



Funds and Investment Management News

August 2024

Welcome to Clifford Chance's Funds and Investment Management News. This monthly update covers legal and regulatory developments from around the world in the funds and investment management sector, as well as our briefings and details of our conferences, events, and [Insights for Asset Managers webinar series](#).

If you would like to know more about a particular development, please get in touch with your usual Clifford Chance contact or any of our team listed at the end of this newsletter.

Further details and related resources, including [previous editions of this newsletter](#) and [our ESG newsletter](#), can be found on the [Clifford Chance Financial Markets Toolkit](#) and [Clifford Chance Funds and Investment Management page](#).

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Headlines

The [Artificial Intelligence \(AI\) Act](#) has been published in the Official Journal, aiming to introduce harmonised rules to foster investment and innovation in AI.

The European Commission clarified that the six-month derogation for new UCITS starts from authorisation, funds for internally managed AIFs and self-managed UCITS must be separate from the undertaking's assets, and no branch notification is needed for AIFMs establishing a branch for real estate administration in another member state.

The European Supervisory Authorities (ESAs) have released consolidated [Q&As](#) on the Sustainable Finance Disclosure Regulation (SFDR) and its Delegated Regulation.

The FCA [published](#) a policy statement (PS24/6) setting out its final policy position and rules for a new UK listing regime.

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International

FATF publishes targeted update on implementation of standards on virtual assets

The Financial Action Task Force (FATF) has published its [fifth update](#) on jurisdictions' compliance with its Recommendation 15 and Interpretative Note, which apply anti-money laundering and counter-terrorist financing measures to virtual assets and their service providers. The report reveals that while some jurisdictions have made progress, global implementation is lagging, with several governments yet to regulate the sector significantly, and 75% of jurisdictions are only partially or not compliant with FATF's requirements. The FATF has urged all jurisdictions to swiftly implement its standards on virtual assets and their service providers, including the travel rule.

FSB publishes stocktake of initiatives related to nature-related financial risks

The Financial Stability Board (FSB) has published a [stocktake](#) of initiatives by member financial authorities on identifying and assessing nature-related financial risks, including biodiversity loss. The report notes that authorities are at varying stages of evaluating these risks, categorising them into physical and transition risks, and highlights that regulatory and supervisory work is still in early stages globally with differing approaches across jurisdictions.

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United States

Brokerage cash sweep programs result in class action suits and SEC probes

There has been a series of recent private class action lawsuits against brokerage platforms, including [Morgan Stanley](#), [Merril Lynch](#), [Wells Fargo](#), [LPL Financial](#) and [Ameriprise](#), in connection with their cash sweep programs, by which brokerages automatically transfer (or sweep) a customer's uninvested cash balance into interest bearing deposit accounts. The crux of these complaints generally involve a brokerage's failure to secure "reasonable interest rates" for customers' cash balances, citing that brokerages will pay customers as little as 0.01% interest while simultaneously achieving returns of up to 4.50% on the cash balances, with this difference being retained by the brokerage. [Wells Fargo and Morgan Stanley](#) have recently indicated that the SEC has begun a probe into their cash sweep programs as well.

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Europe

European Union

Corporate Sustainability Due Diligence Directive published in Official Journal

[Directive \(EU\) 2024/1760](#) on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (CSDDD) mandates firms and their partners in supply, production, and distribution to prevent, mitigate, or end their adverse impact on human rights and the environment. CSDDD will enter into force on 25 July 2024, after which Member States will have until 26 July 2026 to transpose it into national law. Application will then be on a staggered basis, starting from 26 July 2027 for the largest companies.

AI Act published in Official Journal

The Artificial Intelligence (AI) Act, [Regulation \(EU\) 2024/1689](#), has been published in the Official Journal, aiming to introduce harmonised rules to foster investment and innovation in AI and ensure that AI developed and used within the EU is trustworthy and subject to a suitable legal framework. The AI Act will come into force on 1 August 2024 and apply from 2 August 2026, with certain provisions and obligations applying at different stages between 2 February 2025 and 2 August 2027.

EU Commission adopts RTS under revised ELTIF Regulation

The EU Commission has adopted a [Delegated Regulation](#) establishing regulatory technical standards (RTS) under the revised European Long-Term Investment Fund (ELTIF) Regulation. These RTS define the conditions for using financial derivatives for hedging, criteria for determining the minimum holding period, required information for competent authorities, and requirements for redemption policies and liquidity management tools of ELTIFs.

EU Commission updates its Q&A with investment-management-related queries

The European Commission has provided answers to three investment-management-related queries and clarified:

- that the start date of the six-month derogation period from investment restrictions for newly authorised UCITS runs from the date of authorisation of the UCITS, regardless of whether the UCITS launches immediately after authorisation or at a later stage ([available here](#));

- that the capital and additional own funds requirements for internally managed AIFs and self-managed UCITS investment companies needs to be kept separate from the collective investment undertaking's assets ([available here](#));
- that no notification for establishment of a branch is required for AIFMs setting up a branch in another member state for the sole purpose of carrying out an activity referred to in point (2)(c) of Annex I to the AIFMD, such as real estate administration activities ([available here](#)).

MiFID2: ESMA consults on firms' order execution policies

The European Securities and Markets Authority (ESMA) has initiated a [consultation](#) on draft technical standards, aiming to enhance investor protection by improving how investment firms establish and evaluate their order execution policies. ESMA is seeking feedback on several aspects, including the creation of an investment firm's order execution policy, the procedures for monitoring and assessing the effectiveness of its order execution arrangements and policy, the firm's execution of client orders through own account dealing, and the handling of client instructions. Comments are due by 16 October 2024.

MiFIR Review: ESMA publishes statement on new DPE regime for OTC transaction transparency

The European Securities and Markets Authority (ESMA) has [announced](#) the transition to a new regime for publishing over-the-counter (OTC) transactions under the MiFIR review. Investment firms can become designated publishing entities (DPEs) responsible for making transactions public through an approved publication arrangement (APA). ESMA will publish a DPE register by 29 September 2024, with the new regime becoming fully operational on 3 February 2025.

ESAs publish consolidated Q&As on SFDR and SFDR Delegated Regulation

The European Supervisory Authorities (ESAs) have released consolidated [Q&As](#) on the Sustainable Finance Disclosure Regulation (SFDR) and its Delegated Regulation. These Q&As address topics like sustainable investment, taxonomy-aligned disclosures, financial product disclosures, and multi-option products.

ESMA publishes guidelines on corporate sustainability reporting

ESMA published a final report on the guidelines on enforcement of sustainability information (GLESI) and a public statement on the first application of the European Sustainability Reporting Standards (ESRS). The [GLESI](#) are intended to build convergence on supervisory practices on sustainability reporting. Through the [public statement](#), ESMA intends to support large issuers in going through the learning curve associated with the implementation of the new reporting requirements.

ESMA sets out long-term vision on functioning of Sustainable Finance Framework

The European Securities and Markets Authority (ESMA) has published an [opinion](#) on the Sustainable Finance Regulatory Framework, recommending long-term improvements. Key suggestions include making the EU Taxonomy the central reference for sustainability assessments, developing a social taxonomy, defining transition investments, mandating minimum sustainability disclosures for financial products, introducing a product categorisation system, regulating ESG data products, and conducting consumer and industry testing before policy implementation.

ESMA consults on liquidity management tools for funds

The European Securities and Markets Authority (ESMA) launched a [consultation](#) on draft guidelines and regulatory technical standards (RTS) on liquidity management tools (LMTs) under the revised Alternative Investment Fund Managers Directive (AIFMD) and the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive. The draft RTS and guidelines are intended to promote convergent application of the directives for both UCITS and open-ended AIFs and to equip EU fund managers better to manage the liquidity of their funds. They also aim to clarify the functioning of specific LMTs, such as the use of side pockets, a practice that currently varies significantly across the EU. Comments are due by 8 October 2024.

EBA issues travel rule guidelines for transfer of funds and cryptoassets

The European Banking Authority (EBA) published its [final guidelines](#) on the so-called 'travel rule' under Regulation (EU) 2023/1113, which sets out the information that must accompany transfers of funds and certain cryptoassets for anti-money laundering and counter terrorist financing (AML/CTF) purposes. The guidelines are intended to create a common understanding to ensure the consistent application of the travel rule and to strengthen the EU AML/CFT regime.

MiCA: ESMA publishes second package of final draft technical standards

ESMA published a [final report](#) setting out its second package of draft technical standards under the Markets in Cryptoassets Regulation (MiCA), comprising technical standards covering, among other things: sustainability indicators in relation to climate and other environment-related adverse impacts; trade transparency; and the public disclosure of inside information. The draft technical standards will now be submitted to the European Commission for adoption.

MiCA: ESAs consult on cryptoasset classification guidelines

The European Supervisory Authorities (ESAs) have launched a [consultation](#) on draft guidelines for classifying cryptoassets under the Markets in Cryptoassets Regulation (MiCA). The guidelines include a standardised test and templates for explanations and legal opinions, stating that the white paper for asset-referenced tokens (ARTs) and other cryptoassets must be accompanied by a legal opinion or explanation of their classification, confirming they are not electronic money tokens (EMTs), ARTs, or cryptoassets excluded from MiCA's scope. Comments are due by 12 October 2024.

MiCA: EBA consults on data reporting guidelines for supervision and significance assessments

The European Banking Authority (EBA) has launched a [consultation](#) on draft guidelines to aid competent authorities (CAs) and the EBA in their duties under the Markets in Cryptoassets Regulation (MiCA), as current data points reported by issuers of asset-referenced tokens (ARTs) and certain e-money tokens (EMTs) are insufficient for supervisory activities. The EBA is seeking feedback on these guidelines, which provide templates for ART and EMT issuers to report additional information, including details on holders, market capitalisation, reserve of assets, daily transactions, own funds, liquidity, and entities involved in the tokens' custody, operation, or distribution. The guidelines also propose common templates for issuers to gather data from relevant cryptoasset service providers (CASPs). Comments are due by 15 October 2024.

DORA: ESAs publish second package of final draft technical standards and guidelines

The European Supervisory Authorities (ESAs) have published a second package of policy products under the Digital Operational Resilience Act (DORA). This includes final draft regulatory and implementing technical standards on reporting major incidents, harmonising oversight activities, and

guidelines on estimating costs from ICT incidents. These standards have been submitted to the Commission for adoption, with further standards on subcontracting to follow.

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France

Ordinance on modernisation of alternative investment funds regime published

The [ordinance](#), issued based on Article 40 of Law 2023-973 of 23 October 2023 on the green industry, introduces a number of measures intended to modernise and simplify the regime for certain AIFs in order to make the French asset management regulatory regime more attractive and competitive, especially as regards the European Long-Term Investment Fund (ELTIF) Regulation as modified by Regulation (EU) 2023/606 (ELTIF 2.0). Specifically, it modernises the rules governing so-called 'professional' AIFs, in particular by simplifying the rules governing them and creating a new unincorporated form for French limited partnerships (*société de libre partenariat spéciale*); adapts the rules applicable to so-called 'non-professional' AIFs to ensure they complement ELTIF 2.0 funds; and allows employee investment undertakings (FCPE) to invest in ELTIF 2.0 funds. The ordinance entered into force on 5 July 2024.

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Luxembourg

Luxembourg law implementing DORA published

The [law of 1 July 2024](#) amending certain financial sector laws with a view to implementing the Digital Operational Resilience Act (DORA) and the DORA Amending Directive has been published in the Luxembourg official journal (*Mémorial A*). Targeted amendments are made to a series of Luxembourg laws, including the law of 17 December 2010 on undertakings for collective investment (as amended) and the law of 12 July 2013 on alternative investment fund managers (as amended). The law enters into force on 17 January 2025.

Luxembourg bill introducing new role of control agent facilitating use of distributed ledger technology for securities issuances published

A new [bill](#) (No. 8425/00) has been lodged with the Luxembourg Parliament to amend the law on dematerialised securities. It introduces the role of a control agent and expands the scope of dematerialised securities that can be issued using secured electronic recording mechanisms, including distributed ledgers (DLT). The bill aims to promote financial sector innovation and continues previous legislation recognising the use of DLT for securities.

CSSF publishes communiqué on publication of Luxembourg DORA Law in Official Journal

The Commission de Surveillance du Secteur Financier (CSSF) has [announced](#) the publication of the Luxembourg law implementing the Regulation on digital operational resilience for the financial sector (DORA Law), which will apply from 17 January 2025. The DORA Law provides national authorities with necessary supervisory and investigative powers, and transposes the DORA Amending Directive into Luxembourg law, ensuring national laws are consistent with DORA's digital operational resilience requirements. The CSSF has reminded financial entities to work towards compliance with DORA and to regularly consult the DORA page on the CSSF website for updates.

CSSF publishes communiqué on ELTIF

The Commission de Surveillance du Secteur Financier (CSSF) **draws the attention from** market participants and financial advisers to a proposal by the European Commission for a new Commission Delegated Regulation (EU) supplementing Regulation (EU) 2015/760 with specifications on derivatives use solely for hedging risks in ELTIF's., requirements for ELTIF redemption policy and liquidity management, circumstances for matching transfer requests of ELTIF unites or shares, criteria for disposing of ELTIF assets and certain elements of cost disclosure.

The document is not final and must go through the EU legislative process. It is expected to be published in the Official Journal of the European Union by the end of the year.

CSSF on ELTIF Application Process

The Commission de Surveillance du Secteur Financier (CSSF) **announces** updates to the ELTIF application questionnaire following the amendments introduced by Regulation (EU) 2023/606, effective since 10 January 2024. The updated form aims to simplify and expedite the ELTIF authorisation process for existing or new UCI Part II, SIF or SICAR funds.

The updated ELTIF questionnaire replaces the form published on 15 December 2023. It streamlines procedures for new ELTIF authorisation requests and subsequent amendments, clarifying key points early in the process.

For new ELTIF authorisations within the existing UCI Part II, SIF or SICAR funds, only the ELTIF questionnaire is needed, without requiring the "Questionnaire for approval of a new sub-fund". For new UCI Part II, SIF, or SICAR funds, both the eDesk/UCI Approval request and the ELTIF questionnaire must be completed.

The updated questionnaire must be used for all new authorisation requests submitted after 29 July 2024, and for substantial modifications to existing Luxembourg ELTIFs.

CSSF on Overseas Funds Regime (OFR)

The Commission de Surveillance du Secteur Financier (CSSF) **informs** that the UK Financial Conduct Authority (FCA) has published a policy statement outlining the final rules and guidance for implementing the OFR.

The OFR will replace the current Temporary Marketing Permissions Regime upon its expiry. Luxembourg-domiciled UCITS and management companies should monitor the implications to ensure smooth continuity of their marketing activities toward UK investors.

CSSF on Depositary Controls for AIFs Investing in Illiquid Assets

The Commission de Surveillance du Secteur Financier (CSSF) clarifies the controls Luxembourg depositaries must implement for alternative investment funds (AIFs) investing in illiquid assets.

Luxembourg depositaries must perform checks and controls prior acquiring illiquid assets (ex-ante) to comply with safekeeping duties under Article 90 of Commission Delegated Regulation (EU) No 231/2013 (AIFMR) and timely settlement obligations under Article 96 of AIFMR.

- Prior to payment: The AIF manager (AIFM) must notify the depositary of the transaction with supporting documents, allowing the depositary to verify the transaction and relevant assets before

authorizing payments.

- At the time of payment: Conduct consistency checks between payment instructions and supporting documents.
- After payment: Verify the effective ownership of the assets based on final transaction documents and external registers, if applicable.

AIFMs must provide depositaries with all relevant information in a timely manner to comply with these safekeeping duties.

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UK

FRC announces update to UK Stewardship Code

The Financial Reporting Council (FRC) has [revised](#) the UK Stewardship Code application process, focusing on five priority areas: defining effective stewardship, necessary reporting, proxy advisor transparency, reducing reporting burdens, and regulatory collaboration. Immediate changes include removing annual 'Context' reporting, allowing content reuse from previous reports, and setting clear stewardship outcome expectations, effective from 31 October 2024. Further stakeholder engagement will occur in August and September.

Law Commission publishes paper on decentralised autonomous organisations

The Law Commission has published a [scoping paper](#) exploring the characterisation of decentralised autonomous organisations (DAOs), described as a new type of online organisation that uses computer code to unite a community of participants with shared goals, often using distributed ledger technology and smart contracts. The paper aims to identify current issues with DAOs to inform future law reforms in England and Wales, and suggests several areas for further work, including the development of a DAO-specific legal entity, a review of the Companies Act 2006 and other business organisation laws, and a review of anti-money laundering regulation to accommodate the use of distributed ledger technology.

Digital assets: Law Commission publishes supplemental report and draft Bill on treating digital assets as a third type of property

The Law Commission has published a [supplemental report and draft Bill](#) proposing a third category of personal property for digital and other assets. Following consultations in February 2024, the draft Bill was amended based on feedback. The Government is now considering these recommendations along with those from the June 2023 report on digital assets.

FCA publishes Quarterly Consultation No. 44

The Financial Conduct Authority (FCA) published its latest quarterly consultation paper ([CP24/11](#)) on proposed amendments to the FCA Handbook, including changes to retail conduct rules as a result of MiFID Org Reg amendments, a change to the application of the UCITS concentration rules, and removing references to LTIFs and the LTIF Regulation Handbook, following the government's repeal of the LTIF Regulation on 1 January 2024. Comments are due by 12 August 2024.

FCA publishes final Listing Rules

The FCA [published](#) a policy statement (PS24/6) setting out its final policy position and rules for a new UK listing regime. Forming part of the implementation of the 2021 UK Listing Review, PS24/6 sets out reforms intended to simplify and streamline the regime, such as: replacing the 'premium' and 'standard'

listing segments with a new 'commercial companies' category for equity share listings; taking a disclosure-based approach, including replacing the requirement for shareholder approval with market notifications in relation to significant and related party transactions; and fewer restrictions on dual class share structures (DCSS), while subjecting institutional investors' enhanced voting rights to a 10-year sunset. The final rules, which replace the LR sourcebook with a new UKLR sourcebook, come into force on 29 July 2024.

FCA consults on UK wholesale markets and finalises policy on payment option for investment research

The Financial Conduct Authority (FCA) has published a [policy statement](#) (PS24/9) and three consultations ([CP24/12](#), [CP24/13](#) and [CP24/14](#)) to enhance the UK wholesale markets. PS24/9 introduces a new payment option for investment research, allowing bundled payments for research and trade execution, and makes changes to rules on budgeting, disclosures, and cost allocation. Additionally, the FCA has proposed new regulations for public offers and admissions to trading, a public offer platform regime, and improvements to the derivatives trading obligation and post-trade risk reduction services.

FCA consults on guidance on treatment of politically exposed persons

The Financial Conduct Authority (FCA) has launched a consultation ([GC24/2](#)) on proposed amendments to its guidance for firms on handling UK Politically Exposed Persons (PEPs) for anti-money laundering purposes. The FCA's review found that most firms did not subject PEPs to excessive checks, but improvements are needed, such as tightening definitions, promptly reviewing PEP status after leaving office, and improving staff training. Proposed amendments include treating UK PEPs as lower risk and giving more flexibility in approving PEP relationships. Comments on GC24/2 are due by 18 October 2024.

PSR and FCA consult on big tech and digital wallets

The Payments Systems Regulator (PSR) and Financial Conduct Authority (FCA) have launched a joint [call for information](#) on the benefits and risks of digital wallets to individuals and businesses, noting the rapid growth and increasing importance of digital wallets in recent years. They aim to gather information on the benefits of digital wallets, their impact on payment systems and potential competition, consumer protection or market integrity issues. The regulators plan to provide an update by Q1 2025, and comments are due by 13 September.

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Asia Pacific

Hong Kong

Hong Kong Government publishes consultation conclusions on proposal to implement regulatory regime for stablecoin issuers

The Financial Services and the Treasury Bureau (FSTB) and the Hong Kong Monetary Authority (HKMA) have [concluded](#) their consultation on a regulatory regime for fiat-referenced stablecoin (FRS) issuers. Most respondents supported the proposed regime to manage monetary and financial stability risks. The FSTB and HKMA are now preparing a bill for the Legislative Council and will issue licensing and supervisory guidelines.

SFC publishes consultation conclusions on implementation of uncertified securities market in Hong Kong

The Securities and Futures Commission (SFC) has [concluded its consultations](#) on implementing an uncertificated securities market (USM) in Hong Kong. The SFC proposes a 5-year timeline, aiming to implement the USM regime by the end of 2025 and transition companies in batches by the end of 2030. Next steps include further consultations on USM-related fees and engaging with market participants to facilitate the transition.

HKMA issues circular on cryptoasset disclosure requirements and standard amendments

The Hong Kong Monetary Authority (HKMA) has issued a [circular](#) to align its proposed regulatory framework for cryptoasset exposures with the latest updates from the Basel Committee on Banking Supervision (BCBS). The BCBS documents include a final disclosure framework for banks' cryptoasset exposures and targeted amendments to the cryptoasset standard, specifying criteria for stablecoins and promoting consistent understanding. The HKMA plans to consult the industry on any major additional changes to local requirements.

HKEX announces addition of Abu Dhabi Securities Exchange and Dubai Financial Market as recognised stock exchanges

The Stock Exchange of Hong Kong Limited (SEHK) has added the Abu Dhabi Securities Exchange (ADX) and the Dubai Financial Market (DFM) as recognised stock exchanges (RSEs). This allows public joint stock companies listed on these UAE exchanges to apply for a secondary listing in Hong Kong. With ADX and DFM, the total number of RSEs in the Middle East is now three, including the Saudi Exchange (Tadawul).

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Singapore

Anti-Money Laundering and Other Matters Bill moved for first reading in Singapore Parliament

The [Anti-Money Laundering and Other Matters Bill](#) has been introduced for its first reading in the Singapore Parliament. The Bill aims to enhance law enforcement's ability to prosecute money laundering (ML) offences, designate serious foreign environmental crimes as ML predicate offences, and improve processes for dealing with seized properties. It also seeks to align Singapore's anti-money laundering framework for casino operators with international standards.

MAS publishes Sustainability Report 2023/2024

The Monetary Authority of Singapore (MAS) has published the [Sustainability Report 2023/2024](#), outlining its strategy for climate resilience and environmental sustainability. Key initiatives include proposing Guidelines on Transition Planning, conducting climate scenario analysis, implementing mandatory climate-related disclosures, publishing the Singapore-Asia Taxonomy, and launching the Sustainable Finance Jobs Transformation Map.

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Clifford Chance publications

- (22 July 2024) Briefing - [EU crypto regulation: MICAR overview for issuers and crypto-asset service providers](#)
- (22 July 2024) Briefing - [What does MICAR mean for issuing and offering stablecoins and other crypto-assets in the EU?](#)
- (18 July 2024) Briefing - [China issues guidelines on corporate sustainability reporting](#)
- (18 July 2024) Briefing - [ESG ratings and ESG data: Regulation and practical issues in the equity and debt capital markets](#)
- (15 July 2024) Briefing - [FCA primary market bulletin 50 - key points for sponsor firms](#)
- (12 July 2024) Briefing - [Reforms to UK listing regime taking effect on 29 July](#)
- (11 July 2024) Briefing - [10 key takeaways - How does the 'once in a generation' new UK listing regime benefit listed companies and potential IPO candidates?](#)
- (11 July 2024) Briefing - [Update – recent amendments to Regulation S-P](#)
- (9 July 2024) Briefing – [Industrie Verte – Publication de l'Ordonnance portant modernisation du régime des fonds d'investissement alternatifs \(FIA\)](#)
- (9 July 2024) Briefing – [Delivering Solvency UK: Final matching adjustment reforms published](#)
- (5 July 2024) Thought Leadership – [Global developments in AI regulation](#)
- (4 July 2024) Thought Leadership – [Private Credit – A global perspective on market developments](#)
- (2 July 2024) Briefing – [Update on the U.S. Treasury Security Clearing Mandate and FICC Rule Proposals](#)
- (2 July 2024) Briefing – [Scrutinizing Outbound Investment: A Closer Look at Treasury's Proposed Rule on Outbound U.S. Investments](#)

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