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PRIVATE BANK BRIEFING

LATHAM & WATKINS

Issues Impacting the Private Bank Sector

Welcome to our quarterly roundup of legal and compliance issues impacting private banks and their clients.

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Brexit: The Run-Up to the End of the Transition Period

Ahead of the end of the Brexit transition period, on 31 December 2020, regulators in the UK and the EU have issued a number of updates:

Share trading obligation

In relation to the potential conflict between the share trading obligation (STO) requirements that will exist under both UK and EU MiFIR once the transition period ends, both ESMA and the FCA have published statements on this matter.

On 26 October 2020, ESMA published its final position on the scope of the EU STO under Article 23 of MiFIR at the end of the transition period. In doing so, ESMA reaffirmed its previous position that:

- Following the end of the transition period, ESMA assumes that all EU shares (EU Member States, Iceland, Liechtenstein, and Norway ISINs) will be within the scope of the EU STO
- GB ISINs will fall outside the scope of the EU STO

In addition, ESMA clarified that shares with a European Economic Area (EEA) ISIN that are traded on a UK trading venue in British pounds (GBP) fall outside the scope of the EU STO. The number of shares traded in this way are limited and account for a small proportion of the total EU trading activity, enabling ESMA to conclude that such trading "occurs on a non-systematic, ad-hoc, irregular and infrequent basis" and therefore falls outside the scope of the EU STO.

ESMA noted that, in order to avoid overlaps between the UK STO and the EU STO, the UK would have to exclude EEA ISINs from the scope of the UK STO.

In response, the FCA published a statement on 4 November 2020, stating its view that the ISIN or currency that a share carries and trades in does not and should not determine the scope of the STO. Therefore, the FCA confirmed that it will use its temporary transitional powers to delay the application of the UK STO in order to avoid disruption and allow firms to continue trading all shares on EU trading venues and SIs. As such, UK market participants will be able to continue to access any EU trading venue from the end of the implementation period, provided the venue has ensured it has the relevant regulatory permissions under either the UK's long-standing regimes for overseas access or the UK temporary permissions regime.

New FCA webpage on preparing for Brexit: Net short positions reporting

The FCA has published a new webpage on net short positions reporting in order to assist firms in preparing for the end of the Brexit transition period. At that point, under the onshored Short Selling Regulation (SSR):

- Position holders will be required to report their net short positions in shares at the 0.20% threshold.
- The reporting thresholds for UK sovereign debt and uncovered positions in UK sovereign credit default swaps will remain the same. The FCA will provide quarterly updates on its website regarding the amount of the outstanding UK sovereign debt.
- To determine whether a share position should be notified to the FCA, position holders should consult the FCA FIRDS for a particular share and also the UK List of exempted shares to see if that share is exempt. If a share is not exempt, position holders should notify the FCA.

The UK List of exempted shares will be published on the FCA website from 1 January 2021 and will cover the FCA's list of exempted shares, as well as ESMA's list of exempted shares, as of the end of the transition period. The shares on this list will remain exempt from some of the requirements in the onshored SSR for two years, including reporting requirements under Articles 5 and 6 of the onshored SSR. The webpage confirms that no notification is required if a share appears on the UK List of exempted shares.

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HM Treasury announcement on equivalence

HM Treasury has announced its intention to take equivalence decisions in respect of the European Economic Area (EEA) states across a number of specific financial services areas. Most relevant to private banks is the decision to grant equivalence under Article 30 of the Benchmarks Regulation (BMR). Under this decision, EEA benchmark administrators will be able to access UK markets, and UK supervised entities can continue to use their benchmarks on that basis. EEA benchmark administrators will need to notify the FCA if they wish to benefit from the decision. However, in practice, the impact of this finding will not be significant because the UK government has already proposed to extend the current transitional period for all third-country benchmarks set out in the UK BMR from the end of 2022 to the end of 2025 in the recently published Financial Services Bill (FS Bill). Under the existing transitional arrangements, UK supervised entities are permitted to use all third-country benchmarks until the end of 2022 without further action from the EEA benchmark administrator. If the FS Bill is enacted, this period will extend to the end of 2025.

HM Treasury has announced its intention to take equivalence decisions in respect of the European Economic Area (EEA) states across a number of specific financial services areas.

HM Treasury consults on post-EU financial services regulatory framework

HM Treasury has published a consultation paper marking the start of phase II of its financial services review, which will focus on the broader regulatory framework for financial services regulation in the UK post-Brexit. The consultation period has recently been extended and will now remain open until 19 February 2021. The government will use the feedback to inform a second consultation in 2021, which will set out a final package of proposals. Phase I, which concluded in March 2020, examined the coordination arrangements between the regulators and policymakers responsible for financial services.

In the consultation paper, HM Treasury notes that the EU approach to regulating financial services, which will be largely preserved in the UK as a result of the onshoring process, involves enacting legislation with detailed regulatory standards that apply across Member States in order to facilitate a single market in financial services. This is in contrast to the Financial Services and Markets Act 2000 (FSMA) model of regulation, which delegates the task of establishing regulatory standards to expert, independent regulators who work within an overall policy framework set by the UK government and Parliament.

HM Treasury believes that the FSMA model continues to be the most effective way of delivering a stable, fair, and prosperous financial services sector, and therefore the HM Treasury's proposed post-EU framework provides for the following three-step approach:

- The UK government and Parliament would set the policy framework in key regulatory areas.
- HM Treasury would have affirmative procedure secondary powers to update the framework as needed.
- The regulators would then design and apply all direct requirements applying to financial services firms and markets in accordance with the policy framework set out in the legislation.

HM Treasury believes that the FSMA model continues to be the most effective way of delivering a stable, fair, and prosperous financial services sector.

HM Treasury therefore proposes an adaptation of the FSMA model as the most effective approach to the UK's post-EU financial services regulatory framework, acknowledging that the onshored regime of EU legislation will fail to provide an adequate long-term solution.

PRA Dear CEO Letter: "Information Request — Operational Readiness for a Zero or Negative Bank Rate"

On 12 October 2020, the PRA published a Dear CEO letter that was sent to specific firms asking about their operational readiness for a zero or negative Bank Rate.

The PRA and the Bank are requesting specific information about firms' current readiness to deal with a zero Bank Rate, a negative Bank Rate, or a tiered system of reserves remuneration — and the steps that firms would need to take to prepare for the implementation of these potential outcomes.

As stated in the September minutes of the Bank of England Monetary Policy Committee (MPC) meeting, the Bank and the PRA are starting "structured engagement" on the operational considerations of a negative Bank Rate. For these purposes, the PRA and the Bank include being operationally ready to deal with a zero Bank Rate. However, the letter reminds firms that this structured engagement is not indicative that the MPC will employ a zero or negative Bank Rate.

The PRA and the Bank recognise that a negative Bank Rate could have wide implications for a firm's business and customers. The PRA and the Bank will consider the business implications, including on the financial stability, safety, and soundness of regulated firms and pass-through to the wider economy. However, the PRA and the Bank are seeking information to understand firms' operational readiness and challenges with potential implementation, particularly in terms of technology capabilities.

Responding to the letter and the structured survey questions attached to it will help the PRA, the Bank, and firms to identify whether there are any technical operational challenges associated with the implementation of a zero or negative Bank Rate, and to consider how best to prepare and prevent any unintended operational disruption that could be associated with a change.

As part of this work, the PRA and the Bank are requesting specific information about firms' current readiness to deal with a zero Bank Rate, a negative Bank Rate, or a tiered system of reserves remuneration — and the steps that firms would need to take to prepare for the implementation of these potential outcomes. The PRA and the Bank are also seeking to explore the potential of short-term solutions or workarounds, as well as permanent systems changes.

Given the importance of the information request, the PRA asked for responses from CEOs. The deadline for responses was 12 November 2020 and supervisors will follow up with firms if necessary.

MiFID: ESMA Publishes New Q&A on Product Governance

ESMA has updated its Q&A on MiFID II and MiFIR investor protection and intermediaries topics.

Firms should ensure that the charging structure of the financial instrument is appropriately transparent for the target market.

The updated Q&A includes three new Q&As on product governance that provide guidance for firms that manufacture financial instruments. For example, firms should ensure that:

- Clear and robust policies and procedures identify and quantify all product-related costs and charges. These policies and procedures should be approved by the board and should be assessed and monitored by the compliance function as part of the general obligation to "monitor the development and periodic review of product governance arrangements".
- Costs and charges related to financial instruments are compatible with the needs, objectives, and characteristics of the target market.
- Costs and charges do not undermine the financial instrument's return expectations.

Additionally, firms should ensure that the charging structure of the financial instrument is appropriately transparent for the target market. In particular, the charging structure should not disguise charges or be too complex for clients to understand. If the cost structure is particularly complex, private banks should consider the possibility of some form of testing of the cost disclosures to ensure that such disclosures are not too complex to understand based on the target clients.

ESMA Speech: "Retail Investors and Asset Management Are the Pillars of a Successful Capital Markets Union"

ESMA has published a speech by Steven Maijoor, ESMA Chair, in which he explains why retail investors and asset management are the pillars of a successful capital markets union (CMU).

As set out in the European Commission's recent CMU action plan, ESMA supports a fundamental assessment of the role of inducements in the distribution of investment products in the EU.

Points of interest for private banks include:

- In 2021, ESMA will coordinate a common supervisory action (CSA) exercise on investment funds' costs and fees. National competent authorities will simultaneously investigate whether market participants in their jurisdictions adhere to the key regulatory requirements on costs and fees in their day-to-day business. ESMA expects this will ultimately enhance investor protection across the EU by increasing supervisory scrutiny of the costs and fees charged to fund investors.
- As set out in the European Commission's recent CMU action plan, ESMA supports a fundamental assessment of the role of inducements in the distribution of investment products in the EU. The experience of countries that have banned the use of inducements should be carefully considered.
- A similarly careful assessment should be carried out in relation to the Commission's proposal to reform the MiFID II client categories. Adding another category of clients could increase the complexity of the framework and would risk undermining appropriate investor protection levels.
- ESMA hopes that the Commission, together with the Council of the EU and the European Parliament, to advance as soon as possible the draft regulatory technical standards (RTS) to improve the PRIIPs KID Delegated Regulation that were adopted by the European Supervisory Authorities in July 2020. ESMA considers this will help bring UCITS within the scope of the PRIIPs Regulation. However, if past performance information will not become part of a revised PRIIPs KID, Mr Maijoor will no longer support bringing UCITS within the scope of the PRIIPs Regulation, because this would be detrimental to retail investors.
- In relation to the MiFID II research unbundling rules, Mr Maijoor does not believe undoing these provisions can improve research availability for SMEs. He also notes their significant investor protection benefits.

COVID-19: FCA Speech on Market Abuse During the Pandemic

On 12 October 2020, the FCA published a speech given by Julia Hoggett, FCA Market Oversight Director, on "Market abuse in a time of coronavirus".

Points of interest for private banks include:

Risk assessments

The FCA has sought to place the market abuse risk assessment at the heart of how it encourages firms and venues to think about all the activities they need to undertake to surveil for market abuse. According to the FCA, firms are often tempted to look purely to the behaviours described in the recitals in MAR or to utilise "out of the box" alerts from certain technology providers.

However, whilst those avenues may provide assurance that firms have followed a process, the FCA highlights that they may not provide assurance that firms have effective controls in place to mitigate the risks they face. The FCA reminds firms that identifying the risks associated with the new environment in which they are operating is essential in changing times.

What constitutes inside information may change radically during the pandemic.

Primary markets

In the FCA's view, the need for firms to ensure that they have appropriate controls over inside information and effective information barriers is even more critical during times like these. Sometimes the simple steps can make the greatest difference, such as regularly reviewing how many people are permanent insiders in a firm's organisation and whether they are necessary — including in the technology division. Additionally, market participants should ensure that they have proper controls in place to recognise the point during transactional discussions with an issuer at which to restrict themselves from trading in relevant securities.

What constitutes inside information may change radically during the pandemic. As such, companies and their advisers must be alert to what information is likely to drive their valuation and to bring a potentially wider range of issues to be discussed at their disclosure committees.

Surveillance alerts and STORs in volatile markets

The FCA highlights that the dramatic increase in trading activity and volatility has led to a surge in alert volumes in firms and trading venues. However, whilst the fundamentals of the market abuse offences are constant, the ways in which risks may manifest are not. For this reason, firms must appropriately consider, document, and govern any calibration changes.

Firms should also continue to escalate and report instances of potentially suspicious activity by considering whether the bar of "reasonable suspicion" has been met. Exceptional market conditions may impact what is judged to constitute unusual or anomalous activity, but the process should be the same. The FCA does not expect firms to submit poor quality STORs simply because they have had more alerts. Private banks with significant backlogs should advise the FCA's STOR Supervision team of the issue, its scale, and the anticipated timescales for clearance.

Firms should continue to escalate and report instances of potentially suspicious activity by considering whether the bar of "reasonable suspicion" has been met.

Surveillance and new ways of working

The FCA expects that, going forward, office and working from home arrangements should be equivalent — this is not a market for information that the FCA wishes to see being arbitraged. Firms must update their policies, refresh their training, and establish rigorous oversight reflecting the new environment, particularly regarding the risks related to use of privately owned devices. Other concerns arising from remote working relate to oversight and provision of advice from compliance advisory teams. Additionally, a decrease in self-policing among front office staff could lead to that type of first-line control being diminished or absent.

Good culture plays an important role. Compliance teams, management, and leaders throughout private banks should consider how they can reiterate and reinforce their expectations. Staff should be in no doubt about the standards expected of them.

The FCA expects that, going forward, office and working from home arrangements should be equivalent — this is not a market for information that the FCA wishes to see being arbitraged.

Personal dealing

Before the pandemic, the FCA observed the risk of an uptick in what it defines as "single stock events" — the potential that individuals within listed companies, or with access to information about listed companies, were inappropriately utilising that information to make a profit or avoid a loss in the relevant securities. The FCA remains exceptionally focused on this type of event.

The FCA reminds market participants that market abuse is not an offence that applies only to individuals working in the financial services industry. Everyone must comply with MAR and criminal law. Any individual in receipt of inside information who trades while in possession of that information, or induces someone else to, is guilty of market abuse. It is also essential that firms conduct enquiries into these matters with appropriate levels of discretion to avoid tipping off.

Sustainable Finance: Latest Developments

SFDR: European Commission extends deadline for draft RTS under Disclosure Regulation

The European Commission has confirmed that it will not expect firms to comply with the Sustainable Finance Disclosure Regulation (SFDR) Level II measures by 10 March 2021. Instead, the mandatory reporting template(s) will likely enter into force after 1 January 2022 (date to be confirmed). The Commission highlighted the unprecedented economic and market stress caused by the COVID-19 crisis as the reason for extending the deadline for the public consultation on the draft regulatory technical standards (RTS). This extension will allow stakeholders the time needed to properly address the complex issues contained in the joint consultation paper. At the same time, the Level 1 measures will continue to apply from 10 March 2021.

The Commission has made clear that financial market participants and financial advisers do not face any impediments in complying with the Level 1 requirements. With regard to the integration of sustainability risks in the investment decision making process, financial market participants must already, in accordance with the applicable sectoral legislation, consider sustainability risks in their internal processes. The SFDR requires transparency in this respect, with no further details necessary in the regulatory technical standards. As regards financial products that qualify under Articles 8 and 9 of the SFDR, in accordance with applicable sectoral legislation, product manufacturers must already describe in the product documentation how the levels of sustainability are achieved — meaning the manufacturers must comply with the disclosure principles set out in Articles 8 and 9 of the SFDR. In relation to transparency of adverse sustainability impacts, numerous financial market participants currently comply with the non-financial reporting requirements in their financial statements under Directive 2013/34/EU or adhere to international standards and might consider using that information.

The European Commission has confirmed that it will not expect firms to comply with the Sustainable Finance Disclosure Regulation (SFDR) Level II measures by 10 March 2021.

European Commission publishes paper on sustainable corporate governance

As announced in the European Green Deal and the European Commission's Communication on the (COVID-19) Recovery Plan, the Commission is currently consulting on the extent to which sustainability should be formally embedded into the corporate governance framework. Sustainability in corporate governance encompasses encouraging businesses to consider environmental (including climate, biodiversity), social, human, and economic impacts in their business decisions, and to focus on long-term sustainable value creation rather than short-term financial value. Competitive sustainability will contribute to the COVID-19 recovery and to the long-term resilience and development of companies. This public consultation aims to gather data and to collect the views of stakeholders with regard to a possible initiative on sustainable corporate governance. The consultation closes on 8 February 2021.

The consultation echoes steps that many financial services institutions have already taken in order to embed sustainability considerations within the oversight and control framework in light of the consequential changes that the SFDR — within the AIFMD, MiFID II, and UCITS Directive — is bringing to risk management and oversight frameworks. The consultation also recognises the established position of many EU national competent authorities that failure to manage the transition to sustainable finance is a key prudential risk for financial services firms, thereby necessitating strong governance standards.

The UK will become the first country in the world to move past the "comply or explain" approach and make TCFD-aligned disclosure fully mandatory, in an effort to support climate-related transparency and the greening of the UK economy.

UK deviates from EU on ESG policy

On 9 November 2020, Rishi Sunak, Chancellor of the Exchequer, announced several initiatives designed to help the UK tackle climate change, while maintaining its position as an "open, attractive international financial centre" after the Brexit transition period ends.

Most importantly, the Chancellor announced that the UK will require corporate disclosures to align with the Task Force on Climate-related Financial Disclosures (TCFD) by 2025 at the latest. In doing so, the UK will become the first country in the world to move past the "comply or explain" approach and make TCFD-aligned disclosure fully mandatory, in an effort to support climate-related transparency and the greening of the UK economy.

Acknowledging the challenges of a mandatory disclosure system, the TCFD Roadmap envisions gradual implementation, with some requirements initially including flexibility as non-binding expectations and accompanied by guidance. The UK government intends for TCFD-aligned disclosure to apply to all of the following institutions by 2025 at the latest:

- Listed commercial companies
- UK-registered companies
- Banks and building societies
- Insurance companies
- Asset managers
- Life insurers and FCA-regulated pension schemes
- Occupational pension schemes

The first stakeholders to be subject to certain TCFD-related disclosure requirements will be occupational pension schemes with a market capitalisation above £5 billion, banks and building societies, insurance companies, and listed commercial companies, all from 2021 (and these may be on a "comply or explain" basis in the first instance). The TCFD Roadmap shows that mandatory disclosures will then target large companies and institutions with high market capitalisation, as those have the potential to effect the greatest positive change in relation to climate issues.

Relevant to private banks operating in the UK, the FCA has announced that it will not implement the SFDR in the UK for 10 March 2021. Instead, it will consult on a UK regime for advisors, asset managers, life insurers, and FCA-regulated pension schemes in the New Year.

Further, the Chancellor indicated that the UK will introduce its own green taxonomy, which will be aligned with the scientific metrics that are set out in the EU taxonomy. The Chancellor is looking to establish a UK Green Technical Advisory Group, which will examine the EU taxonomy metrics and ensure that such metrics are appropriate for the UK market.

For more information, see Latham & Watkins' blog post UK Announces Climate Focused Financial Services Regime.

Corporate level disclosures

	FMP	FA	Level I 10 Mar 2021	Level II RTS [1 Jan 2022]	Level I 30 Dec 2022
Corporate Level ***Publish on website***	●	●	**(Art 3) Sustainability Risk Management Policy**		
	●	●	**(Art 4) Principal Adverse Impact Statement** (a) information about their policies on the identification and prioritisation of principal adverse sustainability impacts and indicators (b) a description of the principal adverse sustainability impacts and of any actions in relation thereto taken or, where relevant, planned (c) brief summaries of Stewardship / CSR Policy	A **mandatory reporting template:** • sustainability indicators in relation to adverse impacts on the climate and other environment-related adverse impacts (*draft published: implementation delayed*) • sustainability indicators in relation to adverse impacts in the field of social and employee matters, respect for human rights, anti-corruption and anti-bribery matters (*draft pending: end 2021*)	
	●	●	**(Art 5) Remuneration Policy**		

Product / service level disclosures

	FMP	FA	Level I 10 Mar 2021	Level II RTS [1 Jan 2022]	Level I 30 Dec 2022
Product / Service Level ***Publish on website***	●	●	**(Art 10) Promotion of environmental or social characteristics (Art 8) and of sustainable investments (Art 9)** For each ESG product: (a) a description of the investment objective (b) methodologies used (c) the information included in the pre-contractual disclosures (d) the information referred to in the periodic reports	For each product, information in relation to 12 different data points should be included on the website, focusing on the methodology employed, the data sources used, and any screening criteria employed. This includes the need to publish a two-page summary.	Information on performance of products against sustainability objectives
Pre-contractual disclosures	●		**(Art 6) Pre-contractual disclosures covering:** (1) How are sustainability risks embedded; (2) The result of sustainability risk assessment process; (3) Specific disclosures for products with the following objectives		FMPs: Whether and how a product considers principal adverse impacts on sustainability factors
	●	●	• **(Art 8)** Environmental / social characteristics	A **mandatory reporting template** (not yet developed)	
	●	●	• **(Art 9)** Sustainable investment	A **mandatory reporting template** (not yet developed)	
	●	●	• **(Art 9)** Reduction of carbon emissions	A **mandatory reporting template** (not yet developed)	

Periodic reports	●			**(Art 11) Periodic reports**
				• **(Art 8)** products - the extent to which environmental or social characteristics are met
				• **(Art 9)** products –
				  • the overall sustainability-related impact of the financial product by means of relevant sustainability indicators; or
				  • where an index has been designated as a reference benchmark, a comparison between the overall sustainability-related impact of the financial product with the impacts of the designated index and of a broad market index through sustainability indicators.
				Level II RTS: Mandatory reporting template(s) for Art 8 and Art 9 products (not yet developed)
				Requirements for products making sustainable investments regarding how the product complied with the "do not significantly harm" principle in relation to the principal adverse impact indicators	

Marketing literature	●	●	**(Art 13)** Ensure that marketing communications do not contradict the information disclosed pursuant to SFDR		

Taxonomy Regulation: European Commission consults on criteria defining environmentally sustainable activities

The European Commission has launched a public consultation on a draft Delegated Regulation that supplements the Taxonomy Regulation relating to climate change mitigation and adaptation. The purpose of the Delegated Regulation, in accordance with Articles 10(3) and 11(3) of the Taxonomy Regulation, is to specify technical screening criteria for determining the conditions under which a specific economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation. The Delegated Regulation also establishes, for each relevant environmental objective laid down in Article 9 of the Taxonomy Regulation, technical screening criteria for determining whether a specific economic activity causes no significant harm to one or more of those environmental objectives.

The activities and criteria are based on the recommendations of the Technical Expert Group on Sustainable Finance published in March 2020.

The deadline for responses is 18 December 2020. The Commission will consider feedback before finalising the adoption of the delegated act. The delegated act will then be subject to scrutiny by the European Parliament and the Council, and will apply from 1 January 2022.

FCA considers establishing ESG guiding principles

On 23 November 2020, the FCA published a speech by Richard Monks, Director of Strategy at the FCA, on building trust in sustainable investments. In the speech, Mr Monks highlights how sustainability factors are increasingly influencing consumer decision-making. Consumers should be able to trust the products they are offered and rely on the products to perform as expected. As a result, the FCA has announced that it is undertaking several initiatives to help address these identified concerns, including domestic and international work on issuers' disclosures, and ongoing work with the UK government on implementing EU regulations.

The FCA is considering whether introducing a set of guiding principles to assist firms with ESG product design and disclosure would help to tackle its concerns, while also ensure that consumers are protected from potential greenwashing. The FCA's five areas for potential principles are:

- Consistency in messaging and approach with regards to a product's ESG focus
- The clear and fair reflection of an ESG focus in the product's objectives
- Documented investment strategies to set out clearly how a product's sustainable objectives are to be met
- Ongoing reporting by firms of their performance against declared sustainable objectives
- Assurance of ESG data quality by firms

For more information, see Latham & Watkins' blog post FCA Considers Establishing ESG Guiding Principles.

AIFMD: European Commission Consultation on the AIFMD Review

On 22 October 2020, the European Commission launched its consultation on the review of the Alternative Investment Fund Managers Directive (AIFMD). This consultation follows the European Commission's 10 June 2020 report and ESMA's August 2020 letter to the Commission which lists the issues ESMA considered important to take into consideration during the AIFMD review. The consultation period will end on 29 January 2021 and any proposed changes to the AIFMD are expected by Q3 2021.

The AIFMD requires the Commission to review certain aspects of the application and scope of the AIFMD, including its impact on investors, alternative investment funds (AIFs), and alternative investment fund managers (AIFMs) in the EU and in third countries. To establish whether the AIFMD's objectives have been achieved, the consultation contains questions designed to address these areas together with several additional areas included by the Commission.

The Commission is asking for feedback on a large number of issues, including the AIFM passport, the scope of the AIFM licence, investor protection, non-EU AIFs, financial stability, investment in private companies, sustainability, delegation, and alignment with the UCITS Directive. While the consultation's primary focus is on potential areas of improvement and harmonisation to the AIFMD, there are indications of future changes to and tightening of the rules around delegation, particularly on delegation to third countries bearing in mind the impact of Brexit (that would have a significant impact on access to the EU AIF market from outside the EU).

Particular areas for feedback include:

- **AIFM passport:** The Commission asks for views on the scope of the AIFM licence, its potential extension to smaller AIFMs, and issues around the creation of a level playing field between AIFMs and other financial intermediaries, such as MiFID investment firms, credit institutions, or UCITS managers that provide similar services.
- **Investor protection:** The Commission asks for stakeholder views on investor access to the AIF market, making the market more accessible to retail investors, and the potential for a pre-calibration of an AIF suitable for marketing to retail investors, as well as a retail AIF passport. The consultation also addresses the adequacy of disclosure requirements, what are said to be ambiguities in the depositary regime, and the lack of the depositary passport.
- **International issues:** The Commission seeks views on how to achieve equitable treatment of non-EU AIFs and how to secure a wider choice of AIFs for investors, while ensuring that EU AIFMs are not exposed to unfair competition. The consultation also requests views on the AIFMD third country passport regime.
- **Delegation:** The Commission raises questions around the delegation rules, including whether clarifications are required to prevent the creation of letter-box entities in the EU and whether the rules are appropriate to ensure effective risk management. The Commission asks whether the delegation rules should be complemented with specified quantitative criteria and a list of functions that must always be performed internally and may not be delegated. These questions are in line with the recommendations suggested by ESMA.
- **Financial stability:** The Commission asks stakeholders how to ensure that national competent authorities and AIFMs have the necessary tools to effectively mitigate and deal with systemic risks. The Commission suggests more centralised supervisory reporting and improved information sharing national competent authorities. The Commission also asks for stakeholder views on possible amendments to the supervision and cooperation regime in general.
- **Sustainability:** The Commission is asking how AIFs can effectively participate in sustainable finance and environmental, social, and governance goals.
- **UCITS:** The Commission is looking for feedback on an increased alignment with the UCITS regime, particularly a single licence for AIF and UCITS managers, and other harmonisation measures.

Breathing Space Regulations: FCA Consultation Paper on Changes to Its Handbook

The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 (Breathing Space Regulations) were made on 17 November 2020 and are set to come into force on 4 May 2021. The FCA is consulting on some changes to its Handbook resulting from these regulations.

The Breathing Space Regulations will give people in problem debt the right to legal protections from creditor action for up to 60 days. This allows people time to receive advice and potentially enter an appropriate scheme to resolve their debt.

The FCA is proposing some minor changes to its Consumer Credit sourcebook (CONC) 5, 6, and 7 to clarify how its rules apply where the Breathing Space Regulations also apply, and to avoid duplicating the effects of the Breathing Space Regulations in a disproportionate way. The FCA has not identified any rules or guidance in its Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) or CONC 8 (debt advice) that need clarifying or amending.

The Breathing Space Regulations will give people in problem debt the right to legal protections from creditor action for up to 60 days.

Consumer credit conduct rules

Persistent debt rules (CONC 6.7.27R, CONC 6.7.29R, 6.7.30R)

The FCA's persistent debt rules require firms to help customers in persistent debt reduce the level of debt they have on their credit cards and retail revolving credit agreements more quickly, through a series of communications and actions that escalate over time. The communications and actions are not required where the firm is already taking steps "equivalent or more favourable in relation to the customer's account".

The FCA therefore considers that where a firm is complying with the Breathing Space Regulations so that a customer is benefiting from the protections of a moratorium, the firm is already taking steps "equivalent or more favourable" to the persistent debt rules.

At the end of the moratorium, the persistent debt rules would apply as normal unless the firm continued to take equivalent or more favourable steps.

The FCA therefore considers that where a firm is complying with the Breathing Space Regulations so that a customer is benefiting from the protections of a moratorium, the firm is already taking steps "equivalent or more favourable" to the persistent debt rules.

Repeat overdraft use rules (CONC 5D.3.3(5)G)

With regards to the application of the repeat overdraft use intervention rules, where a customer has been identified as being in financial difficulty and the firm is treating that customer with appropriate forbearance, then the firm is not required to make the interventions required by CONC 5D.3 if those interventions would cause inconsistency with that treatment. The FCA considers that treating with "appropriate forbearance" in this context would include firms complying with the Breathing Space Regulations so that the customer is benefiting from the protections of a moratorium in relation to their overdraft.

Monitoring a customer's repayments for signs of actual or possible repayment difficulty (CONC 6.7.2R and 6.7.3 G, 6.7.3R A and B)

Customers in a moratorium will have actual or possible repayment difficulty, given that one of the eligibility criteria is that "the debtor is unable, or is unlikely to be able, to repay some or all of their debt as it falls due". CONC 6.7.2R therefore applies and requires firms to take "appropriate action", including sending the customer information about the risks of escalating debts and providing contact details for non-profit debt-advice bodies.

According to the FCA, this guidance is not relevant where a customer is in a moratorium, since they are already taking steps to deal with their debts and are in contact with a debt-advice firm. The FCA proposes adding additional guidance to make clear that compliance with a moratorium is an appropriate action under this rule.

Suspending recovery of a debt for a reasonable period (CONC 7.3.11R)

CONC 7.3.11R requires firms to suspend active recovery of a debt for a reasonable period where the customer (or someone acting on their behalf) is developing a repayment plan. Guidance in 7.3.12 G states that a "reasonable period" should generally be 30 days and then a further 30 days if there is evidence of progress towards developing a plan.

The FCA highlights that this rule has a similar purpose and effect to the protections of a moratorium. Both are intended to allow the customer time to get advice and develop a repayment plan or enter into a debt solution. When assessing what is a reasonable period under CONC 7.3.11R, the FCA considers that it is reasonable for firms to take into account the time the debt has already been in a moratorium.

The deadline for responses to the consultation is 6 January 2021.

LIBOR Update

ISDA launches IBOR Fallbacks Supplement and Protocol

On 23 October 2020, the International Swaps and Derivatives Association, Inc. (ISDA) published its IBOR Fallbacks Protocol (Protocol) and Supplement to the 2006 ISDA Definitions (Supplement) in anticipation of the expected discontinuation of LIBOR at the end of 2021. ISDA also published a related set of Frequently Asked Questions, as well as a User Guide to IBOR Fallbacks and RFRs, to assist market participants in navigating the Protocol and the Supplement.

ISDA collaborated with the Financial Stability Board's Official Sector Steering Group to devise more robust fallbacks for LIBOR and other key interbank offered rates (IBORs) in its standard documentation for interest rate derivatives. The Protocol and the Supplement will facilitate inclusion of consistent triggers and hardwired fallbacks in new and existing non-cleared derivatives transactions that will apply if an IBOR they reference is either permanently discontinued (a Cessation Event) or — with respect to LIBOR in particular — determined in a pre-cessation announcement by the FCA to have become non-representative of its underlying market (a Pre-Cessation Event). The new fallback waterfalls include fallbacks to term- and spread-adjusted versions of the risk-free rates (RFRs) identified as alternatives to LIBOR and other IBORs in the relevant jurisdictions.

While use of the Protocol and the Supplement is voluntary, and counterparties are free to seek their own bilateral solutions, the ISDA solutions should give derivatives market participants (as well as those in related loan and bond markets) much-needed standardisation and certainty in the final stages of the transition away from LIBOR. According to ISDA, 257 entities across 14 jurisdictions adhered to the Protocol on a binding (but previously non-public) basis in the two-week pre-launch "escrow" period, and a publicly available list of adhering parties is now available on the ISDA website.

The FCA has strongly encouraged market participants from all sectors to sign and adhere to the Protocol. However, the Protocol is not a one-stop solution for all market participants, and will need to be carefully considered by buy-side counterparties in close coordination with their underlying loan and financing floating rate exposures. Market participants that choose not to adhere to the Protocol will need to take robust alternative measures (including bilateral amendments or closing out of positions) to manage risk and avoid disruption.

The Protocol and the Supplement, which take effect on 25 January 2021, provide robust fallback provisions to be applied upon the permanent cessation of a relevant IBOR or a pre-cessation announcement made with respect to LIBOR.

Key points for private banks include:

- The Protocol and the Supplement, which take effect on 25 January 2021, provide robust fallback provisions to be applied upon the permanent cessation of a relevant IBOR or a pre-cessation announcement made with respect to LIBOR.
- The Protocol provides an efficient amendment mechanism for mutually adhering counterparties to incorporate these fallback provisions into legacy contracts.
- The Protocol and the Supplement do not themselves modify the terms of underlying floating rate exposures or ensure such exposures transition in the same manner as any interest rate derivatives entered into to hedge those exposures.
- Market participants should work closely with counsel and financial advisors to ensure that they understand the role and impacts of the Protocol and the Supplement within their overall IBOR transition strategy.

For more information, see Latham & Watkins' *Client Alert* Understanding the ISDA IBOR Fallbacks Protocol and Supplement: Summary and Takeaways for the Market.

The roadmap is intended to inform those with exposure to LIBOR benchmarks of steps they should be taking now until the end of 2021 to successfully mitigate the risks of LIBOR's discontinuation.

FSB global transition roadmap

On 16 October 2020, the Financial Stability Board (FSB) published its Global Transition Roadmap for LIBOR to ensure a smooth LIBOR transition by the end of 2021. The roadmap sets out a timetable of actions for both financial-sector and non-financial-sector firms.

The roadmap is intended to inform those with exposure to LIBOR benchmarks of steps they should be taking now until the end of 2021 to successfully mitigate the risks of LIBOR's discontinuation. According to the FSB, the steps are intended to supplement existing timelines/ milestones from regulators and industry working groups, such as the Risk Free Rate Working Group.

Private banks should:

- Identify and assess all existing LIBOR exposures and agree on a project plan to transition in advance of the end of 2021
- Adhere to the ISDA Fallbacks Protocol by the effective date (see "ISDA launches IBOR Fallbacks Supplement and Protocol"), as encouraged by the FSB
- Be able to offer non-LIBOR linked loans to their customers by the end of 2020
- Establish formalised plans to amend legacy contracts where possible and implement all necessary systems and process changes to transition effectively by mid-2021
- Be prepared for LIBOR to cease by the end of 2021

Amendments to the Benchmarks Regulation to support LIBOR transition

On 21 October 2020, the UK government introduced to Parliament the Financial Services Bill, which includes amendments to the Benchmarks Regulation (which has been onshored as part of Brexit). The amendments provide the FCA with new powers to help manage, where necessary, the wind-down of critical benchmarks, including LIBOR.

It was recognised that while firms should take steps to actively transition existing LIBOR referencing contracts to alternative rates, some contracts face insurmountable barriers to transitioning away from LIBOR (so-called "tough legacy contracts"). In order to cater for tough legacy contracts, it was recognised that a legislative solution was required to protect consumers and protect market integrity. The amendments to the Benchmarks Regulation, therefore, provide a framework to achieve this, with the option for the FCA to direct a change in the methodology of a critical benchmark and extend its publication for a limited time period, to create a "synthetic LIBOR".

However, it has been made clear that firms should not rely on a synthetic LIBOR as an alternative to active transition, and the use of a synthetic LIBOR will only be permitted for tough legacy contracts (which the FCA has discretion to determine if it considers necessary).

Private banks should therefore note the potential for the creation of a synthetic LIBOR in their transition plans, while not relying on a synthetic LIBOR for any contracts other than those that cannot realistically be renegotiated or amended to transition to an alternative benchmark.

The amendments provide the FCA with new powers to help manage, where necessary, the wind-down of critical benchmarks, including LIBOR.

FCA consults on new benchmarks powers

The FCA has launched two consultations on its proposed new enhanced powers, to be granted under the Financial Services Bill (FS Bill), to designate a critical benchmark and to impose changes to that benchmark. These consultations will inform how the FCA uses its new powers to help manage an orderly wind-down of critical benchmarks, such as LIBOR.

Consultation on proposed policy regarding the designation of benchmarks under new Article 23A

The FS Bill proposes the insertion of a new Article 23A into the UK Benchmarks Regulation (UK BMR). Its provisions would grant the FCA the ability (in certain circumstances) to designate a critical benchmark, which it has determined as unrepresentative, as an Article 23A benchmark. Such designation would result in a general prohibition on use of the benchmark by supervised entities, as well as powers for the FCA to exempt some or all existing use of the benchmark from this general prohibition. It would also empower the FCA to impose requirements on the benchmark administrator relating to the way in which the benchmark is determined, including by amending the benchmark's methodology. The FCA is consulting on its proposed policy approach and the factors the FCA proposes to take into consideration when deciding whether it should designate a critical benchmark as an Article 23A benchmark. In particular, the FCA is considering the factors relevant to its decision on designating a critical benchmark if its representativeness cannot reasonably be restored or if the representativeness can be restored but there are no good reasons to restore it.

Consultation on proposed policy regarding the exercise of the FCA's powers under new Article 23D

The FS Bill proposes the insertion of a new Article 23D into the UK BMR. Its provisions would grant the FCA the ability to impose requirements on the administrator of a critical benchmark designated under Article 23A. Following such a designation, the FCA could impose requirements on the benchmark administrator in relation to the way in which the benchmark is determined, the rules of the benchmark, or, where the benchmark is based on submissions from contributors, the benchmark's code of conduct. The document's purpose is to consult on the FCA's proposed policy approach regarding its powers under new Article 23D, particularly in relation to LIBOR and tough legacy contracts.

The deadline for responses to the consultations is 18 January 2021, after which, the FCA will finalise its policy statements.

Complaints: FOS Annual Report and Accounts for the Year Ended 31 March 2020

On 5 November 2020, the FOS published its annual report and accounts for the year ended 31 March 2020. The publication date was delayed by several months due to the impact of COVID-19.

Key points for private banks include:

- Across the year, the FOS received 273,026 new complaints, of which 122,153 (around 45% of the total) were about PPI. The FOS resolved 296,712 complaints, of which 123,380 were about PPI. The FOS noted that it received and resolved fewer complaints than it had budgeted for. After PPI, consumer credit products and services were the next most complained about area.
- The impact of COVID-19 on the volume of complaints received by the FOS is currently uncertain, however due to COVID-19, the FOS is expecting a growing demand for its service, particularly in the consumer-advice sector, based on feedback received from stakeholders in that sector.
- The FOS noted the expansion of its remit in 2019 to include certain types of complaints from SMEs and claims management companies, and stated that it has established new teams that are ready to meet future demand.
- The FOS expects to see the following trends and issues in its casework during the forthcoming year:
  - Vulnerability due to the continuation of cross sector conversations about how vulnerability arises and how to identify and address it
  - Challenges of persistent debt and wider indebtedness, including in the context of the use of high-cost credit
  - Fraud and scams — including both the continuing evolution and sophistication of fraudsters' methods, and ongoing developments in mechanisms to tackle fraud
  - Technology potentially accelerating the speed with which problems can arise, and the scale of the impact such problems can have (e.g., due to banking IT outages)
  - Complexity, including due to the circumstances of the parties involved, the changing regulatory landscape, or other developments that raise challenging and wide reaching questions of fairness

Global Insights — Hong Kong

SFC Consults on Requirements for Climate-Related Risks in Funds

On 29 October 2020, the Securities and Futures Commission of Hong Kong (SFC) issued a consultation paper setting out its proposals for requirements and disclosures by fund managers on climate-related risks.

By way of background, on 21 September 2018, the SFC announced a strategic framework to contribute to the development of green finance in Hong Kong. As part of the effort to engage with the asset management industry to formulate an appropriate regulatory response to climate change, the SFC conducted a survey and found that asset managers did not take a consistent approach to disclosing climate-related risks and integrating such risks into their investment decisions, and only a limited number of asset managers had processes in place to manage the financial impact of such risks. It was found that these practices may not meet the expectations of asset owners and are not on par with the latest international developments in this area.

The SFC proposes to:

- Amend the Fund Manager Code of Conduct (FMCC) to require fund managers to take climate-related risks into consideration in their investment management and risk management processes, and to make appropriate disclosures to meet investors' growing demand for climate risk information and to combat greenwashing (such as when asset managers market themselves as "green" or "sustainable" but do not fully integrate these factors into their investment management process).
- Issue a circular setting out baseline requirements and enhanced standards for larger fund managers, to facilitate fund managers' compliance.

These proposed requirements would help ensure that fund managers properly handle climate-related risks and promote clear, comparable, and high-quality disclosures to help investors make more informed decisions.

These proposed requirements would help ensure that fund managers properly handle climate-related risks and promote clear, comparable, and high-quality disclosures to help investors make more informed decisions.

Scope

The proposed requirements in the FMCC will apply to fund managers that manage collective investment schemes. At the initial stage the requirements will not be mandatory for fund managers that manage discretionary accounts. The requirements will apply to fund managers that have discretion over investment management and risk management processes irrespective of whether fund managers have overall responsibility or manage only part of a fund.

The proposed disclosure requirements in the FMCC will only be applicable to fund managers that are responsible for the overall operation of funds (meaning the requirements are not applicable to those who manage only part of a fund).

The proposed baseline requirements will apply to all fund managers, though implementation is subject to the principle of proportionality — considering factors such as the size and complexity of a fund managers' business and investment strategies adopted by the funds under its management.

Proposed requirements

The SFC's proposed requirements cover four key elements; governance, investment management, risk management, and disclosure. Specifically, the SFC proposes to:

Governance

- Require the board to be responsible for overseeing the incorporation of climate-related considerations into investment management and risk management processes, and oversee progress against goals for addressing climate-related issues
- Require management to maintain an appropriate structure for managing climate-related risks and reporting to the board; this includes requiring management to develop action plans, establish controls and procedures, and devote sufficient resources for the proper performance of their duty to manage climate-related risks

Investment management

- Require fund managers to ensure climate-related risks are considered in their investment management process for funds
- Require fund managers to identify climate-related risks which are relevant to their investment strategies and the funds they manage (such as acute and chronic physical risks, and transition risks relating to policy and law, technology, market, and reputation), assess the impact of such risks, and prioritize material risks in their investment management processes
- Require fund managers to adopt processes to identify the relevance and materiality of climate-related risks
- Where fund managers assess that climate-related risks are irrelevant to their investment management and risk management processes, require fund managers to ensure such conclusions are justifiable, maintain appropriate records explaining why climate-related risks are irrelevant, and disclose the types of investment strategies or funds for which such risks are considered irrelevant
- Where funds adopt a passive investment strategy, require fund managers to assess the method used to replicate the underlying index
- Require fund managers to adopt a qualitative, quantitative, or combined approach that is appropriate and proportionate to their circumstances when assessing the materiality of the impact of climate-related risks on an investment strategy or a fund

- Where climate-related risks are considered to be material to a strategy or a fund, require fund managers to take such risks into consideration in the portfolio construction process
- Require fund managers who are responsible for the overall operation of funds to disclose to investors how they consider material climate-related risks in the portfolio construction process, and explain differing approaches across various investment strategies and funds

Risk management

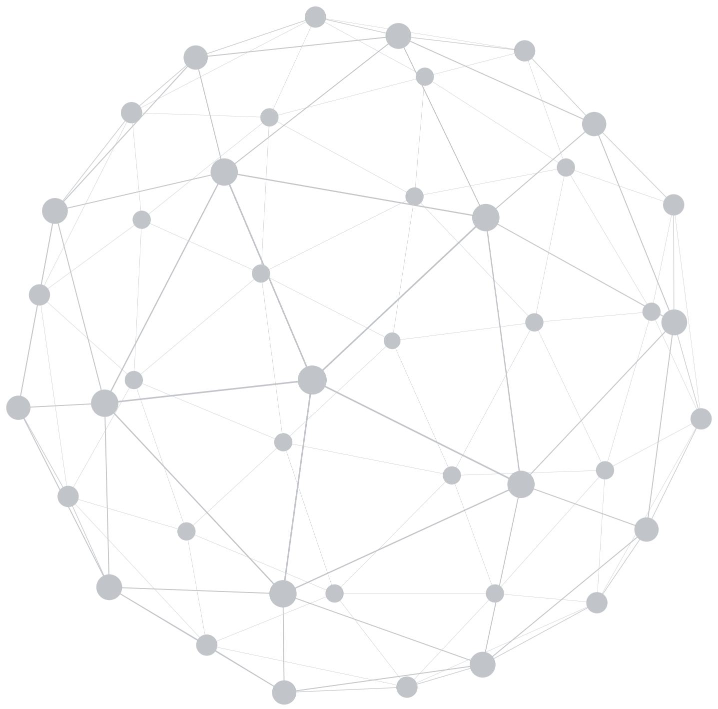
- Require fund managers to incorporate climate-related risks into their existing risk management framework
- Where climate-related risks are assessed to be material, require fund managers to adopt appropriate measures to manage the risks (such as by reallocating assets under management, exercising stewardship through active engagement, voting or collaborating with other stakeholders)
- Require fund managers to monitor climate-related risks considered to be relevant but assessed to be immaterial on an ongoing basis and re-evaluate their materiality from time to time, and take appropriate steps to manage risks that become material
- Require fund managers with assets under management of HK$4 billion or more (Large Fund Managers) to adopt a more robust and systematic approach to climate-related risks management, including using commonly adopted quantitative metrics to identify and assess the impact of climate-related risks on the underlying investments
- Require Large Fund Managers at the initial stage to make reasonable efforts to acquire or estimate the weighted average carbon intensity (WACI) (meaning a portfolio's exposure to carbon-intensive companies) of Scope 1 and Scope 2 greenhouse gas (GHG) emissions for funds under management for risk management purposes if climate-related risks are assessed to be material
- Require Large Fund Managers at the initial stage to assess the relevance and utility of scenario analysis for evaluating the resilience of their investment strategies to climate-related risks under different pathways, and to keep an internal record of the assessment

Disclosure

- Require fund managers responsible for the overall operation of a fund to make adequate disclosures covering their governance arrangements for the oversight of climate-related risks and how climate-related risks are taken into account during the investment management and risk management processes
- Where fund managers are responsible for the overall operation of a fund, (i) in general, require disclosure of their governance structures and risk management processes as long as the climate-related risks are relevant to the investment strategy of a fund; (ii) if climate-related risks are assessed to be material to a fund, require disclosures relating to how climate-related risks are being factored into the portfolio construction process and key tools and metrics used in the investment management and risk management processes; (iii) for Large Fund Managers, require descriptions of their engagement policy
- Require fund managers to provide concrete examples to illustrate how they implement their governance, investment management and risk management policies and procedures
- Require fund managers to disclose the types of investment strategies or funds under their management for which climate-related risks have been assessed to be irrelevant
- Where fund managers assess that climate-related risks are irrelevant to their investment management and risk management processes, require fund managers to ensure their conclusions are justifiable, maintain appropriate records explaining why climate-related risks are irrelevant, and re-evaluate their assessment from time to time
- Require Large Fund Managers to make reasonable efforts to disclose available Scope 1 and Scope 2 GHG emissions data together with the calculation methodology, underlying assumptions and limitations, as well as the proportion of investments which are assessed or being covered
- At a minimum, require fund managers to make appropriate disclosures regarding governance, investment management, and risk management at an entity level

The consultation is open for comments until 15 January 2021.

TechTrends



Prelude to a Digital Euro: European Central Bank Joins the CBDC Race

In October 2020, the European Central Bank (ECB) published a Report on a Digital Euro (the Report), which sets out the main findings of a task force initiated in early 2020 to investigate the potential for a central bank digital currency (CBDC) in the euro area.

Reasons to issue a digital euro

The Report identifies a number of scenarios that could cause the ECB to introduce a digital euro, including:

- Supporting the digitalization of the European economy by filling a gap in the provision of digital payment solutions by offering an open-access architecture for retail payment solutions
- Providing a public sector cash-like alternative to payment solutions offered by (potentially unsupervised) private entities or foreign central banks in order to prevent threats to financial sovereignty and stability, and to preserve the possibility of cash-like payments if the use of cash declines significantly
- Reinforcing the transmission of monetary policy (by setting the remuneration rate on the digital euro in order to directly influence consumption and investment choices)
- Providing a resilient payment system as a contingency mechanism should cyber incidents, natural disasters, pandemics, etc., hinder the provision of payment services
- Strengthening the international significance of the euro should other foreign central banks begin issuing CBDCs

The digital euro would be a central bank liability, thus providing citizens and businesses riskless money whose value does not fluctuate over time compared with other forms of euros.

Potential features of the digital euro

Key features of digital euros discussed in the Report include the following:

- **Riskless money.** The digital euro would be a central bank liability, thus providing citizens and businesses riskless money whose value does not fluctuate over time compared with other forms of euros (e.g., cash and wholesale central bank deposits). The Report emphasises that, despite the fact that a digital euro could rely on the same technology as cryptoassets or stablecoins (i.e., distributed ledger technology), it is fundamentally different as the digital euro would be a risk-free liability of the central bank, in contrast to cryptoassets or stablecoins that are either a liability of a private sector entity or not a liability of anyone at all.
- **Account-based vs. bearer instrument.** The digital euro could be provided either through an account-based system or as a bearer instrument, or both options in parallel. In an account-based system, digital euros would be registered in an account either directly with the Eurosystem or with private intermediaries. Transactions would occur through such accounts as in bank account transfers today, either through private intermediaries as settlement agents, or directly via the Eurosystem's own infrastructure. A bearer digital euro (i.e., a "token-based" or "value-based" digital euro), on the other hand, could be exchanged directly between payer and payee without third-party intermediation (as cash today) using online or offline payment devices.
- **Further features depending on effect of digital euros.** A digital euro could affect retail payment systems, the central bank, the transmission of monetary policy, international capital flows, financial criminal activities (AML/CTF), and financial stability (such as bank runs into digital euros in crisis situations). To address the possible effects, the Report discusses design features such as:
  - Access to the digital euro (directly through the central bank vs. indirectly through intermediaries)
  - Remuneration rates (at all, fixed, variable, tiered rates) or service fees
  - Limitations on transfer volume and individual holdings (potentially depending on location within vs. outside of the euro area)
  - Recording of payer's and payee's identity (possibly depending on transaction value)

Legal considerations and next steps

The Report addresses the EU legal basis for the issuance of digital euros (depending on its specific design, such as its availability only to central bank counterparties or also to households) and how to assign legal tender status to digital euros.

From a private law perspective, different legal implications would arise depending on whether the digital euro is issued as a bearer digital euro or in an account-based model in which the digital euro represents a claim against the ECB/national central banks to which private law rules for bank deposits would apply.

The Report kicks off a public consultation period. In mid-2021, the ECB will decide whether to start a full digital euro project to identify at least one "minimum viable product".

What to Look Out for in Q1 2021

- UK onshored legislation will apply – end of the transition period
- Ongoing review of MAR by the European Commission
- ISDA IBOR Fallbacks Protocol and Supplement become effective
- FCA's finalised guidance expected on its approach to international firms
- FCA expected to publish its policy statement on operational resilience
- Finalisation expected of the FCA's policy approach in relation to proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations
- Fintech Strategic Review expected to report to HM Treasury

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