MAYER|BROWN

CAPITAL MARKETS KNOW-HOW SERIES #21

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AGENDA

Structuring under the Mistletoe

Silent Bonds, Holy Swaps

The Gift of good Regulation


STRUCTURING UNDER THE MISTLETOE …

DEAL-CONTINGENT HEDGING – WHAT IS IT?

- Purpose: hedging of FX or interest rate risk in the context of M&A transactions, capital raises, asset sales, infrastructure and project finance etc.
- Key feature: Hedging agreement becomes effective only if a specified event occurs – usually the closing of a deal; if the contingent event does not occur, the DCH arrangement usually terminates at no cost to buyer; however, deal specific risk allocation possible
- Contingencies: regulatory approvals, financing, shareholder consents, no MAC
- Typical tenors: generally bespoke terms linked to deal timeline
- Parties: buyer/seller; often syndicated hedges

DEAL-CONTINGENT HEDGING – KEY TERMS IN A TRANSACTION

- **Contingency event**: deal closing, defined approvals (usually cross-referencing the relevant event in the relevant asset purchase agreement); Contingency dependency requires an analysis of legal risks, relevant for the deal condition not to occur
- Longstop/expiry: outside date; automatic lapse; extension rights/fees; phoenix clause
- Valuation and pricing: premium vs. embedded optionality; breakage costs

hedging disruption, illegality

- Representations/covenants: material non-public information handling, no market abuse, disclosure undertakings
- Calculation/valuation agent: independence, disputes, fallbacks
- Hedging disruption: increased cost, market disruption, benchmark fallbacks

DEAL-CONTINGENT HEDGING – PRACTICAL CONSIDERATION

- Definition of contingency condition is critical ("Closing", "Regulatory Approvals", "MAC")
- How to deal with amendments in underlying transaction documents
- Specify longstop and extension mechanics
- Pricing for extensions
- Detail failure-to-close consequences; cost allocation; documentation for costs
- Collateral terms aligned to conditionality; CSA haircuts/eligibility; close-out netting
- Governing law/jurisdiction: New York, English law, German law
- Confidentiality and announcements; public filings coordination
- Timeline: term sheet → wall-cross → ISDA/DRV in place → confirm → monitor approvals
- Risk transfer: back-to-back hedges; novation on close

DEAL-CONTINGENT HEDGING – REGULATORY, CONDUCT AND RISK CONSIDERATIONS

- Dodd-Frank/EMIR risk-mitigation, reporting, clearing/margin
- Reporting: UTI, trade repository, real-time (where applicable), lifecycle events
- Margin/clearing: typically uncleared; assess IM/VM rules and exemptions
- Conduct: suitability, fair dealing, conflicts, MNPI/insider lists, wall-crossing
- Governance: product approval, risk limits, model validation, new product checks
- Accounting/tax: hedge accounting eligibility, tax characterization of premiums/fees
- Sanctions/AML/anti-bribery and anti-corruption reps; KYC

CRR GUARANTEES

- Transaction background
  - Mitigation of a CRR Credit Risk pursuant to Part 3, Title II CRR
- A so called **Unfunded Credit Protection**
- Requirements
  - General requirement of Art. 194 para. 1, 2, 8, 9 (all Instruments)
  - General requirements of Art. 194 para. 5, 6 (only for UCP)
  - Specific requirements
    - Art. 194 para. 7 in conjunction with Section 3
    - Art. 201, 202 (*eligibility requirements for collateral provider*)
    - Art. 203, 213 and 215 (*instrument specific requirements*)
- Result: Substitution RW (Substitution Approach) (Art. 235) / Substitution Probability of Default (PD) / (Loss Given Default) LGB (IRB Approach) (Art. 236)

CRR GUARANTEES – LEGAL ASPECTS

- What is a guarantee pursuant to CRR?
  - Generally a wide term
  - Substantive tests based on the effect
  - Civil law qualification not decisive
- Protection must be direct / in a timely manner / clearly set out and incontrovertible / not outside control of institution
- Documentation aspects?
  - Definition of Guarantee event
  - Enforceability is key
  - Transparency
  - Clarity; avoid unclear terms and avoid too general terms if interpretation can result in non intended results
- Legal Opinions

CRYPTO EXCHANGE TRADED NOTES

- What is a Crypto ETN?
- Where does this name convention comes from?
- Typical issuers
- Collateralisation as Key feature
- Custodian
- Location of Crypto Assets and governing law for collateral
- What is the collateral asset?
- Cypto Asset or Rights against the Custodian or both
- How to take security over a Crypto Asset? German law consideration
- What has to be considered in practical cases?
- Is there an insolvency risk?

ACTIVELY MANAGED CERTIFICATES

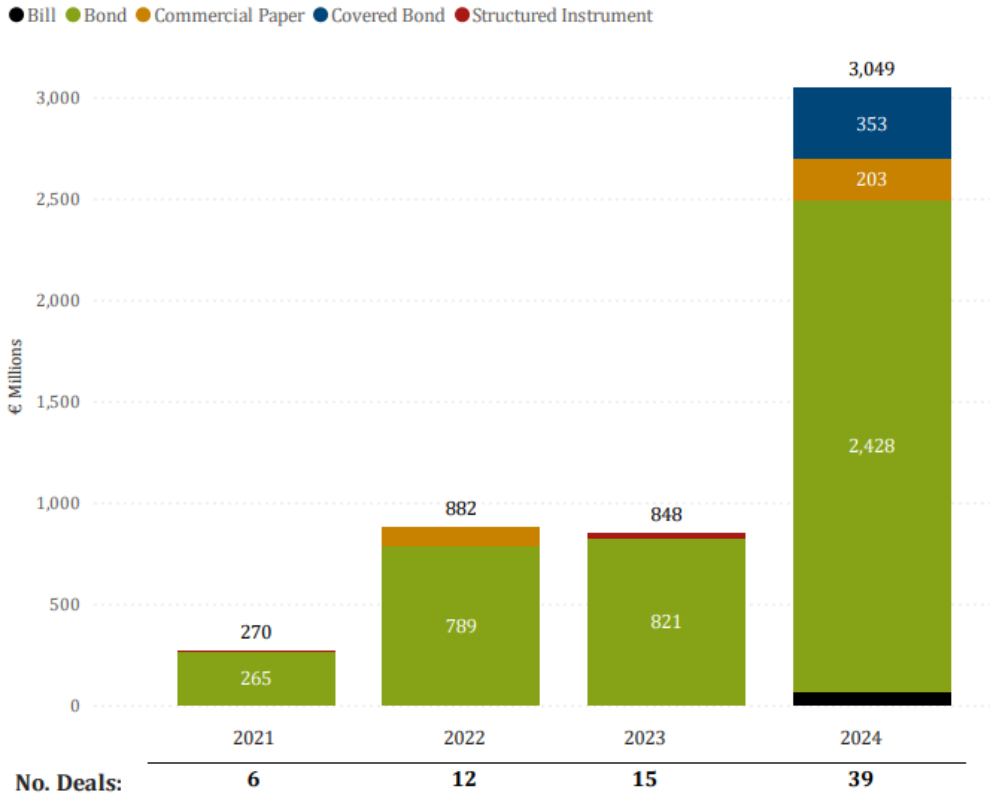
- Actively Managed Certificates in Europe and Switzerland
- Structures
  - On balance sheet issuances using an Index
  - SPV issuer
- Documentation
- Legal and practical consideration, in particular on
  - Transparency of terms
  - Conflicts of interests
- Regulatory consideration
- AMCs for retail investors

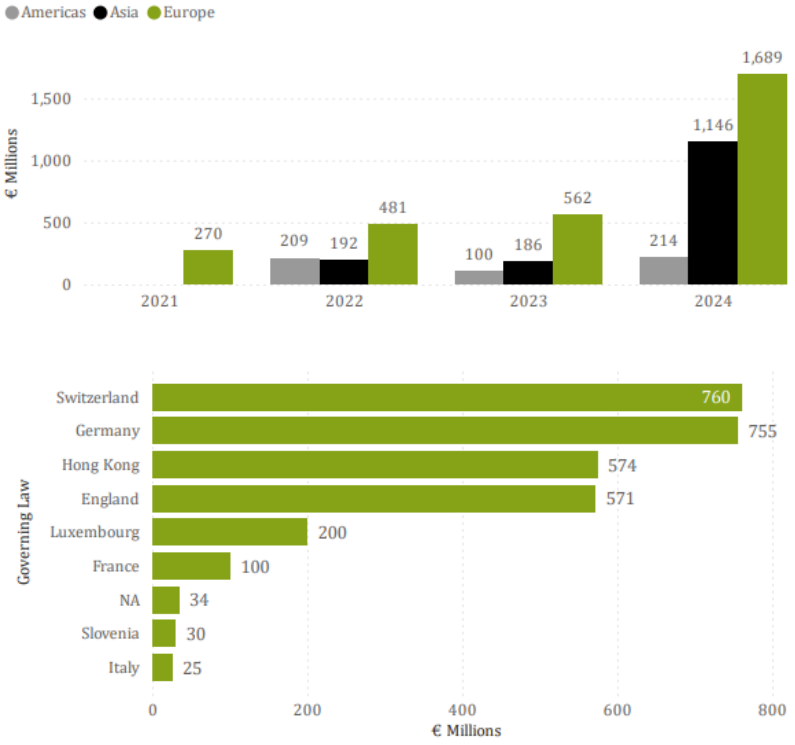

SILENT BONDS, HOLY SWAPS ...

DIGITAL BONDS

- **Digital Native Bonds** are bonds in **fully dematerialised** form and issued natively onto a distributed ledger or blockchain, with such securities being held and **transferred through the DLT**; Based on this technology Digital Native Bonds can be transferred outside of a central securities depositary (and other customary market infrastructure)
- Other forms of "electronic" (dematerialised) securities, e.g:
  - German central register securities, i.e. bearer securities registered in a central securities register maintained by a central depository (in such case held in book-entry form) or a custodian
  - bonds which are immobilised before rights relating to those bonds are circulated in tokenised form on a distributed ledger (tokenised bonds)
  - Other dematerialised book-entry securities exist in e.g. in Netherlands, France, Italy and Luxembourg

WORLDWIDE ACCELERATION OF ISSUANCE OF DLT-BASED SECURITIES

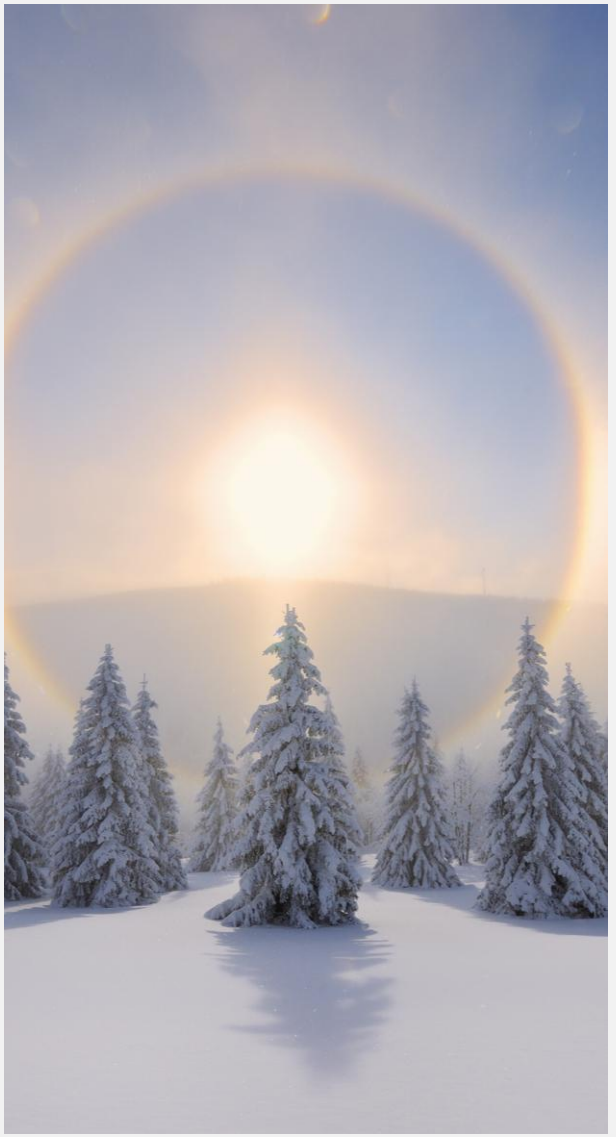




Source: AFME DLT-Based Capital Market Report 2024

GOVERNING LAW CONSIDERATIONS

- Conflict of laws aspects:
  - Law applicable to claims securitised by the Digital Bonds
  - Law applicable to the transfer of Digital Bonds
  - Generally free choice of law, subject to the requirements of substantial and mandatory laws in the relevant jurisdictions
  - Split law aspects: different laws governing the DLT form possible?
- Legal qualification of Digital Bonds:
  - Subject to the relevant law governing the securitised claim
  - In Germany deemed to be bearer bonds (*Inhaberschuldverschreibungen*), including covered bonds, and, consequentially, deemed to be similar to securities issued with a physical certificate, i.e. German crypto securities are deemed to be property (*Sache*); Transfers, pledges etc. are made/created in the same legal way as bearer bonds with physical certificates; This creates legal certainty
- Supervisory laws aspects:
  - Prospectus laws (such as the Prospectus Regulation)
  - Distribution and market/trading laws (such as MiFID II)



ELECTRONIC SECURITIES UNDER GERMAN LAW

- German Electronic Securities Act (eWpG) provides for the issuance of crypto securities (*Kryptowertpapiere*) and central register securities (*Zentralregisterwertpapiere*)
- Crypto securities are registered in a crypto securities register (*Kryptowertpapierregister*); Central register securities are registered in a central register (*zentrales Register*)
- The registration replaces the securities certificate
- Deemed to be a property (*Sache*); no difference to traditional securities in paper form from a legal perspective (legal certainty)
- Crypto securities are designed to be held in the form of an individual registration (*Einzeleintragung*); Collective registration (*Sammeleintragung*) is also possible - collective securities holding (*Wertpapiersammelbestand*) - and is currently the preferred from in practice; Central register securities are typically held in collective registration;
- Transfer of electronic securities follows principles of property law (*Sachenrecht*); Accordingly, same legal principles apply as for securities with a physical certificate; German property law also applies to the creation of pledges etc. over the electronic securities

CHALLENGES WITH DLT BONDS – RISKS

- ICMA condensed additional risks for DLT Bonds into three categories:
  - Technology risks
  - Legal and regulatory risks
  - Liquidity risks
- ***Technology risks***: include cybersecurity risks, outage time risks and connection error risks, exploitable flaws/security breaches, theft of Digital Bonds etc.
- ***Legal and regulatory risks***: Rapidly evolving regulatory / supervisory landscape (including tax) that may affect security, privacy, buying / selling bonds or require network/documentation updates, lack of comparability / DLT-based debt instruments across globe (risk of fragmentation of markets and systems)
- ***Liquidity risks***: Lack of public trust in underlying technology and inability to list/admit to trading DLT-based debt instruments in certain jurisdictions results in no active trading market for the bonds; liquidity issues due to missing trading platforms and the high number of blockchain platforms

EU GREEN BOND DEVELOPMENTS

- First issue in January 2025; Around ten issues listed on LuxSE in September, October and November 2025
- Issuers include: A2A, Latvenergo, Iberdrola Finanzas, ASN Bank, SNAM, Banco BPM, Eurogrid, Elia Transmission, Teollisudden Voima
- Documentation, either
  - Incorporation by way of supplement accepted by CSSF; or
  - Incorporation as part of an update of Base Prospectus
- Presentation, either
  - Clear segregation of EuGBs (Factsheet) and other Green Bonds (Framework)
  - Combined disclosures and certain EuGB additions
    - in one case Green Bonds (including EU Green Bonds)
    - in one case in Germany combination within a Green Financing Framework
- Generally, no incorporation of Factsheet by reference; As a consequence, sometimes (in our view problematic) less disclosure in the prospectus compared to ICMA Green Bonds (prospectus complete without description of the content of the Factsheet)?

INTERPRETATION GUIDANCE BY EU COMMISSION OF 6 NOVEMBER 2025

- Conversion of GB into an EuGB? Yes, but strict requirements, including prior publication of Factsheet and prospectus before re-labelling
- Consequences of post issuance breaches of EuGB-Standard: no longer allowed to label as EuGB; Re-labeling as ICMA Green Bond possible?
- Other answered questions relate for example to
  - Allocation to financial assets existing prior to issuance? Yes
  - Combination of portfolio and gradual approach? No
  - Permanent coverage of aggregate value of fixed or financial assets and aggregate principal amounts of outstanding EuGBs? Only in respect of due dates for Allocation Reports
  - 15% flexibility pocket
  - Grandfathering under the portfolio approach; Subsequent issuances will not prevent the grandfathering, but the seven years deadline applies strictly and will require changes to the portfolio over time or less EuGBs
  - Changes to factsheet template
  - Voluntary prospectuses under the EU PR for EuGB listed on an MTF only

INTERPRETATION GUIDANCE BY EU COMMISSION OF 6 NOVEMBER 2025

EU COM on combined disclosures EuGB and GB:

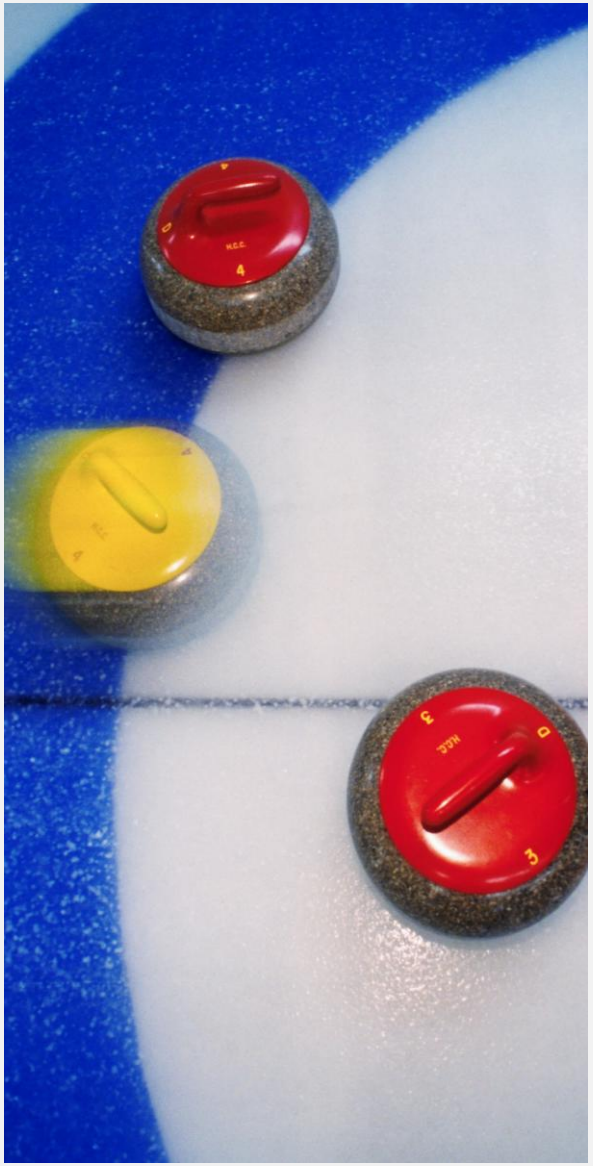
- EuGB disclosures may be complemented by other disclosures, so long as investors are able to clearly identify the information related to the EuGB Regulation and that the information respects all the requirements of the EuGB Regulation
- Any information not required by the EuGB Regulation should not obscure the mandatory EuGB disclosures, should not be prepared on a basis that contradicts the requirements set out in the EuGB Regulation and should not be displayed in a more prominent manner than the disclosures that are mandatory for and specific to EuGBs
- And in respect of green bond frameworks:
  - However, such frameworks have generally not been developed in accordance with a regulated framework and do therefore not constitute regulated documents
  - The EuGB factsheet, while similar to such frameworks in some respects, is a separate document that is required for an issuance of a European Green Bond

However, it is issuers' responsibility to make sure that all information provided to investors is clear and allows them to make informed decisions. Information linked specifically to an EuGB or a series of EuGB issuances should therefore not be combined with other disclosures, such as a green bond framework, in a way that might mislead investors

→ Some examples in the market seem to be not best practice on such basis

STRUCTURED PRUDUCTS DEVELOPMENTS

- Less innovation?
  - Focus on yield-enhancing, capital-protection buffered products and autocallable notes
- DLT-based products are of a very minor importance
- More customisation
  - AMCs?
- Less ESG and more social?
  - Good purpose payouts?
- Any changes in respect of defense?
- Use of proprietary indices after the reform of the EU Benchmark Regulation



"WARNING
On average, 7 out of 10 retail clients suffer losses when trading turbo certificates. Turbo certificates are highly risky products and are not suited for long-term investment strategies."

BAFIN'S PRODUCT INTERVENTION IN GERMANY ON TURBOS

- On 15 October 2025: BaFin issued a general order on the marketing, sale, and distribution of turbo certificates to retail clients in Germany; The requirements come into force on 16 June 2026; No product ban; ESMA opinion of 25 November 2025
- Key Requirements imposed by BaFin
  - Mandatory Standardised Risk Warning
  - Prohibition of Sales Incentives; Firms may no longer use any monetary or non-monetary incentives to push the products
  - Knowledge Test for Retail Clients before the first purchase, repeated every six months: if clients fails test, the distributor must block the purchase
- Impact for issuers and distribution banks:
  - Redesign marketing and distribution processes, including documents
  - Integrate knowledge-testing systems before order execution
  - Cannot use promotional campaigns to drive trading volumes
  - Reduced trading volumes?


THE GIFT OF GOOD REGULATION…

EU RETAIL INVESTMENT PACKAGE – OVERVIEW

- Commissions Proposal from 24 May 2024 on **omnibus amending Directive** revising the existing rules set out in the:
  - Markets in Financial Instruments Directive (MiFID II)
  - Undertaking for Collective Investment in Transferable Securities (UCITS) Directive
  - Alternative Investment Fund Managers Directive (AIFMD)
  - Insurance Distribution Directive (IDD)
  - Taking-up and pursuit of the business of Insurance and Reinsurance Directive (Solvency II)
- Amending Regulation to the EU PRIIPs Regulation (see PRIIPs slide below)
- Aims to implement one of the Commission's key objectives of the 2020 capital markets union action plan i.e. **create a safer place for citizens to invest in the long term**
- *"Boosting the capital markets union is also an essential means to **channel private funding** into our economy and to fund the green and digital transitions"*
- *"…a retail investment strategy that places the **consumers' interests** at the centre of retail investing. The aim is to empower **retail investors** (i.e. "consumer" investors) to make investment decisions that are aligned with their needs and preferences, ensuring that they are **treated fairly and duly protected**. This will enhance retail investors' trust and confidence to safely invest in their future and take full advantage of the EU's capital markets union."*

OMNIBUS AMENDING DIRECTIVE

- The omnibus directive aims to:
  - **Simplify and reduce the information** presented to retail investors by adapting disclosure rules to the digital age
  - Increase **transparency and comparability of costs** by requiring the use of a standard presentation and terminology on costs
  - Address **potential conflicts of interest** in the distribution of investment products by banning inducements for "execution-only" sales and ensuring that financial advice is aligned with retail investors' "best interests"
  - Protect retail investors from **misleading marketing** by ensuring that financial intermediaries (i.e. advisors) are fully responsible for the use (and misuse) of their marketing communication
  - Ensure **high standards** of professional qualifications for **financial advisors**
  - Encourage Member States to implement national measures that can support citizens' **financial literacy**
  - Reduce administrative burdens and improve the accessibility of products and services for sophisticated retail investors, by making the **eligibility criteria** to become a professional investor **more proportionate**
  - **Enhance supervisory cooperation** across the EU to jointly fight fraud and malpractices

KEY PROPOSED CHANGES TO THE PRIIPS REGULATION

- Introduction of a **summary dashboard**, to make key information on costs and risks of investment products highly visible at the top of the document
- More flexibility to **display information** from PRIIPs KIDs in a digital and **user-friendly** way, notably by allowing the use of **layering**; Introduction of conditions for more interactive features
- A new **sustainability section** in the KID to make information on sustainability-related characteristics of investment products more visible, comparable and understandable for retail investors; Information will be built on existing sustainability disclosures, avoiding new reporting burdens; May be **deleted** in view of the

SFDR review

- Adapted rules for presentation of key information on **multi-option products (MOPs)**, ensuring better visibility on total costs of such products while allowing some degree of flexibility.
- Clarifications to provide greater legal clarity on the exclusion of specific products (e.g. corporate bonds) that were not originally intended to be captured by the PRIIPs regulation
- Amending Regulation **currently in the legislative process** and will apply 18 months after its entry into force

KEY PROPOSED CHANGES TO MIFID II – VALUE FOR MONEY

- *"Evidence shows that there are some products on the market that provide **little, if any, value for money** to the retail client, in particular due to **high costs of products**."*
- Proposed changes aim to **ensure that products** that are offered to retail clients **offer good value for money**
- The requirements apply to both **manufacturers and distributors** of retail investment products
- Under the proposed rules, manufacturers and distributors would **assess whether costs and charges** related to a product **are justified and proportionate** with regard to their performance, other benefits and characteristics, their objectives and, if relevant, their strategy
- To ensure that all costs are available to the NCAs manufacturers and distributors must **report the costs of distribution** of PRIIPS, including details on the cost of advice and inducements, to NCAs
- Method of implementation currently unclear
- Industry mostly rejects proposal and is concerned that this can result in price regulations and factual product interventions

KEY PROPOSED CHANGES TO MIFID II – INDUCEMENTS

- Inducements (often referred to as "commissions" or "retrocession fees") are **payments or non-monetary benefits** paid or provided by anybody other than the retail investor **to the distributor** of an investment product
- Inducements may cause **conflicts of interest** in the distribution of retail investment products which may **impair the efficiency** of the retail investment market
- A **ban** on inducements is already in place for **independent investment advice and portfolio management** with only limited exceptions
- The **Commission's proposal** includes a **ban on inducements** received for **execution-only** sales, i.e. where no advice is provided to the investor
- The Council suggests to remove the proposed ban on inducements for execution-only sales and instead suggests to strengthen the safeguards accompanying all inducements
- Suggested change is mainly criticised as it adds complexity

OTHER PROPOSED CHANGES TO MIFID II

- **Adjustment of eligibility criteria for professional clients** upon request (allows investor to opt-out from protection framework)
- **Clarification** in relation to the requirements that distributors need to comply with when assessing the **suitability of a recommendation or the appropriateness** of a financial product for the retail investor
- Amendments to the **best interest test**
- Introduction of further requirements in relation to the **content of marketing advertisements** of financial securities
- Introduction of new provisions to ensure the **effective enforcement of marketing provisions** (e.g. in relation to use of "finfluencers")
- Provisions to improve **financial literacy**
- Provisions to improve knowledge and **competence of investment advisors** (currently set out in ESMA Guidelines for the assessment of knowledge and competence)
- Provisions to **reduce administrative burdens** and improve the accessibility of products and services **for sophisticated retail investors**
- Provisions to strengthen **cross border supervision** and enforcement

CRD VI – M&A AND CROSS-BORDER ASPECTS (1/5)

- Most amended CRR provisions (**CRR III**) are effective since 1 January 2025
- CRD implementation provisions (**CRD VI**) are to be transposed into national law by EU Member States as of 11 January 2026
- In Germany: Transposition into national law by virtue of the **BRUBEG** - *Bankenrichtlinienumsetzungs- und Bürokratieentlastungsgesetz*
- EBA/CP/2025/22 (Draft Guidelines on the authorisation of third country branches in accordance with Article 48c(8) of Directive 2013/36/EU)
- EBA/REP/2025/21 (Report on the exemption of third country undertakings from the requirement to set-up a branch for the provision of banking services to EU financial sector entities)

CRD VI – M&A AND CROSS-BORDER ASPECTS (2/5)

- Currently, the **acquisition of a "qualifying holding" in a credit institution** requires prior notification and prior regulatory approval. A "qualifying holding" is defined as a holding that comprises at least 10% of the capital or voting rights of the credit institution concerned or that otherwise enables significant influence to be exercised over the management of this target company
- However, **aquisitions** of shareholdings **by credit institutions** or by financial holding companies as well as mergers, divisions and asset deal transactions by the aforementioned companies are **not subject** to a formal **regulatory approval procedure**
- This will **change under** the new regime introduced by **CRD VI / BRUBEG**

CRD VI – M&A AND CROSS-BORDER ASPECTS (3/5)

- **Notification and approval requirement** for the acquisition and a notification requirement for the disposal of **material holdings** by institutions
  - Holdings are defined as "**material**" if they are equal to **15%** or more of the eligible own funds of the proposed acquirer (Art. 27a (2) CRD); Neither the text nor the recitals of the directive contain further details on how the afore-mentioned threshold is to be calculated in concrete terms
- **Notification and approval requirements** for **mergers and divisions** of institutions, financial holding companies and mixed financial holding companies
- **Notification obligation** for **material transfers of assets** and liabilities by way of asset deals for the same group of addressees
  - No approval requirement in this respect
  - **Transfers** are considered "**material**" if the planned transaction involves at least **10%** of the total assets or liabilities of the entity concerned
- Specific thresholds/rules for intra-group cases

CRD VI – M&A AND CROSS-BORDER ASPECTS (4/5)

- New minimum requirements for prudential supervision of third-country branches (**TCBs**) – these are key repercussions for non-EU entities
- Undertaking established in third country active in an EU Member State falls under new TCB regime if:
  - It would qualify as a credit institution or would fulfil the criteria set out in Article 4(1) point (1)(b) of the CRR if it were established in the EU and its activities include
    - Lending (including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting);
    - Financial leasing; Payment services (as defined in point (3) of Article 4 of the EU Payment Services Directive 2 (PSD2 - Directive (EU) 2015/2366);
    - Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as such activity is not covered b the payment services above;
    - Guarantees and commitments
  - It is taking deposits and other repayable funds
- However: Exemptions (in particular: **reverse solicitation exemption**)

CRD VI - CROSS-BORDER ASPECTS (5/5)

'Article 21c

Requirement to establish a branch for the provision of banking services by third-country undertakings

1. Member States shall require undertakings established in a third country as referred to in Article 47 to establish a branch in their territory and apply for authorisation in accordance with Title VI to commence or continue carrying out the activities referred to in Article 47(1) in the relevant Member State.

2. The requirement laid down in paragraph 1 of this Article shall not apply where the undertaking established in a third country provides a service or activity to a client or counterparty established or situated in the Union that is:

(a) a retail client, an eligible counterparty, or a professional client within the meaning of Annex II, Sections I and II, to Directive 2014/65/EU established or situated in the Union where such client or counterparty approaches an undertaking established in a third country at its own exclusive initiative for the provision of any service or activity referred to in Article 47(1) of this Directive;

(b) a credit institution;

(c) an undertaking of the same group as that of the undertaking established in a third country.

Without prejudice to the first subparagraph, point (c), where a third-country undertaking solicits a client or counterparty, or a potential client or counterparty, referred to in point (a) of that subparagraph, through an entity acting on its own behalf or having close links with such third-country undertaking or through any other person acting on behalf of such undertaking, it shall not be deemed to be a service provided at the own exclusive initiative of the client or counterparty, or of the potential client or counterparty.

Member States shall ensure that competent authorities have the power to require credit institutions and branches established in their territory to provide them with the information they require to monitor the services provided at the own exclusive initiative of the client or counterparty established or situated in their territory where such services are provided by undertakings established in third countries that are part of the same group.

3. An initiative by a client or counterparty as referred to in paragraph 2 shall not entitle the third-country undertaking to market other categories of products, activities or services than those that the client or counterparty had solicited, other than through a third-country branch established in a Member State. However, the establishment of a third-country branch shall not be required for any services, activities or products necessary for, or closely related to the provision of the service, product or activity originally solicited by the client or counterparty, including where such closely related services, activities or products are provided subsequently to those originally solicited.

4. The requirement laid down in paragraph 1 of this Article shall not apply to services or activities listed in Annex I, Section A, to Directive 2014/65/EU, including any accommodating ancillary services, such as related deposit taking or the granting of credit or loans the purpose of which is to provide services under that Directive.

5. In order to preserve clients' acquired rights under existing contracts, the requirement laid down in paragraph 1 shall be without prejudice to existing contracts that were entered into before 11 July 2026.

SFDR REVIEW (1/3)

- On 20 November 2025, the EU Commission published a set of amendments to the Sustainable Finance Disclosure Regulation (SFDR)
- It is reshaping the current disclosure regime into a product categorisation regime; A significant change is **the introduction** of **three product categories for products with sustainability claims** (Art. 7, 8, and 9) that are intended to replace the previous Art. 8 and 9 of the SFDR
- Specifically, these are the following three categories:
  - The **"Sustainable" category** (Article 9 SFDR-E) covers products that claim to invest in companies, assets, activities, or projects that are already sustainable or pursue a specific objective related to sustainability factors, including environmental or social objectives

SFDR REVIEW (2/3)

- The **"Transition" category** (Art. 7 SFDR-E) covers products that claim to invest in companies, assets, activities, or projects that are on a credible path to sustainability or pursue specific environmental or social objectives related to the transition
- The **"ESG Basic" category** (Art. 8 SFDR-E) includes products that claim to integrate other sustainability aspects beyond sustainability risks into their investment strategy

- Categorised products would need to ensure that a high portion of investments (70% of the portfolio) supports the chosen sustainability strategy and exclude from all their portfolio investments in harmful industries and activities, e.g. companies in violation of human rights standards as well as those involved in tobacco, prohibited weapons and fossil fuels above certain limits
- ESG claims in names and in marketing documentation will be reserved for categorised products – this is a key step to fight greenwashing and boost trust in sustainable investments

SFDR REVIEW (3/3)

- In addition, the following further amendments are intended:
  - The **disclosure requirements at company level** relating to principal adverse impacts (**PAI**) in Art. 4 and 5 are to be **deleted**; However, they will remain in place at product level
  - Removal of principle of "**do no significant harm**" / "good governance"
  - With a view to the Omnibus Simplification Package presented in February 2025, duplications between the SFDR and the CSRD are to be eliminated.
- The EU Commission's proposal will now be negotiated by the EU Parliament and the European Council; The new SFDR regulations are expected to be applicable 18 months after their entry into force; They are therefore likely to apply from 2028 onwards

EMIR 3.0 – ACTIVE ACCOUNT REQUIREMENT (1/2)

- **State of play**:
  - Active Account Requirement (**AAR**) is live
  - Notification to NCAs required in December 2024
  - Active Accounts needed to be opened by 25 June 2025
- **Open issues**:
  - RTS on categories of derivatives subject to AAR outstanding
  - Commission endorsed RTS on 29 October 2025 following ESMA Consultation Paper and Final Report
  - Expected to be published in OJ end of January 2025 with a go-live date of mid February 2025
- **Many open issues**

EMIR 3.0 – ACTIVE ACCOUNT REQUIREMENT (2/2)

ANNEX I

Classes of derivatives and relevant subcategories for the representativeness obligation

Table 1

Subcategories for EUR Fixed-to-float

	Trade size (in EUR million)		
Maturity	[0-25M]	(25M-50M]	(50M+]
[0-5Y]			
(5Y-10Y]			
(10Y-15Y]			
(15Y+]			

Table 2

Subcategories for EUR OIS

	Trade size (in EUR million)		
Maturity	[0-25M]	(25M-100M]	(100M+]
[0-1Y]			
(1Y-2Y]			
(2Y-5Y]			
(5Y+]			

Table 3

Subcategories for EUR FRA

	Trade size (in EUR million)		
Maturity	[0-75M]	(75M-200M]	(200M+]
[0-6M]			
(6M-12M]			
(12M-18M]			
(18M+]			

Table 4

Subcategories for PLN Fixed-to-float

	Trade size (in PLN million)
Maturity	Any trade size
Any maturity	

Table 5

Subcategories for PLN FRA

	Trade size (in PLN million)
Maturity	Any trade size
Any maturity	

Table 6

Classes of derivatives for EUR STIR

Execution	Underlying	Reference index	Settlement currency	Settlement currency type	Optionality
EU or third-country exchange	3-month interest rate	Euribor	EUR	Single currency	Excluded
EU or third-country exchange	3-month interest rate	€STR	EUR	Single currency	Excluded

Table 7

Subcategories for EUR STIR referencing Euribor

	Trade size (in EUR million)
Maturity	Any trade size
[0-6M]	
(6M-12M]	
(12M-24M]	
(24M+]	

Table 8

Subcategories for EUR STIR referencing €STR

	Trade size (in EUR million)
Maturity	Any trade size
[0-6M]	
(6M-12M]	
(12M-24M]	
(24M+]	

THANK YOU, HAPPY HOLIDAYS AND ALL THE BEST FOR 2026

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The team consists of experienced lawyers as well as young, ambitious and inquisitive talents. This also makes it clear to the clients how important it is to the partners to provide well founded training for the up and coming talent. In addition, all team members are incredibly friendly, so working together is a lot of fun, even beyond the technical side.

THE LEGAL 500 DEUTSCHLAND (Client)