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Capital Markets Union: AIFMD2 published in Official Journal

Directive (EU) 2024/927 aimed at improving the regulatory framework applicable to EU investment funds (AIFMD2) has been published in the Official Journal.

AIFMD2 amends the Directive on Undertaking for Collective Investment in Transferable Securities (UCITS) and the Alternative Investment Fund Managers Directive (AIFMD) in relation to:

- delegation arrangements;
- liquidity risk management;
- supervisory reporting;
- the provision of depositary and custody services; and
- loan origination by alternative investment funds (AIFMs).

AIFMD2 enters into force on 15 April 2024. Member States have 24 months to transpose the rules into national legislation.

UCITS/AIFMs: Technical standards on cross-border marketing and management notifications published in Official Journal

A set of EU Commission Delegated and Implementing Regulations containing regulatory technical standards (RTS) and implementing regulatory standards (ITS) in relation to the cross-border marketing and management of funds in the EU under the UCITS Directive and AIFMD have been published in the Official Journal.

The Regulations include:

- RTS specifying the information to be notified in relation to the cross-border activities of managers of AIFMs;
- RTS specifying the information to be notified in relation to the cross-border activities of UCITS management companies and UCITS;
- ITS with regard to the form and content of the information to be notified in respect of the cross-border activities of AIFMs and the exchange of information between competent authorities on cross-border notification letters; and

- ITS with regard to the form and content of the information to be notified in respect of the cross-border activities of UCITS, UCITS management companies, and the exchange of information between competent authorities on cross-border notification letters.

All four Regulations will enter into force on 14 April 2024. The two sets of RTS will both apply from 25 June 2024, the ITS for AIFMs from 14 April 2024 and the ITS for UCITS from 14 July 2024.

Banking Union: EU Council adopts directive on 'daisy chain' amendments to BRRD and SRMR

The EU Council has adopted the proposed directive on targeted amendments to the Bank Recovery and Resolution Directive (BRRD) and the Single Resolution Mechanism Regulation (SRMR) regarding daisy chains.

This follows the Council and Parliament reaching provisional political agreement in December 2023 and the Parliament adopting the directive on 27 February 2024.

The amendments form part of the EU Commission's crisis management and deposit insurance (CMDI) legislative package. They concern certain aspects of the minimum requirement for own funds and eligible liabilities (MREL) that are intended to improve the resolution framework for EU banks. In particular, the proposal gives the resolution authorities the power of setting internal MREL on a consolidated basis subject to certain conditions, and introduces a specific MREL treatment for 'liquidation entities'.

The directive will enter into force 20 days following its publication in the Official Journal and Member States will then have six months to transpose it into their national laws.

PRIIPS: ECON Committee publishes report on proposed changes to key information document

The EU Parliament's Committee on Economic and Monetary Affairs (ECON) has published its report on the proposed Regulation amending the PRIIPs Regulation (EU) No 1286/2014 as regards the modernisation of the key information document. The proposal is part of the EU Commission's retail investment strategy aimed at streamlining and modernising investor protection rules.

The report has been tabled for approval by the EU Parliament during the first plenary session in April. It is intended that the file will be followed up by the new Parliament following the European elections in June.

MiFIR review: EU Commission and ESMA publish statements on transitional provisions

The EU Commission has published a draft interpretative notice intended to provide clarity to market participants on the transitional provision of the Markets in Financial Instruments Regulation (MiFIR) review.

The revised MiFIR rules, politically agreed in June 2023, will apply from 28 March 2024, with certain elements of the regulation phasing in over the coming years. The new rules cover the limitations regarding dark trading, moving from a double to a single volume cap. The EU is now preparing Commission delegated regulations specifying the new rules, including for the single volume cap. The transitional regime laid down in Article 54(3) of MiFIR

sets out that the existing Commission delegated regulations remain applicable until the new ones enter into application.

The European Securities and Markets Authority (ESMA) has complemented the draft interpretive notice with a statement covering guidance on:

- equity transparency and non-equity transparency;
- the systematic internaliser (SIs) regime;
- designated publishing entities (DPEs); and
- reporting.

Regarding the volume cap, following the Commission's draft notice, ESMA has confirmed that DVC data will continue to be published, with the next publication scheduled for early April.

ESMA intends to develop draft technical standards as requested by the revised MiFIR within the set deadlines.

ESMA consults on rules for external reviewers of EU Green Bonds

ESMA has launched a consultation on draft RTS related to the registration and supervision of external reviewers under the EU Green Bond Regulation (EuGB).

ESMA's proposals relate to the registration and supervision of entities interested in becoming external reviewers of EU Green Bonds and are intended to clarify the criteria used for assessing an application for registration by an external reviewer. ESMA proposes to standardise registration requirements and contribute to developing a level playing field through lower entry costs for applicants. In particular, the proposals relate to:

- senior management and analytical resources;
- sound and prudent management, including avoidance of conflicts of interest;
- knowledge and experience of analysts; and
- outsourcing of assessment activities, forms, templates, and procedures for the provision of registration information.

Comments are due by 14 June 2024.

The EuGB Regulation entered into force on 21 December 2023 and will apply from 21 December 2024.

MiCA: ESMA consults on third package of RTS and guidelines and publishes final reports following earlier consultations

ESMA has published its third consultation package under the Markets in Cryptoassets Regulation (MiCA), seeking feedback on the following four sets of proposed rules and guidelines:

- RTS on the detection and reporting of suspected market abuse in cryptoassets;
- guidelines on policies and procedures for cryptoasset transfer services, including the rights of clients;

- guidelines on the suitability requirements for certain cryptoasset services and the format of the periodic statement for portfolio management; and
- guidelines on ICT operational resilience for certain entities under MiCA.

Comments are due by 25 June 2024.

ESMA has also published its final report on the first package of technical standards under MiCA, on which it consulted in July 2023 and which comprises rules relating to the authorisation, identification and complaint handling procedures of cryptoasset service providers (CASPs). In particular, the final report on this package includes the technical standards for the following mandates:

- Article 60(13): RTS on content of notification from selected entities to NCAs
- Article 60(14): ITS on forms and templates for notification from entities to NCAs
- Article 62(5): RTS on the content of the application for authorisation for CASPs
- Article 62(6): ITS on forms and templates for CASP authorisation application
- Article 71(5): RTS on complaint handling procedure
- Article 84(4): RTS on intended acquisition information requirements

ESMA intends to publish its final report relating to the RTS on conflicts of interest for CASPs (in accordance with Article 72(5) of MiCA) at a later stage to allow the European Banking Authority (EBA) to conclude its consultation process and ensure maximum alignment.

Finally, ESMA has published its final report specifying requirements for cooperation under MiCA, which contains two draft RTS and two draft ITS relating to:

- the exchange of information between competent authorities;
- procedures, forms and templates for the exchange of information between competent authorities;
- procedures, forms and templates for exchange of information between competent authorities and ESMA or the EBA; and
- the template for cooperation with third-country authorities.

EMIR 3.0: ESMA provides guidance on clearing obligation for trading with third country pension schemes

The ESMA has issued a public statement on deprioritising supervisory actions linked to the clearing obligation for third country pension scheme arrangements (TC PSA), pending the finalisation of the review of the European Market Infrastructure Regulation (EMIR 3.0).

During this period, ESMA expects national competent authorities (NCAs) not to prioritise supervisory actions in relation to the clearing obligation for derivative transactions conducted with TC PSAs exempted from the clearing obligation under their third-country's national law. Additionally, ESMA recommends that NCAs apply their risk-based supervisory powers in their

day-to-day enforcement of applicable legislation in this area in a proportionate manner.

The EU Council and Parliament reached a provisional political agreement on EMIR 3.0 on 7 February 2024. The agreed text provides for an exemption regime from the EMIR clearing obligation when the TC PSA is exempted from the clearing obligation under that third country's national law.

FCA publishes guidance on financial promotions on social media

The Financial Conduct Authority (FCA) has published its finalised guidance (FG24/1) on financial promotions on social media. FG24/1 sets out the FCA's expectations on how financial promotions should be communicated on social media and summarises and responds to feedback to its guidance consultation (GC23/2).

The FCA warns that unauthorised persons, such as influencers, who promote financial products or services that are subject to regulation without the approval of an FCA authorised person may be committing a criminal offence.

Among other things, the FCA expects:

- financial promotions to be standalone compliant, meaning that each communication must comply with its rules when considered individually;
- promotions to provide a balanced view of the benefits and risks, and clearly communicate information that will help consumers make effective, well-informed decisions;
- firms to be aware of any additional requirements for how this required information is to be displayed;
- firms working with affiliate marketers, such as influencers, to take proactive responsibility for how their affiliates communicate financial promotions; and
- influencers to consider whether they are the right person to promote a product or service, and what other rules and standards apply to their activities.

The guidance also indicates that even when an influencer does not have a commercial relationship with a firm, their communications on social media about financial products or services may still be subject to the financial promotion restriction and require approval to communicate.

Technology Working Group publishes second fund tokenisation report

The Technology Working Group (TWG), a subset of the Economic Secretary's Asset Management Taskforce, has published a second report on its work on the implementation of fund tokenisation in the UK.

The report builds on the contents of the TWG's first report, which was published in November 2023 and set out a recommended 'baseline approach' to implementing the tokenisation of UK investment funds. The second report contains:

- a summary of responses received to the approach proposed in the first report and an overview of relevant developments that have occurred since its publication;

- further use cases for fund tokenisation;
- details of the TWG's vision for the future of fund tokenisation and its recommended path to achieving it; and
- practical guides for firms considering using tokenisation, including model fund prospectus risk factors and a discussion of technical standards for interoperable tokens and networks.

BaFin issues supervisory notice on authorisation procedure for credit services institutions with focus on consumer protection

The German Federal Financial Supervisory Authority (BaFin) has published a supervisory notice on the Act on the Secondary Credit Market (Kreditzweitmarktgesetz – KrZwMG), relating to the authorisation procedure of credit services institutions (Aufsichtsmitteilung - Kreditzweitmarktgesetz: Erlaubnisverfahren für Kreditdienstleistungsinstitute) and emphasising the organisational duties of credit services institutions regarding consumer protection.

Pursuant to Section 14 para 1 sentence 1 KrZwMG, a credit services institution must have a proper business organisation in place that ensures compliance with statutory provisions and business requirements. A proper business organisation includes the organisational duties set out in Section 14 paras 2 to 4 KrZwMG on, broadly, robust governance arrangements and adequate internal control mechanisms for the protection of borrowers' rights and data.

In accordance with Section 10 para 3 sentence 1 no. 7 lit. c) KrZwMG, undertakings must mandatorily provide information on this matter as part of their robust business plan to be evidenced during the authorisation procedure, without which an assessment of the proper business organisation is not possible, resulting in BaFin having to reject the application.

Particularly, BaFin expects evidence on corporate governance rules and internal control procedures on safeguarding borrowers' rights and personal data protection, adopted by the management and recorded in writing or electronically, on principles adopted by the management and set out in writing or electronically relating to borrower protection and appropriate borrower treatment, and internal procedures for recording and processing borrower complaints.

For further information, BaFin refers to the guidance notice on the provision of credit services by Deutsche Bundesbank (Merkblatt über die Erteilung einer Erlaubnis zum Erbringen von Kreditdienstleistungengemäß §10 Absatz 1 KrZwMG) and to the overview of the documents to be submitted for the grant of the authorisation (Übersicht der einzureichenden Unterlagen) available on the BaFin website, both published at the end of 2023.

Commission Delegated Regulation (EU) 2023/2830: Consob consults on implementing provisions on auctioning of emission allowances

The Commissione Nazionale per le Società e la Borsa (Consob) has launched a public consultation process on a set of proposed provisions intended to implement Commission Delegated Regulation (EU) 2023/2830 setting out

rules on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances.

In this context, Consob is using the powers provided for in the Italian Financial Act (Legislative Decree no. 58/1998) to develop a national regulatory framework. In particular, the new rules set out a detailed authorisation process and supervisory regime for entities eligible to participate in the auctioning process.

The new regime will have an impact on those entities benefitting from an exemption under MiFID2 whereas credit institutions and investment firms will not be made subject to it.

Comments are due by 22 May 2024.

CSSF publishes circular on application of ESMA guidelines on transfer of data between trade repositories under EMIR and SFTR

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has published its Circular 24/855 on the application of the ESMA guidelines on the transfer of data between trade repositories (TRs) under the EMIR and the Securities Financing Transactions Regulation (SFTR).

The circular informs the public that the CSSF has integrated the guidelines into its administrative practice and regulatory approach with a view to promoting supervisory convergence in this field at EU level.

The guidelines fulfil several purposes with regard to the establishment of consistent, efficient and effective supervisory practices within the European System of Financial Supervision (ESFS) and to ensure their common, uniform and consistent application by providing clarification for TRs, reporting counterparties and entities responsible for reporting (ERR) on how to ensure continuous compliance with the following EMIR provisions:

- Article 9(1e) of EMIR, which provides that counterparties and CCPs that are required to report the details of derivative contracts shall ensure that such details are reported correctly and without duplication;
- Article 80(3) of EMIR, which provides that a trade repository shall promptly record the information received under Article 9 and shall maintain it for at least 10 years following the termination of the relevant contracts, and that it shall employ timely and efficient record keeping procedures to document changes to recorded information;
- Article 79(3) of EMIR, which provides that a trade repository from which registration has been withdrawn shall ensure orderly substitution including the transfer of data to other TRs and the redirection of reporting flows to other TRs; and
- the procedure for portability under Article 78(9) of EMIR.

The circular applies from 21 March 2024 to financial and non-financial counterparties to derivatives as defined in Articles 2(8) and 2(9) of EMIR for which the CSSF is the competent authority in accordance with the EMIR Law. The CSSF reminds reporting counterparties that they must ensure that ERR reporting on their behalf apply these guidelines.

CSSF publishes communiqué on EMIR REFIT reporting

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has published a communiqué to inform all counterparties involved in derivatives transactions of the upcoming entry into force of the new EMIR REFIT reporting on 29 April 2024.

In this context, the CSSF directs counterparties to the ESM webpage with critical information for the proper implementation of EMIR REFIT, as well as the previous CSSF press release on EMIR REFIT. The communiqué further draws the attention of counterparties to the following, with a particular emphasis on the importance of testing as mentioned in the final bulletin point:

- entities shall notify the CSSF of significant errors and omissions following Article 9 of the implementing technical standards (ITS) on reporting;
- the CSSF will monitor the volume of currently submitted trades, including variations in the volumes of reported transactions;
- should an entity cease to exist, it must close trades from a contractual point of view and with appropriate termination messages to the relevant TRs;
- should another entity take over the reporting on behalf of one counterparty, that counterparty must ensure that no trades are either forgotten or reported twice;
- counterparties are required to monitor the reporting they submit, or the reporting submitted on their behalf and must ensure its accuracy. For illustration purposes, the CSSF reminds counterparties to implement internal controls such as (non-exhaustive list): identification of outliers; application of the correct action type; identification and removal of duplicates; timeliness checks; consistency between the trading activity and the reporting; consistency over time of the reporting with the real activity; and
- TRs have made their platforms available for testing. The CSSF insists that all participants must ensure their ability to submit their trades prior to the go-live date.

The CSSF has reiterated that there has been sufficient time for stakeholders to implement the changes required for EMIR REFIT.

CSSF publishes communiqué on its supervisory priorities in sustainable finance

The CSSF has published a communiqué providing a general overview of its supervisory priorities in the area of sustainable finance.

The communiqué begins by stating that, as the supervisory authority of the financial sector, the CSSF is striving to accompany the transition of the sector and its players in a proactive way and that the integration of sustainability and adequate consideration of sustainability risks as key drivers of financial strategies is a long-term objective. In support of this ambition, the CSSF's supervisory priorities in the area of sustainable finance are intended to foster a coherent implementation of the sustainable finance framework across the financial sector and ensure the integration of ESG requirements in the CSSF's supervisory practice.

The CSSF notes that the regulatory framework in relation to sustainable finance continues to be further enhanced and progressively improved upon. In such an evolving context, and taking into account regulatory developments as well as developing practices, the CSSF will continue implementing its risk-based approach to supervision.

However, the communiqué emphasises that the primary responsibility for ensuring the compliance with applicable requirements lies with the supervised entities and their board members, who should ensure that the integration of ESG factors in traditional governance, risk management and compliance tools is a focal point within their organisations, and endeavour to make suitable ESG education a priority for themselves and their personnel.

The communiqué focuses on supervisory priorities for credit institutions, for the asset management industry, for investment firms and in international cooperation in sustainable finance.

The communiqué is not to be construed as an exhaustive or definitive list. Instead, it is intended to draw the attention of the financial sector to a number of prominent matters to be addressed in this area. If deemed necessary, the supervision priorities may by adjusted, and the CSSF's duties of ongoing prudential supervision may also warrant other ESG-related aspects to come under scrutiny.

CSSF publishes communiqué regarding new reporting procedure for ICT-related incident reporting

The CSSF has published a communiqué regarding the new reporting procedure for information and communication technology (ICT) related incident reporting under Circular CSSF 24/847.

The communiqué provides further guidance related to the submission channels and procedure to be followed when submitting an ICT-related incident notification under the circular.

The CSSF reminds supervised entities that the circular will enter into force on 1 April 2024 for the supervised entities as defined in point 2 a) to d) and k) to p) in Section 1.1., and on 1 June 2024 for the supervised entities as defined in point 2 e) to j) in Section 1.1 of the circular and on these dates repeals and replaces Circular CSSF 11/504 on 'Frauds and incidents due to external computer attacks'. Subsequently, on these dates the new reporting methods and procedures will come into effect.

Notifications shall be submitted via one of the two below methods:

- the dedicated procedure on the CSSF eDesk Portal;
- Application Programming Interface (API) solution via the simple storage service (S3) protocol.

To avoid connection issues when the procedure becomes mandatory on 1 April and 1 June respectively, the CSSF has invited all supervised entities to ensure they have set up the relevant eDesk accounts and enrolled as necessary.

To help supervised entities with the submission of their notifications, a detailed user guide on major ICT-related incident notification has been developed and is available on the eDesk Portal, as announced by the CSSF in another communiqué dated 27 March 2024. The user guide explains the procedures

for completing and submitting the ICT-related incident notifications via both channels.

For any question regarding authentication or account creation, or technical issues in submitting a notification, supervised entities should contact eDesk@cssf.lu

Any questions relating to the circular, the timeline or the content of the ICT-related incident notifications should be addressed to ictrisksupervision@cssf.lu

FINMA publishes ordinances to implement final Basel III standards

The Swiss Financial Market Supervisory Authority (FINMA) has published the following five new Ordinances to implement the final Basel III standards in Switzerland:

- Ordinance on the Trading Book and Banking Book and Eligible Capital of Banks and Securities Firms (TBEO-FINMA);
- Ordinance on the Leverage Ratio and Operational Risks of Banks and Securities Firms (LROO-FINMA);
- Ordinance on the Credit Risks of Banks and Securities Firms (CreO-FINMA);
- Ordinance on the Market Risks of Banks and Securities Firms (MarO-FINMA); and
- Ordinance on the Disclosure Obligations of Banks and Securities Firms (DisO-FINMA).

The Ordinances replace various FINMA circulars and contain the implementing provisions for the Federal Council's revised Capital Adequacy Ordinance (CAO) for banks. The Ordinances will enter into force on 1 January 2025.

FINMA recognises adjustments to self-regulation on mortgage lending

The Swiss FINMA has recognised the adjusted self-regulation by the Swiss Bankers Association in the area of mortgage lending as a binding minimum standard. These adjustments were necessary due to the introduction of the final Basel III standards in Switzerland. In particular, the minimum requirements for capital and amortisation as well as the qualitative requirements in the Mortgage Directive were amended. They will enter into force at the same time as the Federal Council's revised CAO and the FINMA Ordinance on the Credit Risks of Banks and Securities Firms on 1 January 2025.

Hong Kong Government sets out sustainability disclosure vision

The Financial Services and the Treasury Bureau (FSTB) has issued a vision statement on developing the sustainability disclosure ecosystem in Hong Kong.

In June 2023, the International Sustainability Standards Board (ISSB) published its first set of International Financial Reporting Standards – Sustainability Disclosure Standards as the global baseline for entities around

the globe to prepare comparable, consistent and reliable climate and sustainability-related information. The Hong Kong Government announced in its 2023 policy address that it would work with financial regulators and stakeholders to develop a roadmap on the appropriate adoption of the ISSB Standards to align with international standards.

Amongst other things, the FSTB's vision statement highlights that:

- the Government and financial regulators aim for Hong Kong to be among the first jurisdictions to align the local sustainability disclosure requirements with the ISSB Standards;
- the Government will adopt a holistic approach in developing the local sustainability disclosure standards and sustainability disclosure ecosystem. The Hong Kong Institute of Certified Public Accountants intends to develop local sustainability reporting standards (Hong Kong Standards) aligned with the ISSB Standards as well as complementary application and implementation guidance;
- the Hong Kong Standards are intended for cross-sectoral observance, including listed companies and regulated financial institutions, such as banks, fund managers, insurance companies, and Mandatory Provident Fund trustees, under a phased implementation approach. The application of the Hong Kong Standards will be prioritised for publicly accountable entities such as listed companies and regulated financial institutions;
- the Government and financial regulators will promote sustainability assurance to enable credible implementation, enhance capacity building to support the industry and companies, and facilitate the use of technological solutions to enhance efficiency, reduce cost and enable comparability and interoperability of disclosures; and
- the Government will work with financial regulators and stakeholders to develop a roadmap on the appropriate adoption of the ISSB Standards, and aim to launch the roadmap within 2024.

SFC issues circular on shortened US securities transaction settlement cycle

The Securities and Futures Commission (SFC) has issued a circular to remind licensed corporations (LCs) to prepare for the transition of the standard settlement cycle for transactions in US securities, which will be shortened from two business days after the trade date (T+2) to one business day after trading (T+1) as of 28 May 2024.

Noting that the shortened settlement cycle will compress the timeframe for completing post-settlement processes, the SFC expects LCs to assess their readiness and ensure that they are able to cope with the shortened settlement cycle. Amongst other things, LCs should:

- review their liquidity risk management practices and ensure the necessary funding is available for settling US securities transactions on time;
- ensure the availability of staff to complete the post-trade settlement processes within the shortened timeframe; and
- proactively engage and communicate with their clients who are potentially affected by the transition.

In addition, the SFC reminds the management companies of SFC-authorised funds, particularly those with considerable exposures to US securities, to:

- carefully assess the impact of the transition on their funds, including any potential mismatches in settlement cycles relating to the deployment of subscription money or sale proceeds from non-US markets to purchase US securities;
- make appropriate arrangements where necessary, such as expanding pre-funding facilities and allocating additional staff to handle the compressed settlement timeline, to ensure that the funds' operations remain fair and orderly, and in the best interest of investors; and
- give early alerts to the SFC and investors about any intended changes, issues or untoward circumstances arising from the transition that may materially affect the funds and investors and take remedial actions accordingly.

The Hong Kong Monetary Authority (HKMA) has also issued a circular on the securities transaction settlement cycle in the US, reminding authorised institutions that they need to pay attention to their funding arrangements and ensure availability of sufficient funds for settling the affected securities transactions on time.

Proposed amendments to Japan's Financial Instruments and Exchange Act for sophisticated and diversified asset management and large shareholding reporting rule published

A legislative bill proposing substantial revisions to the Financial Instruments and Exchange Act has been presented to the Japanese Diet. The primary objective of these amendments is to cater for sophisticated and diversified asset management, to facilitate the entry of new investment management entities, and to encourage the trading of unlisted securities, thereby fostering a more dynamic financial marketplace.

The proposed legal framework introduces a voluntary registration regime aimed at service providers specialising in ancillary investment management operations, such as compliance, legal, and accounting services. This initiative is intended to streamline the operational burden for investment management firms by enabling the outsourcing of non-core functions, thereby simplifying the regulatory requirements, especially those pertaining to the required personnel structure. Furthermore, the amendments propose that investment managers be empowered to concentrate exclusively on the strategic elements of fund management, such as conceptualisation and design, while outsourcing full investment execution responsibilities to other investment management professionals. This provision is intended to emulate the division of labour observed in the investment sectors of Europe and the United States.

Regarding the activation of trading for unlisted securities, the amendments aim to rejuvenate the market, with a focus on securities issued by emerging companies. To achieve this, the bill suggests easing the registration requirements for Type 1 Financial Instruments Business Operators engaged in unlisted securities, contingent upon these transactions being directed at professional investors and without the brokers retaining any customer funds. Additionally, the legislation would allow for Private Trading Systems (PTS) to function as registered Type 1 Financial Instruments Business Operators

without necessitating a separate permission, providing their transactional throughput remains below prescribed thresholds.

The proposed amendment bill also seeks to refine the definition of joint holders. It introduces specific conditions under which a shareholder is not classified as a joint holder if it enters into an agreement with another person to jointly acquire, transfer or exercise the rights of a shareholder; the other holder is a Type 1 financial instruments business operator, investment management business operator, a bank or other person to be specified in a Cabinet Office Ordinance; the purpose of the agreement is not to jointly engage in material proposed acts (clarification of material proposed acts is currently under consideration); and the agreement is solely for the purpose of jointly exercising voting rights and other shareholder rights in each individual exercise of rights.

The bill also addresses the treatment of cash-settled equity derivative transactions that entail an aim to acquire shares at some point. Parties holding such long positions – or for another purpose to be outlined by a Cabinet Order – are to be considered as the holders of the said shares within the Large Shareholding Reporting regime. While this reflects the current position of the Japan Financial Services Agency, articulated in a Q&A format, the proposed amendments would raise it to the legal level and require a higher level of compliance.

The details of the amendments will be set out in a Cabinet Office Ordinance after the amended Financial Instruments and Exchange Act has been passed by the Diet.

Proposed amendments to mandatory tender offer bid requirements in Japan submitted to National Diet

A proposal to amend the tender offer bid regulations has been published pending approval in the National Diet.

The proposed revisions to the Financial Instruments and Exchange Act would broaden the scope of transactions that necessitate a mandatory tender offer bid as detailed below:

- extending the mandatory tender offer bid rules to encompass on-market transactions, specifically those conducted via auction at exchanges. As a result, acquisitions of voting rights exceeding 30% through on-market transactions would also trigger a mandatory tender offer bid; and
- decreasing the ownership threshold that triggers a mandatory tender offer bid from one-third to 30% of the voting rights.

The amendments are intended to reflect the evolving landscape of corporate acquisitions, with an increase in unsolicited takeovers executed through on-market transactions, as well as a diversification in the structure of mergers and acquisitions, and enhance transparency and fairness. Additionally, the adjustment of the ownership threshold, serving as a benchmark for acquiring significant control over a listed company, is intended to bring Japan's regulatory framework in line with international standards.

RECENT CLIFFORD CHANCE BRIEFINGS

Agreement reached on the EU Corporate Sustainability Due Diligence Directive – what financial services firms need to know

After months of political wrangling, EU Member States have finally reached agreement on the Corporate Sustainability Due Diligence Directive (CS3D). On 15 March 2024, the Council of the EU reached a compromise on the wording of the CS3D which, if adopted by European Parliament, paves the way for this landmark human rights and environmental due diligence legislation to finally become a reality, albeit in a significantly narrower form than was originally proposed.

One of the most controversial topics to emerge from the political negotiations over the past few years was how CS3D would apply to financial services firms – referred to in the directive as 'regulated financial undertakings'.

This briefing paper discusses where we have ended up and what in-scope financial services firms need to be aware of if, as is expected, CS3D becomes law in the EU.

https://www.cliffordchance.com/briefings/2024/03/agreement-reached-on-the-eu-corporate-sustainability-due-diligen.html

The EU Cyber Resilience Act – towards a safe and secure digital market in Europe

The EU's Cyber Resilience Act (CRA) is waiting in the wings. On Tuesday 12 March, the European Parliament voted to approve the text of this milestone EU regulation, reflecting the political agreement reached by the European Parliament and the Council of the European Union late last year. The CRA is now awaiting formal approval by the Council and is expected to enter into force in the coming months.

Originally proposed by the European Commission in September 2022, the CRA will introduce mandatory cybersecurity requirements for products with digital elements made available on the EU market, establishing a consistent EU-wide legal framework for essential cybersecurity requirements for such products.

This briefing paper provides an overview of the CRA as adopted by the European Parliament on 12 March 2024, including the obligations imposed on those involved in the supply chain of connected devices, and considers key changes made by the Council and the European Parliament to the European Commission's original proposal.

https://www.cliffordchance.com/briefings/2024/03/the-eu-cyber-resilience-act---towards-a-safe-and-secure-digital-.html

McDermott International Group receives the Amsterdam Court's approval on its Dutch scheme (WHOA)

On 21 March 2024 the Dutch Court confirmed the latest stage in the restructuring of the McDermott International Group by approving its Dutch WHOA. The WHOA (Wet homologatie onderhands akkoord) has been available since 1 January 2021 and is a restructuring tool that allows the

cramming down of dissenting creditors or shareholders, outside of a formal insolvency.

It is the first time the WHOA has been used in conjunction with an English restructuring plan and demonstrates the flexibility offered to debtors in combining procedures in different jurisdictions to ensure they have international effect. On 22 March 2024, a US Bankruptcy Court made an order recognising the Dutch and English restructuring proceedings.

This briefing paper discusses the approval.

https://www.cliffordchance.com/briefings/2024/03/mcdermott-international-group-receives-the-amsterdam-court-s-app.html