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Briefing note

International Regulatory Update

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EU Commission publishes 2018 work programme

The EU Commission has published its work programme for 2018, which is intended to set out proposals for the next fourteen months, building on the Roadmap presented by President Juncker alongside his State of the Union address in September 2017.

The work programme sets out 26 targeted legislative actions to complete the Commission's ten priority work areas by 2019, which include:

- completing the Banking Union with proposals on:
  - the development of secondary markets for non-performing loans;
  - protections of secured creditors from business borrowers' default; and
  - an enabling framework for the development of EU Sovereign Bond-backed Securities; and
- completing the Capital Markets Union, including:
  - a revised framework for investment firms;
  - an action plan on sustainable finance with regulatory measures;
  - an initiative on fintech;
  - a proposal for an EU framework on crowd funding and peer-to-peer finance; and
  - a European enabling framework for covered bonds.

Certain proposals in the work programme follow on from regulatory fitness and performance (REFIT) reviews of current laws, which include an initiative on reducing barriers to cross-border distribution of alternative investment funds and UCITS under the Capital Markets Union initiative.

The programme also lists 66 priority pending proposals for agreement, which include proposals on:

- Omnibus 3;
- a Directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures (Insolvency Directive);
- a Regulation on a Pan-European Personal Pension Product (PEPP);
- amendments to the European Market Infrastructure Regulation (EMIR);
- amendments to the statute of the European System of Central Banks (ESCB) and of the European Central Bank;
- the risk reduction package, comprising legislative proposals on Capital Requirements Regulation (CRR) reform, loss-absorbing and recapitalisation capacity, the ranking of unsecured debt instruments in insolvency hierarchy, and exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures;
- a Regulation on a framework for the recovery and resolution of central counterparties (CCPs);
- a Regulation to establish a European Deposit Insurance Scheme (EDIS);
- a Directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (MLD 5); and
- a Regulation on mutual recognition of freezing and confiscation orders.

The Commission also highlights its intention to withdraw certain stalled or technically outdated proposals in order that the Parliament and Council focus on its priority areas.

Some initiatives set out in the work programme are intended to have a more forward-looking '2025 perspective', which will include proposals to be brought forward for the creation of a permanent and accountable European Minister of Economy and Finance. The Commission's communication on the work programme notes that all of its forward-looking proposals will be achievable under the Lisbon Treaty.

The Commission intends to table all legislative proposals no later than May 2018, in order that the EU Parliament and EU Council can complete their legislative work ahead of the 2019 European Parliament elections.

Alongside the work programme, the Commission has also published a review of its Better Regulation Agenda, which was adopted in 2015. Overall the review finds that more extensive engagement with the public, systematic evaluation, high quality impact assessments, and a strengthened REFIT approach have allowed for improved appraisal of new proposals and existing legislation. As such, the Commission will continue to improve its better regulation policy and publish an overall assessment of how it has been implemented before the end of this Commission mandate.

EU Commission withdraws proposal for bank structural reform

The EU Commission has announced its intention to withdraw the proposal for a Regulation on bank structural reform (BSR) within six months. Annex IV to the Commission's 2018 work programme sets out a list of 15 legislative proposals that it intends to withdraw due to there being no foreseeable agreement on the proposals, or because the proposals are obsolete.

On BSR, the Commission cites no foreseeable agreement as the file has not progressed since 2015. Moreover, the Commission views the rationale behind the proposal as having been addressed through other regulatory measures in the banking sector.

EU agrees five year phase-in for IFRS 9 and other banking reform measures

The EU Parliament, EU Council and EU Commission have reached a political agreement on a five-year phase-in period for the new International Financial Reporting Standard for financial instruments (IFRS 9), to commence when the standards come into effect on 1 January 2018.

The phase-in period seeks to mitigate the impact of the new impairment model introduced by IFRS 9 by providing banks with time to add part of the increase in loan loss provisions back to their capital. The agreement also introduces a new transitional arrangement for the expiry of certain exemptions for large exposures.

The EU institutions also reached an agreement on a new category of unsecured debt in bank creditors' insolvency ranking under the Bank Recovery and Resolution Directive (BRRD), which would be eligible to meet the Total Loss-Absorbing Capacity (TLAC) standard for global banks.

The political agreements will be followed by further technical talks to finalise the text. The EU Council's Permanent Representatives Committee (COREPER) is expected to endorse the agreement ahead of the EU Parliament plenary vote, which is scheduled for 29 November.

Capital Markets Union: EU Parliament adopts securitisation rules

The EU Parliament has adopted a package of proposals for simple, transparent and standardised (STS) securitisation.

The proposals form part of the EU Commission's Capital Markets Union (CMU) Action Plan and are intended to facilitate the development of the securitisation market in Europe. The package comprises two proposed regulations on:

- rules and criteria to define STS securitisation; and
- capital requirements for positions in securitisation, which will amend the CRR.

Among other things, the new securitisation rules set the risk retention requirement at 5% in accordance with existing international standards.

The new rules will enter into force twenty day after publication in the Official Journal.

EU Parliament publishes final ECON Committee report on ranking unsecured debt instruments in insolvency hierarchy

The EU Parliament has published the final report on a proposed Directive amending the BRRD as regards the ranking of unsecured debt instruments in insolvency hierarchy, which was endorsed by the Committee on

Economic and Monetary Affairs (ECON) on 10 October 2017.

Trilogue negotiations are expected to begin shortly.

CRR: EU Commission adopts Delegated Regulation on materiality thresholds

The EU Commission has adopted a Delegated Regulation setting out RTS on the conditions for setting the materiality threshold for credit obligations past due for the purposes of identifying a default under the CRR.

The RTS specify that the materiality threshold set by the competent authorities should consist of two components: an absolute component, which is the absolute amount, and a relative component, which is the percentage of the overall credit obligation that the amount past due represents. When both these are exceeded, the past due credit obligation should be considered material.

The conditions also distinguish between retail and other exposures, and allow for differences in the levels of thresholds applicable in different jurisdictions.

The Delegated Regulation will enter into force on the twentieth day following its publication in the Official Journal. The deadline for competent authorities to apply the materiality threshold is 31 December 2020.

EU Commission consults on extension of transitional periods on capital requirements for exposures to central counterparties

The EU Commission has requested feedback on a draft implementing regulation on the extension of the transitional periods related to own funds requirements for exposures to CCPs set out in the CRR and the EMIR.

The transitional periods under Article 497(2) of the CRR and Article 89(5a) of EMIR were most recently extended until 15 December 2017 by Commission Implementing Regulation (EU) 2017/954. The draft regulation would extend this period by an additional six months until 15 June 2018.

Comments on the proposed implementing regulation are due by 21 November 2017.

MiFID2: technical standards on authorisation and on acquisitions of qualifying holdings in investment firms published in Official Journal

Two sets of RTS and two sets of implementing technical standards (ITS) under MiFID2 have been published in the Official Journal. The technical standards relate to authorisation and proposed acquisitions of a qualifying holding in an investment firm.

The technical standards on authorisation are:

- Commission Delegated Regulation (EU) 2017/1943, which sets out RTS on information and requirements for the authorisation of investment firms; and
- Commission Implementing Regulation (EU) 2017/1945, which lays down ITS with regard to notifications by and to applicant and authorised investment firms.

The technical standards on acquisitions of qualifying holdings in investment firms are:

- Commission Delegated Regulation (EU) 2017/1946, supplementing MiFID1 and MiFID2, which sets out RTS for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm; and
- Commission Implementing Regulation (EU) 2017/1944, which lays down ITS with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm.

All of the technical standards will enter into force on 15 November 2017.

MiFID2: EU Commission publishes FAQs on interaction with third country broker-dealers

The EU Commission has published frequently asked questions (FAQs) on the interaction with third country broker-dealers under MiFID2. In particular, the FAQs are intended to respond to certain industry concerns relating to the application of MiFID2 on portfolio managers and their third country sub-advisors that are contractually obliged to comply with MiFID2.

The FAQs state that they do not represent an authoritative interpretation of the law but set out the EU Commission's views in answer to questions on:

- whether a MiFID2 portfolio manager or its third country sub-advisor may combine a payment for research and a payment for execution services into a single commission to a third country broker-dealer; and
- whether third country broker-dealers are required to identify a separate charge for research in cases where a MiFID2 portfolio manager or its third country sub-advisor pays for these services out of a research

payment account (RPA) or directly out of its own resources.

MiFID2: ESMA agrees FCA commodity derivative position limits

The European Securities and Markets Authority (ESMA) has published nine opinions agreeing position limits under MiFID2/MiFIR, which have been proposed by the Financial Conduct Authority (FCA).

The opinions relate to commodity derivative position limits for commodity futures and options contracts for:

- London cocoa;
- Robusta coffee;
- ICE white sugar;
- aluminium;
- copper;
- lead;
- nickel;
- tin; and
- zinc.

From 3 January 2018, limits will apply to the net position a person can hold in commodity derivative contracts. ESMA has published a spreadsheet listing liquid contracts that will receive bespoke position limits following notifications from national competent authorities (NCAs), including links to ESMA's opinions.

PSD2: EBA consults on RTS on home-host cooperation

The European Banking Authority (EBA) has launched a consultation on draft regulatory technical standards (RTS) on requirements for home-host cooperation under the recast Payment Services Directive (PSD2).

The draft RTS specify the method, means and detail of cooperation in the supervision of payment institutions operating on a cross-border basis, in particular:

- the framework for the cooperation between competent authorities in the host and home Member State, which is intended to enhance supervision of payment institutions operating across borders;
- procedures for requests and replies for cooperation and specific features relating to exchange of information between competent authorities; and
- periodic reporting requirements, in relation to requests by host competent authorities to payment institutions operating in their territories via agents or branches.

Comments on the consultation are due by 5 January 2018.

BCBS releases guidelines on identification and management of step-in risk

The Basel Committee on Banking Supervision (BCBS) has released its final guidelines on the identification and management of step-in risk.

Step-in risk refers to the risk that a bank provides financial support to an entity beyond, or in the absence of, its contractual obligations should the entity experience financial stress. The guidelines aim to mitigate the systemic risks stemming from potential financial distress in shadow banking entities spilling over to banks through a supervisory process built on reporting. Under the guidelines banks will be required to assess their step-in risk based on a range of indicators and a self-defined materiality policy.

The BCBS expects the guidelines to enter into force as soon as possible and no later than 2020.

FCA sets out reforms to UK capital markets

The FCA has published two policy statements (PS17/22 and PS17/23) and a feedback statement (FS17/3), setting out a package of measures designed to ensure the UK's primary capital markets continue to effectively meet the needs of issuers and investors.

PS17/23 introduces final rules aimed at improving the range, quality and timeliness of information available to investors during the equity initial public offering (IPO) process. In particular the measures introduced are intended to:

- restore the centrality of the prospectus in the IPO process;
- create the necessary conditions for unconnected IPO research to be produced; and
- address the underlying conflicts of interest that can arise in the production and distribution of connected research.

PS17/22 is intended to clarify and enhance some elements of the Listing Regime. It amends the Listing Rules as follows:

- clarifies the eligibility requirements for premium listing;
- introduces a concessionary route to premium listing for property companies;
- updates how premium listed issuers may classify transactions and the FCA consultation requirements; and

- changes the FCA approach to the suspension of listing for reverse takeovers.

FS17/3 provides feedback on responses received to the FCA's consultation on the above reforms as well as identifying three areas that it believes require further exploration and stakeholder engagement. These areas include the relative positioning of standard versus premium listing, the provision of patient capital to companies that require long-term investment and retail access to debt markets.

UK Government publishes outcome of second national risk assessment of money laundering and terrorist financing

HM Treasury (HMT) and the Home Office have published the outcome of the UK's second national risk assessment (NRA) of money laundering and terrorist financing. The NRA sets out the key money laundering and terrorist financing risks for the UK, how these have changed since the UK's first NRA was published in 2015 and the action taken since then to address these risks.

The key findings of the 2017 NRA include:

- high-end money laundering, typically involving the laundering of major frauds, corruption or tax evasion through exploitation of financial and other professional services, as well as cash-based money laundering remain the greatest areas of money laundering risk to the UK;
- new typologies of money laundering are emerging, including through capital markets and the exploitation of technology;
- professional services are a crucial gateway for criminals looking to disguise the origin of their funds; and
- cash is still the preferred method for terrorists to move funds through and out of the country.

The NRA also identifies actions taken by the government and law enforcement to address these risks. These reforms, such as the implementation of the Criminal Finances Act 2017 and the Money Laundering Regulations 2017, and the expansion of the Joint Money Laundering Intelligence Taskforce, are intended to strengthen the UK's anti-money laundering and counter-terrorist financing (AML/CTF) regime, tackle abuse of professional services, improve law enforcement response and increase corporate transparency.

The 2017 NRA and the reforms discussed will provide a basis for the 2017/18 Financial Action Task Force (FATF) mutual evaluation of the UK against global AML/CTF standards. FATF intends to publish its mutual evaluation report, the UK's first FATF peer review since 2007, in December 2018.

Revised WpDVerOV published in German Federal Gazette

The revised German Conduct of Business and Organisation Regulation (WpDVerOV) has been published in the German Federal Gazette (Bundesgesetzblatt). The revision of the WpDVerOV follows the implementation of MiFID2 and the entry into force of the PRIIPs Regulation. Consequently, provisions which are directly applicable on the basis of the EU regulations have been deleted in the WpDVerOV.

Amongst other things, the WpDVerOV includes the following:

- procedures on categorisation of a client as a professional client;
- provisions regarding independent investment advice;
- product information sheets;
- inducements, inducement register, quality improvement;
- inducements regarding financial analysis;
- record keeping obligations;
- safe custody of customer assets; and
- product governance.

The WpDVerOV will enter into force on 3 January 2018.

BaFin consults on revised German Liquidity Ordinance

Pursuant to Article 460 of the CRR, the liquidity coverage requirement will be set at 100% as of 1 January 2018. In this respect, there is no longer an option for the German Federal Financial Supervisory Authority (BaFin) to introduce or maintain national provisions on liquidity requirements pursuant to Article 412 para. 5 CRR.

Consequently, BaFin has launched a consultation on a revised German Liquidity Ordinance (Liquiditätsverordnung) which imposes liquidity requirements for institutions which are not covered by Articles 412 to 428 CRR. This includes CRR investment firms, as they are not subject to Articles 412 to 428 CRR pursuant to section 2 para. 9d of the German Banking Act (KWG).

For institutions which are no longer covered by the German Liquidity Ordinance this avoids double reporting and – according to BaFin – will provide significant relief from regulatory reporting obligations.

Comments on the draft amendment ordinance are due by 7 November 2017.

BaFin publishes revised MaRisk

BaFin has published a revised version of its Circular on Minimum Requirements for Risk Management (MaRisk).

In particular, the revised MaRisk are intended to implement the BCBS principles for effective risk data aggregation and risk reporting as well as to strengthen the requirements for IT systems, to establish an appropriate risk culture and to expand and clarify the requirements for outsourcing.

The revised MaRisk entered into force on 27 October 2017. They provide for an implementation period regarding certain requirements.

SFTR: new Luxembourg implementing bill published

A new bill (no. 7194) implementing Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse (SFTR), has been lodged with the Luxembourg Parliament.

The bill ensures the implementation of the SFTR in the Luxembourg legal framework and, in particular, modifies:

- the Luxembourg law of 17 December 2010 on undertakings for collective investment (as amended);
- the Luxembourg law of 12 July 2013 on alternative investment fund managers (as amended); and
- the Luxembourg law of 7 December 2015 on the insurance sector (as amended).

In particular, the bill provides for the power of the Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), (for financial counterparties subject to its supervision and non-financial counterparties) and the Luxembourg insurance sector supervisory authority, the Commissariat aux Assurances (CAA), (for financial counterparties subject to its supervision, i.e. in particular insurance and reinsurance undertakings) to impose adequate sanctions for certain SFTR breaches, to take other administrative measures which have to be efficient, proportionate and dissuasive, and to publish decisions in relation thereto on their websites.

The lodging of the bill with the Parliament constitutes the start of the legislative procedure.

Dutch Ministry of Finance consults on decree to implement Insurance Distribution Directive

The Dutch Ministry of Finance has launched a consultation on a draft decree which, together with the recently introduced Bill for the Implementation of the Insurance Distribution Directive, implements EU Directive 2016/97/EU on Insurance Distribution and amends several Dutch financial regulatory rules under the Financial Supervision Act.

Comments are due by 17 November 2017.

PSD2: Bill for Implementation Act submitted to Dutch Parliament

The Dutch Cabinet has submitted a bill to Parliament which, once enacted, would implement PSD2. The bill amends the Dutch Financial Supervision Act, the Dutch Civil Code and the Consumer Protection Enforcement Act.

PSD2 has to be implemented in national law by 13 January 2018. This implementation deadline will likely not be met. The Dutch Cabinet intends to let the Implementation Act enter into force in spring 2018.

Polish Financial Supervision Authority issues communiqué on increase in nominal value of subordinated bonds

The Polish Financial Supervision Authority (PFSA) has issued a communiqué recommending that the nominal value per subordinated bond to be issued in all subsequent issues by banks be at least PLN 400,000 (approximately EUR 100,000).

The PFSA has justified its recommendation by citing an increase in the value and number of offers of these bonds being made by banks, which could result in a material increase in individual investors’ interest in the instrument.

Bank of Spain consults on modifying calculation methodology for risk-based contributions to DGS

The Bank of Spain has issued a draft circular intended to incorporate a new factor in the calculation methodology included in Circular 5/2016, of 27 May, on the method of calculating the contributions of member institutions to the Deposit Guarantee Fund of Credit Institutions. This new factor was introduced by Royal Decree Law 11/2017 of 23 June, on urgent measures on financial matters through the modification of article 6.3 of Royal Decree-Law 16/2011, of 14 October 2011, by virtue of which the Credit Institution

Deposit Guarantee Fund (Fondo de Garantía de Depósitos de entidades de crédito) (DGS) was created.

The factor relates to those credit institutions to which that amendment applies (i.e. those belonging to an Institutional Protection System (Sistema Institucional de Protección) (SIP)), which can be distinguished between:

- SIPs known as reinforced or full mutualisation SIPs, for which the calculation method uses consolidated data for the calculation of the contributions to the DGS; or
- regulatory SIPs, for which it is expressly established that, for those credit institutions that have created a fund, in advance, which may help to reinforce the liquidity and solvency and to prevent the resolution of the members of the SIP, said credit institutions may make less contributions to the DGS.

Additionally, the draft circular modifies Circular 8/2015, of 18 December, to branches of credit institutions and credit institutions members of the DGS, on information to determine the calculation base of the contributions to the DGS, in order to gather information on the volume and annual provision to the referred fund created in advance.

The draft circular will be subject to a public consultation until 16 November 2017.

FINMA introduces new capital adequacy treatment of holdings in subsidiaries

The Swiss Financial Market Supervisory Authority (FINMA) is changing the way in which holdings in subsidiaries are treated in examining compliance with regulatory capital adequacy requirements by the parent companies of Switzerland's two large banks. The new procedure is intended to improve the transparency of the parent companies' capital structures, simplify calculations and enhance comparability with regulations in other key jurisdictions.

Under the current system, the book value of the parent companies' holdings in subsidiaries must be deducted in full from core equity capital. To prevent the current large banks from overshooting their capital adequacy requirements at consolidated level, FINMA has granted them relief measures under the Capital Adequacy Ordinance. Specifically, an individually determined proportion of holdings has been risk-weighted at 200% as opposed to the holdings being fully deducted.

Such full deduction of holdings from core equity is onerous by international standards and requires significant relief measures. FINMA is therefore abolishing deductions from capital altogether as well as the accompanying relief measures allowed for the two large banks. In their place, a risk weighting is now applied with weights increasing up to 250% for all Swiss-based holdings and 400% for all foreign-based holdings by the end of the transition period. Both large banks have to regularly disclose the total book value of their Swiss and foreign holdings in the interests of total transparency. The new system, to be brought in on the basis of individual FINMA decrees, will apply to the two large banks retroactively as of 1 July 2017 and to their parent companies' capital ratios only, i.e. excluding consolidated ratios. It is planned that the new risk weightings will also apply to all other banks as of 1 January 2019. The process to make the required changes to the Capital Adequacy Ordinance has been initiated.

HKEX announces plans for more long-dated contract months in derivatives market

Hong Kong Exchanges and Clearing (HKEX) has announced that it plans to introduce long-dated contract months for its Hang Seng Index (HSI) and Hang Seng China Enterprises Index (HSCEI) Futures and increase the long-dated contract months for its HSI and HSCEI Options, with maturities up to 5.5 years, with effect from 4 December 2017, subject to regulatory approval.

The planned changes include:

- adding five December contracts for HSI and HSCEI Futures;
- adding two December contracts and stop introducing the last June contract for HSI Options (long-dated contracts will increase from five to six); and
- adding three December contracts for HSCEI Options.

HKEX believes that the additional long-dated contracts will be useful for investment banks, portfolio managers and other market participants in managing their counterparty risk.

Revised capital and liquidity rules and amendment notice under Banking Ordinance gazetted

The Hong Kong Monetary Authority (HKMA) has announced that the following three pieces of subsidiary legislation have been gazetted to implement international standards on banking regulation in Hong Kong:

- the Banking (Capital) (Amendment) Rules 2017 – the Amendment Rules are intended to implement three Basel III related capital standards of the Basel Committee on Banking Supervision (BCBS). These include the revised securitisation framework, the

leverage ratio framework, and the interim capital treatment of expected loss provisions under the new International Financial Reporting Standard 9;

- the Banking (Liquidity) (Amendment) Rules 2017 – the Amendment Rules are intended to implement the Basel III Net Stable Funding Ratio and a new local Core Funding Ratio for different categories of authorised institutions, having regard to their business size and liquidity risk profile, to ensure that their assets are financed with a sufficiently stable source of funding; and
- the Banking (Specification of Multilateral Development Bank) (Amendment) Notice 2017 – the Amendment Notice is intended to implement a decision of the BCBS in November 2016 to allow banks to apply a 0% risk-weight to claims on the International Development Association (a member of the World Bank Group) as a multilateral development bank (MDB) under the standardised approach for credit risk.

The three pieces of subsidiary legislation will be tabled before the Legislative Council at its sitting on 25 October 2017, for negative vetting, and will come into operation on 1 January 2018.

HKMA and MAS sign agreement to strengthen co-operation on fintech

The HKMA and the Monetary Authority of Singapore (MAS) have signed and exchanged a co-operation agreement to strengthen co-operation on fintech. The agreement is intended to bolster ties between the two jurisdictions and foster fintech development within the region. The agreement, signed between heads of the two organisations, was exchanged at the Fintech Day organised by the HKMA.

Under the agreement, the HKMA and the MAS will collaborate on a number of initiatives, including joint innovation projects, referrals of innovative businesses, information sharing and exchange of expertise, to facilitate financial innovation in Hong Kong and Singapore.

The two authorities have also committed to working on a strategy project on trade finance cross-border infrastructure, based on Distributed Ledger Technology, as their first collaborative initiative, which will facilitate cross-border trade and financing. Details of the project will be announced by the two authorities in November 2017.

MAS responds to feedback on proposed amendments to regulatory requirements in relation to credit loss provisioning

The MAS has published its responses to the feedback it received on its May 2017 public consultation on proposed amendments to regulatory requirements in relation to credit loss provisioning by banks and merchant banks.

The consultation proposed amendments to MAS Notices 612, 1005, 637 and 1111 in relation to the changes in the recognition and measurement of allowance for credit losses introduced in International Financial Reporting Standard (IFRS) 9 Financial Instruments and Singapore Financial Reporting Standard (SFRS) 109 Financial Instruments. The proposals were calibrated to meet the MAS' prudential objectives in areas where the expected credit loss (ECL) model under IFRS 9 and SFRS 109 may not fully address its prudential concerns. The MAS will publish the finalised MAS Notice 612, 1005, 637 and 1111 before the end of 2017. Amongst other things, the MAS confirmed in its responses that:

- it will remove the regulatory requirements on minimum impairment provisions for credit-impaired exposures;
- it is reviewing the regulatory loan classification framework, and will seek feedback from the industry at a later date. Meanwhile, banks must continue adhering to the regulatory loan classification requirements set out in the MAS Notice 612;
- it will impose minimum regulatory loss allowances on locally-incorporated domestic systemically important banks;
- it will require banks to adopt the RLAR approach (recognising the additional loss allowance by establishing a non-distributable regulatory loss allowance reserve through appropriation of retained earnings) for the treatment of minimum regulatory loss allowances. Under this approach, the profit and loss statements of banks will fully reflect credit loss allowance based on accounting standards;
- it will retain the option for banks incorporated outside Singapore to record their loss allowances for non-credit-impaired exposures at head office, taking into consideration their size, complexity and risk profile;
- it will revise the reporting template to require only the total non-credit-impaired exposures and the corresponding total credit loss allowances to be reported, and to allow reporting periods to be aligned to banks' financial year-ends; and

- it will allow banks in Singapore a period of up to two years to build up the additional loss allowance required to meet the 1% minimum regulatory loss allowances.

This transitional arrangement is only applicable to banks that do not currently maintain the 1% minimum collective impairment provisions under the MAS Notice 612, and which are required or choose to comply with the 1% minimum regulatory loss allowances from 1 January 2018

MAS simplifies rules for managers of venture capital funds

The MAS has announced the commencement of a simplified regulatory regime for managers of venture capital funds (VC managers) with immediate effect. The announcement follows a public consultation on the proposed regulatory regime for VC managers, which was published on 15 February 2017.

The new regulatory regime is intended to simplify and shorten the authorisation process for VC managers. The MAS will no longer require VC managers to have directors and representatives with at least five years of relevant experience in fund management. VC managers will also not be subject to the capital requirements and business conduct rules that currently apply to other fund managers. VC managers will, however, be required to disclose to investors that they are not subject to all of the regulatory requirements imposed on other fund management companies.

In admitting and supervising VC managers, the MAS will focus primarily on existing fit and proper and anti-money laundering safeguards under the Securities and Futures Act, Chapter 289 (SFA). The MAS will also retain regulatory powers to maintain control and supervision over VC managers.

The simplified regulatory regime takes into account the extent of contractual safeguards that are already present in typical contracts negotiated by VC managers' investor client base. To qualify for the VC manager regime, a VC manager has to manage funds that meet the following characteristics:

- they invest in business ventures that are not listed on a securities exchange;
- they invest at least 80% of committed capital in securities that are directly issued by start-ups that are no more than ten years old;
- units of the funds are not available for new subscription after the close of fund-raising, and can only be redeemed at the end of the fund life; and
- they are offered only to accredited and/or institutional investors.

Funds managed by a VC manager will have flexibility to invest up to 20% of committed capital in unlisted business ventures that do not meet the second criterion above, including investments in business ventures that have been incorporated for more than ten years and investments acquired through secondary purchases. The MAS has also decided against imposing any restriction on the use of financing or leverage by VC managers.

The MAS has amended/updated the related regulations, notices, guidelines and frequently asked questions (FAQs), and issued a new application form (Form 1V) for a capital markets services licence for VC managers. Existing licensed fund management companies or registered fund management companies which seek to transit to the VC manager regime only need to notify the MAS of their intention to be a VC manager by indicating so in Form 1V.

The MAS has also published its response to the feedback it received on its February 2017 public consultation on the proposed regulatory regime for VC managers.

ASIC overhauls funds management guidance

The Australian Securities and Investments Commission (ASIC) has released a suite of new and updated guidance for the funds management industry for consultation.

ASIC proposes to consolidate its core guidance for the funds management industry into 6 regulatory guides covering topics:

- establishing and registering a fund;
- constitutions;
- compliance and oversight;
- asset holding;
- how ASIC may exercise its exemption or modification powers and common forms of relief it may grant; and
- entry and ongoing requirements for foreign passport funds.

The guidance will reflect ASIC's current views on these topics, and apply to managed investment schemes, CCIVs, Australian passport funds and certain other AFS licensees involved in funds management.

ASIC will develop an information sheet on funds management governance considerations and make a range

of less substantive amendments to other regulatory guides. These amendments will reflect the consequential amendments that will be made to the Australian Corporations Act to accommodate the new regimes.

US SEC issues three 'no action' letters on MIFID2 research unbundling

The US Securities and Exchange Commission (SEC) has issued three related no-action letters that collectively provide relief to US market participants who are impacted directly or indirectly by MiFID2. In parallel, the EU Commission has issued an FAQ offering guidance to portfolio managers subject to MiFID2 and non-EU broker-dealers that provides flexibility in the types of payments that can be made.

RECENT CLIFFORD CHANCE BRIEFINGS

A Brexit transition period – wasting asset or business necessity?

The UK is due to leave the EU in March 2019 and it is now just over a month since Theresa May, the UK Prime Minister, sought to give new momentum to the Brexit negotiations and talked in Florence about the need for an implementation period so that businesses and public services only have to plan for one set of changes.

This briefing discusses the timeline for achieving the proposed implementation or transition period, the legal challenges involved, the implications for trade and for multinational businesses outside the financial services sector more generally.

https://www.cliffordchance.com/briefings/2017/10/a_brexit_transitionperiod-wastingasseto.html

Post-Brexit vision for insurance – Sam Woods, Mansion House speech on geofinance

On 4 October 2017, Sam Woods, the Deputy Governor for Prudential Regulation and the Chief Executive Officer of the Prudential Regulation Authority (PRA), delivered a speech at the Mansion House City Banquet.

This briefing discusses the speech, which explores the impact of geography on the shape of banks, insurers and financial regulation – a dynamic Sam Wood's referred to as 'geofinance' – and the PRA's post-Brexit vision for the insurance sector.

https://www.cliffordchance.com/briefings/2017/10/post-brexit_visionforinsurancesamwoods.html

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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