required to fund documentation at a later date. The IFM shall attest that: 1. The amendments made are in accordance with the Guidelines; and 2. No other amendments have been made to the fund documentation. This attestation, along with the relevant revised final dated documents (prospectus/supplement/SFDR annex) for UCITS and AIFs, should be submitted to the dedicated mailbox, SFDR@centralbank.ie, by close of business on the relevant date for automated noting by the CBI. Documents should be dated as at the submission date. The subject line in the email must follow the following format: ESMA Guidelines [Article X] [Name of Management Company] [Name of Umbrella Fund/Stand-alone/Sub-Fund(s)].

WHAT'S NEXT?

Filings must be made within the transition period for existing in-scope funds which runs from 21 November 2024 to 21 May 2025. This deadline applies to all UCITS and AIFs. For newly-established funds, the Guidelines will be applicable from 21 November 2024. New funds created on or after the application date should apply these Guidelines immediately. If the CBI is already in receipt of a submission which is solely in relation to a change of fund name on foot of the Guidelines, with no other updates to disclosures in the fund offering documents, the submission may be included in the streamlined process. The Funds Post-Authorisation team should be notified of the intention to move this submission to the streamlined process via fundspostauthorisation@centralbank.ie. Where a fund is seeking to reclassify, the submission should be made via the Portal in line with the existing process. Where a new fund/sub-fund application has been filed with the CBI, the fund name and disclosures will be considered as part of the standard review process by the Fund Authorisations team. Where an application for a change of name is submitted to the CBI after 21 May 2025, the name change and pre-contractual disclosures will be reviewed as part of the normal review process. For funds availing of the streamlined process, a period of ten business days should be allowed before an attestation is requested in respect of the name change.

ITALY

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

CONSOB publishes first communication relating to MiCAR

On 12 September 2024, the Commissione Nazionale per le Società e la Borsa (CONSOB) published its first communication relating to MiCAR.

In particular, CONSOB invites operators who intend to take on the role of service providers for crypto-assets, to start the process of adapting to MiCAR in time and to guarantee customers maximum transparency on upcoming news, with particular reference to the plans and implementation measures to support them.

More specifically, operators must, among other things, adopt organisational-procedural safeguards, including internal control, suitable for ensuring compliance with the obligation to act correctly and professionally in the best interest of customers and potential holders of crypto-assets.

They will also have to put in place effective systems and procedures to prevent, detect and report possible cases of market abuse. They will also have to provide potential customers with clear and correct information on the services provided and on the crypto-assets handled, both in the context of marketing communications and subsequent communications to customers.

To facilitate compliance with the new regulations, Consob is available to hold preliminary discussions with the operators concerned.

REGULATION ON MARKETS IN CRYPTO-ASSETS (MICA)

Bank of Italy issues communication for entities intending to issue EMTs or ARTs

On 13 September 2024, the Banca d'Italia published a document containing useful information for entities intending to issue e-money tokens (EMTs) or asset-reference tokens (ARTs), as regulated by Regulation (EU) 2023/1114 on markets in crypto-assets (MiCAR).

To smooth the transition to the new regime, as the decree implementing MiCAR comes into effect, the entities intending to start to issue ARTs or EMTs are urged to contact the national competent authorities well in advance of submitting their formal notification or application for authorization, so as to present their initiatives and receive clarification on the information and documents to be submitted, as well as on the applicable legislation. The document published today contains the contact information to request an informal dialogue and to then formalize the notifications and applications for authorization.

The document notes that only once the decree implementing MiCAR enters into force will the Bank of Italy accept formal applications for the authorization to operate as ART issuers, as well as notifications for their issuance from banks and class 1 investment firms, and to initiate, in agreement with CONSOB and within the bounds of their respective remits, the relevant assessment processes.

The banks and electronic money institutions (EMIs) intending to issue EMTs have been able to submit their notifications to the Bank of Italy since 30 June 2024.

Moreover, the document draws attention to the Bank of Italy's Communication of 22 July 2024 and urges entities to take into account, going forward, the regulatory technical standards (RTS) and implementing technical standards (ITS), as well as the guidelines currently being drafted by the European authorities (EBA and ESMA) and submitted for public consultation. Finally, the entities intending to issue EMTs or ARTs should read the 'Priorities for ART/EMT issuers supervision' published by the European Banking Authority (EBA) on 5 July 2024.

Italy publishes Legislative Decree implementing MiCA

On 13 September 2024, Italy published the Legislative Decree of 5 September 2024, no.124, implementing Regulation (EU) 2023/1114 on crypto-asset markets (MiCAR).

The decree designates CONSOB and the Bank of Italy as the primary supervisory authorities for crypto-asset issuers and crypto-asset service providers (CASPs) in Italy. It also outlines applicable sanctions for non-compliance and includes specific provisions for fund segregation and bankruptcy scenarios.

The Bank of Italy is tasked with prudential supervision of electronic money token (EMT) and asset-referenced token (ART) issuers and CASPs. Additionally, it acts as the supervisory authority for AML-CFT for CASPs.

Conversely, CONSOB oversees crypto-assets excluding EMTs and ARTs. It is responsible for ensuring transparency, fair conduct, orderly trading, and customer protection concerning ARTs and crypto-asset services. CONSOB also has oversight roles to prevent and prohibit market abuse involving crypto-assets.

The MiCAR Italian Decree introduces a transitional regime for virtual asset service providers (VASPs) currently operating under Italian law. Specifically, VASPs registered with the Organismo Agenti e Mediatori (OAM) by 27 December 2024, will have two options:

- Apply for a MiCAR authorisation as a CASP in Italy or another EU member state by 30 June 2025: They may continue to operate under the existing VASP regime until 30 December 2025, or until the authorisation is either granted or denied, whichever comes first.
- Fail to apply for MiCAR authorisation: They must cease operations in Italy and will be removed from the OAM register by 30 June 2025.

VASPs are required to inform customers and post on their websites by 31 May 2025, detailing their compliance plans with MiCAR or how they intend to manage the closure of existing relationships.

Regarding current reporting obligations to OAM, the final report will be for Q1 2025. VASPs must maintain records of all transactions between 1 April 2025, and their removal from the VASP register. These records must be retained for a ten-year period.

VASPs currently operating in Italy and listed in the OAM register should consider the transitional provisions outlined in the MiCAR Italian Decree. They must take the necessary steps to apply for a CASP licence in Italy or another EU member state by 30 June 2025.

CONSOB has also issued a communication indicating that entities intending to apply for a MiCAR CASP licence may engage with the regulator on the required information/documentation as part of a pre-filing process. Entities, including VASPs, need to complete a specific form and submit it to CONSOB for this purpose.

The Decree took effect on 14 September 2024 and applies from that date unless stated otherwise. MiCAR will be applicable from 30 December 2024, except for provisions concerning ARTs and EMTs, which have been effective from 30 June 2024.

SUSTAINABLE FINANCE / GREEN FINANCE

Camera dei Deputati publishes Legislative Decree implementing CSRD

On 10 September 2024, the Camera dei Deputati published Legislative Decree 6 September 125/2024.

It concerns the implementation of CSRD.

Key Points of the Decree:

- **Extended Scope of Applicability:** The law not only targets large enterprises but also extends to certain medium-sized companies that meet specific thresholds. This ensures that a wide range of entities are subject to the reporting requirements.
- **Mandatory Disclosure Requirements:** Companies are required to report on key sustainability factors, such as greenhouse gas emissions, social responsibility initiatives, and governance structures. These reports must be included in the annual management report, undergo auditing, and be publicly disclosed. Also, there is expansion of the scope of the contents of the sustainability communication, which must include sustainability information and any negative impacts not only in relation to the company's activity but also in relation to its upstream and downstream value chain.
- **Compliance and Enforcement:** Italy has established a robust enforcement mechanism, which includes financial penalties for non-compliance. The penalties are proportional to the size of the company and the severity of the violation. Furthermore, non-compliance can result in reputational damage since sustainability reports are made available to the public.
- **logic of double materiality;**
- **harmonization of reporting criteria through the use of common standards (European Sustainability Reporting Standard or ESRS);**
- **certification of the compliance of the data included in the sustainability report;** The Decree mandates that the sustainability report must be certified for both data accuracy and standards compliance. This certification must adhere to principles set by EFRAG, and approved by the European Commission by 1 October 2026. In the interim, these principles will be formulated nationally by associations and professional bodies in collaboration with the Ministry of Economy and Finance and CONSOB.

On the first & second point the start of the reporting obligation varies depending on the size of the company:

- **Obligations Starting 1 January 2024:** Large companies and parent companies of significant groups with more than 500 employees and of public interest are required to provide sustainability information.

- Obligations Starting 1 January 2025: Other large companies and parent companies of substantial groups not already obligated must meet sustainability information requirements.
- Exemptions for Non-listed Groups: Subsidiaries may be exempt if the parent company includes sustainability information in the consolidated financial statements.
- Obligations Starting 1 January 2026: Listed SMEs are required to provide sustainability information.
- Option for Derogation for Listed SMEs: These companies may opt to defer the application of the rule until 2028, provided they explain the reasons for doing so.

The Decree also amends Legislative Decree 39/2010, specifying that the “sustainability auditor” can be either the same as the financial statement auditor or a different one. The notion of a sustainability auditor is a kind of introduction for mandatory assurance on the sustainability information reported by the companies, which shall be performed by a qualified “sustainability auditor”.

The date of entry into force is 25 September 2024.

CONSOB announces translation of ESMA guidelines on names of funds using ESG terms

On 21 September 2024, the Commissione Nazionale per le Società e la Borsa (CONSOB) announced that European Market Regulatory and Supervisory (ESMA) published Italian translation of the guidelines on the names of funds using Environmental, Social, and Governance (ESG) terms.

They will enter into force, three months after publication, on 21 November 2024.

Two months after the date of publication of the Guidelines (21 October 2024), the national competent authorities will still have to notify ESMA whether:

- They are compliant;
- They are not compliant, but they intend to comply, or
- They are not compliant and do not intend to comply with the Guidelines.

A transitional period of six months will be in place before the rules on funds are applied, ending on 21 May 2025.

After this date, all new funds created after the date of application must comply with the Guidelines. The aim of the Guidelines is to ensure that investors are protected from unsubstantiated or exaggerated sustainability claims in fund names and to provide asset managers with criteria for the protection of the Guidelines. clear and measurable to assess their ability to use ESG or sustainability-related terms, present in the names of the funds.

JERSEY

FINANCIAL SUPERVISION

JFSC announces five forms are added to myJFSC

On 26 September 2024, the Jersey Financial Services Commission (JFSC) announced five forms are added to myJFSC.

As part of JFSC ongoing efforts to enhance regulatory processes, they have added five forms to myJFSC. One form is Cease to Act notification for key and principal persons, the additional four are application and revocation forms for anti-money laundering service providers (AMLSPs).

These forms are:

- AMLSP legal person application form
- AMLSP legal arrangement application form
- AMLSP Schedule 2 revocation form
- AMLSP key person application form

The Cease to Act notification for key and principal persons, and the AMLSP Schedule 2 revocation form are designed as straight-through processes. This means that once the form is completed, you will receive acknowledgement via email. The other three forms will still require processing by JFSC. These application forms will be processed in five days. JFSC aims to process applications related to Jersey private funds within 48 hours.

On 7 October 2024, JFSC will remove the existing AMLSP workbooks from their website.

JFSC announces updates to supervisory risk data collection

On 27 September 2024, the Jersey Financial Services Commission (JFSC) announced updates to their supervisory risk data collection.

In January 2025, JFSC will launch our annual supervisory risk data collection (SRDC) to collect data from supervised businesses and individuals.

This supports their risk-based supervision by improving our understanding of the activities they undertake.

JFSC has published a paper setting out updates to the 2024 SRDC, including:

- an additional question asking for the number of customers that carry out any activity listed in table 2 of the Sound Business Practice Policy;
- an additional conduct related question asking for the number of complaints recorded in the period, in the following categories:
 - poor administration, including customer service
 - customer due diligence process
 - fees/charges
 - mis-selling/unsuitable advice
 - withdrawal/refusal of services
 - fraud
 - on-payment of claim
 - transaction error
- collection of data on Schedule 2 businesses serviced via an anti-money laundering service provider (AMLSP);
- collection of data on DNFbps in two phases:
 - phase one: an ad hoc data collection exercise for DNFbps supervised by our DNFbp/NPO/VASP team in early October 2024
 - phase two: TCSPs, including those serviced via an AMLSP, in Q1 2025
- collection of data from TCB administered NPOs and Prescribed NPOs;
- clarification on data validation and integrity checking;
- use of late filing fees for non-submissions of supervisory risk data;
- withdrawal of the trust company business private trust company (PTC) workbook;
- clarification that certain Category A insurance business permit holders will not be required to complete the insurance business SRDC workbook;

JFSC has also outlined future SRDC changes we are likely to implement, which includes:

- prudential questions;
- conflict of interest categories;
- wire transfer purpose of payments;
- prudential data questions, primarily to inform the Jersey Resolution Authority's critical function assessment of the banking sector;
- MONEYVAL Mutual Evaluation Report recommendations to obtain more granular inherent risk data pertaining to key areas.

RISK MANAGEMENT

JFSC publishes Industry Update on conflicts of interest Thematic Examination Questionnaire

On 9 September 2024, the Jersey Financial Services Commission (JFSC) published an Industry update on conflicts of interest Thematic Examination Questionnaire.

JFSCs cross-sector thematic examination on conflicts of interest will commence soon with the issuance of a questionnaire to a wide selection of entities. Their onsite examinations will follow in Q1 2025. Both the questionnaire and the onsite examinations will assess how entities identify, record and manage conflicts, such as:

- disclosure to the customer;
- the application of internal rules relating to confidentiality;
- declining to act where the risk is considered too high to proceed.

The data collected will inform the selection of entities for the onsite examinations. Following these, JFSC will publish a feedback paper detailing current practices and examples of good practice. This review aims to evaluate the effectiveness of current systems and may lead to additional guidance for Jersey's finance industry.

Entities should ensure they have robust procedures in place to manage conflicts of interest as required by the Codes of Practice.

LUXEMBOURG

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

CSSF amends Circular 19/732 on Ultimate Beneficial Owner / La CSSF modifie la Circulaire 19/732 relative au bénéficiaire effectif final

On 5 September 2024, the Commission de Surveillance du secteur financier (CSSF) published the Circular CSSF 24/861 amending Circular CSSF 19/732 of 20 December 2019 on the Prevention of Money Laundering and Terrorist Financing: clarifications on the Identification and Verification of the Identity of the Ultimate Beneficial Owner(s).

This circular modifies point 74 of Circular CSSF 19/732 of 20 December 2019 on the Prevention of Money Laundering and Terrorist Financing: Clarifications on the Identification and Verification of the Identity of the Ultimate Beneficial Owner(s) with immediate effect.

Point 74 will be replaced by the following: “Where legal persons or arrangements are in between the customer and the natural person - beneficial owner, their identification, with its documentation and verification, has to be done

according to a risk-based approach”, meaning the level of scrutiny and verification should be based on how risky the institution perceives the transaction or relationship to be. Higher risk warrants more stringent checks.

Version française

Le 5 septembre 2024, la Commission de Surveillance du secteur financier (CSSF) a publié la circulaire CSSF 24/861 modifiant la circulaire CSSF 19/732 du 20 décembre 2019 relative à la prévention du blanchiment de capitaux et du financement du terrorisme : précisions sur l'identification et la vérification de l'identité du bénéficiaire effectif ultime.

Cette circulaire modifie le point 74 de la circulaire CSSF 19/732 du 20 décembre 2019 relative à la prévention du blanchiment de capitaux et du financement du terrorisme : précisions sur l'identification et la vérification de l'identité du ou des bénéficiaires effectifs avec effet immédiat.

Lorsqu'il existe des personnes morales ou des dispositions entre le client et la personne physique – bénéficiaire effectif, leur identification, avec sa documentation et sa vérification, doit être effectuée selon une approche basée sur les risques.

COMPLIANCE

LBR publishes Public Notice on updating filing process to RCS / LBR publie un avis public sur la mise à jour du processus de dépôt au RCS

On 6 September 2024, the Luxembourg Business Registers (LBR) published a Public Notice on updating the filing process to the Luxembourg trade and companies register (RCS).

The requisition forms in the current PDF format will soon be replaced by forms to be completed directly online in HTML format. This change of technology will solve the practical difficulties encountered by our users, linked to the PDF format of the requisition forms. It will also provide a more user-friendly interface for the RCS registration process.

With the implementation of the new HTML forms, persons and entities registered with the RCS will have to communicate the Luxembourg national identification number for any natural person registered with the RCS, within their file, pursuant to Article 12bis of the amended law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings. Persons who do not have such a number will be given one when they register with the RCS.

The following additional information should be provided via the new form:

- Nationality
- Gender
- Private residence

This information will not be registered in the RCS but will be transmitted to the Centre des technologies de l'information de l'Etat for inclusion in the National Register of Natural Persons.

The upcoming changes will apply as from 12 November 2024.

Version française

Le 6 septembre 2024, les Registres du Commerce et des Sociétés luxembourgeois (LBR) ont publié un Avis public relatif à la mise à jour du processus de dépôt au Registre de commerce et des sociétés (RCS) luxembourgeois.

Les formulaires de réquisition au format PDF actuel seront bientôt remplacés par des formulaires à remplir directement en ligne au format HTML. Ce changement de technologie résoudra les difficultés pratiques rencontrées par nos utilisateurs, liées au format PDF des formulaires de réquisition. Il fournira également une interface plus conviviale pour le processus d'inscription au RCS.

Avec la mise en place des nouveaux formulaires HTML, les personnes et entités inscrites au RCS devront communiquer le numéro d'identification national luxembourgeois de toute personne physique inscrite au RCS, au sein de leur dossier, conformément à l'article 12bis de la loi modifiée du 19 décembre 2002. sur le registre du commerce et des sociétés ainsi que sur la comptabilité et les comptes annuels des entreprises. Les personnes ne disposant pas d'un tel numéro se verront en attribuer un lors de leur inscription au RCS.

Les informations supplémentaires suivantes doivent être fournies via le nouveau formulaire :

- nationalité
- genre
- résidence privée

Ces informations ne seront pas inscrites au RCS mais seront transmises au Centre des technologies de l'information de l'Etat pour inscription au Registre national des personnes physiques.

Les changements à venir s'appliqueront à partir du 12 novembre 2024.

CROSS-BORDER ACTIVITIES

CSSF informs of UCITS and AIFs cross-border marketing notifications / La CSSF informe des notifications de commercialisation transfrontalière des OPCVM et FIA

On 11 September 2024, the Commission de Surveillance du secteur financier (CSSF) updated their guidelines on UCITS and AIFs cross-border marketing notifications.

In order to meet its obligations in relation to the reporting of cross-border marketing of AIFs and UCITS in accordance with Article 13 of Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings, the CSSF would like to inform the supervised entities of the following:

- New information (predominant AIF type and contact point(s) concerning the notification letter, invoices and facilities for investors) will be collected through the marketing notification and de-notification requests from 11 November 2024.

Consequently, the eDesk CBDF module and S3 API channel will be adapted. All modifications, in particular concerning the JSON schema used for transmissions through the API channel, are listed in the new version of the user guide dedicated to the cross-border marketing.

Version française

Le 11 septembre 2024, la Commission de Surveillance du secteur financier (CSSF) a mis à jour ses lignes directrices sur les notifications de marketing transfrontalier des OPCVM et FIA.

Afin de répondre à ses obligations en matière de reporting sur la commercialisation transfrontalière de FIA et d'OPCVM conformément à l'article 13 du règlement (UE) 2019/1156 visant à faciliter la distribution transfrontalière des OPC, la CSSF souhaite informer les entités surveillées suivantes :

- De nouvelles informations (type de FIA prédominant et point(s) de contact concernant la lettre de notification, les factures et les facilités pour les investisseurs) seront collectées via des demandes de notification et de dénotification de commercialisation à partir du 11 novembre 2024.

Par conséquent, le module eDesk CBDF et le canal API S3 seront adaptés. Toutes les modifications, notamment concernant le schéma JSON utilisé pour les transmissions via le canal API, sont répertoriées dans la nouvelle version du guide utilisateur dédié au marketing transfrontalier.

FINANCIAL REPORTING

CSSF reminds of procedures of transmission for KID and official documents / La CSSF rappelle des modalités de transmission des KID et des

documents officiels

On 16 September 2024, the Commission de Surveillance du secteur financier (CSSF) reminded the procedures of transmission for Key Information Document (KID) and official documents.

As announced in the 5 April 2024 communication regarding the direct submission of filings to the CSSF, the collection procedures for the Key Information Document (KID) and the Management Report and Annual Information (annual financial statements, auditor's report, management discussion and analysis, and other mandatory disclosures), will change starting 15 November 2024.

These documents will be collected exclusively through the following two methods, free of charge:

- Document upload via the dedicated eDesk procedure
- Automated submission of the documents via API (S3 protocol)

Please note that from 15 November 2024:

- Only the API (S3) channel or the eDesk approach will be authorised for submitting KIDs and official documents
- Any KID or official document submitted using the old transmission method (external channels) will not be processed by the CSSF.

A user guide detailing the submission procedures for the Key Information Document and the official documents will be made available soon.

For any questions, please contact edesk@cssf.lu.

Version française

Le 16 septembre 2024, la Commission de Surveillance du secteur financier (CSSF) a rappelé les modalités de transmission des Documents d'Information Clés (KID) et des documents officiels (MR/AI).

Comme annoncé dans la communication du 5 avril 2024 relative au dépôt direct des dossiers auprès de la CSSF, les modalités de collecte du Document d'informations clés (KID) et des documents officiels (MR/AI) changeront à compter du 15 novembre 2024.

Ces documents seront collectés exclusivement selon les deux modalités suivantes et gratuitement :

- téléchargement de documents via la procédure eDesk dédiée
- soumission automatisée des documents via API (protocole S3)

Veillez noter qu'à partir du 15 novembre 2024 :

- *seul le canal API (S3) ou l'approche eDesk sera autorisé pour la soumission des KID et documents officiels*
- *tout KID ou document officiel soumis selon l'ancien mode de transmission (canaux externes) ne sera pas traité par la CSSF.*

Un guide d'utilisation détaillant les modalités de soumission du Document d'Informations Clés et des documents officiels sera prochainement disponible.

Pour toute question, veuillez contacter edesk@cssf.lu.

CSSF publishes annual report for 2023 / La CSSF publie son rapport annuel 2023

On 19 September 2024, the Commission de Surveillance du secteur financier (CSSF) published the annual report for 2023.

The report provides comprehensive details on various topics pertinent to the CSSF for the year 2023. Key highlights include:

1. Environmental, Social, and Governance (ESG) Compliance:

- Discussion on the European Sustainability Reporting Standards (ESRS) and the regulatory requirements for sustainability reports to be published in 2025.
- Information on the Taxonomy Regulation under Article 8 of Regulation (EU) 2020/852 and the necessary efforts to align and comply with new mandatory disclosures.
- Updates on Commission Delegated Regulation (EU) 2022/1288 and its amendments concerning pre-contractual and periodic transparency requirements under Regulation (EU) 2019/2088, as well as updates issued through various communicative means in 2023.

2. Challenges and Priorities for 2024:

- Emphasis on the impact of environmental risks and the macroeconomic environment, including high-interest rates.
- Introduction of CSDR and ESRS standards requiring issuers to publish comprehensive sustainability reports.
- Attention to upcoming regulations such as Regulation (EU) 2023/2631 concerning European Green Bonds.

3. Market Supervision and Regulatory Activities:

- Detailed monitoring of compliance in various fields, such as investment fund managers, prospectuses approval, and the use of Delegated Regulation (EU) 2020/1224 values.
- Supervision of pension funds, including major activities and registration changes in 2023.

4. Governance and Operational Aspects:

- Information on the CSSF's organizational structure, IT infrastructure upgrade with eDesk and API introductions for improved communication.
- Training sessions held in 2023 to enhance staff skills.

5. Annual Financial Oversight:

- Budget planning and monitoring processes, the financial performance report, and the key factors affecting the 2023 budget.

6. Whistleblowing and Compliance Reports:

- Summarized actions taken in response to whistleblowing reports and coordination with respective authorities on relevant cases.

Version française

Le 19 septembre 2024, la Commission de Surveillance du secteur financier (CSSF) a publié son rapport annuel pour l'année 2023.

Le rapport fournit des détails complets sur divers sujets pertinents pour la CSSF pour l'année 2023. Les principaux points saillants comprennent :

1. Conformité environnementale, sociale et de gouvernance (ESG) :

- discussion sur les normes européennes de reporting sur le développement durable (ESRS) et les exigences réglementaires pour les rapports de développement durable qui seront publiés en 2025.
- informations sur le règlement taxonomie en vertu de l'article 8 du règlement (UE) 2020/852 et les efforts nécessaires pour s'aligner et se conformer aux nouvelles informations obligatoires.
- mises à jour sur le règlement délégué (UE) 2022/1288 de la Commission et ses modifications concernant les exigences de transparence précontractuelles et périodiques en vertu du règlement (UE) 2019/2088, ainsi que les mises à jour publiées par divers moyens de communication en 2023.

2. Défis et priorités pour 2024 :

- l'accent est mis sur l'impact des risques environnementaux et de l'environnement macroéconomique, notamment les taux d'intérêt élevés.
- introduction des normes CSDR et ESRS obligeant les émetteurs à publier des rapports de développement durable complets.
- attention aux réglementations à venir telles que le Règlement (UE) 2023/2631 concernant les obligations vertes européennes.

3. Surveillance du marché et activités réglementaires :

- suivi détaillé de la conformité dans divers domaines, tels que les gestionnaires de fonds d'investissement, l'approbation des prospectus et l'utilisation des valeurs du règlement délégué (UE) 2020/1224.
- surveillance des fonds de pension, y compris les principales activités et changements d'enregistrement en 2023.

4. Gouvernance et aspects opérationnels :

- informations sur la structure organisationnelle de la CSSF, la mise à niveau de l'infrastructure informatique avec eDesk et l'introduction d'API pour une meilleure communication.

- sessions de formation organisées en 2023 pour renforcer les compétences du personnel.

5. Surveillance financière annuelle :

- processus de planification et de suivi du budget, rapport sur la performance financière et facteurs clés affectant le budget 2023.

6. Rapports de dénonciation et de conformité :

- résumé des mesures prises en réponse aux rapports de dénonciation et coordination avec les autorités respectives sur les cas pertinents.

INFORMATION TECHNOLOGY (IT) / INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT)

CSSF reminds of new U1.1 reporting transmission procedures / La CSSF rappelle de nouvelles modalités de transmission du reporting U1.1

On 12 September 2024, the Commission de Surveillance du secteur financier (CSSF) announced new U1.1 reporting transmission procedures.

As announced in the 5 April 2024 communication regarding the direct submission of filings to the CSSF, the methods for transmitting monthly U1.1 reports will change from 15 November 2024.

The expected reports may be transmitted using the following methods:

- A dedicated eDesk procedure
- An API solution based on the submission of XML reports via the S3 protocol

A user guide detailing the submission procedures for the U1.1 reports will be made available soon.

Please note that it will still be possible to transmit U1.1 reports via external transmission channels until 28 February 2025.

For any questions, please contact edesk@cssf.lu.

Version française

Le 12 septembre 2024, la Commission de Surveillance du secteur financier (CSSF) a annoncé de nouvelles modalités de transmission des reportings U1.1.

Comme annoncé dans la communication du 5 avril 2024 relative à la soumission directe des déclarations à la CSSF, les modalités de transmission des déclarations U1.1 changeront à compter du 15 novembre 2024.

Les rapports attendus pourront être transmis selon les modalités suivantes :

- une procédure eDesk dédiée
- une solution API basée sur la soumission de rapports XML via le protocole S3

Un guide d'utilisation détaillant les procédures de soumission des rapports U1.1 sera bientôt disponible.

Veuillez noter qu'il sera toujours possible de transmettre les rapports U1.1 via des canaux de transmission externes jusqu'au 28 février 2025.

Pour toute question, veuillez contacter edesk@cssf.lu.

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

CSSF reminds of Circular CSSF 22/811 on UCI administrators (UCIAs) / La CSSF rappelle de la circulaire CSSF 22/811 relative aux administrateurs d'OPC

On 3 September 2024, the Commission de Surveillance du secteur financier (CSSF) published a reminder to the industry in relation to Circular CSSF 22/811 on UCI administrators (UCIAs).

On 16 May 2022, the CSSF issued Circular CSSF 22/811, also known as the UCIA Circular, which outlined the authorization and organization of UCI administrators (UCIAs). This communiqué serves as a reminder to the investment fund industry about certain requirements under the UCIA

Circular.

Firstly, the CSSF emphasizes the necessity for the written contracts between UCIA's and UCIs and/or IFMs to comply with specific elements as per points 38 and 39 of the UCIA Circular. Although updates to these contracts do not need prior CSSF submission, the CSSF may require them on a case-by-case basis. Additionally, point 41 mandates that the name of the UCIA must be disclosed in UCI offering documents and any updates must be made at the next submission to the CSSF.

Secondly, the UCIA Circular introduced a new annual reporting requirement to enhance the CSSF's risk-based supervision. This reporting must be submitted no later than five months after the UCIA's financial year-end, starting from 30 June 2023. All entities performing UCI administration functions must ensure timely submission of UCIA reporting, and any delays need to be rectified promptly.

Version française

Le 3 septembre 2024, la Commission de Surveillance du secteur financier (CSSF) a publié un rappel à l'intention du secteur concernant la circulaire CSSF 22/811 relative aux administrateurs d'OPC.

Le 16 mai 2022, la CSSF a publié la circulaire CSSF 22/811, également connue sous le nom de Circulaire UCIA, qui décrit l'habilitation et l'organisation des administrateurs d'OPC (UCIA). Ce communiqué sert à rappeler au secteur des fonds d'investissement certaines exigences de cette Circulaire.

En premier lieu, la CSSF souligne la nécessité que les contrats écrits entre les OPC et les OPC et/ou GFI respectent des éléments spécifiques au sens des points 38 et 39 de la Circulaire UCIA. Bien que les mises à jour de ces contrats ne nécessitent pas de soumission préalable à la CSSF, la CSSF peut les exiger au cas par cas. De plus, le point 41 exige que le nom de l'UCIA soit divulgué dans les documents d'offre d'UCI et que toute mise à jour soit effectuée lors de la prochaine soumission à la CSSF.

Deuxièmement, la Circulaire UCIA a introduit une nouvelle exigence de reporting annuel afin de renforcer la surveillance basée sur les risques de la CSSF. Ce rapport doit être soumis au plus tard cinq mois après la fin de l'exercice financier de l'UCIA, à compter du 30 juin 2023. Toutes les entités exerçant des fonctions d'administration de l'UCI doivent garantir la soumission en temps opportun des rapports de l'UCIA, et tout retard doit être rectifié rapidement.

CSSF reminds IFMs to keep eDesk information up-to-date / La CSSF rappelle aux GFI de maintenir à jour les informations sur eDesk

On 17 September 2024, the Commission de Surveillance du secteur financier (CSSF) published a reminder to the industry on specific communications between the CSSF and the Investment Fund Managers.

On 31 January 2024, the CSSF published a communiqué on interaction between the UCI Departments and the Investment Fund Managers (IFMs) – recipients of specific communications.

In this context, the CSSF reminds the IFMs that they must keep the email addresses of eDesk users and their corresponding roles up to date, so that specific communications reach the persons concerned.

For example:

- each board member's and/or conducting officer's email address must be referenced on eDesk if they wish to be included in the communications;
- in the event of a departure of a board member and/or a conducting officer, the IFM must update eDesk accordingly.

Version française

Le 17 septembre 2024, la Commission de Surveillance du secteur financier (CSSF) a publié un rappel à l'intention du secteur sur les communications spécifiques entre la CSSF et les gestionnaires de fonds d'investissement (GFI).

Le 31 janvier 2024, la CSSF a publié un communiqué sur l'interaction entre les départements OPC et les gestionnaires de fonds d'investissement (GFI) – destinataires de communications spécifiques.

Dans ce contexte, la CSSF rappelle aux GFI qu'ils doivent tenir à jour les adresses email des utilisateurs d'eDesk et leurs rôles correspondants, afin que les communications spécifiques parviennent aux personnes concernées.

Par exemple:

- l'adresse email de chaque administrateur et/ou dirigeant doit être référencée sur eDesk s'il souhaite être inclus dans les communications ;

- en cas de départ d'un administrateur et/ou d'un dirigeant dirigeant, le GFI doit mettre à jour eDesk en conséquence.

REPORTING

CSSF launches a new eDesk platform "PREPROD" for carrying out tests / La CSSF lance une nouvelle plateforme eDesk « PREPROD » pour réaliser des tests

On 2 September 2024, the Commission de Surveillance du secteur financier (CSSF) launched a new platform for carrying out tests.

The CSSF is setting up a new eDesk PREPROD platform (<https://edesk.preprod.apps.cssf.lu/>) enabling professionals to test specific procedures.

The first procedure available for testing via this new platform is the collection of monthly "EBA ITS Reports" (ALM (Asset Liability Management) Report and LCRDA (Liquidity Coverage Ratio Disclosure and Additional) Report), from 2 September 2024.

The ALM report is concerned with managing financial risks that arise from mismatches between the assets and liabilities (i.e., the financial obligations) of a bank. ALM reports typically include information on liquidity, interest rate risks, capital adequacies, and various other metrics that help in understanding how well a bank can meet its short-term and long-term obligations.

The LCRDA report includes detailed disclosures about the Liquidity Coverage Ratio (LCR), such as the composition of the high-quality liquid assets, cash outflows, and inflows over the 30-day period, alongside any additional liquidity information required.

The following two collection methods will be available through eDesk PREPROD:

- Filing of documents in the dedicated eDesk procedure
- Automated submission of documents via API (S3 protocol)

A user guide for this new platform is available at edesk.preprod.apps.cssf.lu.

If you have any questions about this new environment, please contact edesk.preprod@cssf.lu.

Version française

Le 2 septembre 2024, la Commission de surveillance du secteur financier (CSSF) a lancé une nouvelle plateforme permettant de réaliser des tests.

La CSSF met en place une nouvelle plateforme eDesk PREPROD (<https://edesk.preprod.apps.cssf.lu/>) permettant aux professionnels de tester des procédures spécifiques.

La première procédure disponible en test via cette nouvelle plateforme est la collecte mensuelle des « EBA ITS Reports » (ALM (Asset Liability Management) Report et LCRDA (Liquidity Coverage Ratio Disclosure and Additional) Report), à partir du 2 septembre 2024.

Le rapport ALM concerne la gestion des risques financiers résultant des asymétries entre les actifs et les passifs (c'est-à-dire les obligations financières) d'une banque. Les rapports ALM incluent généralement des informations sur la liquidité, les risques de taux d'intérêt, l'adéquation des fonds propres et divers autres indicateurs qui aident à comprendre dans quelle mesure une banque peut remplir ses obligations à court et à long terme.

Le rapport LCRDA comprend des informations détaillées sur le ratio de couverture de liquidité (LCR), telles que la composition des actifs liquides de haute qualité, les sorties et entrées de trésorerie sur la période de 30 jours, ainsi que toute information supplémentaire sur la liquidité requise.

Les deux méthodes de collecte suivantes seront disponibles via eDesk PREPROD :

- classement des documents dans la procédure eDesk dédiée
- soumission automatisée des documents via API (protocole S3)

Un guide d'utilisation de cette nouvelle plateforme est disponible sur edesk.preprod.apps.cssf.lu.

Si vous avez des questions sur ce nouvel environnement, veuillez contacter edesk.preprod@cssf.lu.

MALAYSIA

BENCHMARKS

BNM publishes Discussion Paper on Proposed Full Transition to MYOR / MYOR-i and Cessation of KLIBOR

On 27 September 2024, the Bank Negara Malaysia (BNM) published a Discussion Paper on Proposed Full Transition to MYOR / MYOR-i and Cessation of KLIBOR.

This discussion paper sets out the proposed full transition to Malaysia Overnight Rate (MYOR) / Malaysia Islamic Overnight Rate (MYOR-i) and cessation of Kuala Lumpur Interbank Offered Rate (KLIBOR). Findings of this paper will be instrumental in developing a structured roadmap to ensure a smooth and orderly transition. Key aspects discussed include:

- Potential successors to KLIBOR;
- Management of legacy KLIBOR contracts;
- Strategies for managing transition risks.

BNM, in consultation with the Financial Markets Committee (FMC), invites written feedback on this Discussion Paper, including suggestions to improve clarity on the proposals or alternatives for consideration. To facilitate a constructive consultation process, please support your feedback and views with justifications, evidence or illustrations, where appropriate.

NETHERLANDS

DEPOSIT GUARANTEE SCHEME DIRECTIVE (DGSD)

DNB amends Policy Rules for the Deposit Guarantee Scheme

On 30 September 2024, the De Nederlandsche Bank (DNB) published the amendments to the two policy rules for the deposit guarantee scheme (DGS).

These amendments were publicly consulted in June 2024.

The DGS Policy Rules contribute to a DGS repayment period of seven working days and consist of the Single Customer View Policy Rule (SCV Policy Rule), the Policy Rule Scope and Execution of the DGS and the reporting framework based on the Regulation on Statements of Financial Undertakings under the Financial Supervision Act 2011 (Statements Regulation). The latter was not amended during this amendment round.

The DGS Policy Rules are periodically improved and supplemented. The current changes mainly result from the amendments to the Decree on Special Prudential Measures, Investor Compensation and Deposit Guarantee Wft (Bbpm) as of 1 September 2024.

The changes to the DGS Policy Rules concern:

- (i) the alignment with the independent protection of non-natural persons without legal personality,
- (ii) the alignment with the extension of the term and the situations in which there is an additional higher protection, and
- (iii) the clarification of the information obligation of banks to DNB when there are changes, amendments and incidents that could have an impact on the SCV system of banks.

The changes to the SCV Policy Rule (Refers to an external site) and the Policy Rule Scope and Execution DGS (Refers to an external site) were published in the Government Gazette on 30 September 2024.

In addition, DNB has published a number of documents for the sector on the page Single Customer View DGS. The adoption document provides insight into the results of the public consultation. DNB has also published new versions of the DGS Data Delivery Manual and the Data Delivery Agreement (GLO) that are in line with the changes to the Policy Rules.

PAYMENT TRANSFER

Overheid consults on Implementing Act and Implementing Decree on the Regulation on Instant Credit Transfers in Euros

On 23 September 2024, the Overheid (Government Documents in the Netherlands) published a consultation on the Implementing Act and Implementing Decree on the Regulation on Instant Credit Transfers in Euros.

This legislative proposal and draft decree transposes the European regulation on instant credit transfers in euros into Dutch law. This Directive requires Member States to ensure that payment service providers send and receive instant credit transfers. An instant transfer is a transfer that arrives in the recipient's account within seconds.

The bill brings non-bank payment service providers under the protection of the Settlement Finality Directive. This will allow them, if they meet the conditions of the systems, to participate in the systems necessary to offer instant credit transfers.

The decree sets out the obligations that payment service providers must comply with with regard to the provision of instant credit transfers.

Payment service providers must send and receive instant credit transfers. The costs for this should not be higher than a regular transfer. Payment service providers must also offer a verification service that verifies the recipient's name. Finally, payment service providers must comply with sanctions screening requirements.

SPAIN

CRYPTOASSET / CRYPTOCURRENCY / VIRTUAL CURRENCY

Banco de España adopts Guidelines establishing common reference parameters for stress test scenarios for liquidity stress tests

On 23 September 2024, the Banco de España adopted the Guidelines issued on the basis of Article 45(8) of Markets in Crypto-assets Regulation (Regulation (EU) 2023/1114 – MiCA) establishing the common reference parameters of the stress test scenarios for the liquidity stress tests referred in Article 45(4) MiCA.

These Guidelines are addressed to competent authorities as defined in Article 3(1) point (35) of Regulation (EU) 2023/1114 to whom these guidelines apply and to the issuers, as defined in point 10 of Article 3(1) of Regulation (EU) 2023/1114, to whom these guidelines apply (issuers of asset-referenced tokens as defined in Article 3(1), point 6 of that Regulation; and e-money institutions issuing e-money tokens defined in Article 3 (1), point 7 of that Regulation).

These Guidelines have been developed by the European Banking Authority (EBA) in accordance with article 45(8) of Regulation (EU) No 2023/1114 with a view to establish common reference parameters for the liquidity stress test scenarios that issuers of significant asset-referenced token (ART) and electronic money (e-money) institutions issuers of significant e-money tokens (EMT) must periodically conduct. The national competent authority may also decide that non-significant ART issuers are subject to the obligation to conduct stress tests when it is perceived a higher risk or the need to correct their liquidity risk. This possibility also exists for e-money institutions issuers of non-significant EMT.

These Guidelines have been developed by the EBA in accordance with article 16 of Regulation (EU) 1093/2010. The EBA published the English version of these Guidelines on 19 June 2024 and the Spanish version was released on 30 July 2024. The Guidelines apply from 30 September 2024.

The Executive Commission of the Banco de España, in its role of competent authority for the supervision of issuers of asset-referenced token and e-money tokens within the framework of powers established by Regulation (EU) 2023/1114, on markets in crypto assets, and by Law 6/2023, of 17 March, on Securities Markets and Investment Services, adopted these Guidelines as their own on 23 September 2024.

FINANCIAL SUPERVISION

CNMV adopts EBA guidelines on resubmission of historical data

On 30 September 2024, the Comisión Nacional del Mercado de Valores (CNMV) adopted the European Banking Authority (EBA) guidelines on resubmission of historical data under the EBA reporting framework.

The CNMV has informed the EBA on compliance with the “Guidelines on resubmission of historical data under the EBA reporting framework”, published in each official language of the EU last 17 July 2024. These rules are applicable from 17 October 2024.

The Guidelines specify the requirements to be followed by the financial institutions of historical data to the competent and resolution authorities in case there are errors, inaccuracies or other changes in the data reported in accordance with the supervisory and resolution reporting framework developed by the EBA.

According to the document now adopted, financial institutions will correct and resubmit inaccurate data without undue delay, including all related data affected by the such corrections. Also, these specify the frequency with which the corrected data are to be submitted according to the type of report (monthly, quarterly, semi-annual or annual) and establish that the competent authorities may demand explanations and additional data if necessary.

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

CNMV updates FAQ on collective investments, venture capital and other closed-end collective investment vehicles

On 8 September 2024, the Comisión Nacional del Mercado de Valores (CNMV) updated its frequently asked questions (FAQs) on Collective Investments Schemes (CIS), private equity and other closed collective investment vehicles. This update addresses several regulatory questions:

- Custody and administration fees: The FAQs clarify that Article 5.14 of the RIIC, which governs custody and administration fees, applies specifically to cases involving global accounts. This means that such fees are applicable when the registration of participants in the SGIIC or the marketer is managed through global accounts. It also confirms that a manager can charge these fees when acting as a marketer for

third-party funds, not just their own.

- **Minimum investment requirements:** The FAQ explains that the investment minimum of €100,000, or €10,000 if additional conditions are met, in a UCITS is a threshold that must be maintained. This requirement prevents access to the product for investors who do not commit to maintaining at least this amount, measured at the acquisition price.
- **Verification of investor requirements:** According to the FAQ, the financial asset requirements and the percentage of these assets that the investment represents need to be verified only at the time of subscription. This applies both to initial and subsequent investments, ensuring that only investors who meet the criteria can invest in the IICILs.
- **Calculation of minimum investment:** The minimum investment requirement must be satisfied by each participant or shareholder individually. In cases of joint accounts, all holders are considered as one participant or shareholder for the purposes of this requirement.

PRUDENTIAL REQUIREMENTS FOR INVESTMENT FIRMS DIRECTIVE & REGULATION (IFD / IFR)

CNMV adopts EBA Guidelines on application of group capital test for investment firm groups

On 19 September 2024, the Comisión Nacional del Mercado de Valores (CNMV) adopted the European Banking Authority (EBA) Guidelines on the application of the group capital test for investment firm groups pursuant to Article 8 of the Investment Firms Regulation (Regulation (EU) 2019/2033 – IFR).

The CNMV has informed the EBA on compliance with the “EBA Guidelines on the application of the group capital test for investment firm groups pursuant to Article 8 of Regulation (EU) 2019/2033”.

Such guidelines shall be applicable from 1 January 2025.

These guidelines specify the way in which the competent authorities are to apply Article 8.1 and Article 8.4 of Regulation (EU) 2019/2033, which allow for the authorisation of investment firm groups to apply the group capital test or to have an amount of own funds below that calculated pursuant to Article 8.3 of said Regulation.

The guidelines set common criteria to be taken into account by the competent authorities when considering the award of such authorisation to establish exceptions, while providing sufficient flexibility to apply the principle of proportionality to a case-by-case assessment.

Thus, among others, the guidelines detail the conditions necessary to consider that a group of investment firms is ‘sufficiently simple’, while defining when it poses significant risks to clients or the market.

Finally, the rules specify that the competent authorities must review, update or revoke the authorisations already awarded on their date of application, independently from the duration of the authorisation awarded.

The Guidelines have been issued under Article 16(3) of Regulation No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 creating a European Supervisory Banking Authority, which establishes that competent authorities and financial institutions will do everything possible to adhere to said guidelines. Additionally, the EBA Regulation also establishes the obligation of competent authorities to inform EBA, within two months of publishing the translated Guidelines, whether they comply or intend to comply with the guidelines published by the EBA.

The EBA published the guidelines on 11 April 2024 in English and the translations to each official EU language were published on 16 July 2024.

SWITZERLAND

FINANCIAL SERVICES

Swiss Federal Council approves mutual recognition agreement between Switzerland and the United Kingdom / Le Conseil fédéral suisse adopte l'accord de reconnaissance mutuelle entre la Suisse et le Royaume-Uni

On 4 September 2024, the Swiss Federal Council adopted a dispatch on the approval of the mutual recognition agreement between Switzerland and the United Kingdom.

For the first time, two States mutually recognize the equivalence of their regulatory and supervisory frameworks in certain segments of the financial sector through the signing of an international convention. In this way, they allow or facilitate access to their financial market by the other party. The agreement also strengthens regulatory and supervisory cooperation, ensuring the stability and integrity of the financial market and ensuring customer protection.

This agreement concerns the recognition of the equivalence of the regulatory framework of the two countries in the field of banking, investment services, insurance, wealth management and financial market infrastructures for professional clients. In the case of financial services, in particular asset management, Swiss providers will now be allowed to carry out cross-border business activities. On the basis of this agreement, they will be able to provide cross-border services directly to British private clients with assets in excess of £2 million.

The agreement will also cover certain segments of non-life insurance for large commercial customers and will allow UK insurance companies to provide cross-border services in this area. In particular, accident insurance, health insurance, most liability insurance and insurance of any kind with a monopoly that are provided to professional policyholders. In accordance with current UK legislation, Swiss companies can offer cross-border insurance services to large business customers and this possibility is expressly reaffirmed by the agreement.

Signed on 21 December 2023, the agreement still needs to be approved by the parliaments of both countries before it can enter into force.

Version française

Le 4 septembre 2024, le Conseil fédéral suisse a adopté un message portant approbation de l'accord de reconnaissance mutuelle entre la Suisse et le Royaume-Uni.

Pour la première fois, deux États reconnaissent mutuellement l'équivalence de leurs cadres de régulation et de surveillance dans certains segments du secteur financier à travers la signature d'une convention internationale. De cette manière, ils permettent ou facilitent l'accès de l'autre partie à leur marché financier. L'accord renforce également la coopération en matière de réglementation et de surveillance, garantissant la stabilité et l'intégrité du marché financier et assurant la protection des clients.

Cet accord porte sur la reconnaissance de l'équivalence du cadre réglementaire des deux pays dans le domaine de la banque, des services d'investissement, de l'assurance, de la gestion de patrimoine et des infrastructures des marchés financiers pour la clientèle professionnelle. Dans le cas des services financiers, en particulier de la gestion de fortune, les prestataires suisses seront désormais autorisés à exercer des activités commerciales transfrontalières. Sur la base de cet accord, ils seront en mesure de fournir des services transfrontaliers directement aux clients privés britanniques disposant d'actifs supérieurs à 2 millions de livres sterling.

L'accord couvrira également certains segments de l'assurance non-vie pour les grands clients commerciaux et permettra aux compagnies d'assurance britanniques de fournir des services transfrontaliers dans ce domaine. Notamment les assurances accidents, les assurances maladie, la plupart des assurances responsabilité civile et les assurances de toute nature avec monopole qui sont proposées aux assurés professionnels. Conformément à la législation britannique en vigueur, les entreprises suisses peuvent proposer des services d'assurance transfrontaliers aux grandes entreprises clientes et cette possibilité est expressément réaffirmée par l'accord.

Signé le 21 décembre 2023, l'accord doit encore être approuvé par les parlements des deux pays avant de pouvoir entrer en vigueur.

FINANCIAL SUPERVISION

FINMA launches consultation on new circular on supervisory practice under BA and FinIA / La FINMA lance une consultation sur une nouvelle circulaire relative aux pratiques de surveillance selon la BA et la FinIA

On 2 September 2024, the Eidgenössische Finanzmarktaufsicht (FINMA) launched a consultation on a new circular on supervisory practice under the BA and FinIA.

The primary purpose of consolidated supervision is to ensure that all risks entered into by a financial group are covered by supervision. FINMA has many years of established supervisory practice in the area of consolidated supervision of financial groups under the BA and FinIA. Up to now, supervisory practice has been communicated to the institutions concerned in the form of case-by-case decisions. The circular explains this practice and includes clarifications in selected areas that are key from a supervisory perspective.

The circular sets out the requirements for the inclusion of group companies in consolidated supervision (regulatory scope of consolidation). The decisive factors are the company's activity in the financial sector and the existence of an economic unit, a legal duty to provide support or a de facto obligation to provide support (Art. 21 BO).

The specific implications of consolidated supervision are based on the provisions of the Banking Ordinance (Art. 24 BO). The requirements listed in the circular can be grouped according to quantitative and qualitative elements, the latter including, for example, elements of corporate governance at group level.

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

Version française

Le 2 septembre 2024, l'Eidgenössische Finanzmarktaufsicht (FINMA) a lancé une consultation sur une nouvelle circulaire sur les pratiques de surveillance selon la BA et la FinIA.

L'objectif premier de la surveillance consolidée est de garantir que tous les risques pris par un groupe financier sont couverts par la surveillance. La FINMA dispose d'une pratique de surveillance établie depuis de nombreuses années dans le domaine de la surveillance consolidée des groupes financiers selon la BA et la FinIA. Jusqu'à présent, les pratiques prudentielles ont été communiquées aux établissements concernés sous la forme de décisions au cas par cas. La circulaire explique cette pratique et inclut des clarifications dans des domaines sélectionnés qui sont essentiels du point de vue de la surveillance.

La circulaire précise les conditions d'inclusion des sociétés du groupe dans la surveillance consolidée (périmètre de consolidation réglementaire). Les facteurs déterminants sont l'activité de l'entreprise dans le secteur financier et l'existence d'une unité économique, une obligation légale d'assistance ou une obligation d'assistance de fait (art. 21 BO).

Les implications concrètes de la surveillance consolidée reposent sur les dispositions de l'ordonnance sur les banques (art. 24 OB). Les exigences énumérées dans la circulaire peuvent être regroupées selon des éléments quantitatifs et qualitatifs, ces derniers incluant par exemple des éléments de gouvernance d'entreprise au niveau du groupe.

En commentant sa pratique, la FINMA apporte davantage de clarté sur les questions d'interprétation concernant l'étendue et le contenu de la surveillance consolidée.

Swiss Federal Council consults on amendments to Financial Market Supervision Act and other acts / Le Conseil fédéral procède à une consultation sur les modifications de la loi sur la surveillance des marchés financiers et d'autres lois

On 20 September 2024, the Swiss Federal Council published a consultation on amendments to the Financial Market Supervision Act and other acts.

The aim of the international cooperation of the Swiss authorities in the financial sector is to ensure the openness and international interconnection of the Swiss financial system while protecting clients and ensuring the transparency, integrity and stability of the financial markets. The corresponding legal framework needs to be improved in a number of areas, as highlighted by the analyses carried out by the Federal Department of Finance in cooperation with the Federal Department of Justice and Police, the Swiss Financial Market Supervisory Authority (FINMA), the Swiss Audit Supervisory Authority (FAOA) and the Swiss National Bank (SNB).

The Federal Council is therefore proposing, among other things, the following amendments to the Financial Market Supervision Act (FINMASA), the Audit Supervision Act (SRA) and the National Bank Act (NBA).

In order to minimise the immediate risks to the markets, FINMA's administrative assistance procedure should be adapted to international developments and tightened up, by abolishing the right to be heard and the right to appeal in the client proceedings in whole or in part. In addition to the complete repeal, another variant is proposed in the consultation, namely the restriction of the customer procedure for certain offences such as market abuse and money laundering. The legal protection of the persons concerned would continue to be ensured in all cases.

In addition, a new legal basis should be provided for strengthening the cooperation between FINMA and the SNB in the recognition and audit of

foreign authorities.

The direct transmission of information abroad by supervised financial service providers should be implemented in order to increase the legal certainty of institutions and their employees when providing information.

FINMA should be able to request audits of foreign companies that are not subject to the audit system and, under certain conditions, to authorise foreign supervisory authorities to carry out such audits in Switzerland.

Finally, the legal framework of the LSR relating to the international cooperation of the SRA should be aligned with that of the FINMASA.

The amendments proposed by the Federal Council will strengthen the global role and reputation of the Swiss financial centre. The consultation will close on 3 January 2025.

Version française

Le 20 septembre 2024, le Conseil fédéral a publié une consultation sur les modifications de la loi sur la surveillance des marchés financiers et d'autres lois.

L'objectif de la coopération internationale des autorités suisses dans le secteur financier est d'assurer l'ouverture et l'interconnexion internationale du système financier suisse tout en protégeant les clients et en garantissant la transparence, l'intégrité et la stabilité des marchés financiers. Le cadre juridique correspondant doit être amélioré dans plusieurs domaines, comme le soulignent les analyses effectuées par le Département fédéral des finances en collaboration avec le Département fédéral de justice et police, l'Autorité fédérale de surveillance des marchés financiers (FINMA), l'Autorité fédérale de surveillance des marchés financiers (FINMA), l'Autorité de surveillance de la révision (OFOA) et Banque nationale suisse (BNS).

C'est pourquoi le Conseil fédéral propose, entre autres, les modifications suivantes à la loi sur la surveillance des marchés financiers (LFINMA), à la loi sur la surveillance en matière de révision (LSR) et à la loi sur la Banque nationale (LBN).

Afin de minimiser les risques immédiats pour les marchés, il convient d'adapter et de renforcer la procédure d'assistance administrative de la FINMA aux évolutions internationales en supprimant en tout ou en partie le droit d'être entendu et le droit de recours dans le cadre d'une procédure client. Outre l'abrogation totale, une autre variante est proposée dans la consultation, à savoir la restriction de la procédure client pour certaines infractions telles que les abus de marché et le blanchiment d'argent. La protection juridique des personnes concernées continuerait d'être assurée dans tous les cas.

En outre, une nouvelle base juridique devrait être prévue pour renforcer la coopération entre la FINMA et la BNS en matière de reconnaissance et de contrôle des autorités étrangères.

La transmission directe d'informations à l'étranger par des prestataires de services financiers soumis à surveillance devrait être mise en œuvre afin d'accroître la sécurité juridique des établissements et de leurs employés lors de la fourniture d'informations.

La FINMA devrait pouvoir exiger des audits d'entreprises étrangères qui ne sont pas soumises au système de révision et, sous certaines conditions, autoriser des autorités de surveillance étrangères à effectuer de tels audits en Suisse.

Enfin, le cadre juridique de la LSR relatif à la coopération internationale de l'ASR devrait être aligné sur celui de la FINMASA.

Les modifications proposées par le Conseil fédéral renforceront le rôle et la réputation de la place financière suisse à l'échelle mondiale. La consultation se clôturera le 3 janvier 2025.

UNITED KINGDOM

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

FCA publishes OPBAS report on progress and themes from its 2023/2024 supervisory work

On 23 September 2024, the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) report on progress and themes from its 2023/2024 supervisory work.

In its fifth report, the OPBAS has found that while most Professional Body Supervisors (PBS) are complying with money laundering regulations, how they supervise is still not consistently effective.

OPBAS is housed within the FCA and is responsible for supervising 25 PBSs for anti-money laundering purposes in the legal and accountancy sector. OPBAS found none of the PBSs assessed were fully effective in all areas. For example, the report found weaknesses in how PBSs were using enforcement powers and tools to supervise members, with the number and value of fines issued declining on the previous year. Proactive information and intelligence sharing with regulators and law enforcement was also inconsistent, with some PBSs improving but limited sharing elsewhere hampering efforts to make a real dent in the flow of illicit funds in the UK. OPBAS has used an increasing range of supervisory tools to hold PBSs accountable. This includes using its powers to direct two PBSs to take action to remedy money laundering shortfalls.

In January 2023, OPBAS set out additional guidance on the outcomes PBSs need to achieve to enhance their work. It continues to assess PBSs against this revised sourcebook, prioritising its supervisory oversight on areas of greatest weaknesses.

While it is important that the report shares examples of more effective supervision where the OPBAS finds them, the focus is on highlighting the areas in which PBSs most need to improve. The key findings from the latest round of supervisory assessments are:

- OPBAS has not seen any material improvement in PBSs' effectiveness in the core areas of supervision, risk-based approach, enforcement, and information and intelligence sharing. Of the 9 PBSs the OPBAS assessed, most had marginally declined or remained static in overall effectiveness, with incremental improvements observed in just 3 PBSs. OPBAS intervention was required to address material ineffectiveness and compliance concerns at 2 PBSs.
- Problems in applying a risk-based approach reduced the effectiveness of PBSs' supervision. Many PBSs the OPBAS assessed could not clearly substantiate the risk profiles they had assigned to their members or had used a narrow set of indicators to categorise risks. OPBAS multi-PBS work on risk factors reconfirmed that TCSPs, payroll services and conveyancing remain among the top AML risks facing supervised populations, as identified by the National Risk Assessment 2020. Yet some PBSs demonstrated limited understanding and little proactive action to capture and address these risks. PBSs overseeing supervised populations with these existing and material risks need to do more to effectively identify, assess and mitigate them.
- Weaknesses remain in AML supervision with a large proportion of the PBSs assessed as partially effective. The OPBAS noted shortcomings in the design of some supervisory approaches, lacking clearly defined methodology and effective use of tools to supervise members. PBSs take a variety of approaches to assessing supervised populations, including desk-based reviews (DBRs), on-site inspections and hybrid combinations of these. The range of differing interpretations of these terms makes it difficult to compare like with like. The OPBAS therefore supports ongoing work at the UK Anti-Money Laundering Supervisors Forum (AMLSF) which is considering definitions to increase consistency.
- Continued gaps exist in enforcement approaches. PBSs have a range of enforcement powers and tools, but the majority the OPBAS assessed did not use them effectively in a dissuasive and proportionate manner. The Treasury's 2022/23 report shows the number and value of fines issued in 2022/23 declined compared to the previous year, despite findings of supervisory activity for non-compliance increasing. PBSs need to demonstrate that their enforcement tools act as a credible deterrent against money laundering.
- PBSs' commitment to consistent, proactive information and intelligence sharing continues to be a concern. While some PBSs have made efforts to improve in this area in the last year, there is still too much inconsistency. Most PBSs the OPBAS assessed engaged with fora such as the AMLSF, the ISEWGs and sector affinity groups. However, the OPBAS has seen some reluctance to use information-sharing gateways such as MLRs Regulation 52, particularly for live cases. Limited sharing of live intelligence about investigations has hampered effective progress. The OPBAS is working with partners to increase understanding, awareness and trust sufficiently to improve performance in this area. Collectively the OPBAS needs to up OPBAS' game to improve the cross-system approach required to make a real dent in the flow of illicit funds in the UK.
- Not all PBSs are prioritising and resourcing their AML supervisory function appropriately.

BENCHMARKS

FCA publishes press release on remaining synthetic US dollar LIBOR settings

On 5 September 2024, the Financial Conduct Authority (FCA) published a press release on remaining synthetic US dollar London Interbank Offered Rate (LIBOR) settings.

It is now less than 1 month to go until the 1-, 3- and 6-month synthetic US dollar LIBOR settings cease permanently after their final publication on 30 September 2024.

Further to the June 2024 decision (PDF), the FCA has required ICE Benchmark Administration Limited (IBA) to continue to publish the 1-, 3- and 6-month US dollar LIBOR settings in synthetic form until the end of September 2024. The FCA will not use the powers to compel IBA to continue to publish the settings beyond this date.

Ahead of the deadline, firms with outstanding US dollar LIBOR exposures must continue their active transition efforts.

FINANCIAL SUPERVISION

FCA publishes good practice and areas for improvement on principal firms embedding the new rules for effective appointed representative oversight

On 6 September 2024, the Financial Conduct Authority (FCA) published good practice and areas for improvement on principal firms embedding the new rules for effective appointed representative (AR) oversight.

These rules, effective from 8 December 2022, require principals to ensure their ARs comply with regulations. The FCA tested compliance through a telephone survey of 250 firms and in-depth assessments of 23 firms.

Key findings revealed that while many principals made efforts to comply, there were significant gaps in oversight. Some firms had not completed annual reviews or self-assessments, and many relied on inadequate templates or took a "tick-box" approach. Around 1 in 5 firms failed to meet the required checks, despite 96% expressing confidence in their compliance.

The FCA emphasized the need for improved documentation, onboarding, and termination processes. It urged all firms with ARs to review their processes and ensure they meet the new standards.

FCA publishes its annual report and accounts 2023/24

On 5 September 2024, the Financial Conduct Authority (FCA) published its annual report and accounts 2023/24.

Recognising the vital role that the regulator plays in enabling new financial services firms' ability to meet regulatory standards to get off the ground, the FCA has improved its authorisation process. Now 98% of cases, including applications by wholesale market firms, are assessed within statutory deadlines, up from 89% in Q1 of 2022/23.

Overseas wholesale financial firms wishing to operate in the UK can also benefit from pre-application support from the FCA. The regulator has also recently completed the biggest reform to the listing rules in more than 3 decades. These changes support economic growth by helping firms access the capital they need to grow.

Other highlights include:

- **Intervening to stop harm to consumers more quickly:** The FCA has continued to improve how it detects problem firms and individuals, which helps earlier intervention. For example, it doubled the cancellation of firm authorisations in 2023 to 1,261 and used its powers to intervene against 34 firms, who caused serious concerns, up 68% on 2022.
- **Improved fair complaint resolution and compensation:** The FCA has taken strong action to make sure firms are compensating consumers, promptly and fairly, when things go wrong. This year it intervened with almost 100 lenders to make sure they were supporting borrowers in financial difficulty, and the FCA expects that approximately 270,000 customers will receive close to £60m in compensation.

At the same time, through its work on prevention, the Financial Services Compensation Scheme (FSCS) levy on the industry has fallen to a 10-year low.

- **Strong action to tackle financial crime:** Since April 2023, the FCA has charged 21 people with financial crime offences which is the highest number of charges it has made in a single year. In 2023, it secured 9 freezing orders, 6 more than in 2022, and restrained £21.1m in assets of individuals under investigation.
- **Protecting consumers in the crypto market:** The FCA has introduced new rules that require cryptoassets promotions to UK consumers to

be clear, fair and not misleading. This helps consumers better understand what they are buying, and the risks involved.

- Protecting consumers: Since 31 July 2023, more than 42,000 firms must make sure they can evidence good outcomes for consumers for any new and existing 'on sale' products and services, and for closed 'not on sale' products since 31 July 2024, in line with the Consumer Duty.
- Supporting innovation: The FCA continues to support innovation in financial markets, including the creation of a permanent Digital Sandbox, a testing environment that supports firms at the early stage of product development.

In addition, the FCA published the following:

- Outcomes and metrics report: The FCA's 3-year Strategy and annual Business Plan makes the FCA more accountable by creating a clear path from the outcomes the FCA wants to achieve for consumers and market participants, to the tools and interventions the FCA uses.
- Operating service metrics: This report sets out how the FCA performed in 2023/24 against 51 operating service metrics. Some are voluntary, such as the FCA's Supervision Hub metrics. Others are set by the Financial Services and Markets Act 2000 (FSMA). The FCA also reports on other legislative requirements, including the Freedom of Information Act, the Payment Services Regulations and Electronic Money Regulations.
- Positive impact report: For the period 1 April 2020 to 31 March 2023, the FCA estimates the benefits from a subset of the FCA's policy interventions to be at least £24.9bn. These figures represent only the policies for which the FCA was able to quantify benefits. This equates to an annual average of at least £8.3bn.
- Taskforce for Climate-related Financial Disclosures report: As a regulator, the FCA has limited exposure to climate-related financial risks. There is some risk to cash flow arising out of transition and physical risks. The FCA does face regulatory challenges from climate-related risks in the firms the FCA regulates.
- Annual Prescribed Person report on whistleblowing: Since 2023, the FCA has had a secondary objective to facilitate the international competitiveness and growth of the UK economy in the medium to long term (subject to alignment with international standards). Under Regulation 3 of the Prescribed Persons (Reports on Disclosures of Information) Regulations 2017, each relevant Prescribed Person must report annually in writing on the workers' disclosures (whistleblowing disclosures) it has received. The FCA is a Prescribed Person under the Regulations, and this report meets this obligation. It covers disclosures for the period 1 April 2023 to 31 March 2024.
- Modern Slavery & Human Trafficking Statement: This statement sets out the steps that the Financial Conduct Authority (FCA) has taken to get assurance that slavery and human trafficking are not taking place in its supply chains and its own business.

FINTECH / REGTECH / BIGTECH / SUPTECH / DIGITAL ECONOMY

FCA publishes policy statement PS24/12 Digital Securities Sandbox joint Policy Statement and Final Guidance with BoE

On 30 September 2024, the Financial Conduct Authority (FCA) published a policy statement PS24/12 Digital Securities Sandbox (DSS) joint Policy Statement and Final Guidance with the Bank of England (BoE).

The DSS will allow participants to use developing technologies, such as distributed ledger technology (DLT), to undertake the activities traditionally associated with Central Securities Depositories and trading venues.

Firms will be able to explore the benefits of these new technologies and practices in traditional financial markets.

The FCA will work together with the BoE to operate the DSS, which will have 3 overarching aims:

- Facilitating innovation to promote a safe, sustainable, and efficient financial system.
- Protecting financial stability.
- Protecting market integrity and cleanliness.

Who this is for:

- Firms intending to apply to enter the DSS and be approved as a sandbox entrant.
- Firms that wish to engage with a sandbox entrant but not become one themselves, for example, firms seeking to offer custody services for the digital securities that are recorded, traded or settled on those Financial Market Infrastructures (FMIs).

Following the feedback received to CP24/5, which closed on 29 May 2024, the FCA and the BoE have made targeted changes to the approach. This includes broadly finalising the rules, with some changes.

In particular:

- Extending the scope of the DSS to include non-GBP (non-Pound Sterling) denominated assets.
- Adopting a more flexible approach to setting firm-specific limits at the go-live stage, by adopting limit ranges rather than a fixed go-live limit. This aims to further facilitate firms' business plans and their activities to grow in the DSS, subject to the number of firms participating in the DSS.
- Adding the option of a third Gate 3 progress review window to ensure that firms are not stuck at the live stage for a long period of time.
- Reducing the minimum capital requirement for a Digital Securities Depository (DSD) to 6 months of operating expenses, from the original proposal of a minimum of 9 months of operating expenses.
- Removing detailed provisions relating to the use of bank guarantees and letters of credit used to secure DSD links that were based on provisions in Commission Delegated Regulation (EU) 2017/390. Instead, the FCA is relying on the high-level provisions in the rules based on article 48 of UK CSDR. This is designed to make the provisions relating to DSD links in the DSS rules instrument easier to understand and navigate.
- Amending the rule based on article 39 of UK CSDR to clarify that adequate protection to participants in any securities settlement system that a DSD operates can include protection by contractual means.
- Bringing Article 65 of UK CSDR (Reporting of infringements) back into the BoE DSS rules instrument to avoid lacunas in whistleblowing protection for DSS participants.

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

FCA publishes document on its approach to recognition of funds under OFR and updates its page on OFR (11/09/2024)

On 11 September 2024, the Financial Conduct Authority (FCA) published a document on its approach to recognition of funds under Overseas Funds Regime (OFR) and updates its page on OFR.

The aim of the document is to assist in making an application for an overseas investment fund to be recognised under the OFR. The FCA sets out details of the process and explain some of the factors the FCA will look at when deciding whether an overseas fund meets the conditions for being recognised under the Financial Services and Markets Act 2000.

The OFR is a new legislative gateway to allow certain investment funds established outside the UK to be promoted in the UK, including to retail clients. If a fund applies for and is given "recognised scheme" status under the OFR, it can be promoted in the same way as an authorised collective investment scheme established in the UK.

The categories of funds that can use the OFR are specified in legislation following an equivalence determination by the Government. At the outset, the OFR will be available to most funds established in EEA and EU member states that have been authorised under the Undertakings for Collective Investment in Transferable Securities Directive (UCITS) Directive. The exceptions are EEA UCITS that have been authorised as money-market funds.

If a fund meets the criteria set out in the UK Government's OFR designation order, the fund can make an application to the FCA for your fund(s) to be recognised in the UK. Recognition will allow you to promote your fund to retail investors in the UK.

The FCA sets out the key steps when preparing to make a recognition application:

- Read the information set in the approach document.
- Prepare for the making of the application by gathering together all of the information that is detailed on these pages, so the completion of the application is as efficient as possible.
- Obtain the latest supporting documents for the fund so they can be submitted alongside the application
- Ensure there is an appropriate method of paying the application fee – this forms part of the application.
- Any person who wishes to make an overseas funds application must first register for the FCA Connect System.
- A person with appropriate authority at a firm will need to enrol into the FCA Connect System. This will create a principal user for your firm who, once assigned, will be able to delegate access to other people (either within the firm or at an external firm). Anyone who has registered / been delegated will be able to submit applications on behalf of the firm. A third party is not able to enrol on behalf of a firm (see our 'How to Enrol' guide for further information).
- Submit the relevant application (one will do this on the FCA's Connect System) and pay the relevant application fee.

Alongside its approach document, the FCA has also published various related documents including a set of Connect user guides relating to the OFR.

PACKAGED RETAIL AND INSURANCE-BASED INVESTMENT PRODUCTS (PRIIPS)

FCA updates its statement on forbearance in relation to investment trust disclosure requirements (30/09/2024)

On 30 September 2024, the Financial Conduct Authority (FCA) published an update to its statement on forbearance in relation to investment trust disclosure requirements.

The implication of the forbearance is that it applies along the distribution chain to any firm carrying on business relating to these products, including manufacturing, distribution or marketing. All firms must continue to comply with other relevant rules and regulations including the Consumer Duty and the requirements to ensure communications are fair, clear and not misleading. Firms also need to comply with the requirements in COBS 2.1.1R to act honestly, fairly and professionally in accordance with the best interests of clients.

This means firms across the distribution chain will need to consider what approach will deliver good outcomes for their retail clients. Where firms choose not to provide a key information document (KID), they may wish to consider whether any additional product information is needed to support retail investors, in line with PRIN 2.A.5.3R(1) requirements to equip consumers with the information to make effective, timely and properly informed decisions.

Under product governance requirements, product manufacturers and distributors are generally required to share relevant information about the product to ensure it is appropriately distributed. Distributor firms, or any firm preparing communications for retail customers, are also subject to Consumer Duty obligations relating to meeting the information needs of retail customers. In light of the forbearance statement, the FCA expects firms in the distribution chain for securities issued by investment trusts to look to work together to determine and share what information is required to enable the continued distribution of these products, in compliance with their more general obligations towards retail investors, including in particular under the Consumer Duty.

RETAIL FINANCIAL SERVICES

FCA and UK Government publish statement on reforms to financial services retail-disclosure requirements and on forbearance in relation to investment trust disclosure requirements

On 19 September 2024, the Financial Conduct Authority (FCA) and the UK Government published a statement on reforms to financial services retail-disclosure requirements on forbearance in relation to investment trust disclosure requirements.

The Government and FCA announce plans to reform UK retail disclosure rules and will temporarily exempt investment trusts from assimilated EU law requirements.

The Government and FCA are committed to the ongoing reform programme to reinvigorate the UK's capital markets. Ensuring retail investors can make informed investment decisions is an important part of ensuring healthy capital markets. As part of this, the Government and FCA are committed to replacing EU-inherited consumer cost disclosure regulation with a new framework tailored to UK markets and firms.

The Treasury consulted on replacing the EU-inherited Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation with a new framework for Consumer Composite Investments (CCIs). HM Treasury will lay legislation as soon as possible to provide the FCA with the appropriate powers to deliver this reform. The new CCI regime will deliver more tailored and flexible rules which will address concerns across industry with current disclosure requirements, including for costs.

The UK's new retail disclosure regime is expected to be in place in H1 2025, subject to Parliamentary approval and the FCA consultation process. The FCA intends to consult on proposed rules for the CCI regime this autumn.

The UK's new framework for CCIs will support investors to better understand what they are paying for and the value they are receiving through the distribution chain. The FCA's consultation process will provide an opportunity for a full range of stakeholders to provide feedback on the new regime, to ensure it works as intended.

The intent is that the new CCI framework will be proportionate and will allow more bespoke arrangements to address concerns that have been raised with the current PRIIPs framework.

The Government and FCA also welcome the feedback from the investment trust sector regarding the operation of current cost disclosure requirements and how they might be impacting the investment trust sector specifically.

Investment trusts are a well-established type of investment vehicle in the UK representing over 30% of the FTSE 250 and investing in over £260 billion in assets in total. They can be a valuable source of investment funding to both conventional and emerging asset classes. The valuations and discounts of investment trusts may be influenced by many factors, independent of regulation, including investment performance, overall market sentiment and the interest rate environment.

In response to the feedback from the sector, the Government will lay legislation to exempt listed investment trusts from the current PRIIPs Regulation, as well as make other necessary amendments to other EU-assimilated law.

This approach is intended as an interim measure, and investment trusts will be included within the scope of the future UK retail disclosure framework. The proposed new CCI regime is intended to better cater for a variety of products and investment vehicles, including investment trusts, while still ensuring consumers receive appropriate information to allow them to make meaningful choices between investment opportunities about composite consumer investments.

In light of this announcement the FCA will immediately apply new forbearance to provide certainty for firms ahead of this legislation taking effect. From 19 September 2024 until the legislation to amend the PRIIPs regulation for investment trusts comes into force, the FCA will not take supervisory or enforcement action if an investment trust chooses not to follow the requirements of the PRIIPs regulation and associated technical standards, and/or the requirements of Article 50(2)(b) and Article 51 of the MiFID Org Regulation. This is an interim measure, pending longer term reform.

FCA publishes good and poor practice update on price and value outcome (18/09/2024)

On 18 September 2024, the Financial Conduct Authority (FCA) published a good and poor practice update on price and value outcome.

This publication collates insights from the first year of the implementation of the price and value outcome and is intended to help firms improve the way they think about fair value assessments.

The Consumer Duty sets high and clear standards of protection for retail customers across financial services. Firms made significant compliance efforts in the lead up to the Duty coming into force on 31 July 2023, and after that in relation to closed products and services, which have become subject to the Duty from 31 July 2024. Firms are continuing to adjust and improve the way they are implementing the Consumer Duty to deliver good consumer outcomes.

The FCA is working with firms to ensure they are taking an appropriate and proportionate approach to the price and value outcome. However, the FCA will act where the FCA sees firms not making improvements in response to feedback, or if firms' products and services are clear poor value outliers when compared to the price and value of similar products and services.

This publication is relevant to all firms engaged in retail market business who are required to make sure their products and services offer fair value to retail customers.

The Consumer Duty rules on fair value are there to make sure the price customers pay is reasonable compared to the benefits they receive. The fair value assessment is crucial in this. It is intended to ensure firms properly consider fair value in their decision-making about products and services that are offered or provided to retail customers. It helps them check and demonstrate that they are complying with their obligations.

There are requirements to provide assessment of the price and value of products and services across several parts of the FCA Handbook. This publication provides insights into the quality of analysis the FCA has seen relating to the requirements across these rules, and discusses those in the context of the newer requirements of the Consumer Duty. The insights regarding general quality of analysis can be valuable to all firms required to produce assessments of price and value.

SANCTIONS

UK Government updates its annual frozen asset review and reporting form (11/09/2024)

On 11 September 2024, the UK Government updated its annual frozen asset review and reporting form.

UK financial sanctions legislation mandates that all funds or economic resources belonging to, owned, or controlled by a designated person must be frozen. This is primarily enforced through the Sanctions and Anti-Money Laundering Act 2018 (the Sanctions Act), with HM Treasury's Office of Financial Sanctions Implementation (OFSI) overseeing compliance. OFSI annually reviews frozen assets and requests entities holding or controlling such assets to report their details, including both UK and overseas assets affected by UK sanctions.

For 2024, reports must be submitted by 11 November 2024, detailing the value of assets as of 30 September 2024. Entities are required to use a specific template available on the GOV.UK website. If the assets involve shares, securities, or other financial instruments, their value in GBP must be included in the report. No report is needed if no assets are held, but entities that previously reported assets and no longer hold them must submit a nil return.

One designated person within the organization should be responsible for submitting the report to avoid duplication. Non-compliance or attempts

to circumvent the legislation are considered offences.

SECURITISATION REGULATION

UK publishes Financial Services and Markets Act 2023 (Commencement No. 7) Regulations 2024

On 3 September 2024, the United Kingdom published the Financial Services and Markets Act 2023 (Commencement No. 7) Regulations 2024.

The Regulations set forth the revocation of several financial instruments related to securitisation, effective from 1 November 2024. This includes:

- Remaining provisions of the retained EU Securitisation Regulation that have not yet been revoked.
- EU Securitisation Regulation 2017;
- Securitisation Regulations 2018 (S.I. 2018/1288);
- A retained instrument (Commission Delegated Regulation (EU) No 625/2014) related to the Capital Requirements Regulation and which provided regulatory technical standards related to credit risk exposures for institutions involved in securitisation.
- Instruments made under the EU Securitisation Regulation 2017.

This revocation is in preparation for the implementation of a new UK securitisation framework.

SUSTAINABLE FINANCE / GREEN FINANCE

FCA publishes statement on setting out temporary measures for firms on 'naming and marketing' sustainability rules

On 9 September 2024, the Financial Conduct Authority (FCA) published a statement on setting out temporary measures for firms on 'naming and marketing' sustainability rules.

The FCA's Sustainability Disclosure Requirements (SDR) and investment labels regime (PS23/16) were published on 28 November 2023.

With global assets under management in environmental, social and governance (ESG)-oriented assets expected to increase to \$34trn by 2026, this package of measures, including the consumer-focused labels, will:

- protect investors by helping them to make more informed decisions when investing;
- help maintain the UK's position as a world-leading, competitive centre for asset management and sustainable investment.

The FCA's anti-greenwashing rule took effect from 31 May 2024. Since 31 July 2024 managers of UK-based investment funds have been able to use investment labels on their products. Firms should now be taking all reasonable steps to ensure compliance with the 'naming and marketing' and disclosure rules, which come into force from 2 December 2024.

The SDR is a new regime that raises the bar. The FCA has provided support to firms to help them meet these new higher standards.

In recent weeks, the FCA has been encouraged to see good progress made by firms to comply with the rules, and a strong pipeline of fund applications from firms wishing to use the labels.

Through engagement with industry and their representative trade bodies, it has become clear it has taken longer than expected for some firms to make the required changes. In particular, some firms wishing to use an investment label, or which need to change the names of their products, require more time to meet the higher standards and prepare the disclosures needed for the FCA's approval.

Given the importance of getting SDR right for investors, the FCA is seeking to take a pragmatic and outcomes-based approach to provide further support to those firms which may need additional time to operationalise any changes required.

The FCA is offering limited temporary flexibility, until 5pm on 2 April 2025, for firms to comply with the 'naming and marketing' rules (i.e. ESG 4.3.2R to ESG 4.3.8R of the ESG sourcebook) in relation to a sustainability product which is a UK authorised investment fund in exceptional circumstances where the firm:

- has submitted a completed application for approval of amended disclosures in line with ESG 5.3.2R for that fund by 5pm on 1 October 2024; and
- is currently using one or more of the terms 'sustainable', 'sustainability' or 'impact' (or a variation of those terms) in the name of that fund and is intending either to use a label, or to change the name of that fund.

Where firms can comply with the rules without requiring this flexibility, they should do so. The FCA also expects firms to comply with the rules as

soon as they can, without waiting until 2 April 2025. Firms must continue to comply with all other relevant rules, including the anti-greenwashing rule.

These temporary measures do not apply to funds using other sustainability-related terms in their names that are not specified above.

The new naming rules are broadly consistent with the FCA's pre-SDR guiding principles, which firms should be complying with already.

The guiding principles state that a fund that uses sustainability-related terms in its name could be misleading unless the fund pursues ESG/sustainability characteristics, themes or outcomes in a way that is substantive and material to the fund's objectives, investment policy and strategy.

The new naming rules, for funds that are marketed/sold based on sustainability-related terms but do not have a label, require funds to:

- have sustainability characteristics;
- ensure that funds' names accurately reflect those characteristics.

Sustainability characteristics should be material to that product, for example at least 70% of its assets should have sustainability characteristics (see ESG 4.3.6G(1)).

Firms facing difficulty complying with any of the SDR rules or the guiding principles for their out-of-scope funds should talk to their supervisor or usual supervisory contact.

INTERNATIONAL

FINANCIAL MARKET INFRASTRUCTURE (FMI)

ISDA publishes statement on EMIR 3.0

On 23 September 2024, the International Swaps and Derivatives Association (ISDA) published a joint trade association statement on European Market Infrastructure Regulation (EMIR) 3.0 effective implementation dates.

On 23 September 2024, the ISDA, the Alternative Investment Management Association (AIMA), the European Banking Federation (EBF), the European Fund and Asset Management Association (EFAMA) and FIA sent a letter urging the European Commission and European supervisory authorities to clarify that market participants are not required to implement the EMIR 3.0 Level 1 provisions prior to the date of application of the associated Level 2 regulatory technical standards (RTS).

In the letter, the associations state this is to avoid firms being required to implement the requirements of EMIR 3.0 twice—first, to comply with the Level 1 provisions once EMIR 3.0 enters into force and then when the associated Level 2 RTS becomes applicable.

They recommend that EC/ESMA clarify that the Post-trade risk reduction (PTRR) services clearing exemption is applicable only once the relevant RTS have entered into force and have become applicable.

They also recommend that EC/ESMA clarify that while in-scope counterparties are required to open an account at an EU CCP within six months of entry into force of EMIR 3.0, they are only required to comply with the operational and stress testing conditions, the reporting and notification requirements and the representativeness requirements once the relevant RTS have entered into force and have become applicable.

They recommend that EC/ESAs clarify that the requirement for FCs and NFCs+ to apply for authorisation of initial margin models only applies once the EBA RTS on validation procedures, and EBA guidelines to ensure the uniform application and authorisation process, have entered into force and have become applicable.

They recommend that EC/ESMA clarify that the requirement on competent authorities to impose penalties for systematic manifest errors in reporting only applies once the RTS defining 'systematic manifest errors' have entered into force and have become applicable.

They recommend that EC/ESMA clarify that the new transparency requirements set out in Article 38 only apply once the relevant RTS have entered into force and have become applicable.

Given that the requirements (AAR and the new clearing threshold calculations) are only separated by six months, it would be preferable if both provisions came into force at the same time.

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